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

FORM 10-Q

T **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended April 3, 2011

OR

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from _____ to _____

Commission file number 001-34166

SunPower Corporation

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**94-3008969**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

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

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

3939 North First Street, San Jose, California 95134
(Registrant's Former Address)

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

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

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

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

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

The total number of outstanding shares of the registrant's class A common stock as of May 6, 2011 was 56,981,639.
The total number of outstanding shares of the registrant's class B common stock as of May 6, 2011 was 42,033,287.

SunPower Corporation

INDEX TO FORM 10-Q

Index

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

Index

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

	April 3, 2011	January 2, 2011
Assets		
Current assets:		
Cash and cash equivalents	$ 367,860	$ 605,420
Restricted cash and cash equivalents, current portion	141,617	117,462
Short-term investments	42,089	38,720
Accounts receivable, net	341,400	381,200
Costs and estimated earnings in excess of billings	136,267	89,190
Inventories	487,448	313,398
Advances to suppliers, current portion	33,673	31,657
Project assets - plants and land, current portion	46,377	23,868
Prepaid expenses and other current assets (1)	207,034	192,934
Total current assets	1,803,765	1,793,849
Restricted cash and cash equivalents, net of current portion	119,410	138,837
Property, plant and equipment, net	597,001	578,620
Project assets - plants and land, net of current portion	26,524	22,238
Goodwill	346,159	345,270
Other intangible assets, net	59,753	66,788
Advances to suppliers, net of current portion	266,276	255,435
Other long-term assets (1)	245,733	178,294
Total assets	$ 3,464,621	$ 3,379,331
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable (1)	$ 365,404	$ 382,884
Accrued liabilities	201,612	137,704
Billings in excess of costs and estimated earnings	70,841	48,715
Short-term debt	206,095	198,010
Convertible debt, current portion	185,572	—
Customer advances, current portion (1)	17,186	21,044
Total current liabilities	1,046,710	788,357
Long-term debt	50,000	50,000
Convertible debt, net of current portion	413,046	591,923
Customer advances, net of current portion (1)	157,133	160,485
Other long-term liabilities	170,694	131,132
Total liabilities	1,837,583	1,721,897
Commitments and contingencies (Note 5)		
Stockholders' equity:		
Preferred stock, 10,042,490 shares authorized, $0.001 par value; none issued and outstanding	—	—
Common stock, 217,500,000 shares of class A common stock authorized, $0.001 par value; 57,966,210 and 56,664,413 shares of class A common stock issued; 56,893,750 and 56,073,083 shares of class A common stock outstanding, as of April 3, 2011 and January 2, 2011, respectively; 150,000,000 shares of class B common stock authorized, $0.001 par value; 42,033,287 shares of class B common stock issued and outstanding as of both April 3, 2011 and January 2, 2011	99	98
Additional paid-in capital	1,619,640	1,606,697
Retained earnings	61,551	63,672
Accumulated other comprehensive income (loss)	(29,502)	3,640
Treasury stock, at cost; 1,072,460 and 591,330 shares of class A common stock as of April 3, 2011 and January 2, 2011, respectively	(24,750)	(16,673)
Total stockholders' equity	1,627,038	1,657,434
Total liabilities and stockholders' equity	$ 3,464,621	$ 3,379,331

(1) The Company has related party balances in connection with transactions made with its joint ventures which are recorded within the "Prepaid expenses and other current assets," "Other long-term assets," "Accounts payable," "Customer advance, current portion" and "Customer advances, net of current portion" financial statement line items in the Condensed Consolidated Balance Sheets (see Note 5 and Note 6).

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	
	April 3, 2011	April 4, 2010
Revenue:		
Utility and power plants	$ 245,909	$ 144,094
Residential and commercial	205,509	203,180
Total revenue	451,418	347,274
Cost of revenue:		
Utility and power plants	203,011	111,428
Residential and commercial	159,885	164,103
Total cost of revenue	362,896	275,531
Gross margin	88,522	71,743
Operating expenses:		
Research and development	13,646	10,407
Sales, general and administrative	76,179	64,280
Total operating expenses	89,825	74,687
Operating loss	(1,303)	(2,944)
Other expense, net:		
Interest income	743	273
Interest expense	(15,259)	(10,940)
Loss on mark-to-market derivatives	(44)	(2,218)
Other, net	(9,207)	(5,591)
Other expense, net	(23,767)	(18,476)
Loss before income taxes and equity in earnings of unconsolidated investees	(25,070)	(21,420)
Benefit from income taxes	15,816	30,875
Equity in earnings of unconsolidated investees	7,133	3,118
Net income (loss)	$ (2,121)	$ 12,573
Net income (loss) per share of class A and class B common stock:		
Basic	$ (0.02)	$ 0.13
Diluted	$ (0.02)	$ 0.13
Weighted-average shares:		
Basic	96,453	95,154
Diluted	96,453	96,472

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	
	April 3, 2011	April 4, 2010
Cash flows from operating activities:		
Net income (loss)	$ (2,121)	$ 12,573
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Stock-based compensation	13,163	10,808
Depreciation	25,697	24,715
Amortization of other intangible assets	7,064	4,759
Gain on sale of investments	(128)	(1,572)
Loss on mark-to-market derivatives	44	2,218
Non-cash interest expense	7,325	6,390
Amortization of debt issuance costs	1,256	699
Amortization of promissory notes	1,290	—
Equity in earnings of unconsolidated investees	(7,133)	(3,118)
Deferred income taxes and other tax liabilities	(2,171)	(35,720)
Changes in operating assets and liabilities, net of effect of acquisition:		
Accounts receivable	52,274	30,511
Costs and estimated earnings in excess of billings	(40,638)	(4,907)
Inventories	(163,199)	(51,085)
Project assets	(27,644)	(3,426)
Prepaid expenses and other assets	(14,233)	(14,692)
Advances to suppliers	(12,820)	3,178
Accounts payable and other accrued liabilities	(26,368)	26,873
Billings in excess of costs and estimated earnings	21,271	11,615
Customer advances	(7,588)	(918)
Net cash provided by (used in) operating activities	(174,659)	18,901
Cash flows from investing activities:		
Increase in restricted cash and cash equivalents	(4,728)	(19,717)
Purchase of property, plant and equipment	(44,757)	(43,658)
Proceeds from sale of equipment to third-party	209	2,875
Proceeds from sales or maturities of available-for-sale securities	300	1,572
Cash paid for acquisition, net of cash acquired	—	(272,699)
Cash paid for investments in joint ventures and other non-public companies	(20,000)	(1,618)
Net cash used in investing activities	(68,976)	(333,245)
Cash flows from financing activities:		
Proceeds from issuance of bank loans, net of issuance costs	164,221	1,539
Proceeds from issuance of convertible debt, net of issuance costs	—	214,921
Repayment of bank loans	(156,136)	—
Cash paid for bond hedge	—	(66,176)
Proceeds from warrant transactions	—	54,076
Proceeds from exercise of stock options	73	—
Purchases of stock for tax withholding obligations on vested restricted stock	(8,077)	(1,180)
Net cash provided by financing activities	81	203,180
Effect of exchange rate changes on cash and cash equivalents	5,994	(5,561)
Net decrease in cash and cash equivalents	(237,560)	(116,725)
Cash and cash equivalents at beginning of period	605,420	615,879
Cash and cash equivalents at end of period	$ 367,860	$ 499,154
Non-cash transactions:		
Property, plant and equipment acquisitions funded by liabilities	$ 6,159	$ 31,831
Non-cash interest expense capitalized and added to the cost of qualified assets	499	535

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

SunPower Corporation
Notes to Condensed Consolidated Financial Statements
(unaudited)

Note 1. *THE COMPANY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES*

The Company

SunPower Corporation (together with its subsidiaries, the “Company” or “SunPower”) is a vertically integrated solar products and services company that designs, manufactures and delivers high-performance solar electric systems worldwide for residential, commercial and utility-scale power plant customers.

The Company's President and Chief Executive Officer, as the chief operating decision maker (“CODM”), has organized the Company and manages resource allocations and measures performance of the Company's activities between these two business segments: the Utility and Power Plants ("UPP") Segment and the Residential and Commercial ("R&C") Segment. The Company's UPP Segment refers to its large-scale solar products and systems business, which includes power plant project development and project sales, turn-key engineering, procurement and construction (“EPC”) services for power plant construction, and power plant operations and maintenance (“O&M”) services. The UPP Segment also sells components, including large volume sales of solar panels and mounting systems, to third parties, often on a multi-year, firm commitment basis. The Company's R&C Segment focuses on solar equipment sales into the residential and small commercial market through its third-party global dealer network, as well as direct sales and EPC and O&M services in the United States for rooftop and ground-mounted solar power systems for the new homes, commercial and public sectors.

Basis of Presentation and Preparation

Principles of Consolidation

The accompanying condensed consolidated interim financial statements have been prepared under the rules and regulations of the Securities and Exchange Commission (“SEC”) regarding interim financial reporting and include the accounts of the Company and all of its subsidiaries. Intercompany transactions and balances have been eliminated in consolidation. The year-end Condensed Consolidated Balance Sheet data was derived from audited financial statements contained in the Company's Annual Report on Form 10-K for the fiscal year ended January 2, 2011 (the "fiscal 2010 Form 10-K").

Fiscal Years

The Company reports on a fiscal-year basis and ends its quarters on the Sunday closest to the end of the applicable calendar quarter, except in a 53-week fiscal year, in which case the additional week falls into the fourth quarter of that fiscal year. Both fiscal year 2011 and 2010 consist of 52 weeks. The first quarter of fiscal 2011 ended on April 3, 2011 and the first quarter of fiscal 2010 ended on April 4, 2010.

Management Estimates

The preparation of the condensed consolidated financial statements in conformity with accounting principles generally accepted in the United States (“U.S. GAAP”) requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Significant estimates in these financial statements include percentage-of-completion for construction projects, allowances for doubtful accounts receivable and sales returns, inventory write-downs, stock-based compensation, estimates for future cash flows and economic useful lives of property, plant and equipment, project assets, goodwill, valuations for business combinations, other intangible assets and other long-term assets, asset impairments, fair value of financial instruments, certain accrued liabilities including accrued warranty reserves, valuation of debt without the conversion feature, valuation of share lending arrangements, income taxes and tax valuation allowances. Actual results could materially differ from those estimates.

In the opinion of management, the accompanying condensed consolidated financial statements contain all adjustments, consisting only of normal recurring adjustments, which the Company believes are necessary for a fair statement of the Company's financial position as of April 3, 2011 and its results of operations and cash flows for the three months ended April 3, 2011 and April 4, 2010. These condensed consolidated financial statements are not necessarily indicative of the results to be expected for the entire year.

Summary of Significant Accounting Policies

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

There have been no significant changes in the Company's significant accounting policies for the three months ended April 3, 2011, as compared to the significant accounting policies described in the fiscal 2010 Form 10-K. Further, there has been no issued accounting guidance not yet adopted by the Company that it believes is material, or is potentially material to its condensed consolidated financial statements.

Note 2. *GOODWILL AND OTHER INTANGIBLE ASSETS*

Goodwill

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

(In thousands)	UPP	R&C	Total
As of October 3, 2010	$ 225,529	$ 119,332	$ 344,861
Goodwill arising from business combination	821	—	821
Translation adjustment	—	(412)	(412)
As of January 2, 2011	226,350	118,920	345,270
Translation adjustment	—	889	889
As of April 3, 2011	$ 226,350	$ 119,809	$ 346,159

Intangible Assets

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

(In thousands)	Gross	Accumulated Amortization	Net
As of April 3, 2011			
Project assets	$ 79,160	$ (28,130)	$ 51,030
Patents, trade names and purchased technology	55,207	(54,867)	340
Purchased in-process research and development	1,000	(70)	930
Customer relationships and other	40,805	(33,352)	7,453
	$ 176,172	$ (116,419)	$ 59,753
As of January 2, 2011			
Project assets	$ 79,160	$ (22,627)	$ 56,533
Patents, trade names and purchased technology	55,144	(54,563)	581
Purchased in-process research and development	1,000	(28)	972
Customer relationships and other	40,525	(31,823)	8,702
	$ 175,829	$ (109,041)	$ 66,788

All of the Company's acquired other intangible assets are subject to amortization. Aggregate amortization expense for other intangible assets totaled $7.1 million and $4.8 million in the three months ended April 3, 2011 and April 4, 2010, respectively. As of April 3, 2011, the estimated future amortization expense related to other intangible assets is as follows:

Index

(In thousands)	Amount
Year	
2011 (remaining nine months)	$ 20,128
2012	22,718
2013	16,330
2014	252
2015	186
Thereafter	139
	$ 59,753

Index

Note 3. ***BALANCE SHEET COMPONENTS***

	As of	
(In thousands)	**April 3, 2011**	**January 2, 2011**
Accounts receivable, net:		
Accounts receivable, gross	$ 351,170	$ 389,554
Less: allowance for doubtful accounts	(7,531)	(5,967)
Less: allowance for sales returns	(2,239)	(2,387)
	$ 341,400	$ 381,200
Inventories:		
Raw materials	$ 98,299	$ 70,683
Work-in-process	46,518	35,658
Finished goods	342,631	207,057
	$ 487,448	$ 313,398
Prepaid expenses and other current assets:		
VAT receivables, current portion	$ 38,876	$ 26,500
Short-term deferred tax assets	855	3,605
Foreign currency derivatives	17,926	35,954
Income tax receivable	17,339	1,513
Deferred project costs	717	934
Note receivable (1)	10,000	10,000
Other receivables (2)	88,807	83,712
Other prepaid expenses	32,514	30,716
	$ 207,034	$ 192,934

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

(2) Includes tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured silicon ingots from the suppliers (see Notes 5 and 6).

Project assets - plant and land:		
Project assets - plant	$ 54,029	$ 28,784
Project assets - land	18,872	17,322
	$ 72,901	$ 46,106
Project assets - plants and land, current portion	$ 46,377	$ 23,868
Project assets - plants and land, net of current portion	26,524	22,238

	As of	
(In thousands)	**April 3, 2011**	**January 2, 2011**
Property, plant and equipment, net:		
Land and buildings	$ 13,912	$ 13,912
Leasehold improvements	209,143	207,248
Manufacturing equipment (3)	556,010	551,815
Computer equipment	49,771	46,603
Solar power systems	10,954	10,614
Furniture and fixtures	5,704	5,555

Construction-in-process	64,531	28,308
	910,025	864,055
Less: accumulated depreciation (4)	(313,024)	(285,435)
	$ 597,001	$ 578,620

(3) Certain manufacturing equipment associated with solar cell manufacturing lines located at one of the Company's facilities in the Philippines is collateralized in favor of a third-party lender. The Company provided security for advance payments received from a third party in fiscal 2008 totaling $40.0 million in the form of collateralized manufacturing equipment with a net book value of $26.4 million and $28.3 million as of April 3, 2011 and January 2, 2011, respectively.

(4) Total depreciation expense was $25.7 million and $24.7 million for the three months ended April 3, 2011 and April 4, 2010, respectively.

Property, plant and equipment, net by geography (5):		
Philippines	$ 494,455	$ 502,131
United States	99,956	73,860
Europe	2,367	2,400
Australia	223	229
	$ 597,001	$ 578,620

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

	Three Months Ended	
(In thousands)	**April 3, 2011**	**April 4, 2010**
Interest expense:		
Interest cost incurred	$ 16,451	$ 11,871
Cash interest cost capitalized - property, plant and equipment	(330)	(396)
Non-cash interest cost capitalized - property, plant and equipment	(249)	(535)
Cash interest cost capitalized - project assets - plant and land	(364)	—
Non-cash interest cost capitalized - project assets - plant and land	(249)	—
Interest expense	$ 15,259	$ 10,940

	As of	
(In thousands)	**April 3, 2011**	**January 2, 2011**
Other long-term assets:		
Investments in joint ventures	$ 143,577	$ 116,444
Bond hedge derivative	56,344	34,491
Investments in non-public companies	6,418	6,418
VAT receivables, net of current portion	7,580	7,002
Long-term debt issuance costs	10,436	12,241
Other	21,378	1,698
	$ 245,733	$ 178,294
Accrued liabilities:		
VAT payables	$ 8,311	$ 11,699
Foreign currency derivatives	89,811	10,264
Short-term warranty reserves	16,163	14,639
Interest payable	5,970	6,982
Deferred revenue	27,272	21,972
Employee compensation and employee benefits	21,087	33,227
Other	32,998	38,921
	$ 201,612	$ 137,704
Other long-term liabilities:		
Embedded conversion option derivatives	$ 56,735	$ 34,839
Long-term warranty reserves	53,956	48,923
Unrecognized tax benefits	25,987	24,894
Other	34,016	22,476
	$ 170,694	$ 131,132

Note 4. *INVESTMENTS*

The Company's investments in money market funds and debt securities are carried at fair value. Fair values are determined based on a hierarchy that prioritizes the inputs to valuation techniques by assigning the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities ("Level 1") and the lowest priority to unobservable inputs ("Level 3"). Level 2 measurements are inputs that are observable for assets or liabilities, either directly or indirectly, other than quoted prices included within Level 1.

The following tables present information about the Company's investments in money market funds and debt securities that are measured at fair value on a recurring basis and indicate the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value. Information about the Company's convertible debenture derivatives measured at fair value on a recurring basis is disclosed in Note 7. Information about the Company's foreign currency derivatives measured at fair value on a recurring basis is disclosed in Note 9. The Company does not have any nonfinancial assets or liabilities that are recognized or disclosed at fair value on a recurring basis in its condensed consolidated financial statements.

	April 3, 2011			
(In thousands)	**Level 1**	**Level 2**	**Level 3**	**Total**
Assets				
Money market funds	$ 401,085	$ —	$ —	$ 401,085
Debt securities	—	42,089	—	42,089
	$ 401,085	$ 42,089	$ —	$ 443,174

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

There have been no transfers between Level 1, Level 2 and Level 3 measurements during the three months ended April 3, 2011.

Money Market Funds

The majority of the Company's money market fund instruments are classified within Level 1 of the fair value hierarchy because they are valued using quoted prices for identical instruments in active markets. Investments in money market funds utilizing Level 3 inputs consisted of the Company's investment in the Reserve International Liquidity Fund which amounted to $0.2 million as of January 2, 2011. The Company had estimated the value of its investment in the Reserve International Liquidity Fund to be $0.2 million based on information publicly disclosed by the Reserve International Liquidity Fund relative to its holdings and remaining obligations. On March 3, 2011, the Company recovered $0.3 million from the Reserve International Liquidity Fund. The recovery was $0.1 million in excess of the recorded fair value and was reflected as a gain within "Other, net" in the Condensed Consolidated Statement of Operations for the three months ended April 3, 2011. The Company had no remaining investments with Level 3 measurements as of April 3, 2011.

Debt Securities

Investments in debt securities utilizing Level 2 inputs consist of bonds purchased in the fourth quarter of fiscal 2010. The bonds are guaranteed by the Italian government. The Company bases its valuation of these bonds on movements of Italian sovereign bond rates since the time of purchase and incurred no other-than-temporary impairment loss in the three months ended April 3, 2011.

This valuation is corroborated by comparison to third-party financial institution valuations. The fair value of the Company's investments in bonds totaled $42.1 million and $38.5 million as of April 3, 2011 and January 2, 2011, respectively.

Available-for-Sale Securities

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

(In thousands)	April 3, 2011 Available-For-Sale	Cash and Cash Equivalents (2)	Total	January 2, 2011 Available-For-Sale	Cash and Cash Equivalents (2)	Total
Cash and cash equivalents	$ —	$ 367,860	$ 367,860	$ —	$ 605,420	$ 605,420
Short-term restricted cash and cash equivalents (1)	—	141,617	141,617	—	117,462	117,462
Short-term investments	42,089	—	42,089	38,548	172	38,720
Long-term restricted cash and cash equivalents (1)	—	119,410	119,410	—	138,837	138,837
	$ 42,089	$ 628,887	$ 670,976	$ 38,548	$ 861,891	$ 900,439

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

(2) Includes money market funds.

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

(In thousands)	April 3, 2011	January 2, 2011
Due on November 30, 2028	$ 42,089	$ 38,548

Minority Investments in Joint Ventures and Other Non-Public Companies

The Company holds minority investments comprised of common and preferred stock in joint ventures and other non-public companies. The Company monitors these minority investments for impairment, which are included in “Other long-term assets” in its Condensed Consolidated Balance Sheets and records reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include the valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market prices and declines in operations of the issuer. As of April 3, 2011 and January 2, 2011, the Company had $143.6 million and $116.4 million, respectively, in investments in joint ventures accounted for under the equity method and $6.4 million, as of both periods, in investments accounted for under the cost method (see Note 6).

On September 28, 2010, the Company entered into a $0.2 million investment in a related party accounted for under the cost method. In connection with the investment the Company entered into licensing, lease and facility service agreements. Under the lease and facility service agreements the investee leases space from the Company for a period of five years. Facility services are provided by the Company over the term of the lease on a “cost-plus” basis. Payments received under the lease and facility service agreement totaled $0.1 million in the three months ended April 3, 2011. As of April 3, 2011, $0.8 million remained due and receivable from the investee related to capital purchases made by the Company on behalf of the investee.

Note 5. *COMMITMENTS AND CONTINGENCIES*

Operating Lease Commitments

The Company leased its San Jose, California facility under a non-cancellable operating lease from Cypress Semiconductor Corporation ("Cypress") which expired in May 2011. In May 2011 the Company moved to new offices in San Jose, California under a non-cancellable operating lease from an unaffiliated third party through April 2021. In addition, the Company leases its Richmond, California facility under a non-cancellable operating lease from an unaffiliated third party, which expires in September 2018. The Company also has various lease arrangements, including for its European headquarters located in Geneva, Switzerland under a lease that expires in September 2012, as well as sales and support offices in Southern California, New Jersey, Oregon, Australia, England, France, Germany, Greece, Israel, Italy, Malta, Spain and South Korea, all of which are leased from unaffiliated third parties. In addition, in the first quarter of fiscal 2010 the Company acquired a lease arrangement in London, England, which is leased from a party affiliated with the Company.

The Company leases four solar power systems from Wells Fargo over minimum lease terms of up to 20 years that it had previously sold to Wells Fargo. Separately, the Company entered into power purchase agreements ("PPAs") with end customers, who host those solar power systems and buy the electricity directly from the Company under PPAs with a duration of up to 20 years. At the end of the lease term, the Company has the option to purchase the systems at fair value or remove the systems. The deferred profit on the sale of the systems to Wells Fargo is being recognized over the minimum term of the lease.

Future minimum obligations under all non-cancellable operating leases as of April 3, 2011 are as follows:

(In thousands)	Amount
Year	
2011 (remaining nine months)	$ 8,961
2012	10,599
2013	10,549
2014	9,490
2015	8,241
Thereafter	38,493
	$ 86,333

Purchase Commitments

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

The Company also has agreements with several suppliers, including some of its non-consolidated joint ventures, for the procurement of polysilicon, ingots, wafers, solar cells and solar panels which specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years and provide for certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that the Company terminates the arrangements.

As of April 3, 2011, total obligations related to non-cancellable purchase orders totaled $210.2 million and long-term supply agreements with suppliers totaled $5.2 billion. Of the total future purchase commitments of $5.4 billion as of April 3, 2011, $2.6 billion are for commitments to its non-consolidated joint ventures. Future purchase obligations under non-cancellable purchase orders and long-term supply agreements as of April 3, 2011 are as follows:

(In thousands)	**Amount**
Year	
2011 (remaining nine months)	$ 878,476
2012	576,384
2013	602,414
2014	816,569
2015	901,975
Thereafter	1,648,895
	$ 5,424,713

Total future purchase commitments of $5.4 billion as of April 3, 2011 included tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured silicon ingots from the supplier. Annual future purchase commitments in the table above are calculated using the gross price paid by the Company for silicon ingots and are not reduced by the price paid by suppliers for polysilicon. Total future purchase commitments as of April 3, 2011 would be reduced by $1.3 billion to $4.1 billion had the Company's obligations under such tolling agreements been disclosed using net cash outflows.

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

Advances to Suppliers

As noted above, the Company has entered into agreements with various polysilicon, ingot, wafer, solar cell and solar panel vendors that specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years. Certain agreements also provide for penalties or forfeiture of advanced deposits in the event the Company terminates the

arrangements. Under certain agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements. During the three months ended April 3, 2011, the Company paid advances totaling $17.0 million in accordance with the terms of existing long-term supply agreements. As of April 3, 2011 and January 2, 2011, advances to suppliers totaled $299.9 million and $287.1 million, respectively, the current portion of which is $33.7 million and $31.7 million, respectively. Two suppliers accounted for 78% and 19% of total advances to suppliers as of April 3, 2011, and 83% and 13% as of January 2, 2011.

The Company's future prepayment obligations related to these agreements as of April 3, 2011 are as follows:

(In thousands)	Amount
Year	
2011 (remaining nine months)	$ 120,162
2012	104,523
2013	7,750
	$ 232,435

In January 2008, the Company entered into an Option Agreement with NorSun AS ("NorSun"), a manufacturer of silicon ingots and wafers, under which the Company would deliver cash advance payments to NorSun for the purchase of polysilicon under a long-term polysilicon supply agreement. The Company paid a cash advance of $5.0 million to NorSun during the fourth quarter of fiscal 2009. The Option Agreement provided NorSun an option to sell a 23.3% equity interest in a joint venture to the Company equal to the $5.0 million cash advance. On December 3, 2010, NorSun entered into an agreement with a third party to sell its equity interest in the joint venture at cost, including the Company's indirect equity interest of 23.3% at $5.0 million. That agreement became effective in the first quarter of fiscal 2011 and the Option Agreement was terminated. In connection with the termination of the Option Agreement, on March 31, 2011, the $5.0 million cash advance was returned to the Company.

Product Warranties

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

Provisions for warranty reserves charged to cost of revenue were $7.7 million and $4.1 million during the three months ended April 3, 2011 and April 4, 2010, respectively. Activity within accrued warranty for the first quarter of fiscal 2011 and 2010 is summarized as follows:

	Three Months Ended	
(In thousands)	April 3, 2011	April 4, 2010
Balance at the beginning of the period	$ 63,562	$ 46,475
Accruals for warranties issued during the period	7,739	4,093
Settlements made during the period	(1,182)	(1,144)
Balance at the end of the period	$ 70,119	$ 49,424

System Put-Rights

Projects often require the Company to undertake customer obligations including: (i) system output performance guarantees; (ii) system maintenance; (iii) penalty payments or customer termination rights if the system the Company is constructing is not commissioned within specified timeframes or other milestones are not achieved; (iv) guarantees of certain

minimum residual value of the system at specified future dates; and (v) system put-rights whereby the Company could be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met. To date, no such repurchase obligations have been required.

Future Financing Commitments

As specified in the Company's joint venture agreement with AU Optronics Singapore Pte. Ltd. ("AUO"), both the Company and AUO contributed certain funding during fiscal 2010 and on March 16, 2011. The Company and AUO will each contribute additional amounts in fiscal 2011 to 2014 amounting to $301 million, or such lesser amount as the parties may mutually agree. In addition, if the Company, AUO, or the joint venture requests additional equity financing to the joint venture, then both the Company and AUO will be required to make additional cash contributions of up to $50 million in the aggregate.

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

The Company's future financing obligations related to these agreements as of April 3, 2011 are as follows:

(In thousands)	Amount
Year	
2011 (remaining nine months)	$ 31,900
2012	75,870
2013	101,400
2014	96,770
	$ 305,940

Liabilities Associated with Uncertain Tax Positions

Total liabilities associated with uncertain tax positions were $26.0 million and $24.9 million as of April 3, 2011 and January 2, 2011, respectively, and are included in "Other long-term liabilities" in the Company's Condensed Consolidated Balance Sheets as they are not expected to be paid within the next twelve months. Due to the complexity and uncertainty associated with its tax positions, the Company cannot make a reasonably reliable estimate of the period in which cash settlement will be made for its liabilities associated with uncertain tax positions in other long-term liabilities (see Note 10).

Indemnifications

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

Legal Matters

Three securities class action lawsuits were filed against the Company and certain of its current and former officers and directors in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired the Company's securities from April 17, 2008 through November 16, 2009. The cases were consolidated as Plichta v. SunPower Corp. et al., Case No. CV-09-5473-RS (N.D. Cal.), and lead plaintiffs and lead counsel were appointed on March 5, 2010. Lead plaintiffs filed a consolidated complaint on May 28, 2010. The actions arise from the Audit Committee's investigation announcement on November 16, 2009 regarding certain unsubstantiated accounting entries. The consolidated complaint alleges that the defendants made material misstatements and omissions concerning the Company's financial results for 2008 and 2009, seeks an unspecified amount of damages, and alleges violations of Sections 10(b) and 20(a) of the

Securities Exchange Act of 1934, and Sections 11 and 15 of the Securities Act of 1933. The Company believes it has meritorious defenses to these allegations and will vigorously defend itself in these matters. The court held a hearing on the defendants' motions to dismiss the consolidated complaint on November 4, 2010. The court dismissed the consolidated complaint with leave to amend on March 1, 2011. An amended complaint was filed on April 18, 2011. The Company is currently unable to determine if the resolution of these matters will have an adverse effect on the Company's financial position, liquidity or results of operations.

Derivative actions purporting to be brought on the Company's behalf have also been filed in state and federal courts against several of the Company's current and former officers and directors based on the same events alleged in the securities class action lawsuits described above. The California state derivative cases were consolidated as In re SunPower Corp. S'holder Derivative Litig., Lead Case No. 1-09-CV-158522 (Santa Clara Sup. Ct.), and co-lead counsel for plaintiffs have been appointed. The complaints assert state-law claims for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement, and waste of corporate assets. Plaintiffs are scheduled to file a consolidated complaint after entry of an order deciding defendants' motion to dismiss the amended class action complaint. The federal derivative complaints were consolidated as In re SunPower Corp. S'holder Derivative Litig., Master File No. CV-09-05731-RS (N.D. Cal.), and lead plaintiffs and co-lead counsel were appointed on January 4, 2010. The complaints assert state-law claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment, and seek an unspecified amount of damages. Plaintiffs are scheduled to file a consolidated complaint on May 13, 2011. The Company intends to oppose the derivative plaintiffs' efforts to pursue this litigation on the Company's behalf. The Company is currently unable to determine if the resolution of these matters will have an adverse effect on the Company's financial position, liquidity or results of operations.

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

Note 6. ***JOINT VENTURES***

Joint Venture with Woongjin Energy Co., Ltd (“Woongjin Energy”)

The Company and Woongjin Holdings Co., Ltd. (“Woongjin”) formed Woongjin Energy in fiscal 2006, a joint venture to manufacture monocrystalline silicon ingots in Korea. On June 30, 2010, Woongjin Energy completed its initial public offering ("IPO") and the sale of 15.9 million new shares of common stock. The Company continues to hold 19.4 million shares, or a percentage equity interest of 31.3%, of Woongjin Energy's common stock with a market value of $316.7 million on April 1, 2011. On October 29, 2010, the Company entered into a revolving credit facility with Union Bank, N.A. ("Union Bank"), and all shares of Woongjin Energy held by the Company have been pledged as security under the revolving credit facility.

The Company supplies polysilicon, services and technical support required for silicon ingot manufacturing to the joint venture. Once manufactured, the Company purchases the silicon ingots from the joint venture under a nine-year agreement through 2016. There is no obligation or expectation for the Company to provide additional funding to Woongjin Energy. In addition, as a result of Woongjin Energy completing its IPO and the sale of 15.9 million new shares of common stock on June 30, 2010, the Company has concluded that Woongjin Energy is no longer a variable interest entity ("VIE").

As of April 3, 2011 and January 2, 2011, the Company had an investment of $81.1 million and $76.6 million, respectively, in the joint venture in its Condensed Consolidated Balance Sheets. The Company accounts for its investment in Woongjin Energy using 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 $4.5 million and $3.1 million in the three months ended April 3, 2011 and April 4, 2010, respectively, is included in “Equity in earnings of unconsolidated investees” in the Condensed Consolidated Statements of Operations. As of April 3, 2011, the Company's maximum exposure to loss as a result of its involvement with Woongjin Energy is limited to the carrying value of its investment.

As of April 3, 2011 and January 2, 2011, $18.8 million and $18.4 million, respectively, remained due and receivable from Woongjin Energy related to the polysilicon the Company supplied to the joint venture for silicon ingot manufacturing. Payments to Woongjin Energy for manufactured silicon ingots totaled $48.8 million and $47.0 million in the three months ended April 3, 2011 and April 4, 2010, respectively. As of April 3, 2011 and January 2, 2011, $33.5 million and $32.6 million, respectively, remained due and payable to Woongjin Energy. In addition, the Company conducted other related-party transactions with Woongjin Energy in the first quarter of fiscal 2011. The Company recognized $1.0 million and zero in revenue during the three months ended April 3, 2011 and April 4, 2010, respectively, related to the sale of solar panels to Woongjin Energy. As of April 3, 2011 and January 2, 2011, $0.2 million and zero remained due and receivable from Woongjin

Energy related to the sale of these solar panels.

Woongjin Energy qualified as a "significant investee" of the Company in fiscal 2009 as defined in SEC Regulation S-X Rule 10-01(b)(1). Summarized financial information adjusted to conform to U.S. GAAP for Woongjin Energy for the three months ended April 3, 2011 and April 4, 2010 is as follows:

Statement of Operations

	Three Months Ended	
(In thousands)	**April 3, 2011**	**April 4, 2010**
Revenue	$ 67,272	$ 27,591
Cost of revenue	55,747	13,468
Gross margin	11,525	14,123
Operating income	8,609	13,070
Net income	11,309	11,851

Joint Venture with First Philec Solar Corporation (“First Philec Solar”)

The Company and First Philippine Electric Corporation (“First Philec”) formed First Philec Solar in fiscal 2007, a joint venture to provide wafer slicing services of silicon ingots to the Company in the Philippines. The Company supplies to the joint venture silicon ingots and technology required for slicing silicon. Once manufactured, the Company purchases the completed silicon wafers from the joint venture under a five-year wafering supply and sales agreement through 2013. There is no obligation or expectation for the Company to provide additional funding to First Philec Solar.

As of April 3, 2011 and January 2, 2011, the Company had an investment of $6.6 million and $6.1 million, respectively, in the joint venture in its Condensed Consolidated Balance Sheets which represented a 15% equity investment in both periods. The Company accounts for its investment in First Philec Solar using the equity method since the Company is able to exercise significant influence over the joint venture due to its board positions. The Company's investment is classified as “Other long-term assets” in the Condensed Consolidated Balance Sheets and the Company's share of First Philec Solar's income of $0.5 million and zero during the three months ended April 3, 2011 and April 4, 2010, respectively, is included in “Equity in earnings of unconsolidated investees” in the Condensed Consolidated Statements of Operations. As of April 3, 2011, the Company's maximum exposure to loss as a result of its involvement with First Philec Solar is limited to the carrying value of its investment.

As of April 3, 2011 and January 2, 2011, $2.9 million and $3.3 million, respectively, remained due and receivable from First Philec Solar related to the wafer slicing process of silicon ingots supplied by the Company to the joint venture. Payments to First Philec Solar for wafer slicing services of silicon ingots totaled $28.4 million and $15.5 million during the three months ended April 3, 2011 and April 4, 2010, respectively. As of April 3, 2011 and January 2, 2011, $11.0 million and $9.0 million, respectively, remained due and payable to First Philec Solar related to the purchase of silicon wafers.

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

Joint Venture with AUO SunPower Sdn. Bhd. ("AUOSP")

On May 27, 2010, the Company, through its subsidiaries SunPower Technology, Ltd. (“SPTL") and AUOSP, formerly SunPower Malaysia Manufacturing Sdn. Bhd. ("SPMY"), entered into a joint venture agreement with AUO and AU Optronics Corporation, the ultimate parent company of AUO (“AUO Taiwan”). The joint venture transaction closed on July 5, 2010. The Company, through SPTL, and AUO each own 50% of the joint venture AUOSP. AUOSP owns a solar cell manufacturing facility ("FAB 3") in Malaysia and manufactures solar cells and sells them on a “cost-plus” basis to the Company and AUO.

On July 5, 2010, the Company and AUO also entered into licensing and joint development, supply, and other ancillary transaction agreements. Through the licensing agreement, SPTL and AUO licensed to AUOSP, on a non-exclusive, royalty-free basis, certain background intellectual property related to solar cell manufacturing (in the case of SPTL), and manufacturing processes (in the case of AUO). Under the seven-year supply agreement with AUOSP, renewable by the Company for one-year periods thereafter, the percentage of AUOSP's total annual output allocated on a monthly basis to the Company, which the

Company is committed to purchase, ranges from 95% in the fourth quarter of fiscal 2010 to 80% in fiscal year 2013 and thereafter. The Company and AUO have the right to reallocate supplies from time to time under a written agreement. As required under the joint venture agreement, on November 5, 2010, the Company and AUOSP entered into an agreement under which the Company will resell to AUOSP polysilicon purchased from a third-party supplier and AUOSP will provide prepayments to the Company related to such polysilicon, which prepayment will then be made by the Company to the third-party supplier (see Note 5).

The Company and AUO will not be permitted to transfer any of AUOSP's shares held by them, except to each other and to their direct or indirect wholly-owned subsidiaries. During the second half of fiscal 2010, the Company, through SPTL, and AUO each contributed total initial funding of Malaysian Ringgit 88.6 million. On March 16, 2011, both the Company and AUO each contributed an additional $20.0 million in funding and will each contribute additional amounts in fiscal 2011 to 2014 amounting to $301 million, or such lesser amount as the parties may mutually agree. In addition, if AUOSP, SPTL or AUO requests additional equity financing to AUOSP, then SPTL and AUO will each be required to make additional cash contributions of up to $50 million in the aggregate (See Note 5).

The Company has concluded that it is not the primary beneficiary of the joint venture since, although the Company and AUO are both obligated to absorb losses or have the right to receive benefits, the Company alone does not have the power to direct the activities of the joint venture that most significantly impact its economic performance. In making this determination the Company considered the shared power arrangement, including equal board governance for significant decisions, elective appointment, and the fact that both parties contribute to the activities that most significantly impact the joint venture's economic performance. As a result of the shared power arrangement the Company deconsolidated AUOSP in the third quarter of fiscal 2010 and accounts for its investment in the joint venture under the equity method.

As of April 3, 2011 and January 2, 2011, the Company had an investment of $55.9 million and $33.7 million, respectively, in AUOSP in its Condensed Consolidated Balance Sheets which represents its 50% equity investment. The Company accounts for its investment in AUOSP using the equity method in which the investment is classified as “Other long-term assets” in the Condensed Consolidated Balance Sheets. The Company accounted for its share of AUOSP's net income of $2.2 million for the three months ended January 2, 2011 in “Equity in earnings of unconsolidated investees” in the Condensed Consolidated Statement of Operations during the first quarter of fiscal 2011 due to a quarterly lag in reporting. As of April 3, 2011 and January 2, 2011, $5.8 million and $6.0 million, respectively, remained due and payable to AUOSP and $32.9 million and $7.5 million, respectively, remained due and receivable from AUOSP. Payments to AUOSP for solar cells totaled $27.9 million during the three months ended April 3, 2011. As of April 3, 2011, the Company's maximum exposure to loss as a result of its involvement with AUOSP is limited to the carrying value of its investment.

Note 7. ***DEBT AND CREDIT SOURCES***

The following table summarizes the Company's outstanding debt as of April 3, 2011 and their related maturity dates:

		Payments Due by Period					
(In thousands)	**Face Value**	**2011 (remaining nine months)**	**2012**	**2013**	**2014**	**2015**	**Beyond 2015**
Convertible debt:							
4.50% debentures	$ 250,000	$ —	$ —	$ —	$ —	$ 250,000	$ —
4.75% debentures	230,000	—	—	—	230,000	—	—
1.25% debentures	198,608	—	198,608	—	—	—	—
0.75% debentures	79	—	—	—	—	79	—
IFC mortgage loan	50,000	—	—	10,000	10,000	10,000	20,000
CEDA loan	30,000	30,000	—	—	—	—	—
Union Bank revolving credit facility	70,000	70,000	—	—	—	—	—
Société Générale revolving credit facility	106,095	106,095	—	—	—	—	—
	$ 934,782	$ 206,095	$ 198,608	$ 10,000	$ 240,000	$ 260,079	$ 20,000

Convertible Debt

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

	April 3, 2011			January 2, 2011		
(In thousands)	**Carrying Value**	**Face Value**	**Fair Value (1)**	**Carrying Value**	**Face Value**	**Fair Value (1)**
4.50% debentures	$ 182,967	$ 250,000	$ 260,483	$ 179,821	$ 250,000	$ 230,172
4.75% debentures	230,000	230,000	240,638	230,000	230,000	215,050
1.25% debentures (2)	185,572	198,608	193,146	182,023	198,608	188,429
0.75% debentures	79	79	79	79	79	75
	$ 598,618	$ 678,687	$ 694,346	$ 591,923	$ 678,687	$ 633,726

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

(2) The carrying value of the 1.25% senior convertible debentures ("1.25% debentures") were reclassified from long-term liabilities to short-term liabilities within "Convertible debt, current portion" in the Condensed Consolidated Balance Sheet as of April 3, 2011 as the holders may require the Company to repurchase all of their 1.25% debentures on February 15, 2012.

4.50% Debentures

On April 1, 2010, the Company issued $220.0 million in principal amount of its 4.50% senior cash convertible debentures (“4.50% debentures”). On April 5, 2010, the initial purchasers of the 4.50% debentures exercised the $30.0 million over-allotment option in full. Interest is payable semi-annually, on March 15 and September 15 of each year, at a rate of 4.50% per annum. The 4.50% debentures mature on March 15, 2015 unless repurchased or converted in accordance with their terms prior to such date. The 4.50% debentures are convertible only into cash, and not into shares of the Company's class A common stock (or any other securities).

The embedded cash conversion option within the 4.50% debentures and the over-allotment option related to the 4.50% debentures are derivative instruments that are required to be separated from the 4.50% debentures and accounted for separately as derivative instruments (derivative liabilities) with changes in fair value reported in the Company's Condensed Consolidated Statements of Operations until such transactions settle or expire. The over-allotment option was settled on April 5, 2010, however, the embedded cash conversion option continues to require mark-to-market accounting treatment. The initial fair value liabilities of the embedded cash conversion option and over-allotment option were classified within “Other long-term liabilities” and simultaneously reduced the carrying value of “Convertible debt, net of current portion” in the Company's Condensed Consolidated Balance Sheet.

In the three months ended April 3, 2011, the Company recognized a non-cash loss of $21.9 million recorded in “Loss on mark-to-market derivatives” in the Company's Condensed Consolidated Statement of Operations related to the change in fair value of the embedded cash conversion option. In the three months ended April 4, 2010, the Company recognized a non-cash loss of $0.3 million recorded in “Loss on mark-to-market derivatives” in the Company's Condensed Consolidated Statement of Operations related to the change in fair value of the embedded cash conversion option and over-allotment option. The fair value liability of the embedded cash conversion option as of April 3, 2011 and January 2, 2011 totaled $56.7 million and $34.8 million, respectively, and is classified within “Other long-term liabilities” in the Company's Condensed Consolidated Balance Sheets.

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

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

	As of (1)	
	April 3, 2011	January 2, 2011
Stock price	$ 17.19	$ 12.83
Exercise price	$ 22.53	$ 22.53
Interest rate	1.79%	1.63%
Stock volatility	47.50%	49.80%
Maturity date	February 18, 2015	February 18, 2015

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

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

Concurrent with the issuance of the 4.50% debentures, the Company entered into privately negotiated convertible debenture hedge transactions (collectively, the "Bond Hedge") and warrant transactions (collectively, the "Warrants" and together with the Bond Hedge, the "CSO2015"), with certain of the initial purchasers of the 4.50% cash convertible debentures or their affiliates. The CSO2015 transaction represents a call spread overlay with respect to the 4.50% debentures. Assuming full performance by the counterparties, the transactions effectively reduce the Company's potential payout over the principal amount on the 4.50% debentures upon conversion of the 4.50% debentures.

Under the terms of the Bond Hedge, the Company bought from affiliates of certain of the initial purchasers options to acquire, at an exercise price of $22.53 per share, subject to anti-dilution adjustments, cash in an amount equal to the market value of up to 11.1 million shares of the Company's class A common stock. Under the terms of the original Warrants, the Company sold to affiliates of certain of the initial purchasers of the 4.50% cash convertible debentures warrants to acquire, at an exercise price of $27.03 per share, cash in an amount equal to the market value of up to 11.1 million shares of the Company's class A common stock. Each Bond Hedge and Warrant transaction is a separate transaction, entered into by the Company with each option counterparty, and is not part of the terms of the 4.50% debentures. On December 23, 2010, the Company amended and restated the original Warrants so that the holders would, upon exercise of the Warrants, no longer receive cash but instead would acquire up to 11.1 million shares of the Company's class A common stock.

The Bond Hedge, which is indexed to the Company's class A common stock, is a derivative instrument that requires mark-to-market accounting treatment due to the cash settlement features until such transactions settle or expire. Similarly, the original Warrants was a derivative instrument that required mark-to-market accounting treatment through December 23, 2010. The initial fair value of the Bond Hedge was classified as "Other long-term assets" in the Company's Condensed Consolidated Balance Sheet. As of April 3, 2011, the fair value of the Bond Hedge is $56.3 million, an increase of $21.8 million since January 2, 2011. The change in fair value of the Bond Hedge resulted in a mark-to-market non-cash gain of $21.8 million in "Loss on mark-to-market derivatives" in the Company's Condensed Consolidated Statement of Operations during the first quarter of fiscal 2011. In the first quarter of fiscal 2010, the change in fair value of the original CSO2015 resulted in a mark-to-market non-cash loss of $2.0 million in "Loss on mark-to-market derivatives" in the Company's Condensed Consolidated Statement of Operations.

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

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

	As of (1)	
	April 3, 2011	January 2, 2011
Stock price	$ 17.19	$ 12.83
Exercise price	$ 22.53	$ 22.53
Interest rate	1.79%	1.63%
Stock volatility	47.50%	49.80%
Credit risk adjustment	1.03%	1.25%
Maturity date	February 18, 2015	February 18, 2015

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

July 2007 Share Lending Arrangement

Concurrent with the offering of the 0.75% senior convertible debentures ("0.75% debentures"), the Company lent 1.8 million shares of its class A common stock to Credit Suisse International ("CSI"), an affiliate of Credit Suisse Securities (USA) LLC ("Credit Suisse"), one of the underwriters of the 0.75% debentures. The loaned shares are to be used to facilitate the establishment by investors in the 1.25% debentures and 0.75% debentures of hedged positions in the Company's class A common stock. The Company did not receive any proceeds from the offerings of class A common stock, but received a nominal lending fee of $0.001 per share for each share of common stock that is loaned under the share lending agreement. As of April 3, 2011 the fair value of the 1.8 million outstanding loaned shares of class A common stock was $30.9 million (based on a market price of $17.19 as of April 1, 2011).

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

Any shares loaned to CSI are considered issued and outstanding for corporate law purposes and, accordingly, the holders of the borrowed shares have all of the rights of a holder of the Company's outstanding shares, including the right to vote the shares on all matters submitted to a vote of the Company's stockholders and the right to receive any dividends or other distributions that the Company may pay or make on its outstanding shares of class A common stock. However, CSI agreed that it will not participate in shareholder voting matters and further agreed to pay to the Company an amount equal to any dividends or other distributions that the Company pays on the borrowed shares. The shares are listed for trading on the Nasdaq Global Select Market.

While the share lending agreement does not require cash payment upon return of the shares, physical settlement is required (i.e., the loaned shares must be returned at the end of the arrangement). In view of this share return provision and other contractual undertakings of CSI in the share lending agreement, which have the effect of substantially eliminating the economic dilution that otherwise would result from the issuance of the borrowed shares, historically the loaned shares were not considered issued and outstanding for the purpose of computing and reporting the Company's basic and diluted weighted average shares or earnings per share.

The shares lent to CSI will continue to be excluded for the purpose of computing and reporting the Company's basic and diluted weighted average shares or earnings per share. If Credit Suisse or its affiliates, including CSI, were to file bankruptcy or

commence similar administrative, liquidating, restructuring or other proceedings, the Company may have to consider 1.8 million shares lent to CSI as issued and outstanding for purposes of calculating earnings per share.

Other Debt and Credit Sources

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

Note 8. ***COMPREHENSIVE INCOME (LOSS)***

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

	As of	
(In thousands)	**April 3, 2011**	**January 2, 2011**
Accumulated other comprehensive income (loss):		
Cumulative translation adjustment	$ (2,951)	$ (2,761)
Net unrealized gain (loss) on derivatives	(30,402)	10,647
Net unrealized gain on investments	355	—
Deferred taxes	3,496	(4,246)
	$ (29,502)	$ 3,640

	Three Months Ended	
(In thousands)	**April 3, 2011**	**April 4, 2010**
Net income (loss)	$ (2,121)	$ 12,573
Components of comprehensive income (loss):		
Translation adjustment	(190)	171
Net unrealized gain (loss) on derivatives (Note 9)	(41,049)	25,990
Unrealized gain on investments	355	—
Income taxes	7,742	(2,954)
Net change in accumulated other comprehensive income (loss)	(33,142)	23,207
Total comprehensive income (loss)	$ (35,263)	$ 35,780

Note 9. ***FOREIGN CURRENCY DERIVATIVES***

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

The Company is required to recognize derivative instruments as either assets or liabilities at fair value in its Condensed Consolidated Balance Sheets. The Company utilizes the income approach and mid-market pricing to calculate the fair value of its option and forward contracts based on market volatilities, spot and forward rates, interest rates and credit default swaps rates from published sources. The following table presents information about the Company's hedge instruments measured at fair value on a recurring basis as of April 3, 2011 and January 2, 2011, all of which utilize Level 2 inputs under the fair value hierarchy:

(In thousands)	Balance Sheet Classification	April 3, 2011	January 2, 2011
Assets	Prepaid expenses and other current assets		
Derivatives designated as hedging instruments:			
Foreign currency option contracts		$ 7,772	$ 16,432
Foreign currency forward exchange contracts		208	16,314
		$ 7,980	$ 32,746
Derivatives not designated as hedging instruments:			
Foreign currency forward exchange contracts		$ 9,946	$ 3,208
Liabilities	Accrued liabilities		
Derivatives designated as hedging instruments:			
Foreign currency option contracts		$ 12,413	$ 2,909
Foreign currency forward exchange contracts		9,228	3,295
		$ 21,641	$ 6,204
Derivatives not designated as hedging instruments:			
Foreign currency forward exchange contracts		$ 68,170	$ 4,060

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

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

	Three Months Ended	
(In thousands)	April 3, 2011	April 4, 2010
Derivatives designated as cash flow hedges:		
Unrealized gain (loss) recognized in OCI (effective portion)	$ (47,993)	$ 17,622
Less: Loss (gain) reclassified from OCI to revenue (effective portion)	3,055	(4,110)
Less: Loss reclassified from OCI to other, net (1)	3,889	—
Add: Loss reclassified from OCI to cost of revenue (effective portion)	—	12,478
Net gain (loss) on derivatives (Note 8)	$ (41,049)	$ 25,990

(1) During the three months ended April 3, 2011, the Company reclassified from OCI to "Other, net" a net gain totaling $0.8 million relating to transactions previously designated as effective cash flow hedges as the related forecasted transactions did not occur in the hedge period or within an additional two month time period thereafter. In addition, the Company reclassified from OCI to "Other, net" a net loss totaling $4.7 million relating to transactions previously designated as effective cash hedges as the Company concluded that the related forecasted transactions are probable not to occur in the hedge period or within an additional two month time period thereafter.

The following table summarizes the amount of gain (loss) recognized in “Other, net” in the Condensed Consolidated Statements of Operations in the three months ended April 3, 2011 and April 4, 2010:

(In thousands)	Three Months Ended April 3, 2011	Three Months Ended April 4, 2010
Derivatives designated as cash flow hedges:		
Loss recognized in "Other, net" on derivatives (ineffective portion and amount excluded from effectiveness testing) (1)	$ (12,692)	$ (2,002)
Derivatives not designated as hedging instruments:		
Gain (loss) recognized in "Other, net"	$ (38,195)	$ 15,390

(1) The amount of loss recognized related to the ineffective portion of derivatives was insignificant. This amount also includes a net $3.9 million loss reclassified from OCI to “Other, net” relating to transactions previously designated as effective cash flow hedges which did not occur or were now probable not to occur in the hedge period or within an additional two month time period thereafter.

Foreign Currency Exchange Risk

Designated Derivatives Hedging Cash Flow Exposure

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

As of April 3, 2011, the Company had designated outstanding cash flow hedge option contracts and forward contracts with an aggregate notional value of $430.2 million and $363.0 million, respectively. The maturity dates of the outstanding contracts as of April 3, 2011 range from April to December 2011. During the first quarter of fiscal 2011, the Company entered into additional designated cash flow hedges to protect certain portions of its anticipated non-functional currency cash flows related to foreign denominated revenues. As of January 2, 2011, the Company had designated outstanding hedge option contracts and forward contracts with an aggregate notional value of $358.9 million and $534.7 million, respectively. The Company designates either gross external or intercompany revenue up to its net economic exposure. These derivatives have a maturity of one year or less and consist of foreign currency option and forward contracts. The effective portion of these cash flow hedges are reclassified into revenue when third party revenue is recognized in the Condensed Consolidated Statements of Operations.

The Company expects to reclassify substantially all of its net losses related to these option and forward contracts that are included in accumulated other comprehensive loss as of April 3, 2011 to revenue in fiscal 2011. Cash flow hedges are tested for effectiveness each period based on changes in the spot rate applicable to the hedge contracts against the present value period to period change in spot rates applicable to the hedged item using regression analysis. The change in the time value of the options as well as the cost of forward points (the difference between forward and spot rates at inception) on forward exchange contracts are excluded from the Company's assessment of hedge effectiveness. The premium paid or time value of an option whose strike price is equal to or greater than the market price on the date of purchase is recorded as an asset in the Condensed Consolidated Balance Sheets. Thereafter, any change to this time value and the cost of forward points is included in “Other, net” in the Condensed Consolidated Statements of Operations.

Under hedge accounting rules for foreign currency derivatives, the Company is required to reflect mark-to-market gains and losses on its hedged transactions in accumulated other comprehensive income (loss) rather than current earnings until the hedged transactions occur. However, if the Company determines that the anticipated hedged transactions are probable not to occur, it must immediately reclassify any cumulative market gains and losses into its Condensed Consolidated Statement of Operations. During the three months ended April 3, 2011, the Company determined that certain anticipated hedged transactions are probable not to occur due, in part, to the announcement of the feed-in-tariff changes in Italy. As a result, a loss of $3.9 million was reclassified from accumulated other comprehensive income (loss) to "Other, net" in the Company's Condensed Consolidated Statement of Operations.

Non-Designated Derivatives Hedging Transaction Exposure

Other derivatives not designated as hedging instruments consist of forward contracts used to hedge re-measurement of

foreign currency denominated monetary assets and liabilities primarily for intercompany transactions, receivables from customers, prepayments to suppliers and advances received from customers, and payables to third parties. Changes in exchange rates between the Company's subsidiaries' functional currencies and the currencies in which these assets and liabilities are denominated can create fluctuations in the Company's reported consolidated financial position, results of operations and cash flows. The Company enters into forward contracts, which are originally designated as cash flow hedges, and de-designates them upon recognition of the anticipated transaction to protect resulting non-functional currency monetary assets. These forward contracts as well as additional forward contracts are entered into to hedge foreign currency denominated monetary assets and liabilities against the short-term effects of currency exchange rate fluctuations. The Company records its derivative contracts that are not designated as hedging instruments at fair value with the related gains or losses recorded in “Other, net” in the Condensed Consolidated Statements of Operations. The gains or losses on these contracts are substantially offset by transaction gains or losses on the underlying balances being hedged. As of April 3, 2011 and January 2, 2011, the Company held forward contracts with an aggregate notional value of $566.6 million and $934.8 million, respectively, to hedge balance sheet exposure. These forward contracts have maturities of three month or less.

Credit Risk

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

Note 10. *INCOME TAXES*

In the three months ended April 3, 2011, the Company's income tax benefit of $15.8 million on a loss before income taxes and equity in earnings of unconsolidated investees of $25.1 million was primarily due to domestic and foreign losses in certain jurisdictions, nondeductible amortization of purchased intangible assets, non deductible equity compensation, amortization of debt discount from convertible debentures, mark-to-market fair value adjustments, changes in the valuation allowance on deferred tax assets and discrete stock option deductions. In the three months ended April 4, 2010, the Company's income tax benefit was $30.9 million on a loss before income taxes and equity in earnings of unconsolidated investees of $21.4 million primarily due to domestic and foreign income losses in certain jurisdictions, nondeductible amortization of purchased intangible assets, non deductible equity compensation, amortization of debt discount from convertible debentures and discrete stock option deductions. The Company’s interim period tax provision or benefit is estimated based on the expected annual worldwide tax rate and takes into account the tax effect of discrete items.

Note 11. *NET INCOME (LOSS) PER SHARE OF CLASS A AND CLASS B COMMON STOCK*

The Company calculates net income per share under the two-class method. Under the two-class method, net income per share is computed by dividing earnings allocated to common stockholders by the weighted average number of common shares outstanding for the period. In applying the two-class method, earnings are allocated to both classes of common stock and other participating securities based on their respective weighted average shares outstanding during the period. No allocation is generally made to other participating securities in the case of a net loss per share.

Basic weighted average shares is computed using the weighted average of the combined class A and class B common stock outstanding. Class A and class B common stock are considered equivalent securities for purposes of the earnings per share calculation because the holders of each class are legally entitled to equal per share distributions whether through dividends or in liquidation. The Company's outstanding unvested restricted stock awards are considered participating securities as they may participate in dividends, if declared, even though the awards are not vested. As participating securities, the unvested restricted stock awards are allocated a proportionate share of net income, but excluded from the basic weighted average shares. Diluted weighted average shares is computed using basic weighted average shares plus any potentially dilutive securities outstanding during the period using the if-converted method and treasury-stock-type method, except when their effect is anti-dilutive. Potentially dilutive securities include stock options, restricted stock units, senior convertible debentures and amended warrants associated with the CSO2015.

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

(In thousands)	As of April 3, 2011	As of April 4, 2010
Stock options	1,168	394
Restricted stock units	3,488	1,061
Warrants (under the CSO2015)	*	N/A
4.75% debentures	8,712	8,712
1.25% debentures	*	*
0.75% debentures	*	*

(1) As a result of the net loss per share for the three months ended April 3, 2011, the inclusion of all potentially dilutive stock options, restricted stock units, and common shares under the 4.75% debentures would be anti-dilutive, therefore, those shares were excluded from the computation of the weighted-average shares for diluted net loss per share.

* The Company's average stock price during the three months ended April 3, 2011 and April 4, 2010 did not exceed the conversion price for the amended warrants (under the CSO2015), 1.25% debentures and 0.75% debentures and were thus non-dilutive in both quarters.

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

(In thousands, except per share amounts)	Three Months Ended April 3, 2011	Three Months Ended April 4, 2010
Basic net income (loss) per share:		
Net income (loss)	$ (2,121)	$ 12,573
Less: undistributed earnings allocated to unvested restricted stock awards (1)	—	(30)
Net income (loss) available to common stockholders	$ (2,121)	$ 12,543
Basic weighted-average common shares	96,453	95,154
Basic net income (loss) per share	$ (0.02)	$ 0.13
Diluted net income (loss) per share:		
Net income (loss)	$ (2,121)	$ 12,573
Less: undistributed earnings allocated to unvested restricted stock awards (1)	—	(29)
Net income (loss) available to common stockholders	$ (2,121)	$ 12,544
Basic weighted-average common shares	96,453	95,154
Effect of dilutive securities:		
Stock options	—	1,214
Restricted stock units	—	104
Diluted weighted-average common shares	96,453	96,472
Diluted net income (loss) per share	$ (0.02)	$ 0.13

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

Holders of the Company's 4.75% senior convertible debentures ("4.75% debentures") may convert the debentures into shares of the Company's class A common stock, at the applicable conversion rate, at any time on or prior to maturity. The 4.75% debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the if-converted method. In the first quarter of fiscal 2011 and 2010, there were no dilutive potential common shares under the 4.75%

debentures.

Holders of the Company's 1.25% debentures and 0.75% debentures may, under certain circumstances at their option, convert the debentures into cash and, if applicable, shares of the Company's class A common stock at the applicable conversion rate, at any time on or prior to maturity. The 1.25% debentures and 0.75% debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the treasury-stock-type method. The Company's average stock price during the three months ended April 3, 2011 and April 4, 2010 did not exceed the conversion price for the 1.25% debentures and 0.75% debentures. Under the treasury-stock-type method, the Company's 1.25% debentures and 0.75% debentures will generally have a dilutive impact on net income per share if the Company's average stock price for the period exceeds the conversion price for the debentures.

Holders of the Company's 4.50% debentures may, under certain circumstances at their option, convert the debentures into cash, and not into shares of the Company's class A common stock (or any other securities). Therefore, the 4.50% debentures are excluded from the net income per share calculation. Upon exercise of the amended warrants (under the CSO2015), holders will acquire, at an exercise price of $27.03 per share, up to 11.1 million shares of the Company's class A common stock (see Note 7). If the market price per share of the Company's class A common stock exceeds the exercise price of $27.03 per share, the amended warrants will have a dilutive effect on its dilutive net income per share using the treasury-stock-type method.

Note 12. ***STOCK-BASED COMPENSATION***

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

	Three Months Ended	
(In thousands)	**April 3, 2011**	**April 4, 2010**
Cost of UPP revenue	$ 885	$ 1,191
Cost of R&C revenue	1,036	1,491
Research and development	1,769	1,683
Sales, general and administrative	9,473	6,443
	$ 13,163	$ 10,808

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

	Three Months Ended	
(In thousands)	**April 3, 2011**	**April 4, 2010**
Employee stock options	$ 460	$ 877
Restricted stock awards and units	14,826	10,815
Change in stock-based compensation capitalized in inventory	(2,123)	(884)
	$ 13,163	$ 10,808

Note 13. ***SEGMENT AND GEOGRAPHICAL INFORMATION***

The CODM assesses the performance of the UPP Segment and R&C Segment using information about their revenue and gross margin after adding back certain non-cash expenses such as amortization of other intangible assets, stock-based compensation expense and interest expense. The following tables present revenue by segment, cost of revenue by segment and gross margin by segment, revenue by geography and revenue by significant customer. Revenue is based on the destination of the shipments.

(As a percentage of total revenue)	Three Months Ended April 3, 2011	Three Months Ended April 4, 2010
Revenue by geography:		
North America	45%	30%
Europe:		
Italy	17	18
Germany	5	18
France	16	11
Other	5	13
Rest of world	12	10
	100%	100%
Revenue by segment (in thousands):		
Utility and power plants	$ 245,909	$ 144,094
Residential and commercial	205,509	203,180
Cost of revenue by segment (in thousands):		
Utility and power plants (as reviewed by CODM)	$ 201,639	$ 109,147
Amortization of intangible assets	102	689
Stock-based compensation expense	885	1,191
Non-cash interest expense	385	401
Utility and power plants	$ 203,011	$ 111,428
Residential and commercial (as reviewed by CODM)	$ 158,007	$ 159,986
Amortization of intangible assets	193	2,124
Stock-based compensation expense	1,036	1,491
Non-cash interest expense	649	502
Residential and commercial	$ 159,885	$ 164,103
Gross margin by segment:		
Utility and power plants (as reviewed by CODM)	18%	24%
Residential and commercial (as reviewed by CODM)	23%	21%
Utility and power plants	17%	23%
Residential and commercial	22%	19%

(As a percentage of total revenue)		Three Months Ended April 3, 2011	Three Months Ended April 4, 2010
Significant Customers:	**Business Segment**		
Customer A	Utility and power plants	11%	*

* denotes less than 10% during the period

Note 14. *SUBSEQUENT EVENTS*

Tender Offer

On May 2, 2011 the Company filed a current report on Form 8-K summarizing and attaching as exhibits the agreements described below. Please refer to the full text of such current report for more detail on these agreements and the text thereof. The summaries set forth below do not purport to be complete, and are qualified in its entirety by reference to the full text of such agreements attached as exhibits to such current Report on Form 8-K, which are incorporated herein by reference.

Tender Offer Agreement

On April 28, 2011, the Company and Total Gas & Power USA, SAS, a French *société par actions simplifiée* (the "Purchaser"), a wholly-owned subsidiary of Total S.A., a French *société anonyme* (the "Parent"), entered into a Tender Offer Agreement (the "Tender Offer Agreement"). Pursuant to the Tender Offer Agreement, on May 3, 2011, Purchaser commenced a cash tender offer to acquire up to 60% of the Company's outstanding shares of class A common stock and up to 60% of the Company's outstanding shares of class B common stock (the "Tender Offer") at a price of $23.25 per share for each class. The consummation of the Tender Offer is subject to customary closing conditions, including a minimum of 50% of the outstanding shares of each of the class A common stock and class B common stock being tendered, clearance by U.S. and European Union antitrust authorities, and other customary closing conditions. On May 9, 2011 the U.S. Federal Trade Commission granted us and the Parent early termination of the waiting period otherwise required for the parties to achieve U.S. antitrust approval. The Company has agreed, pursuant to the Tender Offer Agreement, to pay a termination fee to Purchaser equal to the sum of (i) $42.5 million plus (ii) Purchaser's transaction expenses up to $2.5 million in certain circumstances, including with respect to accepting an unsolicited alternative proposal that is superior to the transaction with Purchaser. In connection with the Tender Offer, Parent filed a Tender Offer Statement on Schedule TO and the Company filed a Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC, which contained additional information about the Tender Offer. Those documents were also mailed to the Company's stockholders.

Tender Offer Agreement Guaranty

In connection with the Tender Offer Agreement, Parent entered into a guaranty (the "Tender Offer Agreement Guaranty") pursuant to which Parent unconditionally guarantees the full and prompt payment obligations under the Tender Offer Agreement and the full and prompt performance of all of Purchaser's representations, warranties, covenants, duties and agreements contained in the Tender Offer Agreement. The maximum aggregate liability to Parent under the Tender Offer Guaranty, however, will not be more than the value of the shares of class A common stock and class B common stock that are subject to the Tender Offer, based on the offer price.

Credit Support Agreement

In connection with the Tender Offer, the Company and Parent entered into a Credit Support Agreement (the "Credit Support Agreement") under which Parent has agreed to enter into one or more guarantee agreements (each a "Guaranty") with banks providing letter of credit facilities to the Company in support of certain Company businesses and other permitted purposes. Parent will guarantee the payment to the applicable bank of the Company's obligation to reimburse a draw on a letter of credit and pay interest thereon in accordance with the letter of credit facility between such bank and the Company. The Credit Support Agreement will become effective on the date on which the acceptance for payment by Purchaser of shares pursuant to the Tender Offer occurs (the "CSA Effective Date"). Under the Credit Support Agreement, at any time from the CSA Effective Date until the fifth anniversary of the CSA Effective Date, the Company may request that Parent provide a Guaranty in support of the Company's payment obligations with respect to a letter of credit facility. Parent is required to issue and enter into the Guaranty requested by the Company, subject to certain terms and conditions that may be waived by Parent, and subject to certain other conditions.

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

The Company is also required to reimburse Parent for payments made under any Guaranty, plus interest, and certain expenses of Parent, plus interest.

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

The Credit Support Agreement will terminate after the later of the payment in full of all obligations thereunder and the termination or expiration of each Guaranty provided thereunder following the fifth anniversary of the CSA Effective Date. In addition, the Credit Support Agreement will terminate automatically and be of no further force or effect upon the Tender Offer Agreement being terminated in accordance with its terms.

Affiliation Agreement

In connection with the Tender Offer, the Company and Purchaser entered into an Affiliation Agreement that will govern

the relationship between Purchaser and the Company following the closing of the Tender Offer (the "Affiliation Agreement"). Following the closing of the Tender Offer and until the expiration of a standstill period (the "Standstill Period"), Purchaser, Parent, any of their respective affiliates and certain other related parties (the "Total Group") may not effect, seek, or enter into discussions with any third party regarding any transaction that would result in the Total Group beneficially owning shares of the Company in excess certain thresholds, or request the Company or the Company's independent directors, officers or employees, to amend or waive any of the standstill restrictions applicable to the Total Group.

The Affiliation Agreement also imposes certain limitations on the Total Group's ability to seek to effect a tender offer or merger to acquire 100% of the outstanding voting power of the Company.

During the Standstill Period (as defined in the Affiliation Agreement), no member of the Total Group may, among other things, solicit proxies or become a participant in an election contest relating to the election of directors to the Company's Board of Directors.

The Affiliation Agreement also imposes certain limitations on the Total Group's ability to transfer 40% or more of outstanding shares or voting power of the Company to a single person or group that is not a direct or indirect subsidiary of Parent.

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

Immediately after the consummation of the Tender Offer, the Company's Board of Directors will be expanded to eleven persons, composed of the Chief Executive Officer of the Company (who will also serve as the chairman of the Company's Board of Directors), four current members of the Company's Board of Directors, and six directors designated by the Purchaser. Directors designated by the Purchaser will also be able to serve on certain committees of the Company's Board of Directors. On the first anniversary of the consummation of the Offer, the size of the Company's Board of Directors will be reduced to nine members and one non-Purchaser designated director and one director designated by the Purchaser will resign from the Company's Board of Directors. If the Total Group's ownership of Company common stock declines, the number of members of the Company's Board of Directors that the Purchaser is entitled to nominate to the Company's Board of Directors will be reduced as set forth in the Affiliation Agreement.

The Affiliation Agreement also imposes certain restrictions with respect to the Company's and the Company's Board of Director's ability to take certain actions.

Affiliation Agreement Guaranty

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

Research & Collaboration Agreement

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

The R&D Agreement contemplates a joint committee (the "R&D Strategic Committee") that will identify, plan and manage the R&D Collaboration. Due to the impracticability of anticipating and establishing all of the legal and business terms that will be applicable to the R&D Collaboration or to each R&D Project, the R&D Agreement sets forth broad principles applicable to the parties' potential R&D Collaboration, and Purchaser and the Company expect that the R&D Strategic Committee will establish the particular terms governing each particular R&D Project consistent with the terms set forth in

R&D Agreement.

Registration Rights Agreement

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

Stockholder Rights Plan

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

The Tender Offer Agreement, Tender Offer Agreement Guaranty, Credit Support Agreement, Affiliation Agreement, Affiliation Agreement Guaranty, Research and Collaboration Agreement, Registration Rights Agreement, and Rights Agreement Amendment are attached to, and more fully described in, the Company's Form 8-K as filed with the SEC on May 2, 2011, and are also attached as exhibits to this Quarterly Report on Form 10-Q.

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

Cautionary Statement Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements that do not represent historical facts and the assumptions underlying such statements. We use words such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "plan," "predict," "potential," "should," "will," "would," and similar expressions to identify forward-looking statements. Forward-looking statements in this Quarterly Report on Form 10-Q include, but are not limited to, our plans and expectations regarding future financial results, expected operating results, business strategies, projected costs, products, ability to monetize utility projects, competitive positions, management's plans and objectives for future operations, the sufficiency of our cash and our liquidity, our ability to obtain financing, the success of our joint ventures, expected capital expenditures, warranty matters, outcomes of litigation, our exposure to foreign exchange, interest and credit risk, general business and economic conditions, industry trends, impact of the decree on the Italian feed-in tariff program, the likelihood of any impairment of project assets, goodwill and intangible assets, the expected timing and our ability to satisfy the closing conditions, including regulatory approval, of the proposed tender offer from Total Gas & Power USA S.A.S. ("Total"), and the expected benefits from such tender offer and the related agreements with Total and its affiliates. These forward-looking statements are based on information available to us as of the date of this Quarterly Report on Form 10-Q and current expectations, forecasts and assumptions and involve a number of risks and uncertainties that could cause actual results to differ materially from those anticipated by these forward-looking statements. Such risks and uncertainties include a variety of factors, some of which are beyond our control. Please see "Part II. Item 1A: Risk Factors" herein and our other filings with the Securities and Exchange Commission ("SEC"), including our Annual Report on Form 10-K for the year ended January 2, 2011 (the "fiscal 2010 Form 10-K"), for additional information on risks and uncertainties that could cause actual results to differ. These forward-looking statements should not be relied upon as representing our views as of any subsequent date, and we are under no obligation to, and expressly disclaim any responsibility to, update or alter our forward-looking statements, whether as a result of new information, future events or otherwise.

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

Unit of Power

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

General Overview

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

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

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

The high efficiency and superior aesthetics of our solar power products provide compelling customer benefits. In many situations, we offer a significantly lower area-related cost structure for our customers because our solar panels require a

substantially smaller roof or land area than conventional solar technology and half or less of the roof or land area of many commercial solar thin film technologies.

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

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

Our solar power systems are designed to generate electricity over a system life typically exceeding 25 years under test conditions and are principally designed to be used in large-scale applications with system ratings of typically more than 500 KW. Worldwide, we have more than 650 MW of SunPower solar power systems operating or under contract. We sell distributed rooftop and ground-mounted solar power systems as well as central-station power plants globally. In the United States, distributed solar power systems are typically either: (i) rated at more than 500 KW of capacity to provide a supplemental, distributed source of electricity for a customer's facility; or (ii) ground mount systems reaching up to hundreds of MWs for regulated utilities. In the United States, commercial and electric utility customers typically choose to purchase solar electricity under a power purchase agreement (“PPA”) with an investor or financing company that buys the system from us. In Europe, our products and systems are typically purchased by an investor or financing company and operated as central-station solar power plants. These power plants are rated with capacities of approximately one to fifty MW, and generate electricity for sale under tariff to private and public utilities.

Business Segments Overview

Our President and Chief Executive Officer, as the chief operating decision maker (“CODM”), has organized our company and manages resource allocations and measures performance of our company's activities between two business segments: the Utility and Power Plants ("UPP") Segment and the Residential and Commercial ("R&C") Segment. Our UPP Segment refers to our large-scale solar products and systems business, which includes power plant project development and project sales, turn-key engineering, procurement and construction (“EPC”) services for power plant construction, and power plant operations and maintenance (“O&M”) services. Our UPP Segment also sells components, including large volume sales of solar panels and mounting systems to third parties, often on a multi-year, firm commitment basis. Our R&C Segment focuses on solar equipment sales into the residential and small commercial market through our third-party global dealer network, as well as direct sales and EPC and O&M services in the United States for rooftop and ground-mounted solar power systems for the new homes, commercial and public sectors.

Seasonal Trends

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

Tender Offer

On April 28, 2011, we and Total, a wholly-owned subsidiary of Total S.A., a French *société anonyme* (the “Parent”), entered into a Tender Offer Agreement (the “Tender Offer Agreement”). Pursuant to the Tender Offer Agreement, on May 3, 2011, Total commenced a cash tender offer to acquire up to 60% of our outstanding shares of class A common stock and up to 60% of our outstanding shares of class B common stock (the “Tender Offer”) at a price of $23.25 per share for each class. The consummation of the Tender Offer is subject to customary closing conditions, including a minimum of 50% of the outstanding shares of each of the class A common stock and class B common stock being tendered, clearance by U.S. and European Union antitrust authorities, and other customary closing conditions. On May 9, 2011 the U.S. Federal Trade Commission granted us

and the Purchaser early termination of the waiting period otherwise required for the parties to achieve U.S. antitrust approval.

2011 Outlook: Italian Feed-in Tariff

On March 3, 2011, the Italian government passed a new legislative decree stating that the current solar feed-in tariff ("FIT") would conclude on May 31, 2011 and that Italy would adopt a new FIT on June 1, 2011. The details of the new FIT program were not included in the legislative decree. The decree also set forth a future limit on the construction of solar plants on agricultural land. These announcements, and the surrounding uncertainty around implementation details of the next FIT, had a materially negative effect on the market for solar systems in Italy. Some solar projects planned for 2011 were delayed in the first quarter of fiscal 2011, which has driven down demand and average selling prices for our solar panels thereby increasing inventories on hand and reducing our cash and cash equivalents. On May 5, 2011, the Italian government announced a legislative decree which defines the revised FIT and the transition process from the current FIT to the next FIT beginning June 1, 2011. The enactment of this decree will likely cause our revenue to decline in Italy and adversely affect our future financial results.

We have tangible project assets on our Condensed Consolidated Balance Sheets related to capitalized costs incurred in connection with the development of solar power systems, including those being developed in Italy. Project assets consist primarily of capitalized costs relating to solar power system projects in various stages of development that we incur prior to the sale of the solar power system to a third party. These costs include costs for land and costs for developing and constructing a solar power system. Our review of our currently active projects did not indicate any impairment of project assets that we either plan to develop and commercialize or sell prior to development and commercialization. However, these project assets could become impaired if there are changes in the fair value of these capitalized costs upon the actual implementation of the new FIT. For example, our project assets could become impaired if the amount of applications exceeds the amount of any limits set forth in the final legislation. If these project assets become impaired, we may write-down or write-off some or all of the capitalized project assets which would have an adverse impact on our financial results in the period in which the loss is recognized.

In addition, we have significant goodwill and intangible assets on our Condensed Consolidated Balance Sheets, of which the majority of the carrying value of intangible assets relates to strategic acquisitions of EPC and O&M project pipelines in Europe. We review our goodwill and intangible assets for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. Triggering events for an impairment review may include indicators such as the availability, reduction, modification or elimination of government and economic incentives, adverse industry or economic trends, lower than projected operating results or cash flows, or a sustained decline in our stock price or market capitalization. During the three months ended April 3, 2011, we changed our internal reporting structure and re-aligned the reporting units in our UPP segment to create the following reporting units: UPP-International and UPP-Americas. The new FIT in Italy announced in March 2011 represented a triggering event which caused us to review the carrying values of our goodwill and intangible assets allocated to the UPP-International reporting unit. In reviewing whether there was an impairment, we considered the discounted cash flows from the UPP-International reporting unit using the income approach and reconciled this value to an implied enterprise value based upon our recently announced transaction with Total. Based upon that review, there was no impairment goodwill and intangible assets allocated to the UPP-International reporting unit. As of April 3, 2011, the UPP-International reporting unit has goodwill and intangible assets of $93.8 million and $51.4 million, respectively, and a fair value which is not significantly different from its book value. This reporting unit could become impaired if there are additional changes in the fair value of this reporting unit upon the actual implementation of the new FIT. These changes could result from, among other items, the application of any limits of construction of solar power parks, customer and market reactions to the implementation of the FIT, and decreases in the valuation premiums for our company or solar companies in general. These factors could impact the fair market value of our UPP-International reporting unit as well as projected profitability of the acquired project pipeline in Italy, which could result in significant write-downs of goodwill and intangible assets and a significant non-cash charge to earnings and lower stockholders' equity.

Critical Accounting Policies and Estimates

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

There have been no significant changes in our significant accounting policies for the three months ended April 3, 2011, as compared to the significant accounting policies described in the fiscal 2010 Form 10-K. Further, there has been no issued accounting guidance not yet adopted by us that we believe is material, or is potentially material, to our condensed consolidated financial statements.

Results of Operations

Revenue

(In thousands)	Three Months Ended April 3, 2011	Three Months Ended April 4, 2010
Utility and power plants	$ 245,909	$ 144,094
Residential and commercial	205,509	203,180
Total revenue	$ 451,418	$ 347,274

Total Revenue: During the three months ended April 3, 2011 and April 4, 2010, our total revenue was $451.4 million and $347.3 million, respectively, an increase of 30% period over period. The increase in our total revenue during the three months ended April 3, 2011 compared to the same period in fiscal 2010 is attributable to revenue related to the development of several large scale projects in North America and Europe, as well as the continuous growth of our third-party global dealer network. In the first quarter of fiscal 2011, we recognized revenue on 132.8 MW of solar power products sold through both our UPP and R&C Segments as compared to 92.9 MW sold during the comparable period in fiscal 2010, representing an increase of 43%. The increase in our total revenue was partially offset by declining average selling prices and mix of our solar power products.

Sales outside North America represented 55% and 70% of total revenue for the three months ended April 3, 2011 and April 4, 2010, respectively. The shift in revenue by geography in the three months ended April 3, 2011 as compared to the three months ended April 4, 2010 is due to increasing demand in the United States for our solar power products due to additional federal and state initiatives supporting attractive solar incentives within the residential, commercial and utility sectors, offset by a slowdown in project development and component shipments in Italy due to the change in the FIT.

Concentrations: We had one customer that accounted for 10 percent or more of total revenue in the three months ended April 3, 2011. No customers accounted for 10 percent or more of total revenue in the three months ended April 4, 2010.

(As a percentage of total revenue)		Three Months Ended April 3, 2011	Three Months Ended April 4, 2010
Significant Customer:	**Business Segment**		
Customer A	Utility and power plants	11%	*

* denotes less than 10% during the period

UPP Revenue: UPP revenue for the three months ended April 3, 2011 and April 4, 2010 was $245.9 million and $144.1 million, respectively, which accounted for 54% and 41%, respectively, of total revenue. UPP revenue for the three months ended April 3, 2011 increased 71% as compared to the three months ended April 4, 2010 due to revenue related to large scale projects completed or under construction in North America and Europe, including projects acquired as part of our strategic acquisition in March 2010, as well as increased sales through our components business.

In the first quarter of fiscal 2011, our UPP revenue was driven by 43.1 MW of component sales, primarily in Europe and Japan. Revenue was additionally recognized under the percentage-of-completion method for several power plants including a 20 MW solar power plant in Ontario, Canada, and three power plants under construction in Italy totaling 7 MW of which significant construction was completed during the quarter.

In the first quarter of fiscal 2010, our UPP revenue was driven by 36.4 MW of component sales, primarily in Europe and Japan. Revenue was additionally recognized under the percentage-of-completion method for several power plants that were at or nearing completion in Florida and Italy.

R&C Revenue: R&C revenue for the three months ended April 3, 2011 and April 4, 2010 was $205.5 million and $203.2 million, respectively, or 46% and 59%, respectively, of total revenue. R&C revenue for the three months ended April 3, 2011 increased 1% as compared to the three months ended April 4, 2010 due to growing demand for our solar power products in the residential and commercial markets, specifically in rooftop and ground-mounted commercial projects in North America, partially offset by the change in the Italy FIT which negatively influenced overall demand in and timing of customers' buying decisions in that region and by declining average selling prices.

In the first quarter of fiscal 2011, our R&C revenue was primarily driven by demand in solar equipment sales into the residential and small commercial market in North America and Europe through our third-party global dealer network. Our third-party global dealer network was composed of more than 1,600 dealers worldwide at the end of the first quarter in fiscal 2011, an increase of approximately 600 dealers from the first quarter in fiscal 2010. R&C revenue was additionally driven by strong demand in large commercial projects in North America, particularly the United States, due to federal, state and local initiatives supporting solar power projects.

In the first quarter of fiscal 2010, our R&C revenue was primary driven by demand for our solar power products in the United States, Germany and Italy through our third-party global dealer network which was composed of more than 1,000 dealers wordwide at the end of the first quarter in fiscal 2010.

Cost of Revenue

	Three Months Ended					
	UPP		R&C		Consolidated	
(Dollars in thousands)	**April 3, 2011**	**April 4, 2010**	**April 3, 2011**	**April 4, 2010**	**April 3, 2011**	**April 4, 2010**
Amortization of other intangible assets	$ 102	$ 689	$ 193	$ 2,124	$ 295	$ 2,813
Stock-based compensation	885	1,191	1,036	1,491	1,921	2,682
Non-cash interest expense	385	401	649	502	1,034	903
Materials and other cost of revenue	201,639	109,147	158,007	159,986	359,646	269,133
Total cost of revenue	$ 203,011	$ 111,428	$ 159,885	$ 164,103	$ 362,896	$ 275,531
Total cost of revenue as a percentage of revenue	83%	77%	78%	81%	80%	79%
Total gross margin percentage	17%	23%	22%	19%	20%	21%

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

We are seeking to reduce our cost of revenue over time through various cost reduction efforts, including improving our manufacturing processes, entering into long-term supply agreements, and growing our business to attain economies of scale on fixed costs. An expected reduction in cost of revenue based on manufacturing efficiencies, however, could be partially or completely offset by increased raw material costs.

During the three months ended April 3, 2011, our two solar cell manufacturing facilities produced 157.6 MW as compared to the three months ended April 4, 2010 when we produced 135.4 MW. Our manufacturing cost per watt decreased in the three month ended April 3, 2011 as compared to the three months ended April 4, 2010 due to lower material cost and better material utilization as well as higher volume, resulting in increased economies of scale in production. We are working with our suppliers and partners along all steps of the value chain to reduce costs by improving manufacturing technologies and expanding economies of scale.

During the three months ended April 3, 2011 and April 4, 2010, total cost of revenue was $362.9 million and $275.5 million, respectively, which represented an increase of 32% period over period. The increase in total cost of revenue corresponds with the increase of 30% in total revenue during the three months ended April 3, 2011 compared to the three months ended April 4, 2010. As a percentage of total revenue, total cost of revenue increased to 80% in the three months ended April 3, 2011 as compared to 79% in the three months ended April 4, 2010. The increase in total cost of revenue as a percentage of total revenue is primarily due to: (i) a 43% increase in total MW of solar power products sold as well as an overall reduction

in average selling prices of our solar power products; (ii) an increase in costs on certain power plant projects under construction coupled with a shift in revenue by segment, specifically, a 13% increase in UPP revenue as a percentage of total revenue, which has experienced lower gross margins period over period as described below; and (iii) additional anticipated costs associated with the ramp up of AUO SunPower Sdn. Bhd's ("AUOSP") solar cell manufacturing facility ("FAB 3") which became operational in December 2010. The increase in total cost of revenue as a percentage of revenue was partially offset by a reduction of our manufacturing cost per watt as described above.

UPP Gross Margin: Gross margin for our UPP Segment was $42.9 million and $32.7 million for the three months ended April 3, 2011 and April 4, 2010, respectively, or 17% and 23%, respectively, of UPP revenue. UPP gross margin for the three months ended April 3, 2011 primarily decreased due to: (i) an increase in costs on certain power plant projects under construction; (ii) a decrease in the percentage of total UPP revenue derived from component sales in Europe, which typically have a higher gross margin percentage than our utility projects; and (iii) reductions in the average selling price of components in excess of the reduction of our manufacturing cost per watt described above.

R&C Gross Margin: Gross margin for our R&C Segment was $45.6 million and $39.1 million for the three months ended April 3, 2011 and April 4, 2010, respectively, or 22% and 19%, respectively, of R&C revenue. Gross margin increased primarily due to: (i) the reduction in large commercial balance of systems costs as well as increased activity and installations of rooftop and ground-mounted projects in the commercial sector in North America; and (ii) improvements attributable to continued manufacturing scale and reductions in our manufacturing cost per watt described above, partially offset by the reduction in average selling prices of our solar power products.

Research and Development ("R&D")

	Three Months Ended	
(Dollars in thousands)	**April 3, 2011**	**April 4, 2010**
Stock-based compensation	$ 1,769	$ 1,683
Other R&D	11,877	8,724
Total R&D	$ 13,646	$ 10,407
As a percentage of revenue	3%	3%

During the three months ended April 3, 2011 and April 4, 2010, R&D expense was $13.6 million and $10.4 million, respectively, which represents an increase of 31% period over period. The increase in our investment in R&D during the three months ended April 3, 2011 as compared to the same period in fiscal 2010 resulted primarily from costs related to the improvement of our current generation solar cell manufacturing technology, development of our next generation of solar cells, development of our next generation of solar panels, development of our next generation of trackers and rooftop systems, and development of systems performance monitoring products. We expect our R&D activity to continue to increase in fiscal 2011 as compared to 2010 as we continue to improve solar cell efficiency through enhancement of our existing products, develop new techniques such as concentrating photovoltaic power, and reduce manufacturing cost and complexity.

The increase in R&D expense for the three months ended April 3, 2011 as compared to the three months ended April 4, 2010 is further attributable to: (i) an increase in personnel related expense (including salary, employee benefits and stock-based compensation costs) as a result of increased headcount; (ii) increased equipment expense and depreciation due to general growth and development; and (iii) a decrease in cost reimbursements received from government entities in the United States from $1.8 million in the three months ended April 4, 2010 to zero in the three months ended April 3, 2011 due to the phase out of related programs during fiscal 2010, such as the Solar America Initiative R&D agreement with the United States Department of Energy. As of April 3, 2011 we have executed three new research and development agreements with the United States federal government and California state agencies. Payments received under these contracts will offset our R&D expense in future periods. No related payments were received under these contracts during the three months ended April 3, 2011.

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

(Dollars in thousands)	Three Months Ended April 3, 2011	Three Months Ended April 4, 2010
Amortization of other intangible assets	$ 6,769	$ 1,946
Stock-based compensation	9,473	6,443
Amortization of promissory notes	1,290	—
Other SG&A	58,647	55,891
Total SG&A	$ 76,179	$ 64,280
As a percentage of revenue	17%	19%

During the three months ended April 3, 2011 and April 4, 2010, SG&A expense was $76.2 million and $64.3 million, respectively, which represents an increase of 19% period over period. The increase in SG&A expense during the three months ended April 3, 2011 as compared to the same period in fiscal 2010 resulted primarily from higher spending in all of the functional areas to support the growth of our business, including additional operating expenses consolidated into our financial results subsequent to our strategic acquisition in March 2010. We expect our SG&A expense to continue to increase in fiscal 2011 as we continue to invest in expanding our sales and support organizations and continue to grow our business globally.

The increase in SG&A expense in the three months ended April 3, 2011 as compared to the three months ended April 4, 2010 primarily related to a full quarter of additional operating and development expenses being consolidated into our financial results due to consolidating an acquiree effective March 26, 2010. These additional expenses include: (i) higher amortization of other intangible assets related to acquired project assets; and (ii) amortization of the $14.0 million in promissory notes issued to the acquiree's management shareholders in connection with the acquisition, offset by a decrease in acquisition and integration-related costs such as legal, accounting and other professional services. Other expenses contributing to the overall increase included personnel related expense (including salary, employee benefits, stock-based compensation costs and commission) as a result of increased headcount and additional bad debt expense due to the overall increase in revenue and the collectability of outstanding accounts receivable related to several customers impacted by the difficult economic conditions experienced in the last two years. This increase in SG&A expense period over period is partially offset by $4.4 million of expenses incurred in the first quarter of fiscal 2010 associated with our Audit Committee's independent investigation of certain accounting entries primarily related to cost of goods sold by our Philippines operations.

Other Expense, Net

(In thousands)	Three Months Ended April 3, 2011	Three Months Ended April 4, 2010
Interest income	$ 743	$ 273
Non-cash interest expense	$ (6,291)	$ (5,487)
Other interest expense	(8,968)	(5,453)
Total interest expense	$ (15,259)	$ (10,940)
Loss on mark-to-market derivatives	$ (44)	$ (2,218)
Other, net	$ (9,207)	$ (5,591)
Other expense, net	$ (23,767)	$ (18,476)

Interest income during the three months ended April 3, 2011 and April 4, 2010 primarily represented interest income earned on our cash, cash equivalents, restricted cash, restricted cash equivalents and available-for-sale securities during these periods. The increase in interest income of 172% in the three months ended April 3, 2011 as compared to the same period in 2010 resulted from higher interest rates earned on available-for-sale securities.

Interest expense during the three months ended April 3, 2011 primarily related to debt under our senior convertible debentures, fees for our outstanding letters of credit with Deutsche Bank AG New York Branch ("Deutsche Bank"), the mortgage loan with International Finance Corporation ("IFC"), debt under the loan agreement with California Enterprise Development Authority ("CEDA"), and debt under the revolving credit facilities with Union Bank, N.A. ("Union Bank") and Société Générale, Milan Branch ("Société Générale"). Interest expense during the three months ended April 4, 2010 primarily related to issuances of our senior convertible debentures and borrowings under the facility agreement with the Malaysian government (deconsolidated in the third quarter of fiscal 2010), the term loan with Union Bank and fees for our outstanding letters of credit with Wells Fargo. The increase in interest expense of 39% in the three months ended April 3, 2011 as compared to the three months ended April 4, 2010 was due to: (i) additional indebtedness related to our $250.0 million in principal

amount of 4.50% senior cash convertible debentures ("4.50% debentures") issued in April 2010, $70.0 million borrowed from Union Bank in October 2010 under the revolving credit facility, approximately $106.1 million borrowed from Société Générale in November 2010 under the revolving credit facility, $50.0 million borrowed from IFC in November 2010 and $30 million borrowed under our loan agreement with CEDA in December 2010; and (ii) fees for our outstanding letters of credit with Deutsche Bank.

The immaterial net loss on mark-to-market derivatives during the three months ended April 3, 2011 related to the change in fair value of the following derivative instruments associated with the 4.50% debentures: (i) the embedded cash conversion option; and (ii) the bond hedge transaction. The $2.2 million net loss on mark-to-market derivatives during the three months ended April 4, 2010 related to the change in fair value of the following derivative instruments associated with the 4.50% debentures: (i) the embedded cash conversion option; (ii) the over-allotment option; (iii) the bond hedge transaction; and (iv) the warrant transaction. The changes in fair value of these derivatives are reported in our Condensed Consolidated Statements of Operations until such transactions settle or expire. The over-allotment option derivative settled on April 5, 2010 when the initial purchasers of the 4.50% debentures exercised the $30.0 million over-allotment option in full. As a result of the terms of the warrants being amended and restated so that they are settled in shares of our class A common stock rather than in cash, the warrants have not required mark-to-market accounting treatment subsequent to December 23, 2010.

The following table summarizes the components of other, net:

	Three Months Ended	
(In thousands)	**April 3, 2011**	**April 4, 2010**
Loss on derivatives and foreign exchange	$ (9,353)	$ (7,058)
Gain on sale of investments	128	1,572
Other income (expense), net	18	(105)
Total other, net	$ (9,207)	$ (5,591)

Other, net was comprised of expenses totaling $9.2 million and $5.6 million during the three months ended April 3, 2011 and April 4, 2010, respectively, consisting primarily of: (i) losses totaling $8.3 million and $2.9 million, respectively, from expensing the time value of option contracts and forward points on forward exchange contracts; and (ii) losses totaling $1.1 million and $4.2 million, respectively, on foreign currency derivatives and foreign exchange largely due to the volatility in the currency markets. In addition, we have an active hedging program designed to reduce our exposure to movements in foreign currency exchange rates. As a part of this program, we designate certain derivative transactions as effective cash flow hedges of anticipated foreign currency revenues and record the effective portion of changes in the fair value of such transactions in "Accumulated other comprehensive income (loss)" in our Condensed Consolidated Balance Sheets until the anticipated revenues have occurred, at which point the associated income or loss would be recognized in revenue. In the first quarter of fiscal 2011, in connection with the decline in forecasted revenue surrounding the change in Italian governmental incentives, we reclassified an amount held in "Accumulated other comprehensive income (loss)" for certain previously anticipated transactions which did not occur or are now probable not to occur, which totaled a loss of $3.9 million. These decreases were partially offset by gains totaling $0.1 million and $1.6 million during the three months ended April 3, 2011 and April 4, 2010, respectively, for distributions from certain money market funds.

Income Taxes

	Three Months Ended	
(Dollars in thousands)	**April 3, 2011**	**April 4, 2010**
Benefit from income taxes	$ 15,816	$ 30,875
As a percentage of revenue	4%	9%

In the three months ended April 3, 2011, our income tax benefit of $15.8 million on a loss before income taxes and equity in earnings of unconsolidated investees of $25.1 million was primarily due to domestic and foreign losses in certain jurisdictions, nondeductible amortization of purchased intangible assets, nondeductible equity compensation, amortization of debt discount from convertible debentures, mark-to-market fair value adjustments, changes in the valuation allowance on deferred tax assets and discrete stock option deductions. In the three months ended April 4, 2010, our income tax benefit was $30.9 million on a loss before income taxes and equity in earnings of unconsolidated investees of $21.4 million was primarily due to domestic and foreign income losses in certain jurisdictions, nondeductible amortization of purchased intangible assets, non deductible equity compensation, amortization of debt discount from convertible debentures and discrete stock option deductions. Our interim period tax provision or benefit is estimated based on the expected annual worldwide tax rate and takes

into account the tax effect of discrete items.

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

We record a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. In assessing the need for a valuation allowance, we consider historical levels of income, expectations and risks associated with the estimates of future taxable income and ongoing prudent and feasible tax planning strategies. In the event we determine that we would be able to realize additional deferred tax assets in the future in excess of the net recorded amount, or if we subsequently determine that realization of an amount previously recorded is unlikely, we would record an adjustment to the deferred tax asset valuation allowance, which would change income tax in the period of adjustment. As of April 3, 2011, we believe there is insufficient evidence to realize additional deferred tax assets, although it is reasonably possible that a reversal of the valuation allowance, which could be material, could occur in fiscal 2011.

Equity in earnings of unconsolidated investees

	Three Months Ended	
(Dollars in thousands)	**April 3, 2011**	**April 4, 2010**
Equity in earnings of unconsolidated investees	$ 7,133	$ 3,118
As a percentage of revenue	2%	1%

Our equity in earnings of unconsolidated investees were gains of $7.1 million and $3.1 million during the three months ended April 3, 2011 and April 4, 2010, respectively. Our share of Woongjin Energy Co., Ltd's (“Woongjin Energy”) income totaled $4.5 million and $3.1 million in the three months ended April 3, 2011 and April 4, 2010, respectively. Our share of First Philec Solar Corporation's (“First Philec Solar”) income totaled $0.5 million and zero in the three months ended April 3, 2011 and April 4, 2010, respectively. The change in our equity share of Woongjin Energy's and First Philec Solar's earnings period over period represents the growth of the joint ventures' operations and changes in our equity ownership. Our share of AUOSP's income totaled $2.2 million in the three months ended April 3, 2011. AUOSP became operational in the fourth quarter of fiscal 2010 with construction of FAB 3 to continue through fiscal 2013.

Liquidity and Capital Resources

Cash Flows

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

	Three Months Ended	
(In thousands)	**April 3, 2011**	**April 4, 2010**
Net cash provided by (used in) operating activities	$ (174,659)	$ 18,901
Net cash used in investing activities	(68,976)	(333,245)
Net cash provided by financing activities	81	203,180

Operating Activities

Net cash used in operating activities of $174.7 million in the three months ended April 3, 2011 was primarily the result of: (i) increases in inventories and project assets of $163.2 million and $27.6 million, respectively, for construction of future and current projects in Italy and the North America; (ii) increases in costs and estimated earnings in excess of billings of $40.6 million related to contractual timing of system project billings; (iii) decreases in accounts payable and other accrued liabilities of $26.4 million; as well as (iv) other changes in operating assets and liabilities of $34.6 million, partially offset by a decrease in accounts receivable of $52.3 million and an increase in billings in excess of costs and estimated earnings of $21.3 million. In addition, net cash used in operating activities resulted from a $2.1 million net loss including $7.1 million of non-cash income related to our equity share in earnings of joint ventures, offset by $53.5 million of non-cash charges primarily related to depreciation, amortization, stock compensation and non-cash interest expense.

Net cash provided by operating activities of $18.9 million in the three months ended April 4, 2010 was primarily the

result of net income of $12.6 million, plus non-cash charges totaling $49.6 million for depreciation, amortization, stock-based compensation, mark-to-market derivatives and non-cash interest expense, less a $1.6 million gain on distributions from certain money market funds and non-cash income of $3.1 million related to our equity share in earnings of joint ventures, as well as a decrease in accounts receivable of $30.5 million due to some delayed projects. This increase was partially offset by increases in inventories of $51.1 million for construction of future projects in Europe, as well as other changes in operating assets and liabilities of $18.0 million.

Investing Activities

Net cash used in investing activities in the three months ended April 3, 2011 was $69.0 million, of which: (i) $44.8 million related to capital expenditures primarily associated with improvements to our current generation solar cell manufacturing technology, a solar power system built to own, leasehold improvements associated with new offices leased in San Jose, California, and other projects; (ii) $20.0 million related to additional cash investments in our AUOSP joint venture; and (iii) $4.7 million related to an increase in restricted cash. Cash used in investing activities was partially offset by $0.5 million related to proceeds from the sale of manufacturing equipment and money market fund distributions.

Net cash used in investing activities during the three months ended April 4, 2010 was $333.2 million, of which: (i) $43.7 million related to capital expenditures primarily associated with the continued construction of AUOSP's solar cell manufacturing facility, FAB 3, in Malaysia (deconsolidated in the third quarter of fiscal 2010); (ii) $272.7 million in cash was paid for an acquisition, net of cash acquired; (iii) $19.7 million related to increases in restricted cash and cash equivalents for advanced payments received from customers that we provided security in the form of cash collateralized bank standby letters of credit; and (iv) $1.6 million related to cash paid for investments in non-public companies. Cash used in investing activities was partially offset by $2.9 million in proceeds received from the sale of equipment to a third-party subcontractor and $1.6 million on distributions from certain money market funds.

Financing Activities

Net cash provided by financing activities in the three months ended April 3, 2011 was $0.1 million and results from: (i) $164.2 million in cash proceeds from subsequent drawdowns under the Union Bank and Société Générale revolving credit facilities in March 2011; and (ii) $0.1 million from stock option exercises. Cash provided by financing activities in the three months ended April 3, 2011 was partially offset by: (i) $156.1 million repayment on outstanding balances under the Union Bank and Société Générale revolving credit facilities in January 2011; and (ii) $8.1 million in purchases of stock for tax withholding obligations on vested restricted stock.

Net cash provided by financing activities in the three months ended April 4, 2010 was $203.2 million and reflects cash received of: (i) $202.8 million in net proceeds from the issuance of $220.0 million in principal amount of our 4.50% debentures, after reflecting the payment of the net cost of the bond hedge and warrant transactions; and (ii) $1.5 million in proceeds from a drawdown of a project loan. Cash received in the three months ended April 4, 2010 was partially offset by cash paid of $1.2 million for treasury stock purchases that were used to pay withholding taxes on vested restricted stock.

Debt and Credit Sources

Convertible Debentures

As of both April 3, 2011 and January 2, 2011, an aggregate principal amount of $250.0 million of the 4.50% debentures remain issued and outstanding. Interest on the 4.50% debentures is payable on March 15 and September 15 of each year. The 4.50% debentures mature on March 15, 2015. The 4.50% debentures are convertible only into cash, and not into shares of our class A common stock (or any other securities). Prior to December 15, 2014, the 4.50% debentures are convertible only upon specified events and, thereafter, they will be convertible at any time, based on an initial conversion price of $22.53 per share of our class A common stock. The conversion price will be subject to adjustment in certain events, such as distributions of dividends or stock splits. Upon conversion, we will deliver an amount of cash calculated by reference to the price of our class A common stock over the applicable observation period. We may not redeem the 4.50% debentures prior to maturity. Holders may also require us to repurchase all or a portion of their 4.50% debentures upon a fundamental change, as defined in the debenture agreement, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as our failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.50% debentures will have the right to declare all amounts then outstanding due and payable.

As of both April 3, 2011 and January 2, 2011, an aggregate principal amount of $230.0 million of the 4.75% senior

convertible debentures ("4.75% debentures") remain issued and outstanding. Interest on the 4.75% debentures is payable on April 15 and October 15 of each year. Holders of the 4.75% debentures are able to exercise their right to convert the debentures at any time into shares of our class A common stock at a conversion price equal to $26.40 per share. The applicable conversion rate may adjust in certain circumstances, including upon a fundamental change, as defined in the indenture governing the 4.75% debentures. If not earlier converted, the 4.75% debentures mature on April 15, 2014. Holders may also require us to repurchase all or a portion of their 4.75% debentures upon a fundamental change at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as our failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.75% debentures will have the right to declare all amounts then outstanding due and payable.

As of both April 3, 2011 and January 2, 2011, an aggregate principal amount of $198.6 million of the 1.25% senior convertible debentures ("1.25% debentures") remain issued and outstanding. Interest on the 1.25% debentures is payable on February 15 and August 15 of each year. The 1.25% debentures mature on February 15, 2027. Holders may require us to repurchase all or a portion of their 1.25% debentures on each of February 15, 2012, February 15, 2017 and February 15, 2022, or if we experience certain types of corporate transactions constituting a fundamental change, as defined in the indenture governing the 1.25% debentures. Any repurchase of the 1.25% debentures under these provisions will be for cash at a price equal to 100% of the principal amount of the 1.25% debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem some or all of the 1.25% debentures on or after February 15, 2012 for cash at a redemption price equal to 100% of the principal amount of the 1.25% debentures to be redeemed plus accrued and unpaid interest. As of April 3, 2011, the 1.25% debentures were reclassified from long-term liabilities to short-term liabilities within "Convertible debt, current portion" in the Condensed Consolidated Balance Sheet as the holders may require us to repurchase all of their 1.25% debentures on February 15, 2012.

As of both April 3, 2011 and January 2, 2011, an aggregate principal amount of $0.1 million of the 0.75% senior convertible debentures ("0.75% debentures") remain issued and outstanding. Interest on the 0.75% debentures is payable on February 1 and August 1 of each year. The 0.75% debentures mature on August 1, 2027. Holders of the 0.75% debentures could require us to repurchase all or a portion of their debentures on each of August 1, 2015, August 1, 2020 and August 1, 2025, or if we experienced certain types of corporate transactions constituting a fundamental change, as defined in the indenture governing the 0.75% debentures. Any repurchase of the 0.75% debentures under these provisions will be for cash at a price equal to 100% of the principal amount of the 0.75% debentures to be repurchased plus accrued and unpaid interest. In addition, we could redeem the remaining 0.75% debentures on or after August 2, 2010 for cash at a redemption price equal to 100% of the principal amount of the 0.75% debentures to be redeemed plus accrued and unpaid interest.

Mortgage Loan Agreement with IFC

On May 6, 2010, our subsidiaries SunPower Philippines Manufacturing Ltd. ("SPML") and SPML Land, Inc. (“SPML Land”) entered into a mortgage loan agreement with IFC. Under the loan agreement, SPML may borrow up to $75.0 million during the first two years, and SPML is required to repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. SPML is required to pay interest of LIBOR plus 3% per annum on outstanding borrowings, and a front-end fee of 1% on the principal amount of borrowings at the time of borrowing, and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed. SPML may prepay all or a part of the outstanding principal, subject to a 1% prepayment premium. As of both April 3, 2011 and January 2, 2011, SPML had $50.0 million outstanding under the mortgage loan agreement which is classified as "Long-term debt" in our Condensed Consolidated Balance Sheets. A total of $25.0 million remains available for borrowing under the mortgage loan agreement.

Loan Agreement with CEDA

On December 29, 2010, we borrowed from CEDA the proceeds of the $30.0 million aggregate principal amount of CEDA's tax-exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (the "Bonds") maturing April 1, 2031 under a loan agreement with CEDA. Certain of our obligations under the loan agreement were contained in a promissory note dated December 29, 2010 issued by us to CEDA, which assigned the promissory note, along with all right, title and interest in the loan agreement, to Wells Fargo, as trustee, with respect to the Bonds for the benefit of the holders of the Bonds. The Bonds will initially bear interest at a variable interest rate (determined weekly), but at our option may be converted into fixed-rate bonds (which include covenants of, and other restrictions on, us to be determined at the time of conversion). As of both April 3, 2011 and January 2, 2011, the $30.0 million aggregate principal amount of the Bonds is classified as "Short-term debt" in our Condensed Consolidated Balance Sheets due to the potential for the Bonds to be redeemed or tendered for purchase on June 22, 2011 under the reimbursement agreement. If the Bonds are converted into fixed-rate bonds prior to June 22, 2011, they will be reclassified to "Long-term debt" in our Condensed Consolidated Balance Sheet.

Revolving Credit Facility with Union Bank

On October 29, 2010, we entered into a revolving credit facility with Union Bank. Until the maturity date of October 28, 2011, we may borrow up to $70.0 million under the revolving credit facility. Amounts borrowed may be repaid and reborrowed until October 28, 2011. As collateral under the revolving credit facility, we pledged our holding of 19.4 million shares of common stock of Woongjin Energy to Union Bank. The revolving credit facility may be increased up to $100.0 million at our option and upon receipt of additional commitments from lenders. As of both April 3, 2011 and January 2, 2011, an aggregate amount of $70.0 million remain outstanding under the revolving credit facility which is classified as "Short-term debt" in our Condensed Consolidated Balance Sheets.

The amount available for borrowing under the revolving credit facility is further capped at 30% of the market value of our shares in Woongjin Energy ("Borrowing Base"). If at any time the amount outstanding under the revolving credit facility is greater than the Borrowing Base, we must repay the difference within two business days. In addition, upon a material adverse change which, in the sole judgment of Union Bank, would adversely affect the ability of Union Bank to promptly sell the Woongjin Energy shares, including but not limited to any unplanned closure of the Korean Stock Exchange that lasts for more than one trading session, we must repay all outstanding amounts under the revolving credit facility within five business days, and the revolving credit facility will be terminated.

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

Revolving Credit Facility with Société Générale

On November 23, 2010, we entered into a revolving credit facility with Société Générale under which we may borrow up to Euro 75.0 million from Société Générale. Amounts borrowed may be repaid and reborrowed until April 23, 2011. Interest periods are monthly. All amounts borrowed are due on May 23, 2011. As of both April 3, 2011 and January 2, 2011, an aggregate amount of Euro 75.0 million, or approximately $106.1 million and $98.0 million, respectively, based on the exchange rates as of those dates, remain outstanding under the revolving credit facility which is classified as "Short-term debt" in our Condensed Consolidated Balance Sheets. Borrowings under the revolving credit facility are not collateralized. We are required to pay interest on outstanding borrowings of (1) EURIBOR plus 2.20% per annum until and including February 23, 2011, and (2) EURIBOR plus 3.25% per annum after February 23, 2011; a front-end fee of 0.50% on the available borrowing; and a commitment fee of 1% per annum on funds available for borrowing and not borrowed.

Letter of Credit Facility with Deutsche Bank

On April 12, 2010, subsequently amended on December 22, 2010, we entered into a letter of credit facility with Deutsche Bank, as issuing bank and as administrative agent, and certain financial institutions. The letter of credit facility provides for the issuance, upon our request, of letters of credit by the issuing bank in order to support our obligations, in an aggregate amount not to exceed $375.0 million (or up to $400.0 million upon the agreement of the parties). Each letter of credit issued under the letter of credit facility must have an expiration date no later than the earlier of the second anniversary of the issuance of that letter of credit and April 12, 2013, except that: (i) a letter of credit may provide for automatic renewal in one-year periods, not to extend later than April 12, 2013; and (ii) up to $100.0 million in aggregate amount of letters of credit, if cash-collateralized, may have expiration dates no later than the fifth anniversary of the closing of the letter of credit facility. For outstanding letters of credit under the letter of credit facility we pay a fee of 0.50% plus any applicable issuances fees charged by its issuing and correspondent banks. We also pay a commitment fee of 0.20% on the unused portion of the facility. We are required to collateralize at least 50% of the dollar-denominated obligations under the issued letters of credit, and 55% of the non-dollar-denominated obligations under the issued letters of credit, with restricted cash on our Condensed Consolidated Balance Sheet. As of April 3, 2011, letters of credit issued under the letter of credit facility totaled $347.4 million and were collateralized by short-term and long-term restricted cash of $86.4 million and $97.8 million, respectively, on our Condensed Consolidated Balance Sheet. As of January 2, 2011, letters of credit issued under the letter of credit facility totaled $326.9 million and were collateralized by short-term and long-term restricted cash of $55.7 million and $118.3 million, respectively, on our Condensed Consolidated Balance Sheet.

Liquidity

As of April 3, 2011, we had unrestricted cash and cash equivalents of $367.9 million as compared to $605.4 million as of January 2, 2011, a decrease of $237.5 million further explained in the 2011 Outlook: Italian Feed-in Tariff and Cash Flows

sections above. Our cash balances are held in numerous locations throughout the world, including substantial amounts held outside of the United States. The amounts held outside of the United States representing the earnings of our foreign subsidiaries, if repatriated to the United States under current law, would be subject to United States federal and state tax less applicable foreign tax credits. Repatriation of earnings that have not been subjected to U.S. tax and which have been indefinitely reinvested outside the U.S. could result in additional United States federal income tax payments in future years.

On July 5, 2010, we formed our AUOSP joint venture. Under the terms of the joint venture agreement, our subsidiary SunPower Technology, Ltd. (“SPTL") and AU Optronics Singapore Pte. Ltd. ("AUO") each own 50% of AUOSP. Both SPTL and AUO are obligated to provide additional funding to AUOSP in the future. During the second half of fiscal 2010, we, through SPTL, and AUO each contributed total initial funding of Malaysian Ringgit 88.6 million. On March 16, 2011, both SPTL and AUO each contributed an additional $20.0 million in funding and will each contribute additional amounts in fiscal 2011 to 2014 amounting to $301 million, or such lesser amount as the parties may mutually agree (see the Contractual Obligations table below). In addition, if AUOSP, SPTL or AUO requests additional equity financing to AUOSP, then SPTL and AUO will each be required to make additional cash contributions of up to $50 million in the aggregate. Further, we could in the future guarantee certain financial obligations of AUOSP. On November 5, 2010, we entered into an agreement with AUOSP under which we will resell to AUOSP polysilicon purchased from a third-party supplier and AUOSP will provide prepayments to us related to such polysilicon, which we will use to satisfy prepayments owed to the third-party supplier. No prepayments were paid to us by AUOSP during the first quarter of fiscal 2011. Prepayments to be paid to us by AUOSP in fiscal 2011 and 2012 total $60 million and $40 million, respectively.

Amounts borrowed under the revolving credit facility with Société Générale are due on May 23, 2011. As of both April 3, 2011 and January 2, 2011, an aggregate amount of Euro 75.0 million, or approximately $106.1 million and $98.0 million, respectively, based on the exchange rates as of those dates, remain outstanding under the revolving credit facility which is classified as "Short-term debt" in our Condensed Consolidated Balance Sheets.

The $70.0 million borrowed under the revolving credit facility with Union Bank as of both April 3, 2011 and January 2, 2011 matures on October 28, 2011 and therefore is classified as "Short-term debt" in our Condensed Consolidated Balance Sheets. The amount available for borrowing under the Union Bank revolving credit facility is further capped at 30% of the market value of our shares in Woongjin Energy ("Borrowing Base"). As collateral under the revolving credit facility, we pledged our holding of 19.4 million shares of common stock of Woongjin Energy. If at any time the amount outstanding under the revolving credit facility is greater than the Borrowing Base, we must repay the difference within two business days. In addition, upon a material adverse change which, in the sole judgment of Union Bank, would adversely affect the ability of Union Bank to promptly sell the Woongjin Energy shares, including but not limited to any unplanned closure of the Korean Stock Exchange that lasts for more than one trading session, we must repay all outstanding amounts under the revolving credit facility within five business days, and the revolving credit facility will be terminated.

The $30.0 million borrowed under the Bonds from CEDA mature on April 1, 2031; however, the Bonds are classified as "Short-term debt" in our Condensed Consolidated Balance Sheets as of both April 3, 2011 and January 2, 2011 due to the potential for the Bonds to be redeemed or tendered for purchase on June 22, 2011 under the reimbursement agreement. If the Bonds are converted into fixed-rate bonds prior to June 22, 2011, they will be reclassified to "Long-term debt" in our Condensed Consolidated Balance Sheet.

Holders of our 1.25% debentures may require us to repurchase all or a portion of their 1.25% debentures on February 15, 2012. Any repurchase of our 1.25% debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the 1.25% debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem some or all of our 1.25% debentures on or after February 15, 2012 for cash at a redemption price equal to 100% of the principal amount of the 1.25% debentures to be redeemed plus accrued and unpaid interest. As of April 3, 2011, the 1.25% debentures were reclassified from long-term liabilities to short-term liabilities within "Convertible debt, current portion" in the Condensed Consolidated Balance Sheet as the holders may require us to repurchase all of their 1.25% debentures on February 15, 2012.

If the closing price of our class A common stock equaled or exceeded 125% of the initial effective conversion price governing the 1.25% debentures for 20 out of 30 consecutive trading days in the last month of any fiscal quarter, then holders of the 1.25% debentures would have the right to convert the debentures into cash and shares of class A common stock any day in the following fiscal quarter. Because the closing price of our class A common stock on at least 20 of the last 30 trading days during the fiscal quarter ending April 3, 2011 and January 2, 2011 did not equal or exceed $70.94, or 125% of the applicable conversion price for our 1.25% debentures, holders of the 1.25% debentures are and were unable to exercise their right to convert the debentures, based on the market price conversion trigger, on any day in the first and second quarters of fiscal 2011. Accordingly, we classified our 1.25% debentures as long-term liabilities in our Condensed Consolidated Balance Sheet as of January 2, 2011. Due to the holders' ability to require us to repurchase all of their 1.25% debentures on February 15, 2012, as

described above, we reclassified the 1.25% debentures as short-term liabilities in our Condensed Consolidated Balance Sheet as of April 3, 2011.

In addition, the holders of our 1.25% debentures would be able to exercise their right to convert the debentures during the five consecutive business days immediately following any five consecutive trading days in which the trading price of our 1.25% debentures is less than 98% of the average closing sale price of a share of class A common stock during the five consecutive trading days, multiplied by the applicable conversion rate.

Under the terms of the amended warrants, we sold to affiliates of certain of the initial purchasers of the 4.50% cash convertible debentures warrants to acquire, subject to anti-dilution adjustments, up to 11.1 million shares of our class A common stock. The bond hedge and warrants described in Note 7 of Notes to the Condensed Consolidated Financial Statements represent a call spread overlay with respect to the 4.50% debentures. Assuming full performance by the counterparties, the transactions effectively reduce our potential payout over the principal amount on the 4.50% debentures upon conversion of the 4.50% debentures.

We expect total capital expenditures related to purchases of property, plant and equipment in the range of $130 million to $150 million in fiscal 2011 in order to improve our current generation solar cell manufacturing technology, complete a solar power system built to own, leasehold improvements associated with new offices leased in San Jose, California, and other projects. In addition, we expect to invest a significant amount of capital to develop solar power systems and plants for sale to customers. The development of solar power plants can require long periods of time and substantial initial investments. Our efforts in this area may consist of all stages of development, including land acquisition, permitting, financing, construction, operation and the eventual sale of the projects. We often choose to bear the costs of such efforts prior to the final sale to a customer, which involves significant upfront investments of resources (including, for example, large transmission deposits or other payments, which may be non-refundable), land acquisition, permitting, legal and other costs, and in some cases the actual costs of constructing a project, in advance of the signing of PPAs and EPC contracts and the receipt of any revenue, much of which is not recognized for several additional months or years following contract signing. Any delays in disposition of one or more projects could have a negative impact on our liquidity.

Certain of our customers also require performance bonds issued by a bonding agency or letters of credit issued by financial institutions. Obtaining letters of credit requires adequate collateral. Our letter of credit facility with Deutsche Bank is at least 50% collateralized by restricted cash, which reduces the amount of cash available for operations.

We believe that our current cash and cash equivalents, cash generated from operations and funds available under our mortgage loan agreement with IFC and our revolving credit facility with Union Bank will be sufficient to meet our working capital and fund our committed capital expenditures over the next 12 months, including the development and construction of solar power systems and plants over the next 12 months. Certain of our revolving credit facilities are scheduled to expire and amounts borrowed thereunder are due in 2011 and we plan to negotiate new facilities or renegotiate and/or extend our existing facilities. However, there can be no assurance that our liquidity will be adequate over time. Our capital expenditures and use of working capital may be greater than we expect if we decide to make additional investments in the development and construction of solar power plants and sales of power plants and associated cash proceeds are delayed, or if we decide to accelerate increases in our manufacturing capacity internally or through capital contributions to joint ventures. We require project financing in connection with the construction of solar power plants, which financing may not be available on terms acceptable to us. In addition, we could in the future make additional investments in our joint ventures or guarantee certain financial obligations of our joint ventures, which could reduce our cash flows, increase our indebtedness and expose us to the credit risk of our joint ventures.

If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing; although the current economic environment could also limit our ability to raise capital by issuing new equity or debt securities on acceptable terms, and lenders may be unwilling to lend funds on acceptable terms that would be required to supplement cash flows to support operations. Effective October 29, 2010, certain limitations regarding our ability to sell additional equity securities pursuant to our tax sharing agreement with Cypress Semiconductor Corporation ("Cypress") have expired. However, the sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders and may not be available on favorable terms or at all, particularly in light of the current conditions in the financial and credit markets. Additional debt would result in increased expenses and would likely impose new restrictive covenants which may be similar or different than those restrictions contained in the covenants under the letter of credit facility with Deutsche Bank, the mortgage loan agreement with IFC, the loan agreement with CEDA, the revolving credit facility with Union Bank, the revolving credit facility with Société Générale, the 4.50% debentures, the 4.75% debentures or the 1.25% debentures. Financing arrangements, including project financing for our solar power plants and letters of credit facilities, may not be available to us, or may not be available in amounts or on terms

acceptable to us.

Contractual Obligations

The following summarizes our contractual obligations as of April 3, 2011:

		Payments Due by Period			
(In thousands)	**Total**	**2011 (remaining 9 months)**	**2012-2013**	**2014-2015**	**Beyond 2015**
Convertible debt, including interest (1)	$ 755,892	$ 18,494	$ 240,538	$ 496,860	$ —
IFC mortgage loan, including interest (2)	57,375	1,750	13,175	21,875	20,575
CEDA loan, including interest (3)	30,345	30,345	—	—	—
Union Bank revolving credit facility, including interest (4)	71,744	71,744	—	—	—
Société Générale revolving credit facility, including interest (5)	107,394	107,394	—	—	—
Future financing commitments (6)	305,940	31,900	177,270	96,770	—
Customer advances (7)	174,319	13,834	31,142	48,447	80,896
Operating lease commitments (8)	86,333	8,961	21,148	17,731	38,493
Utility obligations (9)	750	—	—	—	750
Non-cancellable purchase orders (10)	210,150	210,150	—	—	—
Purchase commitments under agreements (11)	5,214,563	668,326	1,178,798	1,718,544	1,648,895
Total	$ 7,014,805	$ 1,162,898	$ 1,662,071	$ 2,400,227	$ 1,789,609

(1) Convertible debt, including interest, relates to the aggregate of $678.7 million in outstanding principal amount of our senior convertible debentures on April 3, 2011. For the purpose of the table above, we assume that all holders of the 4.50% debentures and 4.75% debentures will hold the debentures through the date of maturity in fiscal 2015 and 2014, respectively, and all holders of the 1.25% debentures and 0.75% debentures will require us to repurchase the debentures on February 15, 2012 and August 1, 2015, respectively, and upon conversion, the values of the senior convertible debentures will be equal to the aggregate principal amount with no premiums.

(2) IFC mortgage loan, including interest, relates to the $50.0 million borrowed on November 12, 2010. Under the loan agreement, SPML is required to repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. SPML is required to pay interest of LIBOR plus 3% per annum on outstanding borrowings.

(3) CEDA loan, including interest, relates to the proceeds of the $30.0 million aggregate principal amount of the Bonds. The Bonds mature on April 1, 2031; however, the Bonds are classified as "Short-term debt" in our Condensed Consolidated Balance Sheets due to the potential for the Bonds to be redeemed or tendered for purchase on June 22, 2011 under the related reimbursement agreement. The Bonds will initially bear interest at a variable interest rate (determined weekly) and estimated interest through June 22, 2011 is calculated using the variable interest rate as of April 3, 2011.

(4) Union Bank revolving credit facility, including interest, relates to the $70.0 million outstanding balance as of April 3, 2011 and matures on October 28, 2011. Estimated interest through October 28, 2011 is calculated using LIBOR plus 2.75%.

(5) Société Générale revolving credit facility, including interest, relates to the Euro 75.0 million outstanding balance as of April 3, 2011 ($106.1 million based on the exchange rates as of April 3, 2011), and matures on May 23, 2011. Interest periods are monthly. We are required to pay interest on outstanding borrowings of EURIBOR plus 3.25% per annum after February 23, 2011.

(6) SPTL and AUO will contribute additional amounts to AUOSP from 2011 to 2014 amounting to $301 million by each shareholder, or such lesser amount as the parties may mutually agree. Further, in connection with a purchase agreement with a related party we will be required to provide additional financing to such party of up to $4.9 million, subject to

certain conditions.

(7) Customer advances relate to advance payments received from customers for future purchases of solar power products and future polysilicon purchases.

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

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

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

(11) Purchase commitments under agreements relate to arrangements entered into with several suppliers, including joint ventures, for polysilicon, ingots, wafers, solar cells and solar panels as well as agreements to purchase solar renewable energy certificates from solar installation owners in New Jersey. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years and there are certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that we terminate the arrangements.

Liabilities Associated with Uncertain Tax Positions

As of April 3, 2011 and January 2, 2011, total liabilities associated with uncertain tax positions were $26.0 million and $24.9 million, respectively, and are included in “Other long-term liabilities” in our Condensed Consolidated Balance Sheets as they are not expected to be paid within the next twelve months. Due to the complexity and uncertainty associated with our tax positions, we cannot make a reasonably reliable estimate of the period in which cash settlement will be made for our liabilities associated with uncertain tax positions in other long-term liabilities, therefore, they have been excluded from the table above.

Off-Balance-Sheet Arrangements

As of April 3, 2011, we did not have any significant off-balance-sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K.

Item 3. Quantitative and Qualitative Disclosure About Market Risk

Foreign Currency Exchange Risk

Our exposure to movements in foreign currency exchange rates is primarily related to sales to European customers that are denominated in Euros. Revenue generated from European customers represented 43% and 60% of our total revenue in the three months ended April 3, 2011 and April 4, 2010, respectively. A 10% change in the Euro exchange rate would have impacted our revenue by approximately $19.4 million and $20.8 million in the three months ended April 3, 2011 and April 4, 2010, respectively.

In the past, we have experienced an adverse impact on our revenue, gross margin and profitability as a result of foreign currency fluctuations. When foreign currencies appreciate against the U.S. dollar, inventories and expenses denominated in foreign currencies become more expensive. Weakening of the Korean Won against the U.S. dollar could result in a foreign currency re-measurement loss by Woongjin Energy which would in turn negatively impact our equity in earnings of the unconsolidated investee. In addition, strengthening of the Malaysian Ringgit against the U.S. dollar would increase AUOSP's liability under the facility agreement with the Malaysian government which in turn would negatively impact our equity in earnings of the unconsolidated investee. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar power products more expensive for international customers, thus potentially leading to a reduction in demand, our sales and profitability. Furthermore, many of our competitors are foreign companies that could benefit from such a currency fluctuation, making it more difficult for us to compete with those companies.

We currently conduct hedging activities which involve the use of option and forward contracts to address our exposure to changes in the foreign exchange rate between the U.S. dollar and other currencies. As of April 3, 2011, we had outstanding hedge option contracts and forward contracts with aggregate notional values of $430.2 million and $363.0 million, respectively. As of January 2, 2011, we held option and forward contracts totaling $358.9 million and $534.7 million, respectively, in notional value. Because we hedge some of our expected future foreign exchange exposure, if associated revenues do not materialize we could experience losses. For example, in the first quarter of fiscal 2011, in connection with the uncertainty surrounding the change in Italian governmental incentives, we concluded that certain previously anticipated transactions were now probable not to occur and thus we reclassified the amount held in "Accumulated other comprehensive income (loss)" in our Condensed Consolidated Balance Sheets for these transactions, which totaled a loss of $3.9 million, to "Other, net" in our Condensed Consolidated Statement of Operations. If we conclude that we have a pattern of determining that hedged forecasted transactions probably will not occur, we may no longer be able to continue to use hedge accounting in the future to reduce our exposure to movements in foreign exchange rates. Such a conclusion and change in our foreign currency hedge program could adversely impact our revenue, margins and results of operations. We cannot predict the impact of future exchange rate fluctuations on our business and operating results.

Credit Risk

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

We enter into agreements with vendors that specify future quantities and pricing of polysilicon to be supplied for periods up to 10 years. Under certain agreements, we are required to make prepayments to the vendors over the terms of the arrangements. As of April 3, 2011 and January 2, 2011, advances to suppliers totaled $299.9 million and $287.1 million, respectively. Two suppliers accounted for 78% and 19% of total advances to suppliers as of April 3, 2011, and 83% and 13% of total advances to suppliers as of January 2, 2011. We may be unable to recover such prepayments if the credit conditions of these suppliers materially deteriorate.

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

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

Interest Rate Risk

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

Our interest expense would increase to the extent interest rates rise in connection with our variable interest rate borrowings. In addition, lower interest rates have an adverse impact on our interest income. Our investment portfolio consists of a variety of financial instruments that exposes us to interest rate risk including, but not limited to, money market funds and debt securities. Our debt securities are classified as available-for-sale and, consequently, are recorded on our balance sheet at fair market value with their related unrealized gain or loss reflected as a component of "Accumulated other comprehensive income (loss)" in the Condensed Consolidated Balance Sheets. Declines in fair value that are considered other-than-temporary are recorded in “Other, net” in the Condensed Consolidated Statements of Operations. We base our valuation of our debt securities on movements of Italian sovereign bond rates since the time of purchase and incurred an other-than-temporary impairment loss of $0.8 million in the fourth quarter of fiscal 2010. If Italian sovereign bond rates continue to increase in fiscal 2011 we may have to incur additional other-than-temporary impairment losses in the future. Due to the relatively short-term nature of our investment portfolio, we do not believe that an immediate 10% increase in interest rates would have a material effect on the fair market value of our money market funds. Since we believe we have the ability to liquidate substantially all of this portfolio, we do not expect our operating results or cash flows to be materially affected to any significant degree by a sudden change in market interest rates on our investment portfolio.

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

Our investments held in joint ventures and other non-public companies expose us to equity price risk. As of April 3, 2011 and January 2, 2011, investments of $143.6 million and $116.4 million, respectively, are accounted for using the equity method, and $6.4 million as of both dates are accounted for using the cost method. These strategic investments in third parties are subject to risk of changes in market value, which if determined to be other-than-temporary, could result in realized impairment losses. We generally do not attempt to reduce or eliminate our market exposure in equity and cost method investments. We monitor these investments for impairment and record reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include the valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market prices and declines in operations of the issuer. There can be no assurance that our equity and cost method investments will not face risks of loss in the future.

Interest Rate Risk and Market Price Risk Involving Convertible Debt

The fair market value of our 4.75%, 4.50%, 1.25% and 0.75% convertible debentures is subject to interest rate risk, market price risk and other factors due to the convertible feature of the debentures. The fair market value of the debentures will generally increase as interest rates fall and decrease as interest rates rise. In addition, the fair market value of the debentures will generally increase as the market price of our class A common stock increases and decrease as the market price of our class A common stock falls. The interest and market value changes affect the fair market value of the debentures but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligations except to the extent increases in the value of our class A common stock may provide the holders of our 4.50% debentures, 1.25% debentures and/or 0.75% debentures the right to convert such debentures into cash in certain instances. The aggregate estimated fair value of the 4.75% debentures, 4.50% debentures, 1.25% debentures and 0.75% debentures was $694.3 million and $633.7 million as of April 3, 2011 and January 2, 2011, respectively, based on quoted market prices as reported by an independent pricing source. A 10% increase in quoted market prices would increase the estimated fair value of our then-outstanding debentures to $763.8 million and $697.1 million as of April 3, 2011 and January 2, 2011, respectively, and a 10% decrease in the quoted market prices would decrease the estimated fair value of our then-outstanding debentures to $624.9 million and $570.4 million as of April 3, 2011 and January 2, 2011, respectively.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

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

Based on their evaluation as of the end of the period covered by this Quarterly Report on Form 10-Q, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of April 3, 2011 at a reasonable assurance level.

Changes in Internal Control over Financial Reporting

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

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

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

The disclosure under "Legal Matters" in *"Note 5. Commitments and Contingencies"* in *"Part I. Financial Information, Item 1. Financial Statements: Notes to Condensed Consolidated Financial Statements"* of this Quarterly Report on Form 10-Q is incorporated herein by reference.

Item 1A: Risk Factors

In addition to the risk factors set forth below and other information set forth in this report, readers should carefully consider the risk factors discussed in *"Part I. Item 1A: Risk Factors"* in our Annual Report on Form 10-K for the fiscal year ended January 2, 2011, which could materially affect our business, financial condition or future results. The risks described below are risks that have arisen since we filed our Annual Report on Form 10-K for the fiscal year ended January 2, 2011 or other material updates to risk factors contained in such Annual Report on Form 10-K. The risks described in our Annual Report on Form 10-K and below are not the only risks facing our company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results.

Risks Related to the Tender Offer

Because the Tender Offer has not yet closed, we cannot be sure that the transactions contemplated by the Tender Offer Agreement will be consummated, which could have a negative effect on our financial performance and stock price.

On April 28, 2011, we and Total Gas & Power USA, SAS, a French *société par actions simplifiée* (the “Purchaser”), a wholly-owned subsidiary of Total S.A., a French *société anonyme* (the “Parent”), entered into a Tender Offer Agreement. Pursuant to the Tender Offer Agreement, on May 3, 2011, Purchaser commenced a cash tender offer to acquire up to 60% of our outstanding shares of class A common stock and up to 60% of our outstanding shares of class B common stock at a price of $23.25 per share for each class (the "Tender Offer").

The current market price of our class A common stock and our class B common stock (collectively, our “common stock”) may reflect, among other things, the announcement and anticipated completion of the Tender Offer. The current market prices of our common stock is higher than the prices before the proposed Tender Offer was announced on April 28, 2011. The prices of our common stock would likely decline substantially if the Tender Offer is not consummated. The obligation of Purchaser to consummate the Tender Offer is subject to certain conditions, including the tender of a minimum of 50% of the outstanding shares of each series of our common stock, clearance by U.S. and European Union antitrust authorities, and other customary closing conditions. On May 9, 2011 the U.S. Federal Trade Commission granted us and the Purchaser early termination of the waiting period otherwise required for the parties to achieve U.S. antitrust approval. If the other conditions set forth in the Tender Offer Agreement are not met or waived, the Tender Offer may not close. We cannot ensure that each of the conditions to the consummation of the Tender Offer will be satisfied.

We may also be subject to additional risks, whether or not the Tender Offer is completed, including:

- our management having spent a significant amount of their time and efforts directed toward the Tender Offer, which time and efforts otherwise would have been spent on our business and other opportunities that could have been beneficial to us;
- costs relating to the Tender Offer, such as legal, financial, and accounting fees, much of which must be paid regardless of whether the Tender Offer is completed; and
- uncertainties relating to the Tender Offer may adversely affect our relationships with our employees, suppliers, and other key constituencies.

Investors should not place undue reliance on the consummation of the Tender Offer. The realization of any of these risks may materially adversely affect our business, financial condition, results of operations and the market price of our common stock. The historical share prices of our common stock have experienced significant volatility. We cannot predict or give any assurances as to the market price of our common stock at any time before or after the completion of the Tender Offer.

If the Tender Offer is not consummated, we would expect to suffer a number of consequences that may adversely affect our business, results of operations and stock price, including, but not limited to, the following effects:

- the market prices of our common stock would likely decrease since the current market prices reflect a market assumption that the Tender Offer will be completed;
- in certain circumstances, we may be required to pay Purchaser a termination fee of (i) $42.5 million plus (ii) Purchaser's transaction expenses up to $2.5 million;
- we may experience difficulties in attracting customers or obtaining financing due to changed perceptions about our competitive position, our management, our liquidity or other aspects of our business;
- we may be unable to find a partner willing to engage in a similar transaction on terms as favorable as those set forth in our agreements with Purchaser and Parent;
- we would not benefit from the anticipated benefits of the Tender Offer, including under the Credit Support Agreement under which Parent has agreed to enter into one or more guarantee agreements with banks providing letter of credit facilities to us in support of certain of our businesses and other permitted purposes; and

- failure to complete the contemplated transactions may substantially limit our ability to grow and implement our current business strategies.

As a result of the Tender Offer, our common stock has been trading within a narrow price range, which could limit possible returns on any new investment in our common stock.

Beginning with the first trading date following the announcement of the Tender Offer, April 29, 2011, and continuing through the date hereof, both classes of our common stock have traded within a narrow price range: from a low closing price of $21.36 on May 11, 2011 to a high closing price of $21.69 on April 29, 2011 for our class A common stock, and from a low closing price of $21.06 on May 12, 2011 to a high closing price of $21.40 on April 29, 2011 for our class B common stock. This constricted trading range surrounding the Tender Offer price is typical with respect to proposed transactions such as the Tender Offer, where the trading market may perceive that both the risk of one or more competing tender offers to be low and the likelihood of legal or regulatory impediments to the transaction to also be low. We expect that this narrow trading range around $21.50 per share is likely to continue until the closing of the Tender Offer. Such a narrow trading range would very likely limit the returns, if any, on any investment in our common stock until the closing or abandonment of the Tender Offer.

The Tender Offer is subject to proration in the event that more than 60% of the shares of either or both series of our common stock is tendered.

Pursuant to the Tender Offer Agreement and the related Affiliation Agreement by and between us and the Purchaser (the “Affiliation Agreement”), the Purchaser and its affiliates will be restricted from acquiring in the Tender Offer or holding more than 60% of the outstanding shares of either series of our common stock. In the event that holders of more than 60% of the outstanding shares of a series of our common stock tender their shares in the Tender Offer, the Purchaser will pro-rate the shares accepted by it in the Tender Offer, such that fewer than all of the shares sought to be tendered by tendering stockholders will be accepted. In such event, stockholders who had sought to tender all of their shares may decide to sell any remaining shares held by them after the closing of the Tender Offer, which could cause the market price of our common stock to decrease. The Affiliation Agreement limits Purchaser, Parent, any of their respective affiliates and certain other related parties (the "Total Group") from effecting, seeking, or entering into discussions with any third party regarding any transaction that would result in the Total Group beneficially owning our shares in excess of certain thresholds during a standstill period. The Affiliation Agreement also imposes certain limitations on the Total Group's ability to seek to effect a tender offer or merger to acquire 100% of our outstanding voting power. Such provisions may not be successful in preventing the Total Group from engaging in transactions which negatively impact the price of our common stock. The price at which holders are ultimately able to sell their shares may also be lower than the price offered in the Tender Offer. See also “*The completion of the Tender Offer will mean that affiliates of Total SA will hold a majority of the shares of our common stock, and our common stock will be more thinly traded, which may adversely affect the liquidity and value of the shares not tendered and accepted in the Tender Offer.*”

The termination fee and restrictions on solicitation contained in the Tender Offer Agreement may discourage other companies from trying to make a competing proposal.

The Tender Offer Agreement prohibits us from entering into an alternative transaction with, or soliciting any alternative proposal from, another party. We have agreed, pursuant to the Tender Offer Agreement, to pay a termination fee to Purchaser equal to the sum of (i) $42.5 million plus (ii) Purchaser's transaction expenses up to $2.5 million in certain circumstances, including with respect to accepting an unsolicited alternative proposal that is superior to the transaction with Purchaser. These provisions could discourage other companies from trying to make a competing proposal even though those other companies might be willing to offer greater value to our stockholders than Purchaser has offered.

The completion of the Tender Offer will mean that affiliates of Total SA will hold a majority of the shares of our common stock, and our common stock will be more thinly traded, which may adversely affect the liquidity and value of the shares not tendered and accepted in the Tender Offer.

If the Tender Offer is consummated, Total SA and certain of its affiliates, including the Purchaser (collectively, “Total SA”) will hold a majority of the shares of our common stock. In addition, pursuant to the Affiliation Agreement, if the Tender Offer is consummated, Total SA will have the right to nominate a majority of directors to our board of directors. As a result, subject to the restrictions in the Affiliation Agreement, Total SA would possess significant influence or control over our affairs. Our current stockholders will have reduced ownership and voting interest in our company following the Tender Offer and, as a result, will have less influence over the management and policies of our company than they currently exercise. Total SA's stock ownership and relationships with members of our board of directors in such event could have the effect of preventing minority stockholders from exercising significant control over our affairs, delaying or preventing a future change in control, impeding a merger, consolidation, takeover or other business combination or discouraging a potential acquirer from making a tender offer

or otherwise attempting to obtain control of us, which in turn could adversely affect the market price of our common stock or prevent our stockholders from realizing a premium over the market price of our common stock. In addition, if the Tender Offer is consummated, the market for our common stock may become more thinly traded, which could affect the liquidity and price of our common stock, and our ability to raise capital on favorable terms in the capital markets.

The Tender Offer may adversely affect our relationship with our customers, suppliers, lenders and partners, and adversely affect our ability to attract and retain key employees.

The Tender Offer will be completed only if stated conditions are met; accordingly, there may be uncertainty regarding the completion of the Tender Offer. This uncertainty may cause customers, suppliers and partners to delay or defer decisions concerning certain of our products, which could negatively affect our business. Customers, suppliers, lenders and partners may also seek to change existing agreements with us as a result of the proposed Tender Offer. Any delay or deferral of those decisions or changes in existing agreements could materially impact our business, regardless of whether the Tender Offer is ultimately completed. Upon the completion of the Tender Offer, the significant influence of Total SA over our board of directors may adversely affect our relationship with our customers, suppliers, lenders and partners. Similarly, current and prospective employees may experience uncertainty about their future roles with our company, or may be uncomfortable with the cultural fit between the two companies. This may adversely affect our ability to attract and retain key management, technical, sales, marketing, and operations personnel.

Upon the completion of the Tender Offer, we may not fully realize the anticipated benefits of our relationship with Total SA.

In connection with the Tender Offer, we and Parent have entered into a Credit Support Agreement under which Parent has agreed to enter into one or more guarantee agreements with banks providing letter of credit facilities to us in support of certain of our businesses and other permitted purposes. Parent will guarantee the payment to the applicable bank of our obligation to reimburse a draw on a letter of credit and pay interest thereon in accordance with the letter of credit facility between such bank and us. In consideration for the commitments of Parent, we are required to pay Parent a guarantee fee for each letter of credit that is the subject of a guaranty, starting at 1% after the completion of the Tender Offer to 2.35% in the fifth year following the completion of the Tender Offer.

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

We may not realize the expected benefits of these agreements in a timely manner, or at all. The Credit Support Agreement can provide guarantees to our letter of credit facility, but not our other indebtedness. As the guarantee fee goes up over time, it may not be price competitive for us to continue to utilize the guarantee under the Credit Support Agreement and we may choose not to do so, which may cause our lenders to seek cash collateral. If the credit quality of Parent were to deteriorate, then the guarantees would not be as beneficial to our lenders, which could reduce their willingness to lend to us and raise our costs of borrowing. We could incur additional expenses related to the Credit Support Agreement, especially relating to the guarantee fee. We may have difficulties in fully leveraging the research and development efforts of Purchaser while protecting our intellectual property rights and our long term strategic interests. In addition, we are a U.S. high growth, innovative technology and alternative energy company, and the differences in corporate culture between us and that of Purchaser and Parent may prevent us from fully realizing the anticipated benefits from our relationship with Purchaser and Parent.

Risks Related to Our Sales Channels

The reduction of the solar incentive scheme in Italy could cause our revenues to decline, our goodwill, intangible assets and tangible project assets to be impaired, and adversely affect our future financial results.

On March 3, 2011, the Italian government passed a new legislative decree stating that the current solar feed-in tariff ("FIT") would conclude on May 31, 2011 and that Italy would adopt a new FIT on June 1, 2011. The details of the new FIT program were not included in the legislative decree. The decree also set forth a future limit on the construction of solar plants on agricultural land. These announcements, and the surrounding uncertainty around implementation details of the next FIT, had a materially negative effect on the market for solar systems in Italy. Some solar projects planned for 2011 were delayed in the first quarter of fiscal 2011, which has driven down demand and average selling prices for our solar panels, thereby increasing inventories on hand and reducing our cash and cash equivalents. On May 5, 2011, the Italian government announced a legislative decree which defines the revised FIT and the transition process from the current FIT to the next FIT beginning June

1, 2011. The enactment of this decree will likely cause our revenue to decline in Italy and adversely affect our future financial results.

We have tangible project assets on our Condensed Consolidated Balance Sheets related to capitalized costs incurred in connection with the development of solar power systems, including those being developed in Italy. Project assets consist primarily of capitalized costs relating to solar power system projects in various stages of development that we incur prior to the sale of the solar power system to a third party. These costs include costs for land and costs for developing and constructing a solar power system. These project assets could become impaired if there are changes in the fair value of these capitalized costs upon the actual implementation of the new FIT. For example, our project assets could become impaired if the amount of applications exceeds the amount of any limits set forth in the final legislation. If these project assets become impaired, we may write-down or write-off some or all of the capitalized project assets which would have an adverse impact on our financial results in the period in which the loss is recognized.

In addition, we have significant goodwill and intangible assets on our Condensed Consolidated Balance Sheets, of which the majority of the carrying value of intangible assets relates to strategic acquisitions of EPC and O&M project pipelines in Europe. We review our goodwill and intangible assets for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. Triggering events for an impairment review may include indicators such as the availability, reduction, modification or elimination of government and economic incentives, adverse industry or economic trends, lower than projected operating results or cash flows, or a sustained decline in our stock price or market capitalization. During the three months ended April 3, 2011, we changed our internal reporting structure and re-aligned the reporting units in our UPP segment to create the following reporting units: UPP-International and UPP-Americas. As of April 3, 2011, our UPP-International reporting unit has goodwill and intangible assets of $93.8 million and $51.4 million, respectively, and a fair value which is not significantly different from its book value. This reporting unit could become impaired if there are additional changes in the fair value of this reporting unit upon the actual implementation of the new FIT. These changes could result from, among other items, the application of any limits of construction of solar power parks, customer and market reactions to the implementation of the FIT, and decreases in the valuation premiums for our company or solar companies in general. These factors could impact the fair market value of our UPP-International reporting unit as well as projected profitability of the acquired project pipeline in Italy, which could result in significant write-downs of goodwill and intangible assets and a significant non-cash charge to earnings and lower stockholders' equity.

Delays or failures to finalize permits or environmental approvals could delay or prevent the California Valley Solar Ranch project from being constructed.

We are currently developing a photovoltaic solar power plant in San Luis Obispo County, California, referred to as the “California Valley Solar Ranch Project”, contracted to produce up to 250 MW (the “CVSR Project”). The conditional use permit ("CUP") issued by the County Planning Commission of San Luis Obispo County was appealed by various interest groups to the County Board of Supervisors. The Board of Supervisors rejected those appeals and affirmed the issuance of the CUP. However, the appellants have the option of filing a lawsuit challenging the CUP under the California Environmental Quality Act. In addition, we are in the process of obtaining various state and federal regulatory permits and may face additional court challenges relating to them. Any failure to obtain such permits, environmental approvals or having such permits or approvals rejected through judicial procedures could delay or prevent the CVSR Project from being constructed, which would have an adverse impact on our financial condition, liquidity and results of operations. We have also entered into an agreement with a subsidiary of NRG Energy, Inc. to sell them the CVSR Project and perform EPC services for the CVSR Project upon meeting certain conditions, which conditions include us obtaining certain governmental approvals required to commence construction. Our failure to obtain all such approvals would prevent us from selling the CVSR Project and recognizing revenue from the EPC services, which would have an adverse impact on our financial condition, liquidity and results of operations.

Risks Related to Our Operations

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

We have an active hedging program designed to reduce our exposure to movements in foreign currency exchange rates. As a part of this program, we designate certain derivative transactions as effective cash flow hedges of anticipated foreign currency revenues and record the effective portion of changes in the fair value of such transactions in "Accumulated other comprehensive income (loss)" in our Condensed Consolidated Balance Sheets until the anticipated revenues have occurred, at which point the associated income or loss would be recognized in revenue. In the first quarter of fiscal 2011, in connection with the decline in forecasted revenue surrounding the change in Italian governmental incentives, we reclassified an amount held in "Accumulated other comprehensive income (loss)" to "Other, net" in our Condensed Consolidated Statement of Operations for

certain previously anticipated transactions which did not occur or were now probable not to occur, which totaled a loss of $3.9 million. If we conclude that we have a pattern of determining that hedged forecasted transactions probably will not occur, we may no longer be able to continue to use hedge accounting in the future to reduce our exposure to movements in foreign exchange rates. Such a conclusion and change in our foreign currency hedge program could adversely impact our revenue, margins and results of operations.

Risks Related to Our Debt and Equity Securities

Our class A common stock and class B common stock may remain as separate classes for an indefinite period of time, and difference in trading history, liquidity, voting rights and other factors may continue to result in different market values for shares of our class A and our class B common stock.

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

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

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

Issuer Purchases of Equity Securities

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

Period	Total Number of Shares Purchased (in thousands) (1)	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet Be Purchased Under the Publicly Announced Plans or Programs
January 3, 2011 through January 30, 2011	14	$ 14.44	—	—
January 31, 2011 through February 27, 2011	52	$ 15.19	—	—
February 28, 2011 through April 3, 2011	415	$ 17.12	—	—
	481	$ 16.84	—	—

(1) The total number of shares purchased includes only shares surrendered to satisfy tax withholding obligations in connection with the vesting of restricted stock issued to employees.

Item 6. Exhibits

Exhibit Number	Description
2.1	Tender Offer Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011 (incorporated by reference to Exhibit 2.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011).
4.1	Amendment to Rights Agreement by and between SunPower Corporation and Computershare Trust Company, N.A. dated April 28, 2011 (incorporated by reference to Exhibit 4.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011).
10.1	Tender Offer Agreement Guaranty between SunPower Corporation and Total S.A. dated April 28, 2011 (incorporated by reference to Exhibit 10.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011).
10.2	Credit Support Agreement between SunPower Corporation and Total S.A. dated April 28, 2011 (incorporated by reference to Exhibit 10.2 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011).
10.3	Affiliation Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011 (incorporated by reference to Exhibit 10.3 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011).
10.4	Affiliation Agreement Guaranty between SunPower Corporation and Total S.A. dated April 28, 2011 (incorporated by reference to Exhibit 10.4 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011).
10.5	Research & Collaboration Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011 (incorporated by reference to Exhibit 10.5 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011).
10.6	Registration Rights Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011 (incorporated by reference to Exhibit 10.6 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011).
10.7*†	Amendment No. 3 to Ingot Supply Agreement, dated February 1, 2011, by and between SunPower Corporation and Woongjin Energy Co., Ltd.
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.
99.1*	Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.2*	Tender Offer Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011 as filed as Exhibit 2.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.3*	Amendment to Rights Agreement by and between SunPower Corporation and Computershare Trust Company, N.A. dated April 28, 2011 as filed as Exhibit 4.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.4*	Tender Offer Agreement Guaranty between SunPower Corporation and Total S.A. dated April 28, 2011 as filed as Exhibit 10.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.5*	Credit Support Agreement between SunPower Corporation and Total S.A. dated April 28, 2011 as filed as Exhibit 10.2 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.6*	Affiliation Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011 as filed as Exhibit 10.3 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.7*	Affiliation Agreement Guaranty between SunPower Corporation and Total S.A. dated April 28, 2011 as filed as Exhibit 10.4 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.8*	Research & Collaboration Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011 as filed as Exhibit 10.5 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.

99.9*	Registration Rights Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011 as filed as Exhibit 10.6 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
101.INS*^	XBRL Instance Document.
101.SCH*^	XBRL Taxonomy Schema Document.
101.CAL*^	XBRL Taxonomy Calculation Linkbase Document.
101.LAB*^	XBRL Taxonomy Label Linkbase Document.
101.PRE*^	XBRL Taxonomy Presentation Linkbase Document.
101.DEF*^	XBRL Taxonomy Definition Linkbase Document.

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

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

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

SIGNATURES

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

SUNPOWER CORPORATION

Dated: May 12, 2011

By: /s/ DENNIS V. ARRIOLA

Dennis V. Arriola
Executive Vice President and
Chief Financial Officer

Index to Exhibits

Exhibit Number	Description
10.7*†	Amendment No. 3 to Ingot Supply Agreement, dated February 1, 2011, by and between SunPower Corporation and Woongjin Energy Co., Ltd.
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.
99.1*	Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.2*	Tender Offer Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011 as filed as Exhibit 2.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.3*	Amendment to Rights Agreement by and between SunPower Corporation and Computershare Trust Company, N.A. dated April 28, 2011 as filed as Exhibit 4.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.4*	Tender Offer Agreement Guaranty between SunPower Corporation and Total S.A. dated April 28, 2011 as filed as Exhibit 10.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.5*	Credit Support Agreement between SunPower Corporation and Total S.A. dated April 28, 2011 as filed as Exhibit 10.2 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.6*	Affiliation Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011 as filed as Exhibit 10.3 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.7*	Affiliation Agreement Guaranty between SunPower Corporation and Total S.A. dated April 28, 2011 as filed as Exhibit 10.4 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.8*	Research & Collaboration Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011 as filed as Exhibit 10.5 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
99.9*	Registration Rights Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011 as filed as Exhibit 10.6 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 2, 2011.
101.INS*^	XBRL Instance Document.
101.SCH*^	XBRL Taxonomy Schema Document.
101.CAL*^	XBRL Taxonomy Calculation Linkbase Document.
101.LAB*^	XBRL Taxonomy Label Linkbase Document.
101.PRE*^	XBRL Taxonomy Presentation Linkbase Document.
101.DEF*^	XBRL Taxonomy Definition Linkbase Document.

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

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

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

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 INGOT SUPPLY AGREEMENT

THIS AMENDMENT NO. 3 INGOT SUPPLY AGREEMENT (This "**Amendment No. 3**") is made this 1st day of February 2011 ("**Effective Date**") by and between Woongjin Energy Co., Ltd., a company organized and existing under the laws of the Republic of Korea with its office located at 1316 GwanPyeong-Dong, YuSung-Gu, DaeJeon, Korea ("**Supplier**"), and SunPower Corporation, a company organized under the laws of the State of Delaware, United States of America, with its principal office located at 3939 North First Street, San Jose, California 95134, United states of America ("**Purchaser**"). Each of Supplier and Purchaser is sometimes referred to herein as a "**Party**" and collectively, as the "**Parties**". Capitalized terms used in this Amendment No. 3 and not defined herein shall have the meaning given to such terms in the Agreement (as hereinafter defined).

RECITALS

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

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

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

AGREEMENT

1. Supplier hereby agrees to supply up to *** MT Ingot (including wafer) to Purchaser in 2011.

2. Schedule 3.1(a) is amended as follows.

Schedule 3.1(a)

The purchase price for SP Polysilicon Based Products per kilogram shall be determined based on (a) the year in which such SP Polysilicon Based Products are ordered, and (b) the price per kilogram set forth in the chart below.

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

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

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

	***	***	***	***	***	***	***	***	***
Poly	$***	$***	$***	$***	$***	$***	$***	$***	$***
160mm	$***	$***	$***	$***	$***	$***	$***	$***	$***
160mm lifetim	$***	$***	$***	$***	$***	$***	$***	$***	$***

3. Supplier and Purchaser hereby agree that SUNPOWER PHILIPPINES MANUFACTURING LIMITED, a Cayman Islands business and wholly owned subsidiary of Purchaser, with a branch office at 100 East Main Avenue, Phase 4, Special Economic Zone, Laguna Techno Park, Binan, Laguna, Philippines 4024 ("**SPML**") may purchase SP Polysilicon Based Products under the Agreement by issuing purchase orders directly to Supplier. References to "Purchaser" under the Agreement shall also refer to SPML.

4. This Amendment No. 3 is effective from Feb. 01, 2011 until Dec. 31, 2016.

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

6. If any part of this Amendment No. 3 or the Agreement as amended herein is found to be void or unenforceable for any reason, the remainder of this Amendment No. 3 and the Agreement as amended hereunder, shall be enforced, to the fullest extent possible, as if such void or unenforceable provision was not part of this Amendment No. 3.

7. This Amendment No. 3 may be executed in one or more counterparts, each of which shall be deemed to be an original and shall constitute one and the same instrument. This Amendment No. 3 may be executed by facsimile, and each such facsimile signature shall be deemed to be an original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, the Parties hereto, intending to be legally bound, have executed this Amendment No. 3 as of the date first written above.

WOONJIN ENERGY CO., LTD

By: /s/ Hakdo Yoo

Name: Hakdo Yoo

Title: CEO

Date: 2/15/2011

SUNPOWER CORPORATION

By: /s/ Paul Charrette

Name: Paul Charrette

Title: Vice President, Capital Procurement SunPower Corporation

Date: 2/3/2011

SUNPOWER PHILIPPINES MANUFACTURING LIMITED

By: /s/ Navneet Govil

Name: Navneet Govil

Title: VP & Treasurer

Date: 2/14/2011

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

EXHIBIT 31.1

CERTIFICATIONS

I, Thomas H. Werner, certify that:

1 I have reviewed this Quarterly Report on Form 10-Q of SunPower Corporation;

2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4 The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5 The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 12, 2011

/S/ THOMAS H. WERNER

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

EXHIBIT 31.2

CERTIFICATIONS

I, Dennis V. Arriola, certify that:

1 I have reviewed this Quarterly Report on Form 10-Q of SunPower Corporation;

2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4 The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5 The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 12, 2011

/S/ DENNIS V. ARRIOLA

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

EXHIBIT 32.1

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

In connection with the Quarterly Report of SunPower Corporation (the "Company") on Form 10-Q for the period ended April 3, 2011 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of Thomas H. Werner and Dennis V. Arriola certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: May 12, 2011

/S/ THOMAS H. WERNER

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

/S/ DENNIS V. ARRIOLA

Dennis V. Arriola
Executive Vice President and Chief Financial Officer
(Principal Financial 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.

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

Form 8-K

Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): April 28, 2011

SunPower Corporation

(Exact name of registrant as specified in its charter)

000-34166		
(Commission File Number)		
Delaware		**94-3008969**
(State or other jurisdiction of incorporation)		**(I.R.S. Employer Identification No.)**

77 Rio Robles, San Jose, California 95134
(Address of principal executive offices, with zip code)

(408) 240-5500
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement

Tender Offer Agreement

On April 28, 2011, SunPower Corporation, a Delaware corporation (the "*Company*"), and Total Gas & Power USA, SAS, a *société par actions simplifiée* organized under the laws of the Republic of France (the "*Purchaser*"), an indirect wholly-owned subsidiary of Total S.A., a *société anonyme* organized under the laws of the Republic of France ("*Parent*"), entered into a Tender Offer Agreement (the "*Tender Offer Agreement*"). Pursuant to the Tender Offer Agreement, and upon the terms and subject to the conditions thereof, Purchaser has agreed to commence a cash tender offer to acquire up to 60% of the Company's outstanding shares of Class A Common stock and up to 60% of the Company's outstanding shares of Class B Common stock (the "*Offer*") at a price of $23.25 per share for each class (the "*Offer Price*").

The consummation of the Offer is conditioned on:

- there having been validly tendered (not including shares tendered pursuant to procedures for guaranteed delivery) and not withdrawn in accordance with the terms of the Offer (1) a number of shares of Class A common stock which, together with the number of shares of Class A common stock, if any, beneficially owned by any "group," as defined in Section 13(d) of the Exchange Act in which Purchaser is a member, constitutes at least a majority of the total number of then outstanding shares of Class A common stock and (2) a number of shares of Class B common stock which, together with the number of shares of Class B common stock, if any, beneficially owned by any "group," as defined in or under Section 13(d) of the Exchange Act, in which Purchaser is a member, constitutes at least a majority of the total number of then outstanding shares of Class B common stock (the "*Minimum Condition*");

- expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and clearance by the European Commission under Council Regulation (EC) No. 139/2004 of 20 January 2004 of the Council of the European Union or its member states;

- the accuracy of the Company's representations and warranties and compliance by the Company with the covenants contained in the Tender Offer Agreement, subject to qualifications; and

- the satisfaction or waiver of other customary conditions.

The Tender Offer Agreement contains customary representations, warranties and covenants of the parties. The Company has agreed to refrain from engaging in certain activities that are out of the ordinary course of business until the Offer is consummated. In addition, under the terms of the Tender Offer Agreement, the Company has agreed to not solicit or support and has agreed to cause its representatives to not solicit or support any alternative acquisition proposals, subject to customary exceptions for the Company to respond to and support unsolicited proposals in the exercise by the Board of Directors of the Company (the "*Company Board*") of its fiduciary duties. The Company will be obligated to pay a termination fee to Purchaser equal to the sum of (i) $42.5 million plus (ii) Purchaser's transaction expenses up to $2.5 million in certain customary circumstances, including with respect to accepting an

unsolicited alternative proposal that is superior to the transaction with Purchaser, and to reimburse Purchaser for up to $2.5 million of its transaction expenses in the event that Purchaser is entitled to terminate the Offer and the Minimum Condition is not then satisfied.

The foregoing description of the Tender Offer Agreement does not purport to be complete and is qualified in its entirety by reference to the Tender Offer Agreement, which is attached as Exhibit 2.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The Tender Offer Agreement has been attached to provide investors with information regarding its terms. It is not intended to provide any other factual information about the Company. In particular, the assertions embodied in the representations and warranties contained in the Tender Offer Agreement are qualified by information in confidential disclosure schedules provided by the Company in connection with the signing of the Tender Offer Agreement. These disclosure schedules contain information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the Tender Offer Agreement. Moreover, certain representations and warranties in the Tender Offer Agreement were used for the purpose of allocating risk between the Company and Purchaser, rather than establishing matters of fact. Accordingly the representations and warranties in the Tender Offer Agreement may not constitute the actual state of facts about the Company or Purchaser.

Tender Offer Agreement Guaranty

Parent has entered into a guaranty (the "*Tender Offer Agreement Guaranty*") in connection with the Offer pursuant to which Parent unconditionally guarantees the full and prompt payment obligations under the Tender Offer Agreement and the full and prompt performance of all of Purchaser's representations, warranties, covenants, duties and agreements contained in the Tender Offer Agreement. The maximum aggregate liability to Parent under the Tender Offer Guaranty, however, will not be more than the value of the shares of Class A common stock and Class B common stock that are subject to the Offer, based on the Offer Price.

A copy of the Tender Offer Agreement Guaranty is attached hereto as Exhibit 10.1 and is incorporated herein by reference. The foregoing description of the Tender Offer Agreement Guaranty is qualified in its entirety by reference to the full text of the Tender Offer Agreement Guaranty.

Credit Support Agreement

The Company and Parent have entered into a Credit Support Agreement (the "*Credit Support Agreement*") under which Parent has agreed to enter into one or more guarantee agreements (each a "*Guaranty*") with banks providing letter of credit facilities to the Company in support of certain Company businesses and other permitted purposes. Parent will guarantee the payment to the applicable bank of the Company's obligation to reimburse a draw on a letter of credit and pay interest thereon in accordance with the letter of credit facility between such bank and the Company. The Credit Support Agreement will become effective on the date on which the acceptance for payment by Purchaser of shares pursuant to the Offer occurs (the "*CSA Effective Date*"). Under the Credit Support Agreement, at any time from the CSA Effective Date

until the fifth anniversary of the CSA Effective Date, the Company may request that Parent provide a Guaranty in support of the Company's payment obligations with respect to a letter of credit facility. Parent is required to issue and enter into the Guaranty requested by the Company, subject to certain terms and conditions that may be waived by Parent, including that the letter of credit facility may not permit the issuance of letters of credit beyond the seventh anniversary of the CSA Effective Date and may not permit the issuance of letters of credit for any obligations of the Company or a wholly-owned subsidiary other than certain obligations specified in the Credit Support Agreement. In addition, Parent will not be required to enter into the Guaranty if, after giving effect to the Company's request for a Guaranty, the sum of (a) the aggregate amount available to be drawn under all guaranteed letter of credit facilities, (b) the amount of letters of credit available to be issued under any guaranteed facility and (c) the aggregate amount of draws (including accrued but unpaid interest) on any letters of credit issued under any guaranteed facility that have not yet been reimbursed by the Company, would exceed:

- $445 million for the period from the CSA Effective Date through December 31, 2011;
- $725 million for the period from January 1, 2012 through December 31, 2012;
- $771 million for the period from January 1, 2013 through December 31, 2013;
- $878 million for the period from January 1, 2014 through December 31, 2014;
- $936 million for the period from January 1, 2015 through December 31, 2015; and
- $1 billion for the period from January 1, 2016 through the termination of the Credit Support Agreement.

Such maximum amounts of credit support available to the Company can be reduced or increased upon the occurrence of specified events.

In consideration for the commitments of Parent, the Company is required to pay Parent a guarantee fee for each letter of credit that is the subject of a Guaranty and was outstanding for all or part of the preceding calendar quarter, which fee will be equal to: (x) the average daily amount of the undrawn amount outstanding on each guaranteed letter of credit plus any drawn amounts that have not been reimbursed by the Company or Parent, (y) multiplied by 1.0% for letters of credit issued or extended prior to the second anniversary of the completion of the Offer; 1.4% for letters of credit issued or extended from the second anniversary of the completion of the Offer until the third anniversary of the completion of the Offer; 1.85% for letters of credit issued or extended from the third anniversary of the completion of the Offer until the fourth anniversary of the completion of the Offer; and 2.35% for letters of credit issued or extended from the fourth anniversary of the completion of the Offer until the fifth anniversary of the completion of the Offer, (z) multiplied by the number of days during such calendar quarter that such letter of credit was outstanding, divided by 365.

The Company is also required to reimburse Parent for payments made under any Guaranty, plus interest, and certain expenses of Parent, plus interest.

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

No later than June 30, 2012 and annually every June 30 thereafter throughout the term of the Credit Support Agreement, so long as the Company desires to obtain a letter of credit facility that would be the subject of a Guaranty, the Company is required to solicit benchmark credit terms that would provide for the issuance of a letter of credit without a Guaranty from Parent, and report those benchmark terms to Parent. If, among other things, the annual fees payable by the Company on the issued amount of a letter of credit under a proposed letter of credit facility that is not guaranteed by Parent are equal to or less than 110% of the annual fees plus any applicable guarantee fee payable to Parent pursuant to a guaranteed letter of credit facility under the Credit Support Agreement, then the Company will be required to enter into such non-guaranteed letter of credit facility as soon as commercially reasonable and reduce the commitments under guaranteed letter of credit facilities in an amount equal to such non-guaranteed letter of credit facility.

The Credit Support Agreement will terminate after the later of the payment in full of all obligations thereunder and the termination or expiration of each Guaranty provided thereunder following the fifth anniversary of the CSA Effective Date. In addition, the Credit Support Agreement will terminate automatically and be of no further force or effect upon the Tender Offer Agreement being terminated in accordance with its terms.

The Credit Support Agreement may not be assigned by the Company without the prior written consent of Parent. During the period from the CSA Effective Date through December 31, 2013, Parent may not assign its rights and obligations under the Credit Support Agreement without the prior written consent of the Company. During the period from January 1, 2014 through June 30, 2016, Parent, as the initial guarantor (but not any assignee of Parent), may assign its rights and obligations under the Credit Support Agreement without consent of the Company to an entity satisfying certain credit requirements. Any assignment by Parent will not release Parent from its obligations to guarantee letters of credit pursuant to a letter of credit facility that is the subject of a Guaranty and outstanding as of the date of the assignment, so long as the Company continues to pay the guarantee fee relating to such letters of credit. In connection with an assignment during the period from January 1, 2014 through June 30, 2016 to an assignee that is rated lower than A by S&P or A2 by Moody's, Parent would be required to either (a) pay to the Company an assignment fee equal to $20 million as of January 1, 2014 and reduced by $2 million per calendar quarter until reduced to zero (for example, the fee payable for an assignment on October 15, 2014 would be $14 million) or (b) agree to pay to the Company a make-whole amount based on a calculation of the amount actually paid by the Company to banks that are party to letter of credit facilities (both guaranteed and non-guaranteed) and to lenders in revolving credit facilities permitted under the Credit Support Agreement in increased costs as a

result of Parent's assignment of its rights and obligations under the Credit Support Agreement. Such make-whole amount would be payable on a quarterly basis from the assignment date through the fifth anniversary of the CSA Effective Date.

A copy of the Credit Support Agreement is attached hereto as Exhibit 10.2 and is incorporated herein by reference. The foregoing description of the Credit Support Agreement is qualified in its entirety by reference to the full text of the Credit Support Agreement.

Affiliation Agreement

In connection with the Offer, the Company and Purchaser have entered into an Affiliation Agreement that will govern the relationship between Purchaser and the Company following the closing of the Offer (the "*Affiliation Agreement*"). Following the closing of the Offer and until the expiration of a standstill period (the "*Standstill Period*"), Purchaser, Parent, any of their respective affiliates and certain other related parties (the "*Total Group*") may not:

- effect or seek any transaction that would result in the Total Group beneficially owning shares in excess of 63% during the period commencing with the closing of the Offer until the second anniversary of such closing, 66 2/3% during the period commencing on the second anniversary of the closing of the Offer until December 31, 2014, or 70% during the period commencing on January 1, 2015 and at any time thereafter (each percentage the "Applicable Standstill Limit");
- request the Company or Company's directors who are independent for stock exchange listing purposes and not appointed by Purchaser (the "Disinterested Directors"), or officers of employees of the Company, to amend or waive any of the standstill restrictions applicable to the Total Group; or
- enter into any discussions with any third party regarding any of the foregoing.

The Standstill Period will end upon:

- a change in control of the Company;
- the first time that the Total Group beneficially owns less than 15% of the outstanding voting power of the Company;
- certain breaches of the Affiliation Agreement by the Company;
- at a time that the Total Group has reduced its ownership level below specified thresholds, the commencement of a tender offer to acquire the Company by a third party (provided that the Standstill Period may be reinstated upon withdrawal of such third party tender offer and certain other events); or
- the termination of the Affiliation Agreement pursuant to its terms.

The Total Group may (1) from the closing of the Offer until the second anniversary of such closing, seek to effect a tender offer or merger to acquire 100% of the

outstanding voting power of the Company so long as it is done at the invitation of and approval and recommendation of the Disinterested Directors; (2) during the period commencing on the second anniversary of the closing of the Offer until December 31, 2014, make and consummate a tender offer or effect a merger with the Company so long as it is approved and recommended by the Disinterested Directors; and (3) during the period commencing on January 1, 2015 and at any time thereafter, make and consummate a tender offer or propose and effect a merger so long as Purchaser complies with certain advance notice and prior negotiation obligations, including providing written notice to the Company at least 120 days in advance and making its designees reasonably available for negotiation with the Disinterested Directors.

During the Standstill Period no member of the Total Group may, among other things, solicit proxies or become a participant in an election contest relating to the election of directors to the Company Board.

If any member or members of the Total Group seek to transfer 40% or more of outstanding shares or voting power of the Company to a single person or group that is not a direct or indirect subsidiary of Parent, such transfer will be conditioned upon and cannot be effected unless the transferee either:

- makes a tender offer to acquire 100% of the voting power of the Company that is conditioned on a majority of the shares of voting stock held by stockholders that are not members of the Total Group being tendered and an irrevocable, unwaivable commitment by the transferee to promptly acquire in a subsequent merger any shares not purchased in such offer, to the extent any shares are purchased in such offer, for the same amount and form of consideration per share offered in such tender offeror; or
- proposes a merger providing for the acquisition of 100% of the voting power of the Company that is conditioned upon the approval of shares of voting stock representing a majority of the shares of voting stock held by stockholders that are not members of the Total Group

in each case, at the same price per share of voting stock and using the same form of consideration to be paid, by the transferee to members of the Total Group.

Purchaser has a right to maintain its percentage ownership in connection with any new securities issued by the Company unless at any time Purchaser owns less than 40% of the outstanding voting power of the Company or transfers securities of the Company to a third party such that the Total Group no longer owns at least 50% of the outstanding voting power of the Company. Subject to the standstill limits described above, Purchaser may also purchase shares on the open market or in private transactions with disinterested stockholders. Generally, the loss of certain rights under the Affiliation Agreement based on The Total Group’s ownership percentage in the Company is subject to a nine-month “grace period” during which Purchaser may acquire more shares to stay above the applicable ownership percentage.

Immediately after the consummation of the Offer, the Company Board will be expanded to eleven persons, composed of the Chief Executive Officer of the Company (who will also serve as the chairman of the Company Board), four current members of the Company

Board, and six directors designated by the Purchaser. Directors designated by the Purchaser will also be able to serve on certain committees of the Company Board.

On the first anniversary of the consummation of the Offer, the size of the Company Board will be reduced to nine members and one Disinterested Director and one director designated by the Purchaser will resign from the Company Board.

If the Total Group's ownership of Company common stock declines, the number of members of the Company Board that the Purchaser is entitled to nominate to the Company Board will be reduced as set forth in the Affiliation Agreement.

So long as the Total Group owns at least 30% of the outstanding voting power of the Company, neither the Total Group nor the Company may, without first obtaining the approval of two-thirds of the directors (including at least one Disinterested Director), effect any approval or adoption of the Company's annual operating plan or budget that has the effect of reducing the planned letter of credit utilization under the Credit Support Agreement in any given year by more than 10% below the applicable maximum letter of credit amount in the Credit Support Agreement.

At any time when the Total Group owns at least 30% of the outstanding voting power of the Company, neither the Total Group nor the Company may effect any of the following without first obtaining the approval of a majority of the Disinterested Directors:

- any amendment to the Company's certificate of incorporation or bylaws;
- any transaction that, in the reasonable judgment of the Disinterested Directors, involves an actual conflict of interest between the Total Group, on the one hand, and the Company and its affiliates, on the other hand;
- the adoption of any shareholder rights plan or the amendment or failure to renew the Company's existing shareholder rights plan;
- except as provided above, the commencement of any tender offer or exchange offer by the Total Group for shares of the Company or securities convertible into shares of the Company, or the approval of a merger of the Company or any company that it controls with a member of the Total Group;
- any voluntary dissolution or liquidation of the Company or any company that it controls;
- any voluntary bankruptcy filing by the Company or any company that it controls or the failure to oppose any other person's bankruptcy filing or action to appoint a receiver of the Company or any company that it controls;
- any delegation of all or a portion of the authority of the Company Board to any committee of the Company Board;
- any amendment, modification or waiver of any provision of the Affiliation Agreement;

• any modification of director's and officer's insurance coverage; or

• any reduction in the compensation of the Disinterested Directors.

Until the first time that the Total Group owns 50% or less of the outstanding voting power of the Company or 40% or less of the outstanding voting power of the Company when at least $100 million in guarantees are outstanding pursuant to the Credit Support Agreement, the Company may not effect any of the following without first obtaining the approval of Purchaser:

• any amendment to the Company's certificate of incorporation or bylaws;

• an acquisition by the Company where the aggregate net present value of the consideration paid or to be paid exceeds the lower of (i) 15% of the Company's then-consolidated total assets or (ii) 15% of the Company's market capitalization;

• a disposition by the Company where the aggregate net present value of the consideration received or to be received exceeds the lower of (i) 10% of the Company's then-consolidated total assets or (ii) 10% of the Company's market capitalization;

• the adoption of any shareholder rights plan or certain changes to the Company's existing shareholder rights plan;

• except for the incurrence of certain permitted indebtedness, the incurrence of additional indebtedness in excess of a specified debt amount that is based on the Company's trailing twelve month financial performance;

• subject to certain exceptions, any voluntary dissolution or liquidation of the Company or any company that it controls; or

• any voluntary bankruptcy filing by the Company or any company that it controls or the failure to oppose any other person's bankruptcy filing or action to appoint a receiver of the Company or any company that it controls.

Until the first time that the Total Group beneficially owns less than 15% of the outstanding voting power of the Company, neither the Company nor the Company Board is permitted to adopt any shareholder rights plan or make certain changes to the Company's existing shareholder rights that would have specified adverse effects on the Total Group or a transferee of 40% of the voting power of the Company from a member of the Total Group in accordance with the provisions of the Affiliation Agreement, without the approval of Purchaser.

A copy of the Affiliation Agreement is attached hereto as Exhibit 10.3 and is incorporated herein by reference. The foregoing description of the Affiliation Agreement is qualified in its entirety by reference to the full text of the Affiliation Agreement.

Affiliation Agreement Guaranty

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

A copy of the Affiliation Agreement Guaranty is attached hereto as Exhibit 10.4 and is incorporated herein by reference. The foregoing description of the Affiliation Agreement Guaranty is qualified in its entirety by reference to the full text of the Affiliation Agreement Guaranty.

Research & Collaboration Agreement

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

The R&D Agreement contemplates a joint committee (the "*R&D Strategic Committee*") that will identify, plan and manage the R&D Collaboration. Due to the impracticability of anticipating and establishing all of the legal and business terms that will be applicable to the R&D Collaboration or to each R&D Project, the R&D Agreement sets forth broad principles applicable to the parties' potential R&D Collaboration, and Purchaser and the Company expect that the R&D Strategic Committee will establish the particular terms governing each particular R&D Project consistent with the terms set forth in R&D Agreement.

A copy of the Research & Development Agreement is attached hereto as Exhibit 10.5 and is incorporated herein by reference. The foregoing description of the R&D Agreement is qualified in its entirety by reference to the full text of the R&D Agreement.

Registration Rights Agreement

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

A copy of the Registration Rights Agreement is attached hereto as Exhibit 10.6 and is incorporated herein by reference. The foregoing description of the Registration Rights Agreement is qualified in its entirety by reference to the full text of the Registration Rights Agreement.

Stockholder Rights Plan

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

A copy of the Rights Agreement Amendment is attached hereto as Exhibit 4.1 and is incorporated herein by reference. The foregoing description of the Rights Agreement Amendment is qualified in its entirety by reference to the full text of the Rights Agreement Amendment.

Item 3.03 Material Modification to Rights of Security Holders

Please see the disclosure set forth under "Item 1.01 Entry into a Material Definitive Agreement," which is incorporated by reference into this Item 3.03.

Additional Information and Where to Find It

This announcement is for informational purposes only and is neither an offer to purchase nor a solicitation of an offer to sell securities. The planned tender offer for the outstanding shares of the Company's Class A and Class B common stock described in this announcement has not commenced and will only be made pursuant to a Tender Offer Statement on Schedule TO (including an offer to purchase, a related letter of transmittal and other offer documents). At the time the tender offer is commenced, Parent and Purchaser will file a Tender Offer Statement on Schedule TO with the U.S. Securities and Exchange Commission ("SEC"), and the Company will file a Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC. Purchaser and the Company intend to mail these documents to the stockholders of the Company. The Tender Offer Statement (including an offer to purchase, a related letter of transmittal and other offer documents) and the Solicitation/Recommendation Statement will contain important information relating to the tender offer and the Company stockholders are urged to read those documents, and any amendments to those documents, carefully before making any decision with respect to the tender offer. Those materials and all other documents filed by Parent, Purchaser or the Company with the SEC will be available at no charge on the SEC's web site at www.sec.gov. The Tender Offer Statement and related materials may be obtained for free by directing such requests to MacKenzie Partners, Inc., the Information Agent for the tender offer, at (800) 322-2885. The Solicitation/Recommendation Statement and such other documents may be obtained for free by directing such requests to the Company, 77 Rio Robles, San Jose, California 95134.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

2.1	Tender Offer Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011.
4.1	Amendment to Rights Agreement by and between SunPower Corporation and Computershare Trust Company, N.A. dated April 28, 2011.
10.1	Tender Offer Agreement Guaranty between SunPower Corporation and Total S.A. dated April 28, 2011.
10.2	Credit Support Agreement between SunPower Corporation and Total S.A. dated April 28, 2011.
10.3	Affiliation Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011.
10.4	Affiliation Agreement Guaranty between SunPower Corporation and Total S.A. dated April 28, 2011.
10.5	Research & Collaboration Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011.
10.6	Registration Rights Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011.

SIGNATURES

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

SUNPOWER CORPORATION

Date: April 28, 2011

By: /s/ DENNIS V. ARRIOLA
Name: Dennis V. Arriola
Title: Executive Vice President and Chief Financial Officer

EXHIBIT INDEX

2.1	Tender Offer Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011.
4.1	Amendment to Rights Agreement by and between SunPower Corporation and Computershare Trust Company, N.A. dated April 28, 2011.
10.1	Tender Offer Agreement Guaranty between SunPower Corporation and Total S.A. dated April 28, 2011.
10.2	Credit Support Agreement between SunPower Corporation and Total S.A. dated April 28, 2011.
10.3	Affiliation Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011.
10.4	Affiliation Agreement Guaranty between SunPower Corporation and Total S.A. dated April 28, 2011.
10.5	Research & Collaboration Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011.
10.6	Registration Rights Agreement between SunPower Corporation and Total Gas & Power USA, SAS dated April 28, 2011.

Exhibit 2.1

EXECUTION COPY

TENDER OFFER AGREEMENT

BY AND BETWEEN

TOTAL GAS & POWER USA, SAS

AND

SUNPOWER CORPORATION

Dated as of April 28, 2011

TABLE OF CONTENTS

TENDER OFFER AGREEMENT

THIS TENDER OFFER AGREEMENT (this "Agreement") is made and entered into as of April 28, 2011, by and between Total Gas & Power USA, SAS, a *société par actions simplifiée* organized under the laws of the Republic of France ("Parent"), and SunPower Corporation, a Delaware corporation (the "Company"). All capitalized terms that are used in this Agreement shall have the respective meanings ascribed thereto in Article I.

W I T N E S S E T H:

WHEREAS, it is proposed that Parent shall commence a tender offer (the "Offer") to acquire up to that number of shares of Class A Common Stock which is equal to 60% of the shares of Class A Common Stock outstanding as of the close of business on April 27, 2011 (or such greater number of shares of Class A Common Stock as Parent may elect to purchase, subject to the terms of this Agreement), and up to that number of shares of Class B Common Stock which is equal to 60% of the shares of Class B Common Stock outstanding as of the close of business on April 27, 2011 (or such greater number of shares of Class B Common Stock as Parent may elect to purchase, subject to the terms of this Agreement) (collectively, the "Shares") at a price of $23.25 per Share, net to the holder thereof in cash (such amount, or any higher amount per Share that may be paid pursuant to the Offer, being hereinafter referred to as the "Offer Price"), all upon the terms and subject to the conditions set forth herein.

WHEREAS, the Company Board has (i) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement, (ii) approved the execution and delivery by the Company of this Agreement, the performance by the Company of its covenants and agreements contained herein and the consummation of the transactions contemplated hereby in accordance with the DGCL upon the terms and subject to the conditions contained herein and (iii) resolved to recommend that the holders of Shares accept the Offer and tender their Shares to Parent pursuant to the Offer.

WHEREAS, Parent and the Company desire to make certain representations, warranties, covenants and agreements in connection with this Agreement and the transactions contemplated hereby to prescribe certain conditions with respect to the consummation of the transactions contemplated by this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants and agreements set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, and intending to be legally bound hereby, Parent and the Company hereby agree as follows:

ARTICLE I

DEFINITIONS & INTERPRETATIONS

1.1 Certain Definitions. For all purposes of and under this Agreement, the following capitalized terms shall have the following respective meanings:

(a) "Acquisition Proposal" means any inquiry, indication of interest, offer or proposal relating to an Acquisition Transaction from any Person other than Parent or any of its Affiliates.

(b) "Acquisition Transaction" means any transaction or series of related transactions (other than a transaction with Parent or any of its Affiliates) involving:

(i) any direct or indirect purchase or other acquisition by any Person or "group" (as defined in or under Section 13(d) of the Exchange Act) from the Company of fifteen percent (15%) or more of the total outstanding equity interests in or voting securities of the Company, or any tender offer or exchange offer that, if consummated, would result in any Person or "group" (as defined in or under Section 13(d) of the Exchange Act) beneficially owning fifteen percent (15%) or more of the total outstanding equity interests in or voting securities of the Company;

(ii) any direct or indirect purchase or other acquisition of fifty percent (50%) or more of any class of equity or other voting securities of one or more direct or indirect Subsidiaries of the Company, the business(es) of which, individually or in the aggregate, generate fifteen percent (15%) or more of the consolidated revenues of the Company and its Subsidiaries, taken as a whole (for the twelve-month period ending on the last day of the Company's most recently completed fiscal year), or the assets of which, individually or in the aggregate, constitute fifteen percent (15%) or more (measured by the fair market value thereof as of the date of such transaction) of the consolidated assets of the Company and its Subsidiaries, taken as a whole, in each case excluding any purchase or other acquisition of any class of equity or other voting securities of Solar SPEs in the ordinary course of business;

(iii) any merger, consolidation, business combination, liquidation, dissolution, recapitalization, reorganization or other similar transaction involving (A) the Company pursuant to which the Company stockholders (as a group) immediately preceding such transaction hold less than eighty-five percent (85%) of the equity interests in or voting securities of the surviving or resulting entity of such transaction, or (B) one or more of the Subsidiaries of the Company, the business(es) of which, individually or in the aggregate, generate fifteen percent (15%) or more of the consolidated revenues (for the twelve-month period ending on the last day of the Company's most recently completed fiscal year) of the Company and its Subsidiaries, taken as a whole, or the assets of which, individually or in the aggregate, constitute fifteen percent (15%) or more (measured by the fair market value thereof as of the date of such transaction) of the consolidated assets of the Company and its Subsidiaries, taken as a whole, pursuant to which the stockholders of each such

Subsidiary (as a group) immediately preceding such transaction hold less than fifty percent (50%) of the equity interests in or voting securities of the surviving or resulting entity of each such transaction; but in each case excluding any merger, consolidation, business combination, liquidation, dissolution, recapitalization, reorganization or other similar transaction involving any Solar SPE in the ordinary course of business;

(iv) any direct or indirect sale, transfer or disposition (other than in the ordinary course of business) of (A) assets of the Company which, individually or in the aggregate, constitute fifteen percent (15%) or more (measured by the fair market value thereof as of the date of such transaction) of the consolidated assets of the Company and its Subsidiaries, taken as a whole, or (B) (x) all or substantially all of the assets of one or more Subsidiaries, the business(es) of which, individually or in the aggregate, generate fifteen percent (15%) or more of the consolidated revenues of the Company and its Subsidiaries, taken as a whole (for the twelve-month period ending on the last day of the Company's most recently completed fiscal year), or (y) assets of one or more of the Subsidiaries of the Company, which assets, individually or in the aggregate, constitute fifteen percent (15%) or more (measured by the fair market value thereof as of the date of such transaction) of the consolidated assets of the Company and its Subsidiaries, taken as a whole; but excluding in each case any direct or indirect sale, transfer or disposition of (x) assets of any Solar SPE in the ordinary course of business or (y) securities held by the Company or any of its Subsidiaries of any Person, which securities are listed on any national or internationally recognized securities exchange; or

(v) any combination of the foregoing transactions that results in one of the effects referenced in clause (i) – (iv) above.

(c) "Affiliate" means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person. For purposes of the immediately preceding sentence, the term "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

(d) "Affiliation Agreement" means that certain Affiliation Agreement, dated of even date herewith, by and between Parent and the Company.

(e) "Business Day" means any day, other than a Saturday, Sunday or any day which is a legal holiday under the laws of the State of California or New York or is a day on which banking institutions located in the State of California or New York are authorized or required by Law or other governmental action to close.

(f) "Business Facility" means current or former Company Real Properties, including the land, improvements thereon, the groundwater and soil thereunder, and the surface water thereon.

(g) "Class A Common Stock" means the Class A Common Stock, par value $0.001 per share, of the Company, together with the Preferred Stock Purchase Rights appurtenant thereto issued under the Company Rights Plan.

(h) "Class B Common Stock" means the Class B Common Stock, par value $0.001 per share, of the Company, together with the Preferred Stock Purchase Rights appurtenant thereto issued under the Company Rights Plan.

(i) "Code" means the Internal Revenue Code of 1986, as amended, or any successor statute.

(j) "Company Balance Sheet" means the consolidated balance sheet of the Company and its Subsidiaries as of January 2, 2011 set forth in the Company Form 10-K.

(k) "Company Board" means the board of directors of the Company.

(l) "Company Capital Stock" means the Company Common Stock and the Company Preferred Stock.

(m) "Company Common Stock" means the Class A Common Stock and the Class B Common Stock.

(n) "Company Form 10-K" means the Company's Annual Report on Form 10-K for the fiscal year ended January 2, 2011 (as filed with the SEC on February 25, 2011).

(o) "Company Intellectual Property" means any and all Intellectual Property Rights that are owned by the Company or any of its Subsidiaries.

(p) "Company Option" means an option to purchase shares of Company Common Stock outstanding under any of the Company Plans.

(q) "Company Plans" means the 1996 Stock Plan, the Second Amended and Restated 2005 SunPower Corporation Stock Incentive Plan, as amended, and the PowerLight Corporation Common Stock Option and Common Stock Repurchase Plan.

(r) "Company Preferred Stock" means the Preferred Stock, par value $0.001 per share, of the Company.

(s) "Company Products" means the products and services marketed, sold or distributed by the Company or its Subsidiaries as of the date hereof.

(t) "Company Registered Intellectual Property" means all Registered Intellectual Property owned by, or filed in the name of, the Company or its Subsidiaries.

(u) "Company Restricted Stock" means shares of Company Common Stock that constitute unvested restricted stock or are otherwise subject to a right of repurchase or redemption by the Company.

(v) "Company Restricted Stock Unit" means a bookkeeping entry representing the equivalent of a share of Company Common Stock.

(w) "Company Rights Plan" means the Rights Agreement, dated August 12, 2008, by and between the Company and Computershare Trust Company, N.A., as Rights Agent, including the form of Certificate of Designation of Series A Junior Participating Preferred Stock, the form of Certificate of Designation of Series B Junior Participating Preferred Stock and the forms of Right Certificates, Assignment and Election to Purchase and the Summary of Rights attached thereto as Exhibits A, B, C and D, respectively.

(x) "Company Source Code" means source code for any software that constitutes or is distributed with any monitoring applications for any Company Product or that is material to any Company Product.

(y) "Company Stock Awards" means Company Options, Company Restricted Stock and Company Restricted Stock Units.

(z) "Contract" means any written contract, subcontract, agreement, purchase or sales order, note, bond, loan instrument, mortgage, indenture, guarantee, lease, sublease, license, sublicense, or other legally binding undertaking, commitment, arrangement or understanding of any kind or character.

(aa) "Credit Support Agreement" means that certain Credit Support Agreement, dated of even date herewith, by and between Total S.A. and the Company.

(bb) "Delaware Law" means the DGCL and any other applicable Law of the State of Delaware.

(cc) "DGCL" means Delaware General Corporation Law.

(dd) "EC Merger Regulation" means Council Regulation (EC) No. 139/2004 of 20 January 2004 of the Council of the European Union.

(ee) "Employee" means any current or former employee, officer or director of the Company or any ERISA Affiliate.

(ff) "Environmental Law" means any and all applicable Laws which prohibit, regulate, or control any Hazardous Substance or any Hazardous Substance Activity, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Resource Recovery and Conservation Act of 1976, the Federal Water Pollution Control Act, the Clean Air Act, the Hazardous Materials Transportation Act, the Clean Water Act, European

Union Directive 2002/96/EC on waste electrical and electronic equipment ("WEEE Directive") and European Union Directive 2002/95/EC on the restriction on the use of hazardous substances ("EU RoHS Directive"), China's Management Methods on the Control of Pollution Caused by Electronic Information Products ("China RoHs"), and laws of similar import, all as amended.

(gg) "Environmental Permit" means any permit, license, authorizations, consent, approval, franchise, certification, or clearance required by a Governmental Authority pursuant to Environmental Law.

(hh) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

(ii) "ERISA Affiliate" means any current or former Person or entity under common control with the Company or that, together with the Company, could be deemed a "single employer" within the meaning of Section 4001(b)(i) of ERISA or Section 414(b), (c), (m) or (o) of the Code and the regulations issued thereunder.

(jj) "Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, or any successor statute, rules and regulations thereto.

(kk) "GAAP" means generally accepted accounting principles, as applied in the United States.

(ll) "Governmental Authority" means any government, any governmental or regulatory entity or body, department, commission, board, agency, instrumentality or self-regulatory organization (including Nasdaq), and any court, tribunal or judicial body, in each case whether federal, state, county, provincial or local, and whether domestic or foreign.

(mm) "Hazardous Substance" means any substance, material, emission, or waste that is characterized or regulated under any Environmental Law as "hazardous," a "pollutant," "contaminant," "toxic", radioactive, or words of similar meaning or effect, or is otherwise a danger to health, reproduction or the environment, including without limitation petroleum and petroleum products, polychlorinated biphenyls and asbestos.

(nn) "Hazardous Substance Activity" means the transportation, transfer, recycling, storage, use, treatment, manufacture, removal, remediation, release, labeling, exposure of others to, sale, or distribution of any Hazardous Substance or any product or waste containing a Hazardous Substance, or product manufactured with ozone depleting substances, including, without limitation, any required payment of waste fees or charges (including, but not limited to, so-called e-waste fees) and compliance with any recycling, product take-back or product content requirements (including, but not limited to the RoHS and WEEE Directives and China RoHS).

(oo) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder, or any successor statute, rules and regulations thereto.

(pp) "Intellectual Property Rights" means rights in any or all of the following: (i) patents and applications therefor ("Patents"); (ii) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto including moral and economic rights of authors and inventors, however denominated ("Copyrights"); (iii) industrial designs and any registrations and applications therefor; (iv) trade names, logos, common law trademarks and service marks, trademark and service mark registrations and applications therefor ("Trademarks"); (v) domain names, domain name registrations and applications therefor; (vi) trade secrets (including, those trade secrets defined in the Uniform Trade Secrets Act and under corresponding foreign statutory and common law), proprietary business, technical and know-how information, and non-public and confidential information ("Trade Secrets"); and (vii) any similar or equivalent rights to any of the foregoing (anywhere in the world).

(qq) "Intervening Event" means a material event, fact, circumstance or development, unknown to the Company Board as of the date hereof, which becomes known prior to the Offer Closing (other than, and not relating in any way to, an Acquisition Proposal).

(rr) "IRS" means the United States Internal Revenue Service or any successor thereto.

(ss) "International Employee Plans" means each Employee Plan that has been established, adopted or maintained by the Company or any ERISA Affiliate, or with respect to which the Company or any ERISA Affiliate will or may have any Liabilities, with respect to any Foreign Employees.

(tt) "Knowledge" of the Company, with respect to any matter in question, means the actual knowledge of any executive officer of the Company after reasonable inquiry of such executive officer's direct reports who have primary responsibility for the matter in question. With respect to matters involving Intellectual Property Rights, Knowledge does not require the Company, its executive officers or their respective direct reports to have conducted or have obtained any freedom-to-operate opinions or similar opinions of counsel or any Patent, Trademark, or other Intellectual Property Rights clearance searches, and if not conducted or obtained, no knowledge of any third party Patents, Trademarks, or other Intellectual Property Rights that would have been revealed by such inquiries, opinions or searches will be imputed to the Company, its executive officers, or their respective direct reports.

(uu) "Law" means any and all applicable federal, state, provincial, local, municipal, foreign or other law, statute, treaty, constitution, principle of common law, ordinance, code, directive, order, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

(vv) "Legal Proceeding" means any action, suit, litigation, arbitration, criminal prosecution or other legal proceeding pending before any Governmental Authority.

(ww) "Liabilities" means any known or unknown liability, indebtedness, obligation or commitment of any kind, nature or character (whether accrued, absolute, contingent, matured, unmatured or otherwise and whether or not required to be recorded or reflected on a balance sheet prepared under GAAP).

(xx) "Lien" means any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, claim, option, right of first refusal, preemptive right, community property interest or other legal restriction of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

(yy) "Loan" means any extension of credit (including any commitment to extend credit).

(zz) "Matching Period" means the period beginning at 9:00 a.m. Pacific Time on the day immediately following the date of delivery by the Company to Parent of a Recommendation Change Notice or Superior Proposal Notice, as applicable, and ending at 9:00 a.m. Pacific Time on the fifth (5th) Business Day thereafter.

(aaa) "Material Adverse Effect" means any fact, circumstance, change or effect (each, an "Effect") that, individually or when taken together with all other Effects that exist at the date of determination of the occurrence of the Material Adverse Effect has had or would reasonably be expected to have a material adverse effect on the business, operations, financial condition or results of operations of the Company, its Subsidiaries and the Solar SPEs taken as a whole; *provided*, *however*, that no Effects (by themselves or when aggregated with any other Effects) to the extent resulting from, arising out of or attributable to the following shall be deemed to be or constitute a "Material Adverse Effect," and no Effects to the extent resulting from, arising out of or attributable to the following (by themselves or when aggregated with any other Effects) shall be taken into account when determining whether a "Material Adverse Effect" has occurred or would reasonably be expected to occur:

(i) general economic or political conditions, or changes in financial, credit or capital markets (including any suspension of trading in securities), in each case to the extent that such conditions and changes do not have a disproportionate impact on the Company, its Subsidiaries and the Solar SPEs, taken as a whole, relative to the solar industry generally;

(ii) general conditions in the solar industry to the extent that such conditions do not have a disproportionate impact on the Company, its Subsidiaries and the Solar SPEs taken as a whole, relative to the solar industry generally;

(iii) acts of war, armed hostilities, sabotage or terrorism (including any escalation or general worsening of any such acts of war, armed hostilities, sabotage or terrorism) or

natural disasters to the extent that such events do not have a disproportionate impact on the Company, its Subsidiaries and the Solar SPEs taken as a whole, relative to the solar industry generally;

(iv) changes in Law or the adoption of, amendments to, or proposals by public officials or agencies regarding, Laws, regulations or government decrees providing economic support or financial incentives for the solar industry;

(v) changes in GAAP to the extent that such changes do not have a disproportionate impact on the Company, its Subsidiaries and the Solar SPEs taken as a whole, relative to the solar industry generally;

(vi) changes in interest or currency rates;

(vii) changes in the trading price or trading volume of the Company's common stock, in and of itself (it being understood that, subject to the exceptions set forth in this definition, any underlying cause(s) of any such change may be deemed to constitute a Material Adverse Effect and may be taken into consideration when determining whether a Material Adverse Effect has occurred);

(viii) any failure by the Company to meet any public estimates or expectations of the Company's revenue, earnings or other financial performance or results of operations for any period, or any failure by the Company to meet any internal budgets, plans or forecasts of its revenues, earnings, other financial performance or results of operations (it being understood that, subject to the exceptions set forth in this definition, any underlying cause(s) of any such failure may be deemed to constitute a Material Adverse Effect and may be taken into consideration when determining whether a Material Adverse Effect has occurred);

(ix) actions taken by or on behalf of Parent in relation to the Offer or the Company (including the taking of any action expressly required or contemplated by, this Agreement or the Related Agreements, or the failure to take any action expressly prohibited by this Agreement or the Related Agreements);

(x) the announcement or pendency of the Offer, this Agreement or the Related Agreements, including any loss of or adverse change in the relationship of the Company, its Subsidiaries or the Solar SPEs with their respective employees, customers, partners or suppliers to the extent resulting from, arising out of or attributable to the announcement or pendency of the Offer, this Agreement or the Related Agreements;

(xi) any Legal Proceeding made or brought by any of the current or former stockholders of the Company (on their own behalf or on behalf of the Company) against the Company, its board of directors or Parent related to the Offer or the other transactions contemplated by this Agreement or the Related Agreements; and

(xii) any willful action taken by or on behalf of Total S.A. or Parent designed to harm the business or operations of the Company, its Subsidiaries or the Solar SPEs taken as a whole.

(bbb) "Nasdaq" means the Nasdaq Stock Market.

(ccc) "Offer Closing" means the acceptance for payment by Parent of Shares pursuant to the Offer.

(ddd) "Order" means any judgment, decision, decree, injunction, ruling, writ, assessment or order of any Governmental Authority that is binding on a Person or its property under applicable Laws.

(eee) "Parent Board" means the board of directors of Parent.

(fff) "Permitted Liens" means any or all of the following: (i) Liens for Taxes and other similar governmental charges and assessments which are not yet due and payable or liens for Taxes being contested in good faith by any appropriate proceedings and for which adequate reserves have been established; (ii) Liens of landlords and liens of carriers, warehousemen, mechanics, repairmen, workmen, contractors and materialmen and other like Liens arising in the ordinary course of business to secure obligations not in default or that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established; (iii) undetermined or inchoate Liens, charges and privileges and any statutory Liens, licenses, charges, adverse claims, security interests or encumbrances of any nature whatsoever that are claimed or held by any Governmental Authority; (iv) security given in the ordinary course of business to any public utility, Governmental Authority or other statutory or public authority; (v) non-monetary defects, imperfections or irregularities in title, covenants, easements and rights-of-way (unrecorded and of record) and the requirements of any zoning, building and other similar codes or restrictions imposed on real property, in each case that do not adversely affect in any material respect the current use of the applicable real property; (vi) pledges or deposits to secure obligations under workers' compensation laws or similar legislation; (vii) pledges and deposits to secure the performance of bids, construction contracts, trade contracts, leases, surety and appeal bonds, performance bonds and other obligations of a similar nature, in each case in the ordinary course of business consistent with past practice; (viii) Liens securing payment obligations under supply contracts; (ix) Liens which do not materially impair the use or operation of the property subject thereto arising in the ordinary course of business to secure obligations not in default or that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established; and (x) non-exclusive licenses of Intellectual Property Rights granted by the Company or its Subsidiaries in the ordinary course of business.

(ggg) "Person" means any individual, corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization, entity or Governmental Authority.

(hhh) "Registered Intellectual Property" means Intellectual Property Rights that have been registered, applied for, filed, certified or otherwise perfected, issued, or recorded with or by any Governmental Authority, including any quasi-public legal authority.

(iii) "Registration Rights Agreement" means that certain Registration Rights Agreement, dated of even date herewith, by and between Parent and the Company.

(jjj) "Related Agreements" means the Credit Support Agreement, the Affiliation Agreement, the Registration Rights Agreement, the R&D Agreement, the Total S.A. Tender Offer Guaranty, the Total S.A. Affiliation Agreement Guaranty and the Tenesol Term Sheet.

(kkk) "R&D Agreement" means the Research & Collaboration Agreement dated of even date herewith by and between Parent and the Company.

(lll) "Representatives" means, with respect to any Person, any directors, officers, employees, controlled Affiliates and any investment bankers, attorneys, advisors, representatives or other agents of such Person.

(mmm) "Sarbanes-Oxley Act" means the Sarbanes-Oxley Act of 2002 or any successor thereto.

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

(ooo) "Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, or any successor statute, rules or regulations thereto.

(ppp) "Solar SPE" means any directly or indirectly owned special purpose vehicles established to facilitate solar system sales in the ordinary course of the Company's utility and power plant or large commercial business lines.

(qqq) "Subsidiary" of any Person means (i) a corporation more than fifty percent (50%) of the combined voting power of the outstanding voting stock of which is owned, directly or indirectly, by such Person or by one of more other Subsidiaries of such Person or by such Person and one or more other Subsidiaries thereof, (ii) a partnership of which such Person, or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, is the general partner and has the power to direct the policies, management and affairs of such partnership, (iii) a limited liability company of which such Person or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, is the managing member and has the power to direct the policies, management and affairs of such company or (iv) any other Person (other than a corporation, partnership or limited liability company) in which such Person, or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, has more than fifty percent (50%) of the ownership and power to direct the policies, management and affairs thereof; *provided*,

however that, solely for purposes of Article III, in no event shall any Solar SPEs, directly or indirectly held by the Company be considered Subsidiaries of the Company.

(rrr) "Superior Proposal" means any unsolicited, *bona fide* written offer or proposal (that has not been withdrawn) for an Acquisition Transaction on terms that the Company Board shall have determined in good faith (after consultation with its financial advisor and outside legal counsel and taking into consideration, in addition to any other factors determined by the Company Board in good faith to be relevant, (A) all financial considerations relevant thereto, including conditions in the financial and credit markets, (B) the identity of the Person(s) making such offer or proposal and the parties providing any of the financing for the transaction contemplated thereby, and the prior history of such Person(s) and sources of financing in connection with the consummation or failure to consummate similar transactions, (C) the anticipated timing, conditions and prospects for completion of the transaction contemplated by such offer or proposal, and (D) the other terms and conditions of such offer or proposal and the implications thereof on the Company, including relevant legal, regulatory and other aspects of such offer or proposal deemed relevant by the Company Board) would be more favorable to the Company's stockholders than the Offer (or any proposal delivered by Parent in accordance with Section 5.4(c)(iv) or Section 6.1(g)); *provided, however*, that for purposes of the reference to an "Acquisition Proposal" in this definition of a "Superior Proposal," all references in the definition of "Acquisition Transaction" to "fifteen percent (15%) or more" shall be deemed to be references to "at least a majority," and the reference in the definition of "Acquisition Transaction" to "eighty-five percent (85%)" shall be deemed to be a reference to "fifty percent (50%)".

(sss) "Tax" means (i) any and all U.S. federal, state and local and non-U.S. taxes, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, escheat, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts, (ii) any liability for the payment of any amounts of the type described in clause (i) as a result of being or having been a member of an affiliated, consolidated, combined, unitary or similar group for any period (including any liability under Treasury Regulation Section 1.1502-6 or any comparable provision of foreign, state or local law) and (iii) any liability for the payment of any amounts of the type described in clause (i) or (ii) or as a result of any obligations under any agreements or arrangements with any other Person with respect to such amounts and including any liability for taxes of a predecessor or transferor or otherwise by operation of law.

(ttt) "Tax Returns" means all returns, declarations, reports, estimates, statements and other documents filed or required to be filed in respect of any Taxes, including any attachments, addenda or amendments thereto.

(uuu) "Tenesol Term Sheet" means the non-binding term sheet between Parent and the Company dated of even date herewith relating to the potential acquisition of Tenesol S.A.

(vvv) "Total S.A." means Total S.A., an indirect parent corporation of Parent.

(www) "Total S.A. Affiliation Agreement Guaranty" means the Guaranty dated of even date herewith by and between Total S.A. and the Company in respect of the Affiliation Agreement.

(xxx) "Total S.A. Tender Offer Agreement Guaranty" means the Guaranty dated of even date herewith by and between Total S.A. and the Company in respect of this Agreement.

(yyy) "Treasury Regulation" means the regulations in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code, and any successor regulations.

(zzz) "WARN" means the Worker Adjustment and Retraining Notification Act or any similar state or local Law, including any similar Law of a non-U.S. jurisdiction.

1.2 Additional Definitions. The following capitalized terms shall have the respective meanings ascribed thereto in the respective sections of this Agreement set forth opposite each of the capitalized terms below:

Term	Section Reference
Acceptable Confidentiality Agreement	5.3(c)
Acquisition Proposal	1.1(a)
Acquisition Transaction	1.1(b)
Affiliate	1.1(c)
Agreement	Preamble
Antitrust Division	5.2(a)
Applicable Governmental Authorities	5.2(a)
Assets	3.19
Business Day	1.1(e)
Business Facility	1.1(f)
Capitalization Date	3.4(a)
China RoHs	1.1(ff)
Class A Common Stock	1.1(g)
Class B Common Stock	1.1(h)
Code	1.1(i)
Collective Bargaining Agreements	3.13(a)(xiii)
Commission	5.2(a)
Company	Preamble
Company Balance Sheet	1.1(j)
Company Board	1.1(k)
Company Board Recommendation	5.4(a)
Company Board Recommendation Change	5.4(b)
Company Capital Stock	1.1(l)
Company Common Stock	1.1(m)
Company Compensation Committee	5.13

Term	Section Reference
Company Disclosure Schedule	Article III
Company Form 10-K	1.1(n)
Company Intellectual Property	1.1(o)
Company Option	1.1(p)
Company Plans	1.1(q)
Company Preferred Stock	1.1(r)
Company Products	1.1(s)
Company Real Properties	3.17(a)
Company Registered Intellectual Property	1.1(t)
Company Restricted Stock	1.1(u)
Company Restricted Stock Unit	1.1(v)
Company SEC Reports	3.6
Company Securities	3.4(c)
Company Source Code	1.1(x)
Company Stock Awards	1.1(y)
Competing Acquisition Transaction	6.3(b)(i)
Confidentiality Agreement	5.11
Consent	3.3(b)
Contract	1.1(z)
Convertible Debentures	3.4(a)
Copyrights	1.1(pp)
Covered Securityholders	5.13
Cypress	5.9(a)
Delaware Law	1.1(bb)
DGCL	1.1(cc)
Effect	1.1(aaa)
Employee	1.1(ee)
Employee Plans	3.15(a)
Employment Compensation Arrangements	5.13
Environmental Law	1.1(ff)
Environmental Permit	1.1(gg)
ERISA	1.1(hh)
ERISA Affiliate	1.1(ii)
EU RoHS DirectiveEU RoHS Directive	1.1(ff)
Exchange Act	1.1(jj)
Expiration Date	2.1(d)(i)
Filed SEC Documents	Article III
Foreign Employees	3.15(m)
FTC	5.2(a)
Fundamental Representations	Annex A
GAAP	1.1(kk)
Government Contract	3.13(d)

Term	Section Reference
Governmental Authority	1.1(ll)
Ground Leases	3.17(a)
Hazardous Substance	1.1(mm)
Hazardous Substance Activity	1.1(nn)
HSR Act	1.1(oo)
Intellectual Property Rights	1.1(pp)
International Employee Plans	1.1(ss)
Intervening Event	1.1(qq)
IRS	1.1(rr)
Joint Venture	3.5(a)
Knowledge	1.1(tt)
Law	1.1(uu)
Leased Real Property	3.17(a)
Leases	3.17(a)
Legal Proceeding	1.1(vv)
Liabilities	1.1(ww)
Lien	1.1(xx)
Loan	1.1(yy)
Material Adverse Effect	1.1(aaa)
Material Contract	3.13(a)
Minimum Condition	2.1(a)(i)
Nasdaq	1.1(bbb)
Offer	Recitals
Offer Closing	1.1(ccc)
Offer Documents	2.1(g)(i)(A)
Offer Price	Recitals
Offer to Purchase	2.1(a)
Open Source Materials	3.20(i)
Order	1.1(ddd)
Outbound IP Contracts	3.13(a)(xvi)
Out-Licenses	3.13(a)(xvi)
Owned Properties	3.17(a)
Owned Property	3.17(a)
Parent	Preamble
Parent Board	1.1(eee)
Parent Disclosure Schedule	Article IV
Parent Expenses	6.3(b)(iv)
Patents	1.1(pp)
Permits	3.11
Permitted Liens	1.1(fff)
Person	1.1(ggg)
Recommendation Change Notice	5.4(c)(ii)

Term	Section Reference
Registered Intellectual Property	1.1(hhh)
Related Agreements	1.1(jjj)
Reclassification Proposal	5.9(a)
Representatives	1.1(lll)
Sarbanes-Oxley Act	1.1(mmm)
Schedule TO	2.1(g)(i)(A)
Schedule 14D-9	2.2(b)
SEC	1.1(nnn)
Securities Act	1.1(ooo)
Shares	Recitals
Fundamental Representations	(1)(5)
Subsidiary	1.1(qqq)
Subsidiary Securities	3.5(d)
Superior Proposal	1.1(rrr)
Superior Proposal Notice	6.1(g)
Tax	1.1(sss)
Tax Returns	1.1(ttt)
Termination Date	6.1(b)
Termination Fee	6.3(b)(i)
Trade Secrets	1.1(pp)
Trademarks	1.1(pp)
Treasury Regulation	1.1(yyy)
WARN	1.1(zzz)
U.S. Employee Plan	3.15(a)
WEEE Directive	1.1(ff)

1.3 Certain Interpretations.

(a) Unless otherwise indicated, all references herein to Articles, Sections, Annexes, Exhibits or Schedules, shall be deemed to refer to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement, as applicable.

(b) Unless otherwise indicated, the words “include,” “includes” and “including,” when used herein, shall be deemed in each case to be followed by the words “without limitation.”

(c) As used in this Agreement, the word “extent” and the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such word or phrase shall not mean simply “if.”

(d) As used in this Agreement, all references to the “date hereof” shall refer to the date this Agreement is made and entered into.

(e) As used in this Agreement, the singular or plural number shall be deemed to include the other whenever the context so requires.

(f) Unless otherwise specifically indicated, all references herein to dollars or "$" shall mean and refer to U.S. denominated dollars.

(g) Unless otherwise indicated, all references herein to the Subsidiaries of a Person shall be deemed to include all direct and indirect Subsidiaries of such Person.

(h) The table of contents and headings set forth in this Agreement are for convenience of reference purposes only and shall not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision hereof.

(i) The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(j) No parol evidence shall be introduced in the construction or interpretation of this Agreement unless the ambiguity or uncertainty in issue is plainly discernable from a reading of this Agreement without consideration of any extrinsic evidence.

(k) Although the same or similar subject matters may be addressed in different provisions of this Agreement, the parties intend that, except as reasonably apparent on the face of the Agreement or as expressly provided in this Agreement, each such provision shall be read separately, be given independent significance and not be construed as limiting any other provision of this Agreement (whether or not more general or more specific in scope, substance or content).

ARTICLE II

THE OFFER

2.1 The Offer.

(a) Terms and Conditions of the Offer. Provided that this Agreement shall not have been terminated pursuant to Article VI and that none of the events set forth in paragraph (3), paragraph (4) or paragraph (7) of Annex A hereto shall exist or shall have occurred and be continuing, as promptly as practicable after the date hereof (but in no event more than ten (10) Business Days thereafter), Parent shall commence (within the meaning of Rule 14d-2 promulgated under the Exchange Act) the Offer to purchase up to that number of shares of Class A Common Stock which is equal to 60% of the shares of Class A Common Stock outstanding as of the close of business on April 27, 2011 and up to that number of shares of Class B Common Stock which is equal to 60% of the shares of Class B Common Stock outstanding as of the close of business on April 27, 2011, at a price per Share equal to the Offer Price; *provided*, *however*, that Parent may at its sole election and so long as it does not amend or extend the Offer, (x) purchase an additional

number of shares of Class A Common Stock that are validly tendered and not properly withdrawn, so long as (i) such additional number of shares of Class A Common Stock do not exceed two percent (2%) of the total number of shares of Class A Common Stock outstanding at the close of business on the Business Day prior to the Expiration Date, and (ii) the total number of shares of Class A Common Stock purchased by Parent in the Offer, together with the number of shares of Class A Common Stock (if any) then owned beneficially by any "group" (as defined in or under Section 13(d) of the Exchange Act) of which Parent is a member, does not exceed sixty percent (60%) of the total number of shares of Class A Common Stock that are outstanding at the close of business on the Business Day prior to the Expiration Date, and (y) purchase an additional number of shares of Class B Common Stock that are validly tendered and not properly withdrawn, so long as (i) such additional number of shares of Class B Common Stock do not exceed two percent (2%) of the total number of shares of Class B Common Stock outstanding at the close of business on the Business Day prior to the Expiration Date, and (ii) the total number of shares of Class B Common Stock purchased by Parent in the Offer, together with the number of shares of Class B Common Stock (if any) then owned beneficially by any "group" (as defined in or under Section 13(d) of the Exchange Act) of which Parent is a member, does not exceed sixty percent (60%) of the total number of shares of Class B Common Stock that are outstanding at the close of business on the Business Day prior to the Expiration Date. The Offer shall be made by means of an offer to purchase (the "Offer to Purchase") that is disseminated to all of the Company stockholders and contains the terms and conditions set forth in this Agreement and in Annex A. Parent shall use its reasonable best efforts to consummate the Offer, subject to the terms and conditions hereof and thereof. The Offer shall be subject only to:

(i) the condition (the "Minimum Condition") that, prior to the expiration of the Offer, there be validly tendered (not including Shares tendered pursuant to procedures for guaranteed delivery) and not withdrawn in accordance with the terms of the Offer:

(A) that number of shares of Class A Common Stock which, together with the number of shares of Class A Common Stock (if any) then owned beneficially by any "group" (as defined in or under Section 13(d) of the Exchange Act) of which Parent is a member, constitutes at least a majority of the total number of then outstanding shares of Class A Common Stock; and

(B) that number of shares of Class B Common Stock which, together with the number of shares of Class B Common Stock (if any) then owned beneficially by any "group" (as defined in or under Section 13(d) of the Exchange Act) of which Parent is a member, constitutes at least a majority of the total number of then outstanding shares of Class B Common Stock; and

(ii) the other conditions set forth in Annex A.

(b) Waiver of Conditions. Parent expressly reserves the right to waive any of the conditions to the Offer and to make any change in the terms of or conditions to the Offer; *provided*, *however*, that notwithstanding the foregoing or anything to the contrary set forth herein, without the

prior written consent of the Company, Parent may not: (i) waive the Minimum Condition or the conditions set forth in clause (2), (3), (4) or (8) of Annex A, or (ii) make any other change in the terms of, or conditions to, the Offer that (A) changes the form of consideration to be paid in the Offer, (B) decreases the Offer Price or increases or decreases the number of Shares sought in the Offer, other than increases in the number of Shares to be purchased by Parent in the Offer as expressly permitted by the provisions of Section 2.1(a), (C) extends the Offer, other than in a manner permitted or required by the provisions of Section 2.1(d)(ii), (D) imposes conditions to the Offer other than those set forth in Annex A, (E) modifies the conditions set forth in Annex A, or (F) amends any other term or condition of the Offer in any manner that is adverse to the holders of Shares.

(c) Adjustments to the Offer Price. Notwithstanding anything to the contrary set forth in this Agreement, the Offer Price shall be adjusted appropriately to reflect fully the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into shares of Company Common Stock), reorganization, recapitalization, reclassification or other like change with respect to Company Common Stock having a record date on or after the date hereof and prior to the Offer Closing.

(d) Expiration and Extension of the Offer.

(i) Unless the Offer is extended pursuant to and in accordance with Section 2.1(d)(ii), the Offer shall expire at midnight, New York Time, on the date that is twenty (20) business days (for this purpose calculated in accordance with Section 14d-1(g)(3) promulgated under the Exchange Act) after the date the Offer is first commenced (within the meaning of Rule 14d-2 promulgated under the Exchange Act). In the event that the Offer is extended pursuant to Section 2.1(d)(ii), then the Offer shall expire on the date and at the time to which the Offer has been so extended. The date upon which the Offer expires pursuant hereto (as such expiration date may be extended pursuant hereto) is referred to herein as the "Expiration Date."

(ii) Notwithstanding the provisions of Section 2.1(d)(i) or anything to the contrary set forth in this Agreement:

(A) Parent shall extend the Offer for any period required by any Law or Order, or any rule, regulation, interpretation or position of the SEC or its staff or Nasdaq, in any such case which is applicable to the Offer;

(B) subject to clause (C) below, in the event that any condition to the Offer (other than the conditions set forth in paragraphs (7) and (8) of Annex A) is not satisfied or waived by Parent (if permitted hereunder) as of any then scheduled expiration of the Offer, but each of the conditions set forth in paragraphs (7) and (8) of Annex A is satisfied at such time, Parent shall extend the Offer for successive periods of ten (10) Business Days each in order to permit the satisfaction of all such conditions to the Offer;

(C) in the event that the Minimum Condition is not satisfied as of any then scheduled expiration of the Offer, but all of the other conditions to the Offer are satisfied at such time, Parent shall extend the Offer for one or more successive extension periods in order to permit the satisfaction of the Minimum Condition; *provided*, *however*, that Parent shall not be required to extend the Offer pursuant to this clause (C) for an aggregate of more than thirty (30) calendar days; and

(D) without limiting the obligations of Parent under the foregoing subsections of this Section 2.1(d)(ii), in the event that the condition to the Offer set forth in paragraph (7) of Annex A is not satisfied or waived by Parent (if permitted hereunder) as of any then scheduled expiration of the Offer, Parent may (at the sole discretion of Parent) extend the Offer for one or more successive extension periods in order to permit the satisfaction of such condition to the Offer; *provided*, *however*, that Parent shall not be permitted to extend the Offer pursuant to this clause (D) for an aggregate of more than thirty (30) calendar days without the Company's consent;

provided, *however*, that (x) Parent shall not be required to extend the Offer beyond the Termination Date and (y) the foregoing clauses (A), (B), (C) and (D) of this Section 2.1(d)(ii) shall not be deemed to impair, limit or otherwise restrict in any manner the right of the parties to terminate this Agreement pursuant to the terms of Article VI.

(iii) Parent shall not extend the Offer in any manner other than pursuant to and in accordance with the provisions of Section 2.1(d)(ii) without the prior written consent of the Company.

(e) Payment for Shares. On the terms and subject to conditions set forth in this Agreement and the Offer, including Section 2.1(f), Parent shall accept for payment, and pay the Offer Price for, all Shares that are validly tendered and not withdrawn pursuant to the Offer promptly (within the meaning of Rule 14e-1(c) promulgated under the Exchange Act) after the expiration of the Offer. The Offer Price payable in respect of each Share validly tendered and not withdrawn pursuant to the Offer shall be paid net to the holder thereof in cash, without interest, subject to reduction for any applicable withholding taxes payable in respect thereof. If this Agreement is terminated pursuant to Article VI, Parent shall promptly, irrevocably and unconditionally terminate the Offer and shall not acquire any Shares pursuant thereto. If the Offer is terminated by Parent, or this Agreement is terminated prior to the purchase of Shares in the Offer, Parent shall promptly return, and shall cause any depositary acting on behalf of Parent to return, in accordance with applicable Law, all tendered Shares that have not then been purchased in the Offer to the registered holders thereof.

(f) Proration.

(i) If and to the extent that a number of shares of Class A Common Stock greater than 60% of the shares of Class A Common Stock outstanding as of the close of business on April 27, 2011 (or such greater number of shares of Class A Common Stock as Parent may elect to purchase in the Offer as expressly permitted by the provisions of Section 2.1(a)) is validly tendered

prior to the Expiration Date, and not properly withdrawn, then, in accordance with Section 14(d)(6) of the Exchange Act, the number of shares of Class A Common Stock validly tendered and not properly withdrawn by each Company stockholder shall be deemed decreased on a pro rata basis (with fractional Shares rounded to the nearest whole Share) such that the aggregate number of shares of Class A Common Stock accepted for payment, and paid for, in the Offer by Parent shall be equal to 60% of the shares of Class A Common Stock outstanding as of the close of business on April 27, 2011 (or such greater number of shares of Class A Common Stock as Parent may elect to purchase in the Offer as expressly permitted by the provisions of Section 2.1(a)).

(ii) If and to the extent that a number of shares of Class B Common Stock greater than 60% of the shares of Class B Common Stock outstanding as of the close of business on April 27, 2011 (or such greater number of shares of Class B Common Stock as Parent may elect to purchase in the Offer as expressly permitted by the provisions of Section 2.1(a)) is validly tendered prior to the Expiration Date, and not properly withdrawn, then, in accordance with Section 14(d)(6) of the Exchange Act, the number of shares of Class B Common Stock validly tendered and not properly withdrawn by each Company stockholder shall be deemed decreased on a pro rata basis (with fractional Shares rounded to the nearest whole Share) such that the aggregate number of shares of Class B Common Stock accepted for payment, and paid for, in the Offer by Parent shall be equal to 60% of the shares of Class B Common Stock outstanding as of the close of business on April 27, 2011 (or such greater number of shares of Class B Common Stock as Parent may elect to purchase in the Offer as expressly permitted by the provisions of Section 2.1(a)).

(iii) Parent shall return all shares not accepted for payment to such Company stockholder or, in the case of tendered shares delivered by book-entry transfer, credited to the account at the book-entry transfer facility from which the transfer had previously been made, promptly after the expiration or termination of the Offer in each case, in accordance with the procedures described in the Offer Documents.

(g) Schedule TO; Offer Documents.

(i) As soon as practicable on the date the Offer is first commenced (within the meaning of Rule 14d-2 promulgated under the Exchange Act), Parent shall:

(A) prepare and, in consultation with the Company, file with the SEC a Tender Offer Statement on Schedule TO (together with all amendments and supplements thereto, and including all exhibits thereto, the "Schedule TO") with respect to the Offer in accordance with Rule 14d-3(a) promulgated under the Exchange Act, which Schedule TO shall contain as an exhibit the Offer to Purchase and forms of the letter of transmittal and summary advertisement, if any, and other customary ancillary documents, in each case in respect of the Offer (together with any supplements or amendments thereto, the "Offer Documents");

(B) deliver a copy of the Schedule TO, including all exhibits thereto, to the Company at its principal executive offices in accordance with Rule 14d-3(a) promulgated under the Exchange Act;

(C) give telephonic notice of the information required by Rule 14d-3 promulgated under the Exchange Act, and mail by means of first class mail a copy of the Schedule TO, to Nasdaq in accordance with Rule 14d-3(a) promulgated under the Exchange Act; and

(D) cause the Offer Documents to be disseminated to all holders of Shares as and to the extent required by the Exchange Act.

(ii) Subject to the provisions of Section 5.4, the Schedule TO and the Offer Documents may include a description of the determinations, approvals and recommendations of the Company Board set forth in Section 2.2(a) and Section 5.4(a) that relate to the Offer. The Company shall furnish in writing to Parent all information concerning the Company and its Subsidiaries that is reasonably determined by Parent to be required by applicable Law and reasonably requested by Parent to be included in the Schedule TO or the Offer Documents so as to enable Parent to comply with its obligations under this Section 2.1(g). Parent and the Company shall cooperate in good faith to determine the information regarding the Company that is necessary or reasonably appropriate to include in the Schedule TO and the Offer Documents in order to satisfy applicable Laws. Each of Parent and the Company shall promptly correct any statements or information provided by it or any of its respective Representatives for use in the Schedule TO or the Offer Documents if and to the extent that such statements or information shall have become false or misleading in any material respect. Parent shall take all steps necessary to cause the Schedule TO and the Offer Documents, as so corrected, to be filed with the SEC and the other Offer Documents, as so corrected, to be disseminated to the Company stockholders, in each case as and to the extent required by applicable Laws, by the SEC or its staff or by Nasdaq. Parent shall provide the Company and its counsel a reasonable opportunity to review and comment on the Schedule TO and the Offer Documents prior to the filing thereof with the SEC, and Parent shall give reasonable and good faith consideration to any comments made by the Company and its counsel (it being understood that the Company and its counsel shall provide any comments thereon as soon as reasonably practicable). Parent shall provide in writing to the Company and its counsel any and all comments or other communications, whether written or oral, that Parent or its counsel may receive from the SEC or its staff with respect to the Schedule TO and the Offer Documents promptly after such receipt, and Parent shall provide the Company and its counsel a reasonable opportunity to participate in the formulation of any response to any such comments of the SEC or its staff (including a reasonable opportunity to review and comment on any such response, to which Parent shall give reasonable and good faith consideration to any comments made by the Company and its counsel) and to participate in any discussions with the SEC or its staff regarding any such comments.

2.2 Company Actions.

(a) Company Determinations, Approvals and Recommendations. The Company hereby approves and consents to the Offer and represents and warrants to Parent that, at a meeting duly called and held prior to the date hereof, the Company Board has unanimously, upon the terms and subject to the conditions set forth herein:

(i) determined that this Agreement is advisable;

(ii) determined that this Agreement and the transactions contemplated hereby, including the Offer, are at a price and on terms that are in the best interests of the Company and the holders of Shares;

(iii) approved this Agreement, the transactions contemplated hereby (including the Offer) and the transactions expressly permitted by the Affiliation Agreement, which approval, to the extent applicable, and assuming that the representations of Parent set forth in Section 4.5 are accurate, constituted approval under the provisions of Section 203 of the DGCL as a result of which this Agreement, the transactions contemplated hereby (including the Offer) and any transaction expressly permitted by the Affiliation Agreement, are not and will not be subject to the provisions of, or any restrictions under, the provisions of Section 203 of the DGCL; and

(iv) resolved to recommend that the holders of Shares accept the Offer and tender their Shares to Parent pursuant to the Offer; *provided*, *however*, that such recommendation may be withheld, withdrawn, amended or modified in accordance with the terms of Section 5.4.

The Company hereby consents to the inclusion of the foregoing determinations and approvals in the Offer Documents and, to the extent that the foregoing recommendation of the Company Board is not withheld, withdrawn, amended or modified in accordance with Section 5.4, the Company hereby consents to the inclusion of such recommendation in the Offer Documents.

(b) Schedule 14D-9. The Company shall (i) file with the SEC, on the same day as the filing by Parent of the Schedule TO, a Solicitation/Recommendation Statement on Schedule 14D-9 (together with all amendments and supplements thereto, and including all exhibits thereto, the "Schedule 14D-9") and (ii) cause the Schedule 14D-9 to be mailed to the Company stockholders, to the extent reasonably practical together with the Offer Documents, promptly after the commencement of the Offer (within the meaning of Rule 14d-2 promulgated under the Exchange Act). Subject to the provisions of Section 5.4, the Schedule 14D-9 shall include a description of the determinations, approvals and recommendations of the Company Board (including the Company Board Recommendation) set forth in Section 2.2(a) and Section 5.4(a). Each of Parent shall furnish in writing to the Company all information concerning Parent that is reasonably determined by the Company to be required by applicable Law and reasonably requested by the Company to be included in the Schedule 14D-9 so as to enable the Company to comply with its obligations under this Section 2.2(b). Parent and the Company shall cooperate in good faith to determine the information regarding the Company that is necessary or reasonably appropriate to include in the Schedule 14D-9 in order to satisfy applicable Laws. Each of the Company and Parent shall promptly correct any statements or information provided by it or any of its respective Representatives for use in the Schedule 14D-9 if and to the extent that such statements or information shall have become false or misleading in any material respect. The Company shall take all steps necessary to cause the Schedule 14D-9, as so corrected, to be filed with the SEC and disseminated to the Company stockholders, in each case as and to the extent required by applicable Laws. Unless the Company Board has effected a Company Board Recommendation Change, the Company shall provide Parent

and its counsel a reasonable opportunity to review and comment on the Schedule 14D-9 prior to the filing thereof with the SEC, and the Company shall give reasonable and good faith consideration to any comments made by Parent and its counsel (it being understood that Parent and its counsel shall provide any comments thereon as soon as reasonably practicable). Unless the Company Board has effected a Company Board Recommendation Change, the Company shall provide in writing to Parent and its counsel any comments or other communications, whether written or oral, the Company or its counsel may receive from the SEC or its staff with respect to the Schedule 14D-9 promptly after such receipt, and unless the Company Board has effected a Company Board Recommendation Change, the Company shall provide Parent and its counsel a reasonable opportunity to participate in the formulation of any response to any such comments of the SEC or its staff (including a reasonable opportunity to review and comment on any such response, to which the Company shall give reasonable and good faith consideration to any comments made by Parent and its counsel) and to participate in any discussions with the SEC or its staff regarding any such comments.

(c) Company Information. The Company shall provide to Parent as promptly as practicable after the date hereof, and shall use its reasonable best efforts to provide to Parent no later than April 30, 2011, a true and correct determination of the number of shares of Class A Common Stock and Class B Common Stock outstanding as of the close of business on April 27, 2011. In connection with the Offer, the Company shall, or shall use its reasonable best efforts to cause its transfer agent to, furnish Parent with such assistance and such information as Parent or its agents may reasonably request in order to disseminate and otherwise communicate the Offer to the record and beneficial holders of shares of Company Common Stock, including a list, as of the most recent practicable date, of the stockholders of the Company, mailing labels and any available listing or computer files containing the names and addresses of all record and beneficial holders of shares of Company Common Stock, and lists of security positions of shares of Company Common Stock held in stock depositories (including updated lists of stockholders, mailing labels, listings or files of securities positions). Subject to the requirements of applicable Law, and except for such steps as are necessary to disseminate the Offer Documents and any other documents necessary to consummate the Offer, Parent shall hold in confidence the information contained in such lists, mailing labels and computer files labels, and shall use such information only in connection with the transactions contemplated by this Agreement, including the Offer, and, if this Agreement shall be terminated in accordance with Article VII, shall deliver to the Company all copies of such information then in their possession.

2.3 Section 14(f) of Exchange Act. The Company's obligation to appoint Parent's designees to the Company Board pursuant to the terms of the Affiliation Agreement and the Company's obligations under the remainder of this Section 2.3 shall be subject to Section 14(f) of the Exchange Act and Rule 14f-1 promulgated thereunder and the Company's receipt of sufficient information from Parent to enable the Company to include in the Schedule 14D-9 the information required by Section 14(f) of the Exchange Act and Rule 14f-1 promulgated thereunder in respect of Parent's designees to the Company Board. The Company shall take all action required pursuant to this Section 2.3 and Section 14(f) and Rule 14f-1 in order to fulfill its obligations under this Section 2.3, and shall include in the Schedule 14D-9 such information with respect to the Company

and its directors and officers, as well as Parent's designees to the Company Board, as is required under such Section 14(f) and Rule 14f-1 in order to fulfill its obligations under this Section 2.3. Parent shall provide to the Company in writing, and be solely responsible for, any information with respect to itself and its designees to the Company Board required by such Section 14(f) of the Exchange Act and Rule 14f-1 promulgated thereunder.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except (i) as disclosed in the reports, schedules, forms, statements and other documents filed by the Company with the SEC or furnished by the Company to the SEC (other than in any "risk factor" disclosures or any other forward looking statements set forth therein) since January 1, 2008 and prior to the date of this Agreement, in each case pursuant to the Exchange Act (the "Filed SEC Documents") or (ii) as set forth in the disclosure letter (the "Company Disclosure Schedule") delivered by the Company to Parent dated as of the date hereof, which Company Disclosure Schedule identifies by reference to, or has been grouped under a heading referring to, a specific section of this Agreement and constitutes an exception hereto and disclosure made pursuant to any section of the Company Disclosure Schedule shall be deemed to be disclosed against each of the other sections of this Agreement to the extent the applicability of the disclosure to such other section is reasonably apparent from the disclosure made (without reference to the underlying documents referenced therein), the Company hereby represents and warrants to Parent as follows:

3.1 Organization and Standing.

(a) The Company is a corporation duly organized and validly existing under Delaware Law. The Company is in good standing under Delaware Law. The Company has the requisite corporate power and authority to conduct its business as it is presently being conducted and to own, lease or operate its respective properties and assets.

(b) The Company is duly qualified to do business and is in good standing in each jurisdiction where the character of its properties owned or leased or the nature of its activities make such qualification necessary (to the extent the "good standing" concept is applicable in the case of any jurisdiction outside the United States), except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect on the Company. The most recent copies of the certificate of incorporation and bylaws of the Company that have been filed with the SEC are complete and correct copies thereof as in effect on the date hereof. The Company is not in violation of its certificate of incorporation or bylaws, and the Company has not violated its certificate of incorporation or bylaws in the last five (5) years.

3.2 Corporate Approvals.

(a) The Company has all requisite corporate power and authority to execute and deliver this Agreement and each of the Related Agreements to which it is a party, to perform its

obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Company of this Agreement and each of the Related Agreements to which it is a party, the performance by the Company of its obligations hereunder and thereunder, and the consummation by the Company of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of the Company and no additional corporate or other actions or proceedings on the part of the Company are necessary to authorize this Agreement or any of the Related Agreements to which it is a party or the consummation of the transactions contemplated hereby or thereby. This Agreement and each of the Related Agreements to which the Company is a party have been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by the other parties thereto, constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with their terms, except that such enforceability may be limited by applicable bankruptcy, insolvency (including all Laws relating to fraudulent transfers), reorganization, moratorium and other similar Laws affecting or relating to creditors rights generally and is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(b) At a meeting duly called and held on April 28, 2011, the Company Board unanimously (i) determined that this Agreement and the transactions contemplated hereby are fair to, and that the transactions contemplated by this Agreement and the Related Agreements to which it is a party are in the best interests of the Company stockholders, (ii) approved the execution and delivery by the Company of this Agreement and each of the Related Agreements to which it is a party, the performance by the Company of its covenants and obligations set forth herein and therein and the consummation of the transactions contemplated hereby and thereby upon the terms and conditions set forth herein and therein, and (iii) resolved to make the Company Board Recommendation. As of the date hereof, the Company Board has not rescinded or modified in any way the foregoing determinations and actions.

(c) Assuming that the representations of Parent set forth in Section 4.5 are accurate, the Company Board has taken all necessary actions so that the restrictions on business combinations set forth in Section 203 of the DGCL are not applicable to this Agreement, the Offer or any transaction expressly permitted by the Affiliation Agreement.

(d) The Company has taken all action required so that (i) the approval, execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the public announcement of any of the foregoing shall not cause Parent or any of its Affiliates to be deemed an “Acquiring Person” under the Company Rights Plan and (ii) the entering into of this Agreement and the transactions contemplated hereby will not result in the grant of any rights to any Person under the Company Rights Plan or enable or require the rights distributed to stockholders thereunder to be exercised, distributed or triggered as a result thereof.

(e) No other U.S. state takeover statute or similar statute or regulation applies to or, to the Knowledge of the Company, purports to apply to the Offer.

(f) The Company has received the oral opinion of Deutsche Bank Securities Inc. to the effect that as of the date of this Agreement and based upon and subject to the matters set forth in such opinion, the consideration to be received by holders of shares of Company Common Stock in the Offer is fair, from a financial point of view, to such holders and such opinion has not been withdrawn, revoked or modified in any respect. A written copy of such opinion will be furnished to Parent promptly following the Company's receipt thereof, for informational purposes. The Company has been authorized by the Company's financial advisor listed above to permit the inclusion of such opinion in its entirety and a summary of the Company's financial advisor's analysis in preparing such opinion in the Schedule 14D-9.

3.3 Non-contravention; Required Consents.

(a) The execution, delivery or performance by the Company of this Agreement, the Related Agreements, the consummation of the Offer and the other transactions contemplated hereby and thereby, and the compliance by the Company with any of the terms hereof and thereof do not and will not (i) violate or conflict with any provision of the certificate of incorporation or bylaws of the Company or other equivalent charter documents of any of the Company's Subsidiaries, the Solar SPEs or Joint Ventures, (ii) subject to obtaining the Consents set forth in Section 3.3(a)(ii) of the Company Disclosure Schedule, violate, conflict with, or result in the breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, any Material Contract to which the Company or any of its Subsidiaries is a party, by which the Company or any of its Subsidiaries may be bound, or to which any of the assets or properties of the Company or any of its Subsidiaries is subject, (iii) violate or conflict with any Law or Order applicable to the Company or any of its Subsidiaries, Solar SPEs or Joint Ventures or by which any of their properties or assets are bound or (iv) result in the creation of any Lien upon any of the properties or assets of the Company or any of its Subsidiaries, except, in the case of each of clauses (ii), (iii) and (iv) above, for such violations, conflicts, breaches, defaults, terminations, accelerations or Liens which would not, individually or in the aggregate, (A) have a Material Adverse Effect, or (B) materially impede or delay the Company's performance of its material obligations under this Agreement or the Related Agreements.

(b) No consent, approval, Order or authorization of, or filing or registration with, or notification to (any of the foregoing being a "Consent"), any Governmental Authority is required on the part of the Company or any of its Subsidiaries, Solar SPEs or Joint Ventures in connection with the execution, delivery and performance by the Company of this Agreement and the Related Agreements and the consummation by the Company of the transactions contemplated hereby and thereby, except (i) applicable requirements, if any, of the Securities Act, the Exchange Act, state securities laws, and the rules and regulations of Nasdaq, (ii) compliance with any applicable requirements of the HSR Act and the EC Merger Regulation and (iii) such other Consents, the failure of which to obtain would not, individually or in the aggregate, have a material adverse effect on the ability of Parent and the Company to consummate the Offer.

3.4 Capitalization.

(a) The authorized capital stock of the Company consists of (i) 367,500,000 shares of Company Common Stock, 217,500,000 of which have been designated as Class A Common Stock and 150,000,000 of which have been designated as Class B Common Stock, and (ii) 10,042,490 shares of Company Preferred Stock. As of the close of business on April 3, 2011 (the "Capitalization Date"): (A) 56,893,750 shares of Class A Common Stock were issued and outstanding, of which 31,178 were unvested and subject to a right of repurchase as of such date, (B) 42,033,287 shares of Class B Common Stock were issued and outstanding, of which none were unvested and subject to a right of repurchase as of such date, (C) no shares of Company Preferred Stock were issued and outstanding and (D) there were 1,072,460 shares of Class A Common Stock held by the Company as treasury shares. As of the close of business on the Capitalization Date, with respect to the Company Plans, (1) there were outstanding Company Options to purchase or otherwise acquire (x) 1,461,156 shares of Class A Common Stock, of which 1,356,982 were exercisable or vested as of such date and (y) no shares of Class B Common Stock, and (2) there were outstanding Company Restricted Stock Units covering 6,166,744 shares of Class A Common Stock (including performance based Company Restricted Stock Units), and outstanding Company Restricted Stock awards covering 31,178 shares of Class A Common Stock and no shares of Class B Common Stock. As of the close of business on the Capitalization Date, there were 14,917,846 shares of Class A Common Stock reserved for issuance pursuant to the convertible debentures disclosed in the Company Form 10-K ("Convertible Debentures"). Since the close of business on the Capitalization Date, the Company has not granted, committed to grant or otherwise created or assumed any obligation with respect to the issuance of any shares of Company Capital Stock or Company Securities except as would have been permitted by Section 5.12(d) if this Agreement was entered into as of the Capitalization Date. All outstanding shares of Company Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of any preemptive rights.

(b) The Company has reserved 10,517,118 shares of Class A Common Stock and no shares of Class B Common Stock for issuance under the Company Plans.

(c) Except as set forth in Sections 3.4(a) and (b), as of the close of business on the Capitalization Date, there are (i) no outstanding shares of capital stock of, or other equity or voting interest in, the Company, (ii) no outstanding securities issued by the Company that are convertible into or exchangeable for shares of capital stock of, or other equity or voting interest in, the Company, (iii) no outstanding options, warrants, rights or other commitments or agreements to acquire from the Company, or that obligates the Company to issue, any capital stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interest in, the Company, (iv) no obligations of the Company to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock of, or other equity or voting interest (including any voting debt) in, the Company (the items in clauses (i), (ii), (iii) and (iv), together with the capital stock of the Company, being referred to collectively as "Company Securities") and (v) no other obligations of the Company or any of its Subsidiaries or Solar SPEs to make any payments based on the price or value of any Company Securities. There are no

outstanding agreements of any kind which obligate the Company or any of its Subsidiaries or Solar SPEs to repurchase, redeem or otherwise acquire any Company Securities.

(d) The Company has made available with respect to each outstanding Company Option, as of the close of business on April 26, 2011, the name of the holder of such option, the number of shares of Company Common Stock issuable upon the exercise of such option, the exercise price of such option, the date on which such option was granted, the vesting schedule for such option (including any acceleration provisions with respect thereto), including the extent unvested and vested on April 26, 2011 and whether such option is intended to qualify as an incentive stock option as defined in Section 422 of the Code. The Company has made available with respect to each award of outstanding Company Restricted Stock Units, as of the close of business on April 26, 2011, the name of the holder of such award, the number of shares subject to such award, the date of grant of such award and the applicable vesting and/or settlement schedule. The Company has made available with respect to each holder of Company Restricted Stock, as of the close of business on April 26, 2011, the name of the holder of such award, the number of shares of Company Restricted Stock held by such holder, the repurchase price of such Company Restricted Stock, the date on which such Company Restricted Stock was purchased or granted, the applicable vesting schedule pursuant to which the Company's right of repurchase or forfeiture lapses, and the extent to which such Company right of repurchase or forfeiture has lapsed as of such date. There are no commitments or agreements of any character to which the Company is bound obligating the Company to waive its right of repurchase or forfeiture with respect to any Company Restricted Stock as a result of the Offer (whether alone or upon the occurrence of any additional or subsequent events). The exercise price of each Company Option is no less than the fair market value of a share of Company Common Stock on the date of grant of such Company Option and such Company Option is not subject to Section 409A of the Code. All grants of Company Options, Company Restricted Stock Units and shares of Company Restricted Stock were validly issued and properly approved by the Company Board in accordance with all applicable Laws and the Company Plans and have been properly accounted for in accordance with GAAP on the Company's audited financial statements.

(e) Neither the Company nor any of its Subsidiaries nor any of the Solar SPEs is a party to any agreement restricting the transfer of the voting of, requiring registration of, or granting any preemptive rights, anti-dilutive rights or rights of first refusal or similar rights with respect to any securities of the Company.

3.5 Subsidiaries, Etc.

(a) Section 3.5(a)(i) of the Company Disclosure Schedule sets forth a complete and accurate list of the name and jurisdiction of organization of each Subsidiary of the Company. Each Subsidiary of the Company is wholly owned, directly or indirectly, by the Company. Section 3.5(a)(ii) of the Company Disclosure Schedule sets forth a complete and accurate list of the name and jurisdiction of organization of each Person in which the Company directly or indirectly owns more than 5% of the capital stock of or other equity or voting interest in such Person, other than Subsidiaries of the Company and the Solar SPEs. Each Person in which the Company directly or

indirectly owns more than forty-nine percent (49%) of the capital stock of or other equity or voting interest in such Person, other than Subsidiaries of the Company and the Solar SPEs, is referred to herein as a "Joint Venture." Section 3.5(a)(ii) of the Company Disclosure Schedule also sets forth, (A) with respect to each such Person listed therein, the type and number of shares, units or interests or other equity or voting interests owned, directly or indirectly, by the Company and (B) with respect to each Joint Venture listed therein, (x) the percentage of all outstanding capital stock or other equity or voting interest owned, directly or indirectly, by the Company and (y) the identity of the other Persons which own any outstanding capital stock of or other equity or voting interest in such Joint Venture. Except as listed in Section 3.5(a)(i) or (ii) of the Company Disclosure Schedule and the Solar SPEs, the Company does not own, directly or indirectly, more than 5% of the capital stock of, or other equity or voting interest in, any Person.

(b) Each of the Company's Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its respective organization (to the extent the "good standing" concept is applicable in the case of any jurisdiction outside the United States) except where the failure to be in good standing would not, individually or in the aggregate, have a Material Adverse Effect. Each of the Company's Subsidiaries has the requisite corporate or other applicable power and authority to carry on its respective business as it is presently being conducted and to own, lease or operate its respective properties and assets. Each of the Company's Subsidiaries is duly qualified to do business and is in good standing in each jurisdiction where the character of its properties owned or leased or the nature of its activities make such qualification necessary (to the extent the "good standing" concept is applicable in the case of any jurisdiction outside the United States), except where the failure to be in good standing would not, individually or in the aggregate, have a Material Adverse Effect. None of the Company's Subsidiaries is in violation of its certificate of incorporation, bylaws or other applicable charter governing documents, except for any such violation that would not, individually or in the aggregate, have a Material Adverse Effect on the Company.

(c) All of the outstanding capital stock of, or other equity or voting interest in, (i) each Subsidiary of the Company and Solar SPE have been duly authorized and validly issued and are fully paid, nonassessable and are free of preemptive rights and (ii) each Subsidiary of the Company, Solar SPE and Person listed or required to be listed in Section 3.5(a)(ii) of the Company Disclosure Schedule (but in the case of each such Person listed or required to be listed in Section 3.5(a)(ii) of the Company Disclosure Schedule, only with respect to such capital stock or other equity or voting interests owned, directly or indirectly, by the Company) are owned, directly or indirectly, by the Company, free and clear of all Liens other than Permitted Liens and free of any other restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other equity or voting interest) that would prevent such Subsidiary, Solar SPE or Joint Venture from operating its business in substantially the same manner as such businesses are presently conducted.

(d) Except in connection with the sale of Solar SPEs in the ordinary course of business, there are no outstanding (i) securities of the Company or any of its Subsidiaries or Solar SPEs convertible into or exchangeable for shares of capital stock of, or other equity or voting interests in, any Subsidiary of the Company or Solar SPE, (ii) options, warrants, rights or other

commitments or agreements to acquire from the Company or any of its Subsidiaries or Solar SPEs, or that obligate the Company or any of its Subsidiaries or Solar SPEs to issue, any capital stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interest in, any Subsidiary of the Company or Solar SPE, (iii) obligations of the Company to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock of, or other equity or voting interest (including any voting debt) in, any Subsidiary of the Company or Solar SPE (the items in clauses (i), (ii) and (iii), together with the capital stock of the Subsidiaries of the Company, being referred to collectively as "Subsidiary Securities") or (iv) other obligations of the Company or any of its Subsidiaries or Solar SPEs to make any payments based on the price or value of any Subsidiary Securities. There are no outstanding agreements of any kind which obligate the Company or any of its Subsidiaries or Solar SPEs to repurchase, redeem or otherwise acquire any outstanding Subsidiary Securities.

3.6 SEC Reports; Other Reports. The Company has timely (it being understood that "timely" means within the time period provided by Rule 12b-25(b)(2)(ii) under the Exchange Act) filed all forms, reports and documents with the SEC that have been required to be filed by it under applicable Laws since January 1, 2008 (all such forms, reports and documents, the "Company SEC Reports"). Each Company SEC Report (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing) complied as of its filing date, in all material respects with the applicable requirements of the Securities Act or the Exchange Act, as the case may be, each as in effect on the date such Company SEC Report was filed. True and correct copies of all Company SEC Reports filed prior to the date hereof, whether or not required under applicable Laws, have been furnished to Parent or are publicly available in the Electronic Data Gathering, Analysis and Retrieval (EDGAR) database of the SEC. As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), each Company SEC Report did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. None of the Company's Subsidiaries is required to file any forms, reports or other documents with the SEC. No executive officer of the Company has failed to make the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act with respect to any Company SEC Report, except as disclosed in certifications filed with the Company SEC Reports. Neither the Company nor any of its executive officers has received notice from any Governmental Authority challenging or questioning the accuracy, completeness, form or manner of filing of such certifications. As of the date of this Agreement, there are no outstanding written comments from the SEC with respect to any of the Company SEC Reports. Solely as used in this Section 3.6, the term "file" and variations thereof shall be broadly construed to include any manner in which a document or information is furnished, supplied or otherwise made available to the SEC.

3.7 Financial Statements and Controls.

(a) The consolidated financial statements of the Company and its Subsidiaries and Solar SPEs filed in the Company SEC Reports complied in all material respects with all applicable

accounting requirements and the published rules and regulations of the SEC with respect thereto and they have been prepared in accordance with GAAP consistently applied during the periods and at the dates involved (except as may be indicated in the notes thereto and, in the case of unaudited interim financial statements, as may be permitted by the SEC for Quarterly Reports on Form 10-Q), and fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries and Solar SPEs as of the dates thereof and the consolidated results of operations and cash flows for the periods then ended, subject, in each case to any filing of financial statements for the same period in subsequent Company SEC Reports, and in the case of unaudited interim financial statements, to normal and year-end audit adjustments as permitted by GAAP and the applicable rules and regulations of the SEC and any other adjustments expressly described therein, including the notes thereto.

(b) The Company has established, and maintains, adheres to and enforces a system of internal accounting controls which are effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP, including policies and procedures that (i) require the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company and its Subsidiaries and Solar SPEs, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company and its Subsidiaries and Solar SPEs are being made only in accordance with appropriate authorizations of management and the Company Board and (iii) provide reasonable assurance that prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company or any of its Subsidiaries or Solar SPEs that could have a material effect on the Company's financial statements. Neither any executive officer of the Company nor, to the Company's Knowledge, any executive officer of its Subsidiaries (including, to the Company's Knowledge, any employee thereof) nor, to the Company's Knowledge, the Company's independent auditors has identified or been made aware of (A) since January 1, 2008, any "significant deficiency" or "material weakness" (as defined in Rule 1-02(a)(4) of Regulation S-X promulgated by the SEC) in the system of internal accounting controls utilized by the Company, or (B) any fraud, whether or not material, that involves the Company's management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company.

(c) The Company has established and maintains disclosure controls and procedures (as such terms are defined in Rule 13a-15(e) or Rule 15d-15(e) promulgated under the Exchange Act) which ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to the Company's management to allow timely decisions regarding required disclosure.

(d) Neither the Company nor any of its Subsidiaries or Solar SPEs is a party to, or has any commitment to become a party to, any joint venture, partnership agreement or any similar Contract (including any Contract relating to any transaction, arrangement or relationship between or

among the Company or any of its Subsidiaries or Solar SPEs, on the one hand, and any unconsolidated affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand (such as any arrangement described in Section 303(a)(4) of Regulation S-K of the SEC)) where the purpose or effect of such arrangement is to avoid disclosure of any material transaction involving the Company or any its Subsidiaries or Solar SPEs in the Company's consolidated financial statements.

(e) Neither the Company nor any of its Subsidiaries or Solar SPEs nor, to the Company's Knowledge, any director or employee of the Company or any of its Subsidiaries has received or otherwise had or obtained Knowledge of any substantive complaint, allegation, assertion or claim, whether written or oral, that the Company or any of its Subsidiaries or Solar SPEs has engaged in questionable accounting or auditing practices. No current or former attorney representing the Company or any of its Subsidiaries or Solar SPEs has reported to the Company Board or any committee thereof or to any director or executive officer of the Company (i) evidence of a material violation of securities Laws or (ii) breach of fiduciary duty or similar violation by the Company or any of its officers, directors, employees or agents.

(f) To the Company's Knowledge, no employee of the Company or any of its Subsidiaries or Solar SPEs has provided or is providing information to any law enforcement agency regarding the commission or possible commission of any crime or the violation or possible violation of any applicable Laws of the type described in Section 806 of the Sarbanes-Oxley Act by the Company or any of its Subsidiaries or Solar SPEs. Neither the Company nor any of its Subsidiaries or Solar SPEs nor, to the Knowledge of the Company, any director, officer, employee, contractor, subcontractor or agent of the Company or any such Subsidiary or Solar SPE has discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against an employee of the Company or any of its Subsidiaries or Solar SPEs in the terms and conditions of employment because of any lawful act of such employee described in Section 806 of the Sarbanes-Oxley Act.

(g) The Company is in compliance in all material respects with all effective provisions of the Sarbanes-Oxley Act that apply to the Company and the applicable listing and corporate governance rules of Nasdaq.

3.8 No Undisclosed Liabilities. None of the Company, any of its Subsidiaries, any of the Solar SPEs or any of the Joint Ventures has any Liabilities other than (a) Liabilities reflected or otherwise reserved against in the Company Balance Sheet or notes thereto, (b) Liabilities incurred after the date of the Company Balance Sheet in the ordinary course of business consistent with past practice, (c) Liabilities contemplated by this Agreement, (d) Liabilities under executory contracts listed or not required to be listed in the Company Disclosure Schedule (excluding liabilities or obligations arising from any breach thereof or default thereunder), or (e) Liabilities that, individually or in the aggregate, would not have a Material Adverse Effect on the Company.

3.9 Absence of Certain Changes.

(a) Since the date of the Company Balance Sheet through the date of this Agreement, there has not been or occurred:

(i) any Material Adverse Effect;

(ii) any split, combination or reclassification of any shares of capital stock, declaration, setting aside or paying of any dividend or other distribution (whether in cash, shares or property or any combination thereof) in respect of any shares of capital stock of the Company or any of its Subsidiaries other than cash dividends made by any wholly owned Subsidiary of the Company to the Company or one of its Subsidiaries;

(iii) any damage, destruction or other casualty loss (whether or not covered by insurance) with respect to any assets that, individually or in the aggregate, are material to the Company and its Subsidiaries and Solar SPEs, taken as a whole;

(iv) any change in any method of accounting or accounting principles or practice, by the Company or any of its Subsidiaries or Solar SPEs, except for any such change required by reason of a change in GAAP or regulatory accounting principles;

(v) any making of or change in any Tax election, adoption of or change in any Tax accounting method, settlement or compromise of any material Tax claim, or consent to any extension or waiver of any limitation period with respect to any Tax claim;

(vi) any acquisition, redemption or amendment of any Company Securities or Subsidiary Securities, other than any acquisition or redemption permitted by the terms of the Company Stock Awards or the Company Plans;

(vii) (i) any incurrence or assumption of any long-term or short-term debt for borrowed money or issuance of any debt securities by the Company or any of its Subsidiaries except for short-term debt incurred to fund operations of the business or owed to the Company or any of its wholly owned Subsidiaries, in each case, in the ordinary course of business consistent with past practice, (ii) any assumption, guarantee or endorsement of the obligations of any other Person (except direct or indirect wholly owned Subsidiaries of the Company or Solar SPEs) by the Company or any of its Subsidiaries, (iii) any capital contribution to, or other investment in, any other Person by the Company or any of its Subsidiaries (other than capital contributions to indirect wholly owned Subsidiaries or Solar SPEs, in each case in the ordinary course of business consistent with past practice) in an amount exceeding $1,000,000 or (iv) any mortgage or pledge of the Company's or any of its Subsidiaries' or Solar SPE's assets, tangible or intangible, or any creation of any Lien (other than a Permitted Lien) thereupon;

(viii) any plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company or any of its Subsidiaries or Solar SPEs (other than among wholly owned Subsidiaries of the Company);

(ix) any commencement or settlement of any material Legal Proceedings by the Company or any of its Subsidiaries or Solar SPEs;

(x) any entry into, adoption, change, termination of, or negotiations regarding any collective bargaining agreement or similar Contract with a union, trade union, works council, or other labor relations entity by the Company or any of its Subsidiaries;

(xi) any material claims or matters raised by any individual, Governmental Authority, or any union, trade union, works council, or other labor relations entity regarding, claiming or alleging labor trouble, wrongful discharge or any other unlawful employment or labor practice or action with respect to the Company or any of its Subsidiaries;

(xii) any payment by the Company or any of its Subsidiaries of any bonus, incentive compensation, or similar payment, except for bonuses and incentive compensation made in the ordinary course of business consistent with past practice, or any granting by the Company or any of its Subsidiaries of any increase in severance or termination pay or any entry by the Company or any of its Subsidiaries into any Employee Plan or indemnification agreement or any agreement the benefits of which are contingent or the terms of which are materially altered upon the occurrence of a transaction involving the Company of the nature contemplated hereby;

(xiii) any promotion, demotion, or other change to the employment status or title of any executive officer of the Company or resignation or removal of any director of the Company; or

(xiv) waiver of any stock repurchase rights, or acceleration, amendment or change in the period of exercisability, as applicable, of options, restricted stock or any other equity or similar incentive awards (including without limitation any long-term incentive awards), or repricing of stock options or authorizing cash payments in exchange for any stock options granted under any of such plans.

3.10 Compliance with Laws and Orders.

(a) The Company, its Subsidiaries, the Solar SPEs and, to the Knowledge of the Company, the Joint Ventures are in compliance in all material respects with all applicable Laws and Orders.

(b) The Company, its Subsidiaries, the Solar SPEs and, to the Knowledge of the Company, the Joint Ventures, at all time during the last five (5) years have been in compliance in all material respects with the Foreign Corrupt Practices Act of 1977, as amended, or any rules or regulations thereunder, or any comparable foreign law or statute.

3.11 Permits. The Company and its Subsidiaries have, and are in compliance in all material respects with the terms of, all material permits, licenses, authorizations, consents, approvals and franchises from Governmental Authorities required to conduct their businesses as currently

conducted ("Permits"), and no suspension or cancellation of any such Permits is pending or, to the Knowledge of the Company, threatened.

3.12 Litigation; Orders; Regulatory Agreements.

(a) As of the date hereof, there is no Legal Proceeding pending or, to the Knowledge of the Company, threatened in writing against the Company, any of its Subsidiaries or any of their respective properties, or to the Knowledge of the Company against any current or former director or executive officer of the Company, any of its Subsidiaries or the Solar SPEs (in their capacities as such) that (A) involves, or would be reasonably expected to involve, damages or settlement payments in excess of $5,000,000, (B) seeks material injunctive relief, (C) seeks to impose any material legal restraint on or prohibition against or otherwise materially limit the Company's ability to operate the business of the Company and its Subsidiaries and Solar SPEs substantially as it was operated immediately prior to the date of this Agreement, or (D) would, individually or in the aggregate with all other pending or threatened Legal Proceedings reasonably be expected to prevent or materially delay or impede the consummation of the transactions contemplated by this Agreement or the ability of the Company to perform its covenants and obligations under this Agreement.

(b) As of the date of this Agreement, neither the Company nor any of its Subsidiaries or Solar SPEs is subject to any outstanding Order, except for Orders that would not, individually or in the aggregate, be material to the Company and its Subsidiaries and Solar SPEs, taken as a whole.

(c) As of the date of this Agreement, there are no currently outstanding claims for indemnification asserted by a third party under any Contract to which the Company, any of its Subsidiaries or any Solar SPE is a party, which claim is reasonably likely to be material to the business of the Company, its Subsidiaries and the Solar SPEs, taken as a whole.

3.13 Material Contracts.

(a) For purposes of this Agreement, a "Material Contract" shall mean all of the following Contracts to and by which the Company or any of its Subsidiaries is a party or is bound and has continuing material obligations:

(i) any requirements, minimum-purchase, "take or pay," or other firm-commitment Contract for the purchase of raw materials, components, parts or subassemblies (including, without limitation, polysilicon, ingots, wafers, solar cells, solar panels and system components), other than any such Contracts that (x) may be cancelled without material liability to the Company or its Subsidiaries upon notice of ninety (90) days or less or (y) are not, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole;

(ii) any Contract for a third Person subcontractor which manufactures or assembles for the Company or any Subsidiary solar cells, panels, power systems or other products in each case excluding any supplier of raw materials or components (including inverters), other than

any such Contract pursuant to which the Company is not reasonably likely to make payments in excess of $5,000,000 per year in 2011 or any calendar year thereafter;

(iii) any Contract containing any covenant (A) limiting the right of the Company or any of its Subsidiaries to engage in any line of business, to make use of any material technology owned by the Company or any of its Subsidiaries or Company Intellectual Property or to compete with any Person in any line of business, in each case other than any Contracts identified on Section 3.13(a)(xvi) of the Company Disclosure Schedule; (B) prohibiting or limiting the right of the Company or any of its Subsidiaries to engage in business with any Person to (x) distribute or offer any products or services (including, any solar cells, panels and power systems) or (y) purchase or otherwise obtain any raw materials, components, parts or subassemblies (including, polysilicon, ingots, wafers, solar cells, solar panels and system components); or (C) granting any exclusive rights to a third party, in each case other than any such Contracts that (x) may be cancelled without material liability to the Company or any of its Subsidiaries upon notice of no more than ninety (90) days or (y) are not material to the Company and its Subsidiaries, taken as a whole;

(iv) any Contract (A) relating to the disposition or acquisition by the Company or any of its Subsidiaries after the date of this Agreement of a material amount of assets other than in the ordinary course of business or (B) pursuant to which the Company or any of its Subsidiaries will acquire any material ownership interest in any other Person or other business enterprise other than the Company's Subsidiaries and any Solar SPEs;

(v) Contracts (A) for the distribution of Company products with the top two components distributors in effect as of the date of this Agreement, (B) that are form agreements for the resale of Company products with dealers in the US, Italy and Germany, (C) with the top five (5) commercial direct customers with contracts booked and pending completion, in each case excluding quotes and purchase orders with such distributors, resellers, and customers and (D) with the top five (5) utility power plant customers measured by revenue in 2010 (cumulative revenue from such customer in EPC and development);

(vi) any Contract containing any obligation to provide support or maintenance for the Company Products outside of the ordinary course of business consistent with past practice, other than those Contracts obligations that are terminable by the Company or any of its Subsidiaries on no more than ninety (90) days notice without liability or financial obligation to the Company or its Subsidiaries;

(vii) any mortgages, indentures, guarantees, Loans or credit agreements, security agreements or other Contracts relating to the borrowing of money or extension of credit, in each case in excess of $5,000,000, other than accounts receivables and payables in the ordinary course of business consistent with past practice;

(viii) any Contract related to the settlement of any Legal Proceeding that contains a material restriction on the business or operations of the Company or any of its Subsidiaries;

(ix) any Contract which grants any right of first refusal, right of first offer or similar right to acquire any material asset, right or property of the Company or any of its Subsidiaries, other than conditional sales contracts with respect to Solar SPEs entered into in the ordinary course of business;

(x) any Contract which limits the payment of dividends by the Company or any of its Subsidiaries;

(xi) any Contract (i) which governs the rights or obligations of the parties to any Joint Venture identified or required to be identified on Section 3.5(a)(ii) of the Company Disclosure Schedule or (ii) requiring the sharing of revenues that is material to the Company, other than with respect to Solar SPEs;

(xii) any Contract which relates to an acquisition, divestiture, merger or similar transaction and which contains any material obligations (including indemnification, "earn-out" or other contingent obligations) that are still in effect, other than with respect to sales of Solar SPEs in the ordinary course of business;

(xiii) any Contract with a union, trade union, works council, group of employees or independent contractors, or any other labor-relations body or entity, for collective bargaining with respect to the respective employees or independent contractors of the Company or any of its Subsidiaries, except for any such Contract that is required by Law ("Collective Bargaining Agreements");

(xiv) any Contract pursuant to which the Company or any of its Subsidiaries is bound to or has committed to provide any product or service to any third party on a most favored nation (MFN) basis or similar pricing basis;

(xv) any Contract pursuant to which the Company or any Subsidiary has agreed to perform any obligation of a third party under any Environmental Law or has agreed to indemnify or defend any third party from any Loss or Liability arising under any Environmental Law or with respect to any Hazardous Substance, other than in the ordinary course of business consistent with past practice;

(xvi) any Contract that is material to the business of the Company and its Subsidiaries, taken as a whole, (i) under which the Company or any of its Subsidiaries is granted the right to use or a license with respect to Intellectual Property Rights of a third Person, other than (A) non-exclusive trademark licenses or (B) licenses or services Contracts for commercially available software in binary form or available on an application service provider, "software as a service" or similar basis or (C) licenses for any Open Source Materials, or (ii) under which the Company or any of its Subsidiaries has licensed to others the right to use or agreed to transfer to others any of the Company Intellectual Property or rights with respect thereto, other than pursuant to Contracts with (A) any customer, dealer, sales representative, reseller or distributor or (B) any commercial partner

for the evaluation, certification or testing of Company Products ("Out-Licenses," and together with the Contracts excluded pursuant to (ii)(A) or (ii)(B) above, "Outbound IP Contracts");

(xvii) any other Contract that provides by its terms for payment obligations by the Company or any of its Subsidiaries of $10,000,000 or more in any current or future individual fiscal year that is not terminable by the Company or its Subsidiaries upon notice of ninety (90) days or less without material liability to the Company or its Subsidiary and is not disclosed pursuant to clauses (i) through (xvi) above;

(xviii) any Contract, or group of Contracts with a Person (or group of affiliated Persons), the termination or breach of which would have or would be reasonably expected to have a Material Adverse Effect and is not disclosed pursuant to clauses (i) through (xvii) above; and

(xix) any other Contract that is not disclosed pursuant to clauses (i) through (xviii) above that would be a "material contract" (as such term is defined in Item 601(b)(10) (other than Item 601(b)(10)(iii) of Regulation S-K of the SEC) with respect to the Company and its Subsidiaries.

(b) Section 3.13 of the Company Disclosure Schedule contains a complete and accurate list, as of the date hereof, of all Material Contracts.

(c) Except for any Material Contract which expires in accordance with its terms, each Material Contract set forth or required to be set forth in Section 3.13 of the Company Disclosure Schedule is valid and binding on the Company (and/or each such Subsidiary of the Company party thereto) and is in full force and effect, except for such failures to be in full force and effect that would not, individually or in the aggregate, be material to the Company and its Subsidiaries taken as a whole. Neither the Company nor any of its Subsidiaries party thereto, nor, to the Knowledge of the Company, any other party thereto, is in breach of, or default under, any Material Contract, and no event has occurred that with notice or lapse of time or both would constitute such a breach or default thereunder by the Company or any of its Subsidiaries, or, to the Knowledge of the Company, any other party thereto, except for such breaches and defaults that would not, individually or in the aggregate, be material to the Company and its Subsidiaries, taken as a whole.

(d) With respect to each Contract pursuant to which the Company or any of its Subsidiaries is bound, or has committed, to provide, whether as a prime contractor or subcontractor, any product or service to any Governmental Authority (each, a "Government Contract"): (i) there is no pending audit or investigation by any Governmental Authority of the Company, its Subsidiaries or any current director, officer or employee or, to the Knowledge of the Company, any former director, officer or employee of the Company or its Subsidiaries, with respect to any alleged bribes, directly or indirectly, irregularity, misstatement or omission arising under or relating to a Government Contract; and (ii) there is no pending, and neither the Company nor any of its Subsidiaries has, in the past five (5) years, received written notice of any claim by a Governmental

Authority of competent jurisdiction against the Company or any of its Subsidiaries, for any of the following: (1) defective pricing, (2) noncompliance, (3) fraud, (4) false claims or false statements, (5) unallowable costs, including those that may be included in indirect cost claims for prior years that have not yet been finally agreed to by the Governmental Authority or (6) the performance or administration by the Company or any of its Subsidiaries of material Contracts or subcontracts for any Governmental Authority.

3.14 Taxes.

(a) All Tax Returns required by applicable Laws to be filed by or on behalf of the Company or any of its Subsidiaries have been filed in compliance in all material respects with all applicable Laws, and all such Tax Returns are true, correct and complete in all material respects.

(b) The Company and each of its Subsidiaries has paid (or has had paid on its behalf) or has withheld and remitted to the appropriate Governmental Authority all material Taxes required to be paid or withheld. As of the date of the Company Balance Sheet, neither the Company nor any of its Subsidiaries had any material Liabilities for unpaid Taxes that had not been accrued or reserved on the Company Balance Sheet, and neither the Company nor any of its Subsidiaries has incurred any material Liabilities for Taxes since such date other than in the ordinary course of business consistent with past practice. The Company has established an adequate accrual for all material Taxes (including Taxes that are not yet due or payable) through the end of the last period for which the Company and its Subsidiaries ordinarily record items on their respective books. The Company has identified all material uncertain tax positions contained in all Tax Returns filed by the Company or any of its Subsidiaries, and has established adequate reserves and made any appropriate disclosures in the most recent consolidated financial statements of the Company and its Subsidiaries included in the Company SEC Reports filed prior to the date of this Agreement in accordance with the requirements of ASC 740-10 (formerly Financial Interpretation No. 48 of FASB Statement No. 109, Accounting for Uncertain Tax Positions). The Company has made available to Parent complete and accurate copies of all material income, franchise, non-U.S. and other material Tax Returns, filed by or on behalf of the Company or any of its Subsidiaries or any member of a group of corporations including the Company or any of its Subsidiaries for any taxable years commencing after December 31, 2006.

(c) There are no Liens on the assets of the Company or any of its Subsidiaries relating or attributable to Taxes, other than Permitted Liens.

(d) There are no material Legal Proceedings pending, or to the Knowledge of the Company, threatened in writing against or with respect to the Company or any of its Subsidiaries with respect to any Tax, and none of the Company or any of its Subsidiaries has been notified in writing of any audit or investigation with respect to any liability of the Company or any of its Subsidiaries for Taxes, and there are no agreements, arrangements, objections or waivers in effect to extend the period of limitations for the assessment or collection of any Tax for which the Company or any of its Subsidiaries may be liable.

(e) Neither the Company nor any of its Subsidiaries has executed any closing agreement pursuant to Section 7121 of the Code or any predecessor provision thereof, or any similar Laws.

(f) No written claim has been made by any appropriate Governmental Authority that the Company or any of its Subsidiaries is or may be subject to any taxation by a jurisdiction in which it does not file Tax Returns.

(g) Neither the Company nor any of its Subsidiaries has participated or engaged in any transaction that constitutes a "reportable transaction" as such term is defined in Treasury Regulations Section 1.6011-4(b).

(h) Neither the Company nor any of its Subsidiaries has agreed or is required to make any adjustments pursuant to Section 481 of the Code or any similar Laws by reason of a change in accounting method initiated by it or any other relevant party.

(i) The Company and its Subsidiaries will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Offer Closing as a result of (i) any installment sale or open transaction disposition made on or prior to the Offer Closing, or (ii) any prepaid amount received on or prior to the Offer Closing.

(j) The Company and its Subsidiaries have delivered or made available to Parent complete and accurate copies of all letter rulings, technical advice memoranda, and similar documents issued since December 31, 2007, by a Governmental Authority relating to U.S. federal, state, local or non-U.S. Taxes due from or with respect to the Company or any of its Subsidiaries.

(k) The Company and each of its Subsidiaries is in compliance with all material terms and conditions of any material (i) exemptions from taxation, Tax holidays, reduction in Tax rate or similar Tax relief, and the consummation of the transactions contemplated by this Agreement will not have any adverse effect on the continued validity and effectiveness of any of the foregoing.

(l) Section 3.14(l) of the Company Disclosure Schedule contains a complete and accurate list of the Company and any of its Subsidiaries that have been a distributing corporation or a controlled corporation in a transaction intended to be governed by Section 355 of the Code.

(m) The Company has not been a United States real property holding corporation within the meaning of Code Section 897(c)(2) during the applicable period specified in Code Section 897(c)(1)(A)(ii).

(n) No Solar SPE has incurred any Tax liability outside the ordinary course of business that would be, individually or in the aggregate, material to the Company and its Subsidiaries taken as a whole.

3.15 Employee Benefits.

(a) Section 3.15(a) of the Company Disclosure Schedule sets forth a complete and accurate list, as of the date hereof, of (i) all material "employee benefit plans" (as defined in Section 3(3) of ERISA), whether or not subject to ERISA and (ii) except for any of the following that are immaterial to the Company and its Subsidiaries, taken as a whole, all other employment agreements (except for offer letters providing for at-will employment that do not provide for severance, acceleration or post-termination benefits), repatriation and expatriation agreements, as well as all bonus, stock option, stock purchase or other equity-based awards and incentive compensation (in each case to the extent not set forth in Section 3.4 or Section 3.4 of the Company Disclosure Schedule), profit sharing, savings, retirement (including early retirement and supplemental retirement), disability benefits, accident benefits, salary continuation, health, dental or vision benefits, vacation, accrued leave, sabbatical, sick pay, unemployment benefits, deferred compensation, termination, retention, change of control and other fringe, welfare or other employee benefit plans, programs, agreements, Contracts, policies or arrangements (whether or not in writing or otherwise funded or unfunded) maintained, contributed to or required to be contributed to for the benefit of any Employee of the Company or any of its ERISA Affiliates or with respect to which the Company or any of its ERISA Affiliates has any material liability or obligation (together the "Employee Plans"). Section 3.15(a) of the Company Disclosure Schedule separately identifies each Employee Plan that is maintained in the United States (each, a "U.S. Employee Plan") and each Employee Plan that is an International Employee Plan.

(b) With respect to each Employee Plan, the Company has made available to Parent complete and accurate copies of, to the extent applicable, (A) the most recent annual report on Form 5500 required to have been filed for each Employee Plan, including any schedules and financial statements required to be attached thereto; (B) the most recent actuarial valuation, if any, prepared for each Employee Plan; (C) the most recent determination, notification, advisory and/or opinion letter, if any, from the IRS for any Employee Plan that is intended to qualify under Section 401(a) of the Code; (D) the most recent plan document, together with all amendments thereto and most recent summary plan description, together with any summary of material modifications to such summary plan description or a written description of the terms of any Employee Plan that is not in writing; (E) any related trust agreements, insurance contracts, insurance policies or other documents of any funding arrangement; and (F) if the Employee Plan is funded through a trust, the most recent annual accounting of Employee Plan assets.

(c) Neither the Company, any of the Company's Subsidiaries nor any of their respective ERISA Affiliates has ever maintained, established, sponsored, participated in or contributed to (or been obligated to participate in or contribute to) (i) an Employee Plan which was ever subject to Section 412 of the Code or Title IV of ERISA, (ii) a "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA), (iii) a "multiple employer plan" as defined in ERISA or the Code, or (iv) a "funded welfare plan" within the meaning of Section 419 of the Code. No Employee Plan provides material welfare benefits that are not fully insured through an insurance contract.

(d) Each U.S. Employee Plan has been maintained, operated and administered in compliance in all material respects with its terms and with all applicable Laws, including the applicable provisions of ERISA and the Code.

(e) Except as required by Laws or the terms of any Employee Plans, neither the Company nor any of its ERISA Affiliates has announced any intent (whether or not binding) to amend in any material respect or establish any new Employee Plan or to increase materially any benefits under any Employee Plan.

(f) There are no Legal Proceedings pending or, to the Knowledge of the Company, threatened on behalf of or against any Employee Plan, the assets of any trust under any Employee Plan, or the plan sponsor, plan administrator or any fiduciary or any Employee Plan, other than routine claims for benefits.

(g) None of the Company, any of its ERISA Affiliates, or, to the Knowledge of the Company, any of their respective directors, officers, employees or agents has, with respect to any Employee Plan, engaged in or been a party to any non-exempt "prohibited transaction," as such term is defined in Section 4975 of the Code or Section 406 of ERISA, which could reasonably be expected to result in the imposition of a material penalty assessed pursuant to Section 502(i) of ERISA or a material tax imposed by Section 4975 of the Code.

(h) No Employee Plan provides post-termination welfare benefits to former employees of the Company or its ERISA Affiliates, other than (i) as required by to Section 4980B of the Code or any similar Laws; (ii) death benefits under any Employee Plan that is intended to be qualified under Section 401(a) of the Code; or (iii) severance benefits reflected in Material Contracts, the Company's Management Career Transition Plan, or the publicly filed financial statements of the Company.

(i) Each Employee Plan that is intended to be "qualified" under Section 401 of the Code either has received a favorable determination or opinion letter from the IRS to such effect, or has applied (or has time remaining in which to apply) to the IRS for such a determination or opinion letter, and nothing has occurred since the date of such determination or opinion letter that would reasonably be expected to materially and adversely affect the qualified status of any such Employee Plan.

(j) Neither the Company nor any of its ERISA Affiliates has violated Section 402 of the Sarbanes-Oxley Act of 2002 and the execution of this Agreement and the consummation of the transactions contemplated hereby will not, to the Knowledge of the Company, cause such a violation.

(k) Neither the execution or delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will, either alone or in conjunction with any other event, (i) result in any material payment or benefit becoming due or payable, or required to be provided, to any Employee, (ii) materially increase the amount or value of any benefit or

compensation otherwise payable or required to be provided to any Employee, or (iii) result in the acceleration of the time of payment, vesting or funding of any such benefit or compensation, except, in each case, for benefits or value attributable solely to the increase in the value of the Company Common Stock as a result of any transactions contemplated by this Agreement.

(l) (x) There is no Contract, agreement, plan or arrangement to which the Company or any of its ERISA Affiliates is a party, including the provisions of this Agreement, covering any employee, consultant or director of the Company or any of its ERISA Affiliates, which, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Sections 280G, 404 or 162(m) of the Code; and (y) each nonqualified deferred compensation plan subject to Section 409A of the Code complies in all material respects with Section 409A of the Code and all applicable guidance issued thereunder. Neither the Company nor any of its ERISA Affiliates is a party to any agreement to indemnify, hold harmless or provide any tax gross-up payment to any Employee with respect to any penalty tax, interest payments or other Liability such Employee may incur under Sections 280G, 4999 or 409A of the Code. Section 3.15(l)(i) of the Company Disclosure Schedule lists the highest paid fifty employees of the Company in the United States, determined on the basis of income reported on their 2010 Forms W-2. Section 3.15(l)(ii) of the Company Disclosure Schedule contains a complete and accurate list of any Contract, agreement, plan or arrangement to which the Company or any of its ERISA Affiliates is a party, covering any Employee of the Company or any of its ERISA Affiliates, which, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Section 280G of the Code.

(m) All Contracts of employment with any Employee who provides services outside the United States ("Foreign Employees") can be terminated by six (6) months notice or less given at any time without giving rise to any material claim for damages, severance pay, or compensation (other than a statutory redundancy payment required by applicable Laws).

(n) Each International Employee Plan has been established, maintained and administered in material compliance with its terms and conditions and with the requirements prescribed by any and all statutory or regulatory Laws that are applicable to such International Employee Plan. Furthermore, no International Employee Plan has unfunded material liabilities that as of the date hereof, will not be offset by insurance or fully accrued. Except as required by Law, no condition exists that would prevent the Company from terminating or amending any International Employee Plan at any time for any reason without material Liability to the Company or its ERISA Affiliates (other than ordinary administration expenses or routine claims for benefits).

3.16 Labor Matters.

(a) No Collective Bargaining Agreement is currently being negotiated by the Company or any of its Subsidiaries. The consummation of the transactions contemplated by this Agreement will not entitle any third party (including any union, trade union, works council, group of employees or any other labor-relations body or entity) to any payments under any Collective Bargaining Agreement or require the Company or any of its Subsidiaries to consult with any union,

trade union, works council, group of employees or any other labor-relations body or entity. To the Knowledge of the Company, there are no activities or proceedings by any labor organization, union, group or association or Representative thereof to organize any such employees, independent contractors or directors. To the Knowledge of the Company, as of the date hereof, there are no lockouts, strikes, slowdowns, work stoppages, concerted refusals to work overtime, or threats thereof against or affecting the Company or its Subsidiaries, nor have there been any overtly threatened lockouts, strikes, slowdowns, work stoppages, or concerted refusals to work overtime. The Company and its Subsidiaries are not, nor have they been, a party to any redundancy agreements (including social plans or job protection plans). To the Knowledge of the Company, there are no actions, suits, claims, labor disputes or grievances pending or threatened or reasonably anticipated relating to any labor matters involving any employee, independent contractor or director, including charges of material unfair labor practices. Neither the Company nor any of its Subsidiaries has engaged in any material unfair labor practices within the meaning of the National Labor Relations Act or any similar state or local Law, including any similar Law of a non-U.S. jurisdiction.

(b) Except as would not result in material liability to the Company, the Company and each of its Subsidiaries is in compliance with all applicable Laws respecting employment, employment practices, terms and conditions of employment, worker classification, tax withholding, prohibited discrimination, equal employment, fair employment practices, meal and rest periods, immigration status, employee safety and health, wages (including overtime wages), compensation, and hours of work, and in each case, with respect to employees, consultants, independent contractors or directors: (i) is not liable for any arrears of wages, severance pay or any Taxes or any penalty for failure to comply with any of the foregoing, and (ii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the normal course of business and consistent with past practice). There are no actions, suits, claims or administrative matters pending, threatened or reasonably anticipated against the Company, any of its Subsidiaries, or any of their employees relating to any employee, employment Contract, or Employee Plan. There are no pending or, to the Company's Knowledge, threatened claims or actions against the Company, any of its Subsidiaries, any Company trustee or any trustee of any Subsidiary under any workers compensation policy or long-term disability policy that are reasonably likely to result in material liability to the Company. Neither the Company nor any Subsidiary is party to a conciliation agreement, consent decree or other agreement or Order with any Governmental Authority with respect to employment practices. Neither the Company nor any of its Subsidiaries has any material liability with respect to any misclassification of: (i) any Person as an independent contractor rather than as an employee, (ii) any employee leased from another employer, or (iii) any employee currently or formerly classified as exempt from overtime wages.

(c) Since January 1, 2011, neither the Company nor and Subsidiary has taken any action which would constitute a "plant closing" or "mass layoff" within the meaning of WARN, issued any notification of a plant closing or mass layoff required by WARN, or incurred any material liability or obligation under WARN that remains unsatisfied.

(d) No Solar SPE has any employees.

3.17 Real Property.

(a) Section 3.17(a)(i) of the Company Disclosure Schedule sets forth a list of all real property owned or ground leased by the Company or any of its Subsidiaries as of the date hereof (each such property, "Owned Property" and together, the "Owned Properties") except for any real property held for transfer to a Solar SPE. The Company or its Subsidiaries has fee title or a valid ground leasehold estate in and to each Owned Property, free and clear of any Liens except for Permitted Liens. Section 3.17(a)(ii) of the Company Disclosure Schedule contains a list of each lease, sublease or other agreement under which the Company or any of its Subsidiaries uses or occupies or has the right to use or occupy any real property as of the date of this Agreement, except for any Real Property related to ordinary course sales of solar power plants or held by Solar SPEs, and pursuant to which the Company or any of its Subsidiaries is obligated to pay in any calendar year an amount in excess of $1,000,000 (collectively, the "Leases") (such property, the "Leased Real Property" and together with the Owned Properties, the "Company Real Properties"). The Company has made available to Parent true, correct and complete copies of all ground leases related to Owned Property ("Ground Leases") and all Leases (including all material amendments, terminations and modifications thereof). The Company or its Subsidiaries have and own valid leasehold estates in the Leased Real Property, free and clear of all Liens other than Permitted Liens. The Leases and Ground Leases are each in full force and effect in accordance with their respective terms. To the Knowledge of the Company, (i) neither the Company nor any of its Subsidiaries is in material breach of or default under, or has received written notice of any breach of or default under, any Lease or Ground Lease and (ii) no event has occurred that with notice or lapse of time or both would constitute a material breach or default under any Lease or Ground Lease by the Company or any of its Subsidiaries or any other party thereto.

(b) To the Knowledge of the Company, the execution and delivery of this Agreement by the Company does not, and the consummation of the transactions contemplated hereby will not, result in any breach of nor constitute a default (or an event that with notice or lapse of time or both would become a default) under, or materially impair the rights of the Company or any of its Subsidiaries or alter the rights or obligations of the sublessor, lessor or licensor under, or give to others any rights of termination, amendment, acceleration or cancellation of any Leases or Ground Leases, or otherwise materially adversely affect the continued use and possession of the Company Real Properties for the conduct of business as presently conducted.

(c) Each Company Real Property is suitable for the conduct of the business as presently conducted therein or intended to be conducted thereon. Each Company Real Property includes all rights, properties and assets necessary to permit the Company and its Subsidiaries to conduct their business in all material respects in the same manner as their businesses have been conducted prior to the date hereof. To the Company's Knowledge, it has received no notice that the current or intended use and operation of the Company nor any of its Subsidiaries on the Company Real Properties or, to the Company's Knowledge, such Company Real Properties, violate any Law or any change contemplated therein relating to such property or operations thereon. To the

Company's Knowledge, it has received no notice of, any pending or threatened condemnation or similar proceeding or special assessments or improvements or activities of any public or quasi-public body which may give rise to any special assessment against any Company Real Property.

3.18 Environmental Matters.

(a) Except in compliance with Environmental Laws and in a manner that would not reasonably be expected to subject the Company or any of its Subsidiaries or Solar SPEs or, to the Knowledge of the Company, Joint Ventures to material liability, no Hazardous Substances are present on, under, or about any Company Real Property or, to the Company's Knowledge, were present on any former Company Real Property at the time it ceased to be owned, operated, occupied, controlled or leased by the Company or any of its Subsidiaries or Solar SPEs. There are no underground storage tanks, asbestos which is friable, or likely to become friable or polychlorinated biphenyls present on any Company Real Property.

(b) The Company and its Subsidiaries and Solar SPEs and, to the Knowledge of the Company, Joint Ventures have conducted all Hazardous Substance Activities in compliance in all material respects with all applicable Environmental Laws. The Hazardous Substance Activities of the Company and its Subsidiaries and Solar SPEs and, to the Knowledge of the Company, Joint Ventures have not resulted in the exposure of any person to a Hazardous Substance in a manner which has, to the Company's Knowledge, caused or could reasonably be expected to cause an adverse health effect to any such person.

(c) The Company holds all material Environmental Permits necessary for the continued conduct of any Hazardous Substance Activity of the Company and its Subsidiaries and Solar SPEs and, to the Knowledge of the Company, Joint Ventures as such activities are currently being conducted in all material respects. All such Environmental Permits are valid and in full force and effect in all material respects. The Company and its Subsidiaries and Solar SPEs and, to the Knowledge of the Company, Joint Ventures have complied in all material respects with all covenants and conditions of any material Environmental Permit which is or has been in force with respect to their Hazardous Substance Activities. To the Company's Knowledge, there are no circumstances that may cause the revocation, modification, suspension and/or annulment of any material Environmental Permits.

(d) As of the date hereof, no action, hearing, complaint, demand, proceeding, revocation proceeding, amendment procedure, writ, injunction or claim is pending, or to the best of the Company's Knowledge, threatened, concerning or relating to any Environmental Permit or any Hazardous Substance Activity of the Company or any of its Subsidiaries or Solar SPEs or, to the Knowledge of the Company, Joint Ventures which is reasonably expected to result in a material Liability to the Company, its Subsidiaries and Solar SPEs taken as a whole. None of the Company, any of its Subsidiaries, Solar SPEs or, to the Knowledge of the Company, Joint Ventures has received any written notice or other written communication of any alleged material claim, material violation of or material liability under any Environmental Law which has not heretofore been cured or for which there is any remaining material liability.

(e) None of the Company, any of its Subsidiaries, Solar SPEs or, to the Knowledge of the Company, Joint Ventures has Knowledge of any fact or circumstance that would be reasonably likely to involve the Company or any of its Subsidiaries, Solar SPEs or, to the Knowledge of the Company, Joint Ventures in any material litigation under any Environmental Law or which would reasonably be expected to impose upon the Company or any of its Subsidiaries, Solar SPEs or, to the Knowledge of the Company, Joint Ventures any material environmental liability.

(f) The Company and its Subsidiaries have delivered to Parent or made available for inspection by Parent and its agents and representatives all material environmental audits and material environmental assessments of any current or former Company Real Property in its possession, and all material Environmental Permits held by the Company or any of its Subsidiaries.

3.19 Personal Property. The machinery, equipment, furniture, fixtures and other tangible personal property and assets owned or leased by the Company or any of its Subsidiaries (the "Assets") are, in the aggregate, sufficient, in suitable physical condition and adequate to carry on their respective businesses in all material respects as presently conducted, and the Company and its Subsidiaries are in possession of and have good title to, or valid leasehold interests in or valid rights under contract to use, such Assets that are material to the Company and its Subsidiaries, free and clear of all Liens (other than Permitted Liens).

3.20 Intellectual Property.

(a) Section 3.20(a) of the Company Disclosure Schedule contains a complete and accurate list of each item of Company Registered Intellectual Property and for each such item, (i) the name of the applicant/registrant, inventor/author and current owner, (ii) the jurisdiction where the application/registration is located, (iii) the application or registration number, (iv) the filing date and the issuance/registration/grant date and (v) the prosecution status thereof.

(b) No event has occurred, and, to the Knowledge of the Company, no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or would reasonably be expected to, nor will the consummation of the transactions contemplated by this Agreement, result in the disclosure or delivery by the Company, any of its Subsidiaries or any Person acting on their behalf to any Person of any material Company Source Code.

(c) In all cases where any government funding, facilities or resources of a Governmental Authority or university were used in the development of Company Products or any material Company Intellectual Property, the Company has taken reasonable measures, and otherwise complied in all material respects with applicable requirements, as necessary to obtain ownership to any material inventions (and corresponding Patent rights) conceived or first reduced to practice in such development efforts.

(d) The Company and its Subsidiaries solely own all right, title and interest in all Company Registered Intellectual Property and, to the Knowledge of the Company, the other material

Company Intellectual Property, free and clear of all Liens other than Permitted Liens and rights granted under the Outbound IP Contracts.

(e) The Company and each of its Subsidiaries has taken reasonable and appropriate steps to protect and preserve the confidentiality of any material Trade Secrets that comprise any part of the Company Intellectual Property. To the Knowledge of the Company, there are no unauthorized uses, disclosures or infringements of any Trade Secrets included in the Company Intellectual Property by any Person in a manner that has or would reasonably be expected to have a Material Adverse Effect. To the Knowledge of the Company, all use and disclosure by the Company or any of its Subsidiaries of Trade Secrets owned by another Person have been pursuant to the terms of a written agreement with such Person or was otherwise lawful. Without limiting the foregoing, the Company and its Subsidiaries have and use commercially reasonable efforts to enforce a policy requiring (i) employees to execute confidentiality and assignment agreements substantially similar to the Company's standard forms previously provided to Parent, and (ii) consultants and contractors to execute a confidentiality and assignment agreement in favor of the Company pursuant to terms substantially similar to the terms of the Company's standard forms of agreements previously made available to Parent.

(f) To the Knowledge of the Company, no Person or any of such Person's products or services or other operation of such Person's business is infringing upon or otherwise violating any Company Intellectual Property in a manner that has or would reasonably be expected to have a Material Adverse Effect, and in the last three (3) years neither the Company nor any of its Subsidiaries have asserted or threatened in writing any claim against any Person alleging that any of such Person's products or services or other operation of such Person's business is infringing upon or otherwise violating any Company Intellectual Property.

(g) To the Knowledge of the Company, none of the Company, any of its Subsidiaries, or any of their respective businesses, operations, products or services is infringing or violating, or has infringed or violated, the Intellectual Property Rights of any third Person in a manner that has or would reasonably be expected to have resulted in a material liability. In the last three (3) years, neither the Company nor any of its Subsidiaries has received written notice of any suit, claim, action, investigation or proceeding made, conducted or brought by a third Person against the Company or any of its Subsidiaries alleging that the Company or any of its Subsidiaries or any of its or their then current products or services or other operation of the Company's or its Subsidiaries' business infringed or violated the Intellectual Property Rights of any third Person that was not otherwise disclosed in the Company 10-K, and no such suit, claim, action, investigation or proceeding has been filed or, to the Knowledge of the Company, threatened in writing, alleging that the Company or any of its Subsidiaries or any of its or their current products or services or other operation of the Company's or its Subsidiaries' business infringes or violates the Intellectual Property Rights of any third Person. In the last three (3) years, there has been no pending or, to the Knowledge of the Company, threatened written claim challenging the validity or enforceability of, or contesting the Company's or any of its Subsidiaries' rights with respect to, any of the Company Intellectual Property. The Company and its Subsidiaries are not subject to any Order that materially restricts or impairs the use of any Company Intellectual Property.

(h) To the Knowledge of the Company, all Company Products conform in all material respects with all applicable material contractual commitments and all material express and implied warranties, the Company's or any of its Subsidiaries', as the case may be, published product specifications and with all regulations, certification standards and other requirements of any applicable Governmental Entity or third party, except, in each case, for failures to conform occurring in the ordinary course of business for which an adequate reserve has been accrued or established on the Company Balance Sheet. There is no presently pending, or, to the Knowledge of the Company, threatened, and, to the Knowledge of the Company, there is no basis for, any material civil, criminal or administrative actions, suits, demands, claims, hearings, notices of violation, investigations, proceedings or demand letters relating to any alleged hazard or alleged defect in design, manufacture, materials or workmanship, including any failure to warn or alleged breach of express or implied warranty or representation, relating to any Company Product, in each case other than any such actions, suits, demands, claims, hearings, notices of violation, investigations, proceedings or demand letters occurring in the ordinary course of business for which an adequate reserve has been accrued or established on the Company Balance Sheet.

(i) No software that is distributed as "open source software" or under a similar licensing or distribution model (collectively, "Open Source Materials") (including the GNU General Public License and the LGPL) is incorporated into a Company Product in a manner such that the Company's use or distribution of such Open Source Materials as incorporated into the Company Products gives rise to any obligation on the Company or any Subsidiaries to disclose or distribute any material Company Source Code, or to license any material Company Intellectual Property for the purpose of making derivative works or to distribute any material Company Intellectual Property or Company Product without charge.

(j) No Solar SPE owns any Intellectual Property Rights material to the business of the Company and its Subsidiaries, taken as a whole, or has any right to use or a license with respect to any Company Intellectual Property other than to the extent required to use the products and services sold or provided to the Solar SPE by the Company and/or its Subsidiaries.

3.21 Insurance. Each material insurance policy of the Company and its Subsidiaries is in full force and effect, no notice of cancellation, refusal to reissue or material increase in the premium therefor has been received with respect thereto, and there is no existing default or event which, with the giving of notice or lapse of time or both, would constitute a default, by any insured thereunder, except for such defaults that would not, individually or in the aggregate, result in a Material Adverse Effect. There is no material claim pending under any of such policies as to which coverage has been denied or disputed by the underwriters of such policies and there has been no written threatened termination of, or to material premium increase with respect to, any such policies.

3.22 Related Party Transactions. Except (a) as set forth in any Company SEC Report filed prior to the date hereof, and (b) for compensation or other employment arrangements in the ordinary course, there are no transactions, agreements, arrangements or understandings between the Company or any of its Subsidiaries, on the one hand, and any Affiliate (including any officer or director) thereof, but not including any wholly owned Subsidiary of the Company, on the other hand, that

would be required to be disclosed pursuant to Item 404 of Regulation S-K under the Securities Act in the Company's Form 10-K or proxy statement pertaining to an annual meeting of stockholders.

3.23 Brokers. Except for Deutsche Bank Securities Inc., there is no investment banker, broker, finder, agent or other Person that has been retained by or is authorized to act on behalf of the Company or any of its Subsidiaries who is entitled to any financial advisor's brokerage, finder's or any other fee or commission in connection with the transactions contemplated by this Agreement.

3.24 Schedule TO and Schedule 14D-9.

(a) Any information provided by or on behalf of the Company or any of its directors, officers, employees, affiliates, agents or other representatives for inclusion or incorporation by reference in the Schedule TO or the Offer Documents shall not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) The Schedule 14D-9 will, when filed with the SEC, comply as to form in all material respects with the applicable requirements of the Exchange Act and all other applicable Laws. The Schedule 14D-9, when filed with the SEC and on the date first disseminated to the Company stockholders, shall not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *however*, that no representation or warranty is made by the Company with respect to information supplied by Parent or any of its directors, officers, employees, affiliates, agents or other representatives for inclusion or incorporation by reference in the Schedule 14D-9.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT

Except as set forth in the disclosure letter (the "Parent Disclosure Schedule") delivered by Parent to the Company dated as of the date hereof, which Parent Disclosure Schedule identifies by reference to, or has been grouped under a heading referring to, a specific section of this Agreement and constitutes an exception hereto and disclosure made pursuant to any section of the Parent Disclosure Schedule shall be deemed to be disclosed against each of the other sections of this Agreement to the extent the applicability of the disclosure to such other section is reasonably apparent from the disclosure made (without reference to the underlying documents referenced therein), Parent represents and warrants to the Company as follows:

4.1 Organization and Standing.

(a) Parent is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation. Parent has the requisite corporate, limited liability or other power and authority to conduct its business as it is presently being conducted and to own, lease or operate its respective properties and assets.

(b) Parent is duly qualified to do business and is in good standing in each jurisdiction where the character of its properties owned or leased or the nature of its activities make such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a material adverse effect on Parent. Parent has delivered or made available to the Company complete and correct copies of the certificate of incorporation and bylaws (or other equivalent charter documents, as applicable) of Parent. Parent is not in violation of its certificate of incorporation, bylaws or other equivalent charter documents, as applicable.

4.2 Corporate Approvals. Parent has all requisite corporate power and authority to execute and deliver this Agreement and each of the Related Agreements to which it is a party, to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder. The execution and delivery by Parent of this Agreement and each of the Related Agreements to which it is a party, the performance by Parent of its obligations hereunder and thereunder, and, assuming the accuracy in all respects of the representations and warranties of the Company set forth in Section 3.4, the consummation by Parent of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Parent and no additional corporate or other actions or proceedings (including a vote of Parent's stockholders) on the part of Parent or Total S.A. are necessary to authorize this Agreement or the consummation of the transactions contemplated hereby and by the Related Agreements. This Agreement and each of the Related Agreements to which Parent is a party have been duly executed and delivered by Parent and, assuming the due authorization, execution and delivery by the other parties thereto, constitutes a legal, valid and binding obligation of Parent, enforceable against Parent in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency (including, without limitation, all Laws relating to fraudulent transfers), reorganization, moratorium and other similar Laws affecting or relating to creditors rights generally and is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

4.3 Non-contravention; Required Consents.

(a) The execution, delivery or performance by Parent of this Agreement, the Related Agreements, the consummation by Parent of the transactions contemplated hereby and thereby and the compliance by Parent with any of the terms hereof and thereof do not and will not (i) violate or conflict with any provision of the certificate of incorporation, bylaws or other equivalent constituent documents (as applicable) of Parent, (ii) violate, conflict with, or result in the breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, any material Contract to which Parent, Total S.A. or any of their Subsidiaries is a party, by which Parent, Total S.A. or any of their Subsidiaries are bound or to which any of the assets or properties of Parent, Total S.A. or any of their Subsidiaries is subject, (iii) assuming compliance with the matters referred to in Section 4.3(b), violate or conflict with any Law or Order applicable to Parent, Total S.A. or any of their Subsidiaries or by which any of their properties or assets are bound or (iv) result in the creation of any Lien upon any of the properties or assets of Parent, Total S.A. or any of their Subsidiaries, except, in the case of

each of clauses (ii), (iii) and (iv) above, for such violations, conflicts, breaches, defaults, terminations, accelerations or Liens which would not, individually or in the aggregate, be reasonably expected to have a material adverse effect on the ability of Parent to consummate the Offer.

(b) No consent of any Governmental Authority is required on the part of Parent or any of its Affiliates in connection with the execution, delivery and performance by Parent of this Agreement and the Related Agreements and the consummation by Parent and Total S.A. of the transactions contemplated hereby and thereby, except (i) applicable requirements, if any, of the Securities Act, the Exchange Act, state securities laws, the rules and regulations of Nasdaq, (ii) compliance with any applicable requirements of the HSR Act and the EC Merger Regulation, and (iii) such other Consents, the failure of which to obtain would not, individually or in the aggregate, be reasonably expected to have a material adverse effect on the ability of Parent to consummate the Offer.

4.4 Litigation; Orders. As of the date hereof, there is no Legal Proceeding pending or, to the Knowledge of Parent, threatened, against Parent, Total S.A. or any of its Subsidiaries or any of their respective properties that would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Parent to consummate the Offer. Neither Parent nor any of its Subsidiaries is subject to any outstanding Order, except for Orders that would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Parent to consummate the Offer.

4.5 Ownership of Company Capital Stock. Prior to the date hereof, Parent, alone or together with any other Person, was not at any time during the last three (3) years an "interested stockholder" within the meaning of Section 203 of the DGCL.

4.6 Brokers. Except for Credit Suisse Securities (Europe) Limited, there is no investment banker, broker, finder, agent or other Person that has been retained by or is authorized to act on behalf of Parent or any of its Subsidiaries who is entitled to any financial advisor's, brokerage, finders' or other similar fee or commission in connection with the transactions contemplated by this Agreement.

4.7 Financing. Parent has sufficient cash for the timely satisfaction of all of Parent's obligations under this Agreement, including payment of the aggregate Offer Price.

4.8 Schedule TO and Schedule 14D-9.

(a) The Schedule TO and the Offer Documents will, when filed with the SEC, comply as to form in all material respects with the applicable requirements of the Exchange Act and all other applicable Laws. The Schedule TO and the Offer Documents, when filed with the SEC and on the date first published, sent or given to the Company stockholders, shall not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *however*, that no representation or warranty is made by Parent with respect to information

supplied by or on behalf of the Company or any of its directors, officers, employees, affiliates, agents or other representatives for inclusion or incorporation by reference in the Schedule TO or the Offer Documents.

(b) Any information provided in writing by Parent or any of its directors, officers, employees, affiliates, agents or other representatives for inclusion or incorporation by reference in the Schedule 14D-9 shall not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

ARTICLE V

ADDITIONAL AGREEMENTS

5.1 Reasonable Best Efforts to Complete.

(a) Upon the terms and subject to the provisions set forth in this Agreement, each of Parent and the Company shall use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other party or parties hereto in doing, all things reasonably necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including by:

(i) using its reasonable best efforts to cause the conditions to the Offer set forth in Annex A to be satisfied or fulfilled;

(ii) using its reasonable best efforts to make any necessary filings with respect to the Offer under the Exchange Act;

(iii) using its reasonable best efforts to obtain all necessary or appropriate consents, waivers and approvals, and to provide all necessary notices, under Material Contracts so as to maintain and preserve the benefits under such Contracts following the consummation of the transactions contemplated by this Agreement;

(iv) making all necessary registrations, declarations and filings with Governmental Authorities in connection with this Agreement and the consummation of the transactions contemplated hereby, and obtaining all necessary actions or non-actions, waivers, clearances, consents, approvals, Orders and authorizations from Governmental Authorities (including any necessary antitrust approvals) in connection with this Agreement and the consummation of the transactions contemplated hereby; and

(v) assisting the other parties in (A) making all necessary registrations, declarations and filings with Governmental Authorities in connection with this Agreement and the consummation of the transactions contemplated hereby, including by providing such information regarding itself, its Affiliates and their respective operations as may be requested in connection with

a filing by it or any of its Subsidiaries and (B) obtaining all necessary actions or non-actions, waivers, clearances, consents, approvals, Orders and authorizations from Governmental Authorities (including any necessary antitrust approvals) in connection with this Agreement and the consummation of the transactions contemplated hereby.

(b) Notwithstanding anything to the contrary set forth in this Agreement, nothing in this Section 5.1 or elsewhere in this Agreement shall be deemed to require Parent or the Company or any Subsidiary thereof to agree to any divesture by itself or any of its Affiliates of shares of capital stock or of any business, assets or property, or the imposition of any limitation on the ability of any of them to conduct their business or to own or exercise control of such assets, properties and stock.

5.2 Regulatory Filings.

(a) Without limiting the generality of the provisions of Section 5.1, (i) as promptly as practicable following the execution and delivery of this Agreement (and in any event, within ten (10) Business Days after the date thereof), each of Parent and the Company shall file with the Federal Trade Commission (the "FTC") and the Antitrust Division of the U.S. Department of Justice (the "Antitrust Division") a Notification and report Form in accordance with the HSR Act with respect to the Offer, and (ii) as promptly as practicable following the execution and delivery of this Agreement, each of Parent and the Company, as applicable, shall make all necessary filings with the European Commission (the "Commission" and, together with the FTC, the Antitrust Division and, if the Commission has taken a decision to refer the whole or part of the transactions contemplated by the Agreement to the competent authorities of a Member State in accordance with Article 9(3) of the EC Merger Regulation, such competent authorities, the "Applicable Governmental Authorities"), and thereafter make any other required submissions and respond as promptly as practicable to any requests from the Commission for additional information or documentary material required under the EC Merger Regulation. The Company and Parent shall have the right to review in advance, and to the extent practicable each will consult the other on, in each case subject to applicable Laws and Orders, all the documentation and information relating to either party and any of its respective Subsidiaries, that appears in any application, notice, petition, filing and documentation made with, or written materials submitted to, any third party or any Applicable Governmental Authority in connection with the transactions contemplated by this Agreement. In exercising the foregoing right, each of the parties hereto shall act reasonably and as promptly as practicable. Parent and the Company shall promptly advise each other upon receiving any substantive communication from any Applicable Governmental Authority regarding any of the transactions contemplated by this Agreement.

(b) Each of Parent and the Company shall (i) cooperate and coordinate with the other in the making and submitting the applications, notices, petitions and filings contemplated by this Section 5.2, (ii) subject to applicable Laws and Orders, supply the other promptly with any information that may be required in order to effectuate such applications, notices, petitions and filings, and (iii) supply promptly any additional information that may be required or reasonably requested by any Applicable Governmental Authority in connection with such applications, notices,

petitions and filings. Subject to applicable Laws and Orders, each party hereto shall (A) promptly inform the other party hereto of any substantive communication from any Applicable Governmental Authority regarding any of the transactions contemplated by this Agreement, (B) permit the other party hereto the opportunity to review in advance all the information relating to Parent and its Subsidiaries or the Company and its Subsidiaries, as the case may be, that appears in any application, notice, petition or filing made with, or written materials submitted to, any third party and/or any Applicable Governmental Authority in connection with the transactions contemplated hereby, (C) not participate in any substantive meeting or discussion with any Applicable Governmental Authority in respect of any filing, investigation, or inquiry concerning the transactions contemplated hereby unless and until such party has consulted with the other party, and, to the extent permitted by such Applicable Governmental Authority, give the other party the opportunity to attend such meeting or discussion, and (D) furnish the other party with copies of all substantive correspondences, filings, and written communications between them and their Subsidiaries and Representatives, on the one hand, and any Applicable Governmental Authority or its respective staff, on the other hand, with respect to the transactions contemplated hereby. If any party hereto or Affiliate thereof receives a request for additional information or documentary material from any such Applicable Governmental Authority with respect to the transactions contemplated by this Agreement, then such party shall use its reasonable best efforts to make, or cause to be made, as soon as reasonably practicable and after consultation with the other party, an appropriate response in compliance with such request.

(c) Notwithstanding anything to the contrary set forth in this Agreement, nothing in this Section 5.2 or elsewhere in this Agreement shall be deemed to require Parent or the Company or any Subsidiary thereof to agree to any divestiture by itself or any of its Affiliates of shares of capital stock or of any business, assets or property, or the imposition of any limitation on the ability of any of them to conduct their business or to own or exercise control of such assets, properties and stock.

5.3 No Solicitation.

(a) Subject to Section 5.3(c) below, the Company and its Subsidiaries shall not, and shall not authorize or permit each of their respective Representatives to, continue any existing activities, discussions or negotiations with any Persons conducted heretofore with respect to any Acquisition Proposal or Acquisition Transaction.

(b) Subject to Section 5.3(c) below, at all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement in accordance with Article VI and the Offer Closing, the Company shall not, the Company shall cause its Subsidiaries not to, and the Company shall not authorize or permit any of its, any of its Subsidiaries or any of their respective Representatives to, directly or indirectly:

(i) solicit, initiate, knowingly encourage, knowingly induce or knowingly facilitate any inquiry with respect to, or the making, submission or announcement of, an Acquisition Proposal or an Acquisition Transaction;

(ii) furnish to any Person (other than Parent, its Affiliates or any of its or their designees) any non-public information relating to the Company or any of its Subsidiaries, or afford access to the business, properties, assets, books or records of the Company or any of its Subsidiaries to any Person (other than Parent, its Affiliates or any of its or their designees), or take any other action, in each case in a manner that is intended or would be reasonably expected to assist or facilitate the making of any Acquisition Proposal or an Acquisition Transaction;

(iii) participate or engage in discussions or negotiations with any Person with respect to an Acquisition Proposal or an Acquisition Transaction;

(iv) approve, endorse or recommend, or propose to approve, endorse or recommend, an Acquisition Proposal or an Acquisition Transaction;

(v) enter into any merger agreement, letter of intent, share purchase agreement, asset purchase agreement or share exchange agreement, option agreement or other similar agreement contemplating or otherwise relating to, or that is intended to, or would reasonably be expected to, lead to any Acquisition Proposal (other than an Acceptable Confidentiality Agreement);

(vi) terminate, amend or waive any rights under (or fail to enforce by seeking an injunction or by seeking to specifically enforce the terms of) any "standstill" or other similar agreement between the Company or any of its Subsidiaries and any other Person, unless such Person enters into an Acceptable Confidentiality Agreement (which would supersede any existing "standstill" or other similar agreement) in accordance with Section 5.3(c);

(vii) take any other action to exempt any Person, other than Parent, from DGCL Section 203 or any other applicable anti-takeover Laws (except as contemplated by the Affiliation Agreement); or

(viii) agree or propose to do any of the foregoing.

(c) (i) Notwithstanding the foregoing terms of Section 5.3(a), Section 5.3(b) or any other provision in this Agreement, at any time prior to the Offer Closing, the Company Board may, directly or indirectly through advisors, agents or other intermediaries, (x) engage or participate in discussions or negotiations with any Person that has, after the date hereof, made (and not withdrawn) a bona fide written Acquisition Proposal that was not received as a result of any material breach or violation of the terms of Section 5.3(a) or Section 5.3(b) (including any such material breach deemed to have occurred pursuant to Section 5.3(d)) and that the Company Board shall have reasonably determined in good faith (after consultation with its financial advisor and its outside legal counsel) that such Acquisition Proposal either constitutes or is reasonably likely to lead to a Superior Proposal, and/or (y) make available or furnish any non-public information relating to the Company

or any of its Subsidiaries to any Person that has made (and not withdrawn) an Acquisition Proposal contemplated by the foregoing subclause (x) pursuant to a confidentiality and "standstill" agreement with such Person, the terms of which are no less favorable to the Company than those contained in the Confidentiality Agreement (*provided*, *however* that such "standstill" provision may permit such person to make a non-public Acquisition Proposal to the Company Board providing for a negotiated Acquisition Transaction) (an "Acceptable Confidentiality Agreement"); *provided*, *however*, that in the case of any action taken pursuant to the preceding clauses (x) or (y): the Company shall have given Parent at least thirty-six (36) hours prior written notice of (A) its intent to take the action permitted by this Section 5.3(c), (B) the identity of the Person(s) making such Acquisition Proposal, and (C) all of the material terms and conditions of such Acquisition Proposal (unless such Acquisition Proposal is in written form, in which case the Company shall give Parent a copy thereof together with the commitment letters and other material documents constituting or relating to such Acquisition Proposal); and

(ii) prior to or contemporaneously with furnishing any non-public information to such Person, the Company shall have furnished or made available such non-public information to Parent (to the extent such information has not been previously furnished or made available by the Company to Parent).

(d) Without limiting the generality of the foregoing, Parent and the Company acknowledge and hereby agree that any action taken by any Representative of the Company or any of its Subsidiaries that would be a breach of the restrictions set forth in this Section 5.3 if taken by the Company shall be deemed to be a breach of this Section 5.3 by the Company for all purposes of and under this Agreement.

(e) In addition to the obligations of the Company set forth in Section 5.3(b), the Company shall promptly, and in all cases within twenty-four (24) hours of its Knowledge of receipt, advise Parent in writing of the receipt by the Company, any of its Subsidiaries or any of their respective Representatives of (i) any Acquisition Proposal, (ii) any request for information that would reasonably be expected to lead to an Acquisition Proposal or (iii) any inquiry with respect to, or which would reasonably be expected to lead to, any Acquisition Proposal. In connection with such notice, the Company shall provide Parent with the material terms and conditions of such Acquisition Proposal, request or inquiry (and all material agreements, commitment letters and other material documents constituting or relating to such Acquisition Proposal), and the identity of the Person or group making any such Acquisition Proposal, request or inquiry. At all times from and after the Company's, any of its Subsidiary's or any of their respective Representative's receipt thereof, the Company shall keep Parent reasonably informed of the status and material terms and conditions (including all amendments or proposed amendments) of any such Acquisition Proposal, request or inquiry.

(f) The Company shall provide Parent with at least forty-eight (48) hours prior written notice (or any shorter period of advance notice provided to members of the Company Board) of a meeting of the Company Board (or any committee thereof) at which the Company Board (or any

committee thereof) is reasonably expected to consider an Acquisition Proposal or Acquisition Transaction.

5.4 Company Board Recommendation.

(a) Subject to the terms of Sections 5.4(b)-(c), the Company Board shall recommend that the Company stockholders accept the Offer and tender their Shares pursuant to the Offer (the "Company Board Recommendation").

(b) Neither the Company Board nor any committee thereof shall (i) fail to make the Company Board Recommendation to the holders of the Company Shares, (ii) withhold, withdraw, amend or modify in a manner adverse to Parent, or publicly propose to withhold, withdraw, amend or modify in a manner adverse to Parent, the Company Board Recommendation, (iii) adopt, approve, recommend, endorse or otherwise declare advisable the adoption of any Acquisition Proposal, (iv) in the case of a publicly announced or publicly disclosed Acquisition Proposal that is not a tender or exchange offer, fail to reaffirm the Company Board Recommendation within ten (10) Business Days after a written request by Parent that the Company do so, it being understood that any publicly announced or publicly disclosed material amendment or modification to any such Acquisition Proposal will be deemed to be a new Acquisition Proposal for purposes of this clause (iv) (and, if applicable, Parent shall specify in its written request whether or not such request is in respect of a material amendment or modification to any such Acquisition Proposal); *provided that* the Company shall not be obligated to reaffirm the Company Board Recommendation on more than one occasion in response to an Acquisition Proposal and any such failure to reaffirm on more than one occasion in response to any such Acquisition Proposal shall not constitute a Company Board Recommendation Change, (v) in the case of an Acquisition Proposal that is a tender or exchange offer, fail to have filed within ten (10) Business Days after the public announcement of the commencement of such Acquisition Proposal a Schedule 14D-9 pursuant to Rule 14e-2 and Rule 14d-9 promulgated under the Exchange Act recommending that the Company stockholders reject such Acquisition Proposal and not tender any shares of Company Common Stock into such tender or exchange offer, or (vi) publicly resolve, agree or propose to take any such actions (each such foregoing action or failure to act in clauses (i) through (vi) being referred to herein as a "Company Board Recommendation Change"); *provided*, *however*, that nothing in this Agreement shall prohibit the Company Board from disclosing to the stockholders of the Company a position contemplated by Rule 14e-2(a) and Rule 14d-9 promulgated under the Exchange Act; *provided*, *however*, that any disclosure other than a "stop, look and listen" or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act, an express rejection of any applicable Acquisition Proposal or an express reaffirmation of its recommendation to its stockholders in favor of the Offer shall be deemed to be a Company Board Recommendation Change.

(c) Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, if, at any time prior to the Offer Closing, the Company Board receives a Superior Proposal or an Intervening Event occurs, the Company Board may effect a Company Board Recommendation Change *provided* that:

(i) the Company Board determines in good faith (after consultation with its financial advisor and outside legal counsel) that failure to effect a Company Board Recommendation Change would be inconsistent with its fiduciary duties to the Company stockholders under Delaware Law;

(ii) the Company has notified Parent in writing that it intends to effect a Company Board Recommendation Change, which notice shall include (A) with respect to a Superior Proposal a copy of the final form of all agreements, commitment letters and other material documents constituting or relating to such Superior Proposal or (B) in response to an Intervening Event, a description of the material facts and circumstances relating to such Intervening Event (in each case, a "Recommendation Change Notice"); *provided* that, notwithstanding anything to the contrary set forth in this Agreement, such Recommendation Change Notice shall in no event constitute a Company Board Recommendation Change;

(iii) upon Parent's request, the Company shall have made its Representatives reasonably available to discuss and negotiate in good faith with Parent's Representatives any proposed modifications to the terms and conditions of this Agreement during the Matching Period; and

(iv) if Parent shall have delivered to the Company a written proposal to alter the terms or conditions of this Agreement during such Matching Period that is capable of being accepted by the Company and, upon such acceptance would be legally binding on Parent, the Company Board shall have determined in good faith (after consultation with its financial advisor and outside legal counsel), after considering the terms of such proposal by Parent, that failure to effect a Company Board Recommendation Change would continue to be inconsistent with its fiduciary duties to the Company stockholders under Delaware Law. Any material amendment or modification to any Superior Proposal will be deemed to be a new Superior Proposal for purposes of this Section 5.4(c) (and require a new Matching Period, except that all references to "five (5) Business Days" in the definition of "Matching Period" shall be references to "three (3) Business Days"). The Company shall keep confidential any proposals made by Parent to revise the terms of this Agreement, other than in the event of any amendment to this Agreement and to the extent required to be disclosed in any Company SEC Reports.

5.5 Access.

(a) Subject to any restrictions imposed under applicable Laws, at all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement in accordance with Article VI and the Offer Closing, the Company shall afford Parent and its accountants, legal counsel and other Representatives reasonable access during normal business hours, upon reasonable notice, to any assets, properties, contracts, books, records and personnel of the Company and its Subsidiaries as Parent may reasonably request; *provided*, *however*, that the Company may restrict or otherwise prohibit access to any documents or information to the extent that (i) any applicable Law requires the Company to restrict or otherwise prohibit access to such documents or information, (ii) access to

such documents or information would give rise to a material risk of waiving any attorney-client privilege, work product doctrine or other applicable privilege applicable to such documents or information, or (iii) access to a Contract of the Company or any of its Subsidiaries would violate or cause a default under, or give a third party the right terminate or accelerate the rights under, such Contract; and *provided further*, that no information or knowledge obtained by Parent in any investigation conducted pursuant to the access contemplated by this Section 5.5 shall affect or be deemed to modify any representation or warranty of the Company set forth in this Agreement or otherwise impair the rights and remedies available to Parent hereunder. In the event that the Company does not provide access or information in reliance on the preceding sentence, it shall use its reasonable best efforts to communicate the applicable information to Parent in a way that would not violate the applicable Law, Contract or obligation or to waive such a privilege. Any investigation conducted pursuant to the access contemplated by this Section 5.5 shall be conducted in a manner that does not unreasonably interfere with the conduct of the business of the Company and its Subsidiaries or create a risk of damage or destruction to any property or assets of the Company or any of its Subsidiaries. Any access to the Company's properties shall be subject to the Company's reasonable security measures and insurance requirements and shall not include the right to perform invasive testing. The terms and conditions of the Confidentiality Agreement shall apply to any information obtained by Parent or any of its Representatives in connection with any investigation conducted pursuant to the access contemplated by this Section 5.5.

(b) At all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of (i) a Company Board Recommendation Change, (ii) the termination of this Agreement in accordance with Article VI and (iii) the Offer Closing, the Company shall, and shall cause its Subsidiaries to, make available to Parent a copy of each Annual and Quarterly report on Form 10-K or 10-Q (as applicable), and each registration statement proposed to be filed by the Company with the SEC during such period a reasonable period of time prior to the filing of such reports or registration statements (and in any event, provide the then current draft thereof at least two (2) Business Days prior to the filing thereof with the SEC).

5.6 Notification of Certain Matters. At all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement in accordance with Article VI and the Offer Closing, each of Parent and the Company shall promptly notify the other upon obtaining Knowledge that any representation or warranty made by such party in this Agreement has become untrue or inaccurate in any material respect or that such party has breached or failed to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by such party under this Agreement; *provided*, *however*, that any failure to provide any such notice shall not trigger the condition to the Offer set forth in paragraph (6) of Annex A.

5.7 Public Disclosure. None of the Company, on the one hand, or Parent, on the other hand, shall issue any public release or make any public announcement concerning this Agreement or the transactions contemplated by this Agreement without the prior written consent of the other (which consent shall not be unreasonably withheld, conditioned or delayed), except as such release or announcement may be required by applicable Law or the rules or regulations of any applicable

United States securities exchange or regulatory or Governmental Authority to which the relevant party is subject or submits, wherever situated, in which case the party required to make the release or announcement shall use its reasonable best efforts to allow the other party or parties hereto reasonable time to comment on such release or announcement in advance of such issuance (it being understood that the final form and content of any such release or announcement, as well as the timing of any such release or announcement, shall be at the final discretion of the disclosing party). The Company and Parent agree that the press release announcing the execution and delivery of this Agreement shall be a joint release of, and shall not be issued prior to the approval of each of, the Company, on the one hand, and Parent on the other hand. Notwithstanding the foregoing provisions of this Section 5.7, (i) Parent, its Representatives, the Company and its Representatives may make public releases or announcements concerning the transactions contemplated hereby that are not inconsistent with previous press releases or announcements made by Parent and/or the Company in compliance with this Section 5.7 and (ii) the restrictions set forth in this Section 5.7 shall not apply to any release or announcement made or proposed following a Company Board Recommendation Change if related to such Company Board Recommendation Change or any Superior Proposal or Intervening Event in connection therewith.

5.8 Certain Litigation. The Company shall promptly advise Parent of any litigation commenced after the date hereof against the Company or any of its directors (in their capacity as such) by any Company stockholders (on their own behalf or on behalf of the Company) relating to this Agreement or the transactions contemplated hereby, and shall keep Parent reasonably informed regarding any such litigation. The Company shall give Parent the opportunity to participate in the defense or settlement of any such stockholder litigation.

5.9 Reclassification.

(a) Subject to Company's receipt of a tax opinion of Jones Day, Skadden, Arps, Slate, Meagher & Flom LLP or other outside counsel to the Company reasonably acceptable to Parent regarding the effect of implementing the Reclassification Proposal, which tax opinion is reasonably satisfactory to Parent and, to the extent so required pursuant to any written agreement entered into between the Company and Cypress Semiconductor Corporation ("Cypress"), reasonably satisfactory to Cypress, the Company shall establish a record date for, call, give notice of, convene and hold a meeting of the Company stockholders as promptly as practicable following the Offer Closing, but in no event later than the six (6) month anniversary of the Offer Closing, for the purpose of voting upon a proposal to amend the Company's Certificate of Incorporation to reclassify all outstanding shares of the Company's Class A Common Stock and Class B Common Stock into a single class of common stock named "Common Stock" which shall have the same voting powers, preferences, rights and qualifications, limitations and restrictions as the Class A Common Stock as of the date of this Agreement (the "Reclassification Proposal").

(b) Parent shall vote all shares of Company Common Stock acquired in the Offer (or otherwise owned by it or any of its respective wholly owned Subsidiaries as of the applicable record date) in favor of (x) the Reclassification Proposal in accordance with the DGCL, and (y) an

increase in the number of shares available for issuance under the Company Plans by 2,500,000, in each case at such Company stockholder meeting or otherwise.

5.10 Anti-Takeover Laws. In the event that any state anti-takeover or other similar statute or regulation is or becomes applicable to this Agreement or any of the transactions contemplated by this Agreement, the Company, at the direction of the Company Board, and Parent, at the direction of the Parent Board, each shall use its reasonable best efforts to provide that the transactions contemplated by this Agreement may be consummated as promptly as practicable on the terms and subject to the provisions set forth in this Agreement, and otherwise to minimize the effect of such statute or regulation on this Agreement and the transactions contemplated hereby.

5.11 Confidentiality. Parent and the Company hereby acknowledge that Parent and the Company have previously executed an Amended and Restated Confidentiality Agreement, dated as of November 4, 2010 (the "Confidentiality Agreement"), which will continue in full force and effect in accordance with its terms; *provided*, *however*, that notwithstanding anything to the contrary set forth in the Confidentiality Agreement, Parent or any of its Affiliates shall be permitted to negotiate with the Company and submit proposals pursuant to Section 5.4(c) and Section 6.1(g).

5.12 Certain Forbearances. Except as (i) set forth in Section 5.12 of the Company Disclosure Schedule or (ii) consented to in writing by Parent, at all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to Section 6.1 and the Offer Closing, the Company shall not take any of the following actions and shall not permit any of its Subsidiaries to take any of the following actions:

(a) any amendment to the Company's bylaws or certificate of incorporation, except as expressly contemplated by Section 5.1 of the Affiliation Agreement;

(b) any amendment or redemption of the Company Rights Plan, except as expressly contemplated by this Agreement or Section 5.1 of the Affiliation Agreement.

(c) any action described in paragraphs (c), (d), (f), (g) or (h) of Section 4.3 of the Affiliation Agreement, except (i) in the case of paragraph (d) thereof, for any sale, lease, license, transfer or other disposition of Solar SPEs in the ordinary course of business, and (ii) in the case of paragraph (f) thereof, in connection with refinancing or replacing any of the 1.25% Convertible Debentures, the issuance of a new convertible debenture issued on or after July 1, 2011 on no less favorable terms than the 1.25% Convertible Debentures being refinanced or replaced with respect to ranking (senior/senior sub/subordinated), financial covenants, operational covenants, and events of default, and whether issued prior to or after the replacement of such 1.25% Convertible Debentures; *provided*, *however*, that the Company shall have provided Parent with written notice of such issuance at least five Business Days prior to such issuance (which notice shall contain a reasonably detailed summary of the material terms and conditions of such new convertible debentures) and shall have consulted with Parent during such five Business Day period;

(d) any issuance, sale, pledge, disposition, granting or encumbrance of any shares of any class of capital stock of the Company, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of such capital stock, or any other ownership interest (including any phantom interest and including any Company Stock Awards or voting securities), of the Company, except for (i) the grant of Company Stock Awards or voting securities under the Company Plans in the ordinary course of business consistent with past practice, (ii) the issuance of shares of Company Common Stock upon the exercise of the Company Options or the vesting or settlement of Company Restricted Stock or Company Restricted Stock Unit awards outstanding on the date hereof or granted in accordance with this Section 5.12(d), and (iii) upon the conversion or exercise of Convertible Debentures outstanding on the date hereof;

(e) any declaration, setting aside, making or payment of any dividend or other distribution (payable in cash, stock, property or otherwise) with respect to, or any reclassification, combination, split or subdivision of, any shares of any class of capital stock of the Company;

(f) any redemption, purchase or other acquisition, directly or indirectly, of any shares of any class of capital stock of the Company, except for (i) Tax withholdings and exercise price settlements upon exercise of Company Options or with respect to Company Restricted Stock or Company Restricted Stock Unit awards, in each case in the ordinary course of business and in compliance with applicable Law and (ii) purchases of shares of Company Common Stock or Convertible Debentures from the holders thereof in one or more privately negotiated transactions which are not effected in the open market and would not constitute a tender offer in accordance with applicable laws; or

(g) any announcement of an intention to enter into, or entry into, any formal or informal Contract or any commitment to do any of the foregoing.

5.13 Rule 14d-10(d) Matters. The parties acknowledge that certain payments have been made or are to be made and certain benefits have been granted or are to be granted according to employment compensation, severance and other employee benefit plans of the Company and its Subsidiaries, including the Employee Plans (collectively, the "Employment Compensation Arrangements"), to certain holders of Shares and Company Stock Awards (collectively, the "Covered Securityholders"). The Compensation Committee of the Company Board (the "Company Compensation Committee"), each member of which is an "independent director" in accordance with the requirements of Rule 14d-10(d)(2) under the Exchange Act, (i) at a meeting to be held prior to the expiration of the Offer, will duly adopt resolutions approving as an "employment compensation, severance or other employee benefit arrangement" within the meaning of Rule 14d-10(d)(1) under the Exchange Act each Employment Compensation Arrangement presented to the Company Compensation Committee on or prior to the expiration of the Offer, and (ii) will take all other actions necessary to satisfy the requirements of the non-exclusive safe harbor under Rule 14d-10(d)(2) under the Exchange Act with respect to the Employment Compensation Arrangements.

ARTICLE VI

TERMINATION, AMENDMENT AND WAIVER

6.1 Termination Prior to the Offer Closing. This Agreement may be terminated and the Offer may be abandoned at any time prior to the Offer Closing (it being agreed that the party hereto terminating this Agreement pursuant to this Section 6.1 shall give prompt written notice of such termination to the other party or parties hereto):

(a) by mutual written agreement of Parent and the Company; or

(b) by either Parent or the Company, if the Offer Closing has not occurred prior to 11:59 p.m. (California time) on December 31, 2011 (the "Termination Date"); *provided, however* that the right to terminate this Agreement pursuant to this Section 6.1(b) shall not be available to any party hereto whose action or failure to fulfill any obligation under this Agreement has been a principal cause of or resulted in any of the conditions to the Offer set forth in Annex A to fail to be satisfied and such action or failure to act constitutes a material breach of this Agreement; or

(c) by Parent or the Company, in the event that the Offer shall have expired in accordance with its terms and shall not have been extended and is not required to be extended pursuant to the provisions of this Agreement, without the Offer Closing having occurred; or

(d) by Parent or the Company, in the event that any Governmental Authority of competent jurisdiction shall have (i) enacted, issued or promulgated any Law that is in effect and has the effect of making the consummation the Offer illegal, or (ii) issued or granted any Order that is in effect and has the effect of making the Offer illegal, and such Order has become final and non-appealable; or

(e) by the Company, in the event that (i) the Company is not then in material breach of its covenants, agreements and other obligations under this Agreement, and (ii) Parent shall have breached or otherwise violated any of its material covenants, agreements or other obligations under this Agreement in any material respect, or any of the representations and warranties of Parent set forth in this Agreement shall have become inaccurate, which breach, violation or inaccuracy, individually or in the aggregate with other such breaches, violations or inaccuracies, would reasonably be expected to prevent the consummation of, or give Parent the right not to consummate, the Offer, and have not been cured prior to the later of (A) any then scheduled expiration of the Offer or (B) thirty (30) days after the giving of written notice by the Company to Parent of such breach, violation or inaccuracy; or

(f) by Parent, in the event that (i) Parent is not then in material breach of its covenants, agreements and other obligations under this Agreement, and (ii) the Company shall have breached or otherwise violated any of its material covenants, agreements or other obligations under this Agreement, or any of the representations and warranties of the Company set forth in this Agreement shall have become inaccurate, in either case such that the events set forth in paragraphs (5) or (6) of Annex A shall have occurred, and have not been cured, prior to the later of

(A) any then scheduled expiration of the Offer or (B) thirty (30) days after the giving of written notice by Parent to the Company of such breach, violation or inaccuracy; or

(g) by the Company, in the event that (i) the Company shall have received a Superior Proposal; (ii) the Company Board shall have determined in good faith (after consultation with outside legal counsel) that the failure to enter into a definitive agreement relating to such Superior Proposal would be inconsistent with its fiduciary duties to the Company stockholders under Delaware Law; (iii) the Company has notified Parent in writing of the Superior Proposal, which notice shall include a copy of the material terms and conditions of such Superior Proposal (and the final form of all agreements, commitment letters and other material documents constituting or relating to such Superior Proposal) (a "Superior Proposal Notice"); *provided* that, notwithstanding anything to the contrary set forth in this Agreement, such Superior Proposal Notice shall in no event constitute a Company Board Recommendation Change; (iv) if requested by Parent, the Company shall have made its Representatives reasonably available to discuss and negotiate in good faith with Parent's Representatives any proposed modifications to the terms and conditions of this Agreement during the Matching Period; (v) if Parent shall have delivered to the Company during such Matching Period a written proposal that if accepted by the Company would be binding on Parent to alter the terms or conditions of this Agreement, the Company Board shall have determined in good faith (after consultation with its financial advisors and outside legal counsel), after considering the terms of such proposal by Parent, that the Superior Proposal giving rise to such Superior Proposal Notice continues to be a Superior Proposal; and (vi) concurrently with the termination of this Agreement, the Company pays Parent the Termination Fee payable to Parent pursuant to Section 6.3(b)(ii); *provided* that any material amendment or modification to any Superior Proposal will be deemed to be a new Superior Proposal for purposes of this Section 6.1(g) (and require a new Matching Period, except that all references to five (5) Business Days in the definition of "Matching Period" shall be references to three (3) Business Days); or

(h) by Parent, in the event that (i) the Company Board or any committee thereof shall have effected a Company Board Recommendation Change (whether or not in compliance with the terms of this Agreement) or (ii) the Company shall have violated or breached any of its obligations and agreements under Section 5.3 in any material respect.

6.2 Notice of Termination; Effect of Termination. Any proper and valid termination of this Agreement pursuant to Section 6.1 shall be effective immediately upon the delivery of written notice of the terminating party to the other party or parties hereto, as applicable. In the event of the termination of this Agreement pursuant to Section 6.1, this Agreement shall be of no further force or effect without liability of any party or parties hereto, as applicable (or any director, officer, employee, affiliate, agent or other representative of such party or parties) to the other party or parties hereto, as applicable, except (a) for the terms of Section 5.11, this Section 6.2, Section 6.3 and Article VII, each of which shall survive the termination of this Agreement, and (b) that nothing herein shall relieve any party or parties hereto, as applicable, from liability for any knowing and intentional breach of, or fraud in connection with, this Agreement. In addition to the foregoing, no termination of this Agreement shall affect the obligations of the parties hereto set forth in the

Confidentiality Agreement, all of which obligations shall survive termination of this Agreement in accordance with its terms.

6.3 Fees and Expenses.

(a) General. Except as set forth in this Section 6.3, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party or parties, as applicable, incurring such expenses whether or not the Offer is consummated.

(b) Company Payments.

(i) The Company shall pay to Parent a fee equal to the sum of (A) the Parent Expenses, up to a maximum of Two Million Five Hundred Thousand Dollars ($2,500,000), plus (B) Forty Two Million Five Hundred Thousand Dollars ($42,500,000) (such sum, collectively, the "Termination Fee"), by wire transfer of immediately available funds to an account or accounts designated in writing by Parent, within five (5) Business Days (unless Parent agrees in writing to reject payment of such Termination Fee), in the event that (A) this Agreement is terminated pursuant to Section 6.1(b), Section 6.1(c) or Section 6.1(f) (*provided* that the breach giving rise to such termination pursuant to Section 6.1(f) shall have occurred following the public announcement or public disclosure of the Acquisition Proposal referenced in clause (B) below) and at the time of such termination the Minimum Condition had not been satisfied, (B) following the execution and delivery of this Agreement and prior to the termination of this Agreement, an Acquisition Proposal shall have been publicly announced or shall have become publicly disclosed, and (C) within three-hundred and sixty five (365) days following the termination of this Agreement, the Company (x) consummates a Competing Acquisition Transaction or (y) enters into a definitive agreement providing for a Competing Acquisition Transaction that is subsequently consummated (whether or not such Competing Acquisition Transaction is with respect to the Acquisition Proposal referenced in the preceding clause (B)). For purposes of the foregoing, a "Competing Acquisition Transaction" shall have the same meaning as an "Acquisition Transaction" except that all references therein to "fifteen percent (15%) or more" shall be deemed to be references to "at least a majority," and the reference therein to "eighty-five percent (85%)" shall be deemed to be a reference to "fifty percent (50%)".

(ii) In the event that this Agreement is terminated by the Company pursuant to Section 6.1(g), the Company shall pay to Parent the Termination Fee, by wire transfer of immediately available funds to an account or accounts designated in writing by Parent, as a condition to the effectiveness of such termination (unless Parent agrees in writing to reject payment of such Termination Fee).

(iii) In the event that this Agreement is terminated by Parent pursuant to Section 6.1(h), the Company shall pay to Parent the Termination Fee, by wire transfer of immediately available funds to an account or accounts designated in writing by Parent, within five (5) Business Days (unless Parent agrees in writing to reject payment of such Termination Fee).

(iv) In the event this Agreement is validly terminated pursuant to Section 6.1(c) and at the expiration of the Offer the Minimum Condition is not satisfied, the Company shall pay to Parent, by wire transfer of immediately available funds to an account or accounts designated in writing by Parent, as promptly as possible following receipt of an invoice from Parent (but in any event within five (5) Business Days) all of Parent's out-of-pocket fees and expenses (including legal and other third party advisors fees and expenses) incurred by Parent and its Affiliates on or prior to the valid termination of this Agreement in connection with the transactions contemplated by this Agreement, (the "Parent Expenses"), up to a maximum of Two Million Five Hundred Thousand Dollars ($2,500,000), *provided*, *however*, that the amount of any payment of Parent Expenses made pursuant to this Section 6.3(b)(iv) shall be credited against any Termination Fee that becomes payable pursuant to this Section 6.3(b).

(c) Enforcement. Each of Parent and the Company acknowledges and hereby agrees that the provisions of Section 6.3 are an integral part of the transactions contemplated by this Agreement, and that, without such provisions, neither Parent nor the Company would have entered into this Agreement. Accordingly, if the Company shall fail to pay in a timely manner any amounts due and payable pursuant to Section 6.3, and, in order to obtain such payment, Parent shall make a claim against the Company and such claim results in a judgment against the Company, the Company shall pay to Parent an amount in cash equal to Parent's costs and expenses (including its attorneys fees and expenses) incurred in connection with such claim, together with interest at the prime rate of Citibank N.A. in effect on the date such payment was required to be made. The parties acknowledge and agree that in no event shall the Company be obligated to pay the Termination Fee on more than one occasion, whether or not the Termination Fee may be payable under more than one provision of this Agreement at the same or at different times and the occurrence of different events.

(d) Liquidated Damages. In the event that Parent shall accept payment of the Termination Fee pursuant to Section 6.3(b) (which Termination Fee Parent shall have the right to reject in its sole discretion), the receipt of the Termination Fee shall be deemed to be liquidated damages for any and all losses or damages suffered or incurred by Parent any of its Affiliates or any other Person in connection with this Agreement (and the termination thereof), the transactions contemplated hereby (and the abandonment thereof) or any matter forming the basis for such termination, and none of Parent, any of its Affiliates or any other Person shall be entitled to bring or maintain any other claim, action or proceeding against the Company arising out of this Agreement (and the termination thereof), the transactions contemplated hereby (and the abandonment thereof) or any matter forming the basis for such termination.

6.4 Amendment. Subject to applicable Laws and subject to the other provisions of this Agreement, this Agreement may be amended by the parties hereto at any time by execution of an instrument in writing signed on behalf of each of Parent and the Company; *provided*, *however*, that after the Offer Closing, no amendment may be made that decreases the Offer Price.

6.5 Extension; Waiver. At any time and from time to time prior to the Offer Closing, any party or parties hereto may, to the extent legally allowed and except as otherwise set forth herein, (a) extend the time for the performance of any of the obligations or other acts of the other party or

parties hereto, as applicable, (b) waive any inaccuracies in the representations and warranties made to such party or parties hereto contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions for the benefit of such party or parties hereto contained herein. Any agreement on the part of a party or parties hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party or parties, as applicable. Any delay in exercising any right under this Agreement shall not constitute a waiver of such right.

ARTICLE VII

GENERAL PROVISIONS

7.1 Survival of Representations, Warranties and Covenants. The representations, warranties and covenants of the Company and Parent set forth in this Agreement shall terminate at the Offer Closing, and only the covenants that by their express terms survive the Offer Closing shall so survive the Offer Closing in accordance with their respective terms.

7.2 Notices.

(a) All notices and other communications hereunder shall be in writing and shall be deemed to have been duly delivered and received hereunder (i) four (4) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; (iii) if sent by facsimile transmission before 5:00 p.m. in the time zone of the receiving party, when transmitted and receipt is confirmed; (iv) if sent by facsimile transmission after 5:00 p.m. in the time zone of the receiving party and receipt is confirmed, on the following Business Day; and (v) if otherwise actually personally delivered by hand, when delivered, in each case to the intended recipient, at the following addresses or facsimile numbers (or at such other address or telecopy numbers for a party as shall be specified by similar notice):

(b) if to Parent to:

Total Gas & Power USA, SAS
2, place Jean Millier
La Défense 6
92400 Courbevoie
France
Attention: Arnaud Chaperon, President
Facsimile: +33 1 47 44 27 90

with copies (which shall not constitute notice) to:

Total S.A.
2, place Jean Millier
La Défense 6
92400 Courbevoie
France
Attention: Humbert de Wendel, Senior Vice President Corporate Business Development
Facsimile: +33 1 47 44 50 95

Total S.A.
2, place Jean Millier
La Défense 6
92400 Courbevoie
France
Attention: Jonathan Mars, Vice President, Legal Director Mergers, Acquisitions & Finance
Facsimile: +33 1 47 44 43 05

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304-1050
Attention: David Segre and Richard Blake
Facsimile: (650) 493-6811

and

Wilson Sonsini Goodrich & Rosati
Professional Corporation
One Market Street
Spear Tower, Suite 3300
San Francisco, California 94105-1126
Attention: Michael Ringler and Denny Kwon
Facsimile: (415) 947-2099

(c) if to the Company, to:

SunPower Corporation
77 Rio Robles
San Jose, California 95314
Attention: Bruce Ledesma
Dennis Arriola
Facsimile: (510) 540-0552

with copies (which shall not constitute notice) to:

Jones Day
1755 Embarcadero Road
Palo Alto, California 94303
Attention: R. Todd Johnson
Steve Gillette
Facsimile: (650) 739-3900

and

Jones Day
3161 Michelson Drive, 8th Floor
Irvine, California 92612
Attention: Jonn R. Beeson
Facsimile: (949) 553-7539

7.3 Assignment. No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other parties, except that Parent may assign any or all of its rights, interests and obligations hereunder to one or more direct or indirect wholly owned Subsidiaries of Parent, but no such assignment shall relieve Parent of any of its obligations under this Agreement. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

7.4 Entire Agreement. This Agreement and the agreements, documents, instruments and certificates among the parties hereto as contemplated by or referred to herein, including the Company Disclosure Schedule, the Parent Disclosure Schedule, the Exhibits and Schedules hereto, the Related Agreements and the Confidentiality Agreement constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; *provided*, *however*, the Confidentiality Agreement shall not be superseded, shall survive any termination of this Agreement and shall continue in full force and effect. Each party hereto agrees that, except for the representations and warranties set forth in this Agreement, neither Parent, on the one hand, nor the Company, on the other hand, makes any representations or warranties, express or implied, whatsoever, including as to the accuracy or completeness of any other information, made (or made available) by itself or any of its Representatives, with respect to, or in connection with, the negotiation, execution or delivery of this Agreement or the transactions contemplated hereby, notwithstanding the delivery of disclosure to the other or the other's Representatives of any documentation of any other information with respect to any one or more of the foregoing; *provided*, *however*, that notwithstanding the foregoing or anything to the contrary set forth in this Agreement, nothing in this Agreement shall relieve any party hereto for liability arising out of fraud or intentional misrepresentation.

7.5 Third Party Beneficiaries. Except, from and after the Offer Closing, for the rights of holders of Shares validly tendered and not withdrawn pursuant to the Offer and accepted for exchange by Parent pursuant to the Offer to receive the Offer Price pursuant to Article II, this Agreement is not intended to, and shall not, confer upon any other Person any rights or remedies hereunder.

7.6 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other Persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such illegal, void or unenforceable provision of this Agreement with a legal, valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such illegal, void or unenforceable provision.

7.7 Other Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

7.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof.

7.9 Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that money damages or other legal remedies would not be an adequate remedy for any such damages. It is accordingly agreed that, in addition to any other remedy to which they are entitled at law or in equity, the parties hereto agree that, in the event of any breach or threatened breach by the Company, on the one hand, or Parent, on the other hand, of any of their respective covenants or obligations set forth in this Agreement, the Company, on the one hand, and Parent, on the other hand, shall be entitled to an injunction or injunctions to prevent or restrain breaches or threatened breaches of this Agreement or to enforce compliance with, the covenants and obligations of the other under this Agreement. The Company, on the one hand, and Parent, on the other hand hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches or threatened breaches of this Agreement by such party (or parties), and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of such party (or parties) under this Agreement. The parties hereto further agree that (x) by seeking the remedies provided for in this Section 7.9, a party shall not in any respect waive its right to seek any other form of relief that may be available to a party under this Agreement (including monetary damages) in the event that this Agreement has been terminated or in the event that the remedies provided for in this Section 7.9 are not available or otherwise are not granted, and (y) nothing set forth in this Section 7.9 shall require any party hereto to institute any

proceeding for (or limit any party's right to institute any proceeding for) specific performance under this Section 7.9 prior or as a condition to exercising any termination right under Article VI (and pursuing damages after such termination), nor shall the commencement of any Legal Proceeding pursuant to this Section 7.9 or anything set forth in this Section 7.9 restrict or limit any party's right to terminate this Agreement in accordance with the terms of Article VI or pursue any other remedies under this Agreement that may be available then or thereafter.

7.10 Consent to Jurisdiction. Each of the parties hereto irrevocably consents and submits itself and its properties and assets to the exclusive jurisdiction and venue in any state court within the State of Delaware (or, if a state court located within the State of Delaware declines to accept jurisdiction over a particular matter, any court of the United States located in the State of Delaware) in connection with any matter based upon or arising out of this Agreement or the transactions contemplated hereby, agrees that process may be served upon them in any manner authorized by the laws of the State of Delaware for such Persons and waives and covenants not to assert or plead any objection which such Person might otherwise have to such jurisdiction, venue and process. Each party hereto hereby agrees not to commence any Legal Proceedings relating to or arising out of this Agreement or the transactions contemplated hereby in any jurisdiction or courts other than as provided herein.

7.11 Waiver Of Jury Trial. EACH OF PARENT AND THE COMPANY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF PARENT OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

7.12 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their respective duly authorized officers to be effective as of the date first above written.

TOTAL GAS & POWER USA, SAS

By: /s/ Arnaud Chaperon

Name: Arnaud Chaperon

Title: President

SUNPOWER CORPORATION

By: /s/ Thomas H. Werner

Name: Thomas H. Werner

Title: Chief Executive Officer

ANNEX A

CONDITIONS TO THE OFFER

Capitalized terms used in this Annex A and not otherwise defined herein shall have the meanings assigned to them in the Agreement to which it is attached. Notwithstanding any other provision of the Offer or the Agreement, Parent shall not be required to accept for payment or, subject to any applicable rules and regulations of the SEC, including Rule 14e-l(c) under the Exchange Act (relating to Parent's obligation to pay for or return tendered Shares promptly after the termination or withdrawal of the Offer), to pay for any Shares tendered in connection with the Offer and, subject to the terms of the Agreement, may terminate or amend the Offer, if, immediately prior to any expiration of the Offer:

(1) the Minimum Condition shall not have been satisfied;

(2) (a) any waiting period (and extensions thereof) applicable to the transactions contemplated by the Agreement under the HSR Act shall not have expired or been terminated; or (b) (i) the Commission shall not have taken a decision under Article 6(1)(b) of the EC Merger Regulation (or has not been deemed to have taken a decision pursuant to Article 10(6) of the EC Merger Regulation) declaring that such transactions are compatible with the common market or (ii) if the Commission has taken a decision to refer the whole or part of the transactions contemplated by the Agreement to the competent authorities of a Member State in accordance with Article 9(3) of the EC Merger Regulation, any such authority shall not have taken a decision with equivalent effect to the decisions in clause (i) above with respect to those parts of the transactions referred to such authority and, where applicable, the Commission has not taken a decision as contemplated under (b)(i) above with respect to those parts of the transactions that have not been thus referred;

(3) any Applicable Governmental Authority of competent jurisdiction shall have (a) enacted, issued or promulgated any Law that is in effect as of immediately prior to the expiration of the Offer on the Expiration Date and has the effect of making the consummation of the Offer illegal or which has the effect of prohibiting or otherwise preventing the consummation of the Offer, (b) issued or granted any Order that is in effect as of immediately prior to the expiration of the Offer on the Expiration Date and has the effect of making the consummation of the Offer illegal or which has the effect of prohibiting or otherwise preventing the consummation of the Offer or (c) issued or granted any Order that is in effect as of immediately prior to the expiration of the Offer on the Expiration Date and has any of the effects set forth in paragraph (4) below;

(4) there shall be pending any Legal Proceeding commenced by any Applicable Governmental Authority of competent jurisdiction against Parent or the Company, or any of their respective affiliates, (a) seeking to enjoin the acquisition by Parent of any Shares pursuant to the Offer or seeking to restrain or prohibit the making or consummation of the Offer, (b) seeking to impose limitations on the ability of Parent, or render Parent unable, to accept for payment, pay for or purchase some or all of the Shares pursuant to the Offer, (c) seeking to impose limitations on the

ability of Parent effectively to exercise full rights of ownership of the Shares, including the right to vote the Shares purchased by it on all matters properly presented to the Company stockholders, or (d) seeking to prohibit or impose limitations on the ownership or operation by Parent of any portion of the business or assets of Parent or the Company (or any of their respective affiliates), or to compel Parent to dispose of or hold separate any portion of the business or assets of Parent or the Company (or any of their respective affiliates), in any such case in a manner that would be reasonably expected to (i) have a material adverse effect on the Company and its Subsidiaries, taken as a whole, (ii) have a material adverse effect on the Company, Total S.A. and their respective Subsidiaries, taken as a whole, or (iii) materially and adversely affect the benefits to be derived from the Offer;

(5) (a) any of the representations and warranties of the Company set forth in the first sentence of Section 3.1(a) (*Organization and Standing*), Section 3.2(a), (b) and (c) (*Corporate Approvals*) and Section 3.4(a), (b) and (c) (*Capitalization*) of the Agreement (collectively, the "Fundamental Representations"), (i) to the extent not qualified by materiality or "Material Adverse Effect," is not true and correct in any material respect, and (ii) to the extent so qualified is not true and correct in any respect, on and as of any scheduled expiration of the Offer with the same force and effect as if made on and as of the scheduled expiration of the Offer (other than those representations and warranties which address matters only as of a particular date, which shall not have been so true and correct as of such particular date); *provided*, *however*, that for purposes of determining the accuracy of the Fundamental Representations for purposes of this paragraph (5)(a), any update of or modification to the Company Disclosure Schedule made or purported to have been made after the date of the execution and delivery of the Agreement shall be disregarded;

(b) any of the representations and warranties of the Company set forth in the Agreement (other than the Fundamental Representations) is not true and correct in any respect, on and as of any scheduled expiration of the Offer with the same force and effect as if made on and as of such date (other than those representations and warranties which address matters only as of a particular date, which shall have been true and correct in all respects only as of such particular date), except in any event for any failure to be so true and correct, individually or in the aggregate, which has not had a Material Adverse Effect; *provided*, *however*, that for purposes of determining the accuracy of the representations and warranties of the Company set forth in the Agreement for purposes of this paragraph (5)(b), (x) all "Material Adverse Effect" and materiality qualifiers set forth in such representations and warranties shall be disregarded and (y) any update of or modification to the Company Disclosure Schedule made or purported to have been made after the date of the execution and delivery of the Agreement shall be disregarded;

(c) any of the representations and warranties of the Company set forth in the Credit Support Agreement, (i) to the extent not qualified by materiality or "Material Adverse Effect," is not true and correct in any material respect, and (ii) to the extent so qualified is not true and correct in any respect, on and as of any scheduled expiration of the Offer with the same force and effect as if made on and as of the scheduled expiration of the Offer; or

(d) Parent shall not have received a certificate, validly executed for and on behalf of the Company and in its name by the Chief Executive Officer or Chief Financial Officer of

the Company, dated as of the Expiration Date, certifying as to the satisfaction of the conditions set forth in this paragraph (5);

(6) the Company shall have failed to perform in any material respect any obligation to be performed by it under the Agreement or failed to perform in any material respect any covenant to be performed by it under the Agreement prior to any scheduled expiration of the Offer;

(7) a Material Adverse Effect on the Company shall have occurred or exists following the execution and delivery of the Agreement and is continuing; or

(8) the Agreement shall have been validly terminated in accordance with its terms.

The failure of Parent at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right that may be asserted prior to the Expiration Date.

Exhibit 4.1

AMENDMENT NO. 1 TO RIGHTS AGREEMENT

Amendment No. 1, dated as of April 28, 2011 (this "***Amendment***"), to the Rights Agreement, dated as of August 12, 2008 (the "***Rights Agreement***"), by and between SunPower Corporation (the "***Company***") and Computershare Trust Company, N.A., as rights agent (the "***Rights Agent***"). Capitalized terms used without other definition in this Amendment are used as defined in the Rights Agreement.

RECITALS

WHEREAS, the Company intends to enter into a Tender Offer Agreement, dated as of April 28, 2011 (as it may be amended or supplemented from time to time, the "***Tender Offer Agreement***"), by and among Total Gas & Power USA, SAS, a société par actions simplifiée organized under the laws of the Republic of France, and the Company;

WHEREAS, the Board of Directors of the Company has determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into the Tender Offer Agreement and approved the execution and delivery by the Company of the Tender Offer Agreement, the performance by the Company of the covenants and agreements contained therein and the consummation of the transactions contemplated thereby in accordance with the Delaware General Corporation Law upon the terms and subject to the conditions contained therein;

WHEREAS, the Board of Directors of the Company has determined that it is in the best interests of the Company and its stockholders to amend the Rights Agreement as set forth in this Amendment;

WHEREAS, no Distribution Date has occurred and no Person is an Acquiring Person;

WHEREAS, pursuant to Section 27 of the Rights Agreement, prior to the time at which the Rights cease to be redeemable pursuant to Section 23 of the Rights Agreement, and subject to the penultimate sentence of Section 27 of the Rights Agreement, the Company may in its sole and absolute discretion, and the Rights Agent will if the Company so directs, supplement or amend any provision of the Rights Agreement in any respect without the approval of any holders of Rights or Common Shares; and

WHEREAS, pursuant to the terms of the Rights Agreement and in accordance with Section 27 thereof, the Company has directed that the Rights Agreement be amended as set forth in this Amendment, and hereby directs the Rights Agent to execute this Amendment.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the mutual agreements set forth in the Rights Agreement and in this Amendment, the parties hereto hereby amend the Rights Agreement as follows:

1. Section 1 of the Rights Agreement is hereby amended by adding the following new Section 1(ll) immediately following Section 1(kk):

"(ll) "***Tender Offer Agreement***" means the Tender Offer Agreement, dated as of April 28, 2011, as it may be amended or supplemented from time to time, by and between Total Gas & Power USA, SAS, a société par actions simplifiée organized under the laws of the Republic of France ("***Terra***"), and the Company."

2. Section 1 of the Rights Agreement is hereby further amended by adding the following new Section 1(mm) immediately following Section 1(ll):

"(mm) Notwithstanding anything in this Agreement to the contrary, (i) neither Terra nor any of its Affiliates will be deemed to be or have become an Acquiring Person, (ii) none of a Distribution Date, a Share Acquisition Date, a Flip-in Event, a Flip-over Event or a Triggering Event will be deemed to occur or to have occurred, and (iii) the Rights will not become separable, distributable, unredeemable, triggered or exercisable, in each such case by reason or as a result of (w) the approval, execution or delivery of the Tender Offer Agreement, (x) the commencement or consummation of the Offer (as defined in the Tender Offer Agreement), (y) the consummation of the other transactions contemplated by the Tender Offer Agreement and the Related Agreements (as defined in the Tender Offer Agreement), or (z) the public or other announcement of any of the foregoing."

3. Exhibits C and D to the Rights Agreement are deemed to be amended in a manner consistent with this Amendment.

4. This Amendment will be deemed to be a contract made under the internal substantive laws of the State of Delaware and for all purposes will be governed by and construed in accordance with the internal substantive laws of such State applicable to contracts to be made and performed entirely within such State.

5. The Rights Agreement will not otherwise be supplemented or amended by virtue of this Amendment and will remain in full force and effect.

6. This Amendment may be executed in any number of counterparts (including by fax and .pdf) and each of such counterparts will for all purposes be deemed to be an original, and all such counterparts will together constitute but one and the same instrument.

7. This Amendment will be effective as of, and immediately prior to, the execution and delivery of the Tender Offer Agreement, and all references to the Rights Agreement will, from and after such time, be deemed to be references to the Rights Agreement as amended hereby. A signature to this Amendment transmitted electronically will have the same authority, effect and enforceability as an original signature.

8. The undersigned officer of the Company, being duly authorized on behalf of the Company, hereby certifies to the Rights Agent in his or her capacity as an officer on behalf of the Company that this Amendment is in compliance with the terms of Section 27 of the Rights Agreement. The Company will notify the Rights Agent promptly after this Amendment becomes effective to confirm such effectiveness.

9. By its execution and delivery hereof, the Company directs the Rights Agent to execute this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the effective time stated above.

SUNPOWER CORPORATION

By: /s/ Thomas H. Werner
Name: Thomas H. Werner
Title: Chief Executive Officer

COMPUTERSHARE TRUST COMPANY, N.A.

By: /s/ Dennis V. Moccia
Name: Dennis V. Moccia
Title: Manager, Contract Administrator

GUARANTY

This **GUARANTY** (the "Guaranty"), dated April 28, 2011, is between Total S.A., a *société anonyme* organized under the laws of the Republic of France (the "Guarantor"), and SunPower Corporation**,** a Delaware corporation (the "Company").

RECITALS

A. It is proposed that, on the date hereof, Total Gas & Power USA, SAS, a *société par actions simplifiée* organized under the laws of the Republic of France and an indirect wholly owned subsidiary of the Guarantor ("Acquirer"), and the Company enter into that certain Tender Offer Agreement, dated as of the date hereof, by and between the Acquirer and the Company (the "Tender Offer Agreement"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Tender Offer Agreement.

B. It is a condition to the willingness of the Company to enter into the Tender Offer Agreement that the Guarantor guarantee to the Company the performance by the Acquirer of its obligations under the Tender Offer Agreement.

C. The Guarantor owns, indirectly through one or more wholly owned subsidiaries, 100% of the equity interest in the Acquirer and will receive direct and indirect benefits from the Acquirer's performance of the Tender Offer Agreement.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. Guaranty.

(a) The Guarantor unconditionally guarantees to the Company, (i) the full and prompt payment when due of all of Acquirer's payment obligations under the Tender Offer Agreement and (ii) the full and prompt performance when due of all of the Acquirer's representations, warranties, covenants, duties, liabilities, obligations, and agreements (including for breach) contained in the Tender Offer Agreement (collectively, the "Obligations"); provided, that the maximum aggregate liability of the Guarantor hereunder under the Tender Offer Agreement shall not exceed the aggregate value at the Offer Price of the maximum number of Shares which may be validly tendered and accepted for payment pursuant to and in accordance with the terms of the Tender Offer Agreement.

(b) This Guaranty is a guaranty of payment, and not of collection, and is absolute, unconditional, continuing and irrevocable, constitutes an independent guaranty of the Obligations, and is in no way conditioned on or contingent upon (i) except as otherwise expressly set forth in this Guaranty, any attempt to enforce in whole or in part any of the Acquirer's Obligations to the Company, (ii) the existence or continuance of the Acquirer as a legal entity, (iii) the consolidation or merger of the Acquirer with or into any other entity, (iv) the sale, lease or disposition by the Acquirer of all or substantially all of its assets to any other entity,

(v) the bankruptcy or insolvency of the Acquirer, (vi) the admission by the Acquirer of its inability to pay its debts as they mature, (vii) the making by the Acquirer of a general assignment for the benefit of, or entering into a composition or arrangement with, creditors, (viii) the adequacy of any means the Company may have of obtaining payment related to the Obligations, or (ix) the existence of any claim, set-off or other right which the Acquirer or the Guarantor may have at any time against the Company (other than rights of the Acquirer pursuant to the Tender Offer Agreement), whether in connection with the Obligations or otherwise. If the Acquirer fails to pay or perform any Obligations to the Company that are subject to this Guaranty as and when they are due and such failure and the consequences thereof have not been cured promptly or of a nature that cannot be cured, then, upon receipt of written notice from the Company specifying the failure, the Guarantor shall forthwith perform, or cause to be performed, any such obligation, responsibility or undertaking as and when required pursuant to the terms and conditions of the Tender Offer Agreement, including, without limitation, all payment obligations under the Tender Offer Agreement, it being understood and agreed that in no event shall the Company have the right to proceed against the Guarantor under this Guaranty or otherwise in respect of the Obligations unless the Acquirer has failed to cure promptly any failure by Acquirer to pay or perform any Obligations to the Company that are subject to this Guaranty as and when they are due (including the consequences thereof) or such failure or the consequences thereof are of a nature that cannot be cured and the Company has delivered written notice to the Guarantor specifying the failure to cure or that such failure is of a nature that cannot be cured. Each failure by the Acquirer to pay or perform any Obligations shall give rise to a separate cause of action, and separate suits may be brought hereunder as each cause of action arises. If any payment in respect of any Obligation, or any portion thereof, is rescinded or must otherwise be returned for any reason whatsoever, including with respect to an insolvency of the Acquirer, the Guarantor shall remain liable hereunder with respect to such Obligation as if such payment had not been made.

(c) The Company may, at any time and from time to time, without the consent of or notice to the Guarantor, except such notice as may be required by applicable statute that cannot be waived, without incurring responsibility to the Guarantor, and without impairing, discharging or releasing the performance of the Obligations, in whole or in part, (i) exercise or delay or refrain from exercising any rights against the Acquirer or others (including the Guarantor) or otherwise act or delay or refrain from acting, (ii) change the time, place or manner of payment of the Obligations, or rescind, settle waive, compromise, consolidate or otherwise amend or modify any of the terms or provisions of the Tender Offer Agreement in accordance with the terms thereof and/or any other obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any obligations and liabilities which may be due to the Company or others, and (iii) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property pledged or mortgaged by anyone to secure or in any manner securing the Obligations hereby guaranteed.

(d) The Company may not, without the prior written consent of the Guarantor, assign its rights and interests under this Guaranty, in whole or in part.

(e) No invalidity, irregularity or unenforceability of the Obligations hereby guaranteed shall affect, impair, or be a defense to this Guaranty. This is a continuing Guaranty

for which the Guarantor receives continuing consideration and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon and this Guaranty is therefore irrevocable without the prior written consent of the Company.

(f) All payments hereunder shall be made in lawful money of the United States, in immediately available funds. The Guarantor promises and undertakes to make all payments hereunder free and clear of any deduction, offset, defense, claim or counterclaim of any kind.

(g) For the avoidance of doubt, if the Acquirer fails to perform any of the Obligations required to be specifically performed by it, the Guarantor shall specifically perform or cause such Obligations to be specifically performed, in each case in accordance with the terms of the Tender Offer Agreement.

(h) Guarantor hereby covenants and agrees that it shall not institute, and shall cause its Affiliates not to institute, any proceeding asserting that this Guaranty or any portion thereof is illegal, invalid or unenforceable in accordance with its terms.

2. Representations and Warranties. The Guarantor represents and warrants to the Company that:

(a) the Guarantor is a *société anonyme* duly organized, validly, existing and in good standing under the laws of its jurisdiction of incorporation or formation;

(b) the execution, delivery and performance by the Guarantor of this Guaranty are within the power of the Guarantor and have been duly authorized by all necessary actions on the part of the Guarantor;

(c) this Guaranty has been duly executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally;

(d) the execution, delivery and performance of this Guaranty do not (i) violate any law, rule or regulation of any governmental authority or (ii) result in the creation or imposition of any material lien, charge, security interest or encumbrance upon any property, asset or revenue of the Guarantor;

(e) no consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority or other person (including, without limitation, the shareholders of the Guarantor) is required in connection with the execution, delivery and performance of this Guaranty or the consummation of the transactions contemplated by the Tender Offer Agreement and by the Related Agreements, except such consents, approvals, orders, authorizations, registrations, declarations and filings that are so required and which have been obtained and are in full force and effect;

(f) the Guarantor is not in violation of any law, rule or regulation other than those the consequences of which cannot reasonably be expected to have material adverse effect on the ability of the Guarantor to perform its obligations under this Guaranty; and

(g) no litigation, investigation or proceeding of any court or other governmental tribunal is pending or, to the knowledge of the Guarantor, threatened against the Guarantor which, if adversely determined, could reasonably be expected to have a material adverse effect on the ability of the Guarantor to perform its obligations under this Guaranty.

3. Waivers.

(a) Guarantor, to the extent permitted under applicable law, hereby waives any right to require the Company to (i) except as otherwise expressly set forth in this Guaranty, proceed against the Acquirer or any other guarantor of the Acquirer's obligations under the Tender Offer Agreement, (ii) proceed against or exhaust any security received from the Acquirer or any other guarantor of the Acquirer's Obligations under the Tender Offer Agreement, or (iii) pursue any other right or remedy in the Company's power whatsoever.

(b) Guarantor further waives, to the fullest extent permitted by applicable law, (i) any defense resulting from the absence, impairment or loss of any right of reimbursement, subrogation, contribution or other right or remedy of the Guarantor against the Acquirer, any other guarantor of the Obligations or any security, (ii) any setoff or counterclaim of the Acquirer or any defense which results from any disability or other defense of the Acquirer or the cessation or stay of enforcement from any cause whatsoever of the liability of the Acquirer (including, without limitation, the lack of validity or enforceability of the Tender Offer Agreement), (iii) any right to exoneration of sureties that would otherwise be applicable, (iv) any right of subrogation or reimbursement and, if there are any other guarantors of the Obligations, any right of contribution, and right to enforce any remedy that the Company now has or may hereafter have against the Acquirer, and any benefit of, and any right to participate in, any security now or hereafter received by Company, (v) all presentments, demands for performance, notices of non-performance, notices delivered under the Tender Offer Agreement, protests, notice of non-performance default, dishonor, and protest and notices of acceptance of this Guaranty and of the Obligations and of the existence, creation or incurring of new or additional Obligations and notices of any public or private foreclosure sale, and all other notices of any kind, (vi) the benefit of any statute of limitations, (vii) any appraisement, valuation, stay, extension, moratorium redemption or similar law now or hereafter in effect or similar rights for marshalling, and (viii) any right to be informed by the Company of the financial condition of the Acquirer or any other guarantor of the Obligations or any change therein or any other circumstances bearing upon the risk of nonpayment or nonperformance of the Obligations. The Guarantor has the ability to and assumes the responsibility for keeping informed of the financial condition of the Acquirer and any other guarantors of the Obligations and of other circumstances affecting such nonpayment and nonperformance risks.

4. Miscellaneous.

(a) Public Disclosure. Guarantor agrees that it will not issue any press release or other public announcement that would constitute a violation of Section 5.7 of the Tender Offer

Agreement as if Guarantor was subject to the same restrictions to which the Acquirer is subject thereunder.

(b) Notices. All notices, requests, demands and other communications that are required or may be given under this Guaranty shall be in writing and shall be personally delivered or sent by certified or registered mail or by a reputable nationwide overnight courier service. If personally delivered, notices, requests, demands and other communications will be deemed to have been duly given at time of actual receipt. If delivered by certified or registered mail or by a reputable nationwide overnight courier service, deemed receipt will be at time evidenced by confirmation of receipt with return receipt requested. In each case notice shall be sent:

if to Guarantor to:

Total S.A.
2, place Jean Millier
La Défense 6
92400 Courbevoie
France
Attention: Patrick de la Chevardière
Attention: Jonathan Marsh

with copies (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304-1050
Attention: David Segre and Richard C. Blake

and

Wilson Sonsini Goodrich & Rosati
Professional Corporation
One Market Street
Spear Tower, Suite 3300
San Francisco, California 94105-1126
Attention: Michael S. Ringler and Denny Kwon

if to the Company, to:

SunPower Corporation
77 Rio Robles
San Jose, CA 95134
Attention: Dennis Arriola and Bruce Ledesma

with copies (which shall not constitute notice) to:

Jones Day
1755 Embarcadero Road
Palo Alto, CA 94303
Attention: R. Todd Johnson
Steve Gillette

and

Jones Day
3161 Michelson Drive, 8th Floor
Irvine, California 92612
Attention: Jonn R. Beeson

or to such other place and with such other copies as the Company or the Guarantor may designate as to itself by written notice to the other pursuant to this Section 4(a).

(b) Nonwaiver. No failure or delay on the Company's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(c) Amendments and Waivers. This Guaranty may not be amended or modified, nor may any of its terms be waived, except by written instruments signed by the Guarantor and the Company. Each waiver or consent under any provision hereof shall be effective only in the specific instances for the purpose for which given.

(d) Assignments. This Guaranty shall be binding upon and inure to the benefit of the Company and the Guarantor and their respective successors and assigns; provided, however, that without the prior written consent of the Company, the Guarantor may not assign its rights and obligations hereunder.

(e) Cumulative Rights, etc. The rights, powers and remedies of the Company under this Guaranty shall be in addition to all rights, powers and remedies given to the Company by virtue of any applicable law, rule or regulation, the Tender Offer Agreement or any other agreement, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing the Company's rights hereunder.

(f) Partial Invalidity. If at any time any provision of this Guaranty is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Guaranty nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

(g) Applicable Law; Jurisdiction; Etc.

(i) This Guaranty shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof.

(ii) Each of the parties hereto irrevocably consents and submits itself and its properties and assets to the exclusive jurisdiction and venue in any state court within the State of Delaware (or, if a state court located within the State of Delaware declines to accept jurisdiction over a particular matter, any court of the United States located in the State of Delaware) in connection with any matter based upon or arising out of this Guaranty or the transactions contemplated hereby, agrees that process may be served upon them in any manner authorized by the laws of the State of Delaware for such Persons and waives and covenants not to assert or plead any objection which such Person might otherwise have to such jurisdiction, venue and process. Each party hereto hereby agrees not to commence any legal proceedings relating to or arising out of this Guaranty or the transactions contemplated hereby in any jurisdiction or courts other than as provided herein.

(iii) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE ACTIONS OF A PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

(j) Attorneys Fees. If any legal action or other proceeding relating to this Guaranty or the enforcement of any provision of this Guaranty is brought, then, to the extent the Company prevails in such litigation or proceeding, Guarantor shall pay on demand all reasonable fees and out of pocket expenses of the Company in connection with such legal action or proceeding.

[Remainder of page intentionally left blank]

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

TOTAL, S.A.

By /s/ Patrick de La Chevardière
Name: Patrick de La Chevardière
Title: Chief Financial Officer

SUNPOWER CORPORATION

By /s/ Thomas H. Werner
Name: Thomas H. Werner
Title: Chief Executive Officer

Exhibit 10.2

CREDIT SUPPORT AGREEMENT

This **CREDIT SUPPORT AGREEMENT** (together with any Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the terms hereof, this "Agreement"), dated as of April 28, 2011, is entered into by and between SunPower Corporation, a Delaware corporation (the "Company"), and Total S.A., a société anonyme organized under the laws of the Republic of France (the "Guarantor").

RECITALS

WHEREAS, the Company wishes to secure one or more letter of credit facilities that provide for the issuance of letters of credit denominated in Dollars, Euros or such other freely-convertible currency as the Guarantor may reasonably approve ("L/Cs") by one or more financial institutions (each such financial institution, a "Bank") in support of the Company's UPP and LComm (each as defined below) businesses (whether issued for the account of the Company or a wholly-owned Subsidiary of the Company (a "Wholly-Owned Subsidiary")), as well as for other purposes permitted by this Agreement (collectively, the "Letter of Credit Facilities"), and as to which L/Cs the Company has either the primary obligation to reimburse draws or is the guarantor of a Wholly-Owned Subsidiary's primary obligation to reimburse draws;

WHEREAS, to obtain more favorable terms under the Letter of Credit Facilities, the Company has requested that the Guarantor agree to enter into a Guaranty Agreement (each a "Guaranty" and collectively, the "Guaranties") with respect to one or more Letter of Credit Facilities, pursuant to which the Guarantor will guarantee the payment to the applicable Bank (such payment to be made after the Bank has notified the Company that an L/C has been drawn and the Company has not repaid the Bank within the period of time agreed in the Letter of Credit Facility) of the Company's obligation to reimburse a draw on an L/C and pay interest thereon in accordance with the Letter of Credit Facility between such Bank and the Company;

WHEREAS, the Company expects that this Agreement will improve the Company's access to Non-Guaranteed Facilities which include more favorable terms than it would otherwise be able to obtain, including no collateral or guaranty requirements, minimum cash balance requirements or other restrictions on the Company's cash or liquidity;

WHEREAS, through an affiliate, the Guarantor has offered to acquire a portion of the equity interests in the Company and, upon the closing of such acquisition, both the Guarantor and its affiliate will derive substantial direct and indirect benefit from the Guarantor providing Guaranties that support the Company's ability to obtain Letter of Credit Facilities on favorable terms; and

WHEREAS, in order to induce the Guarantor to enter into this Agreement and each Guaranty, the Company has agreed to undertake certain obligations as more fully set forth below;

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Guarantor hereby agree as follows:

AGREEMENT

Section 1. Definitions. Capitalized terms used in this Agreement, including in its preamble and recitals, shall have the following meanings:

(a) "Affiliation Agreement" means the Affiliation Agreement, dated as of the date hereof, between Total Gas & Power USA, SAS and the Company.

(b) "Aggregate L/C Amount" means, as of any time, the sum, calculated on a Dollar-Equivalent Basis, of (i) the aggregate amount then-available to be drawn under all L/Cs issued under any Guaranteed Facility, (ii) the then-remaining amount of L/Cs available to be issued under any Guaranteed Facility (based on the maximum aggregate amount of L/Cs that could from time to time in the future be issued under any such Guaranteed Facility), and (iii) the aggregate amount of draws (including accrued but unpaid interest thereon) on any L/Cs issued under any Guaranteed Facility that have not yet been reimbursed by the Company to either (x) the applicable Bank or (y) the Guarantor (following a payment by the Guarantor to the Bank pursuant to a Guaranty).

(c) "Agreement" has the meaning given in the Preamble.

(d) "Annual Operating Plan" means, for any fiscal year, the projected income statement, cash flow statement and balance sheet of the Company broken out by quarter for such fiscal year and approved by the Company's Board of Directors following its review of supporting material such as operational metrics (including regional MW, ASPs and COGS) and credit support requirements.

(e) "Assignment Fee" means a fee, equal to $20 million as of January 1, 2014, and reduced by $2 million per calendar quarter until such Assignment Fee is reduced to zero. As an example, the Assignment Fee that would be payable in connection with an assignment that occurred on October 15, 2014, would be $14 million.

(f) "Available Facility Amount" means, at any time, the Maximum L/C Amount in effect at such time, less the Aggregate L/C Amount at such time.

(g) "Bank" has the meaning given in the Recitals.

(h) "Commission Fee" means the annual fees payable by the Company to a Bank on the issued amount of an L/C under a Letter of Credit Facility.

(i) "Commitment Fee" means the annual fees payable by the Company to a Bank on the committed (but not issued) amount of an L/C under a Letter of Credit Facility.

(j) "Company" has the meaning given in the Preamble.

(k) "Credit Rating" means, for any proposed assignee, the credit rating of such assignee's long-term unsecured, unsubordinated debt as of the proposed assignment date after taking into account the totality of the transactions pursuant to which such assignee is acquiring the voting power or voting stock of the Company and assuming the rights and

obligations of the Guarantor under this Agreement and if such assignee had a Credit Rating by S&P and/or Moody's immediately prior to such proposed assignment, as evidenced by confirmation of rating issued by S&P and/or Moody's, as applicable, setting forth such Credit Rating on a prospective basis after giving effect to such transactions. In any reference to a Credit Rating in this Agreement, the first Credit Rating is the S&P Credit Rating and the second Credit Rating is the Moody's Credit Rating.

(l) "CVSR Project" means the California Valley Solar Ranch in San Luis Obispo County, California, which is expected to have a capacity of approximately 250 megawatts.

(m) "Dollar" and "$" mean lawful money of the United States of America.

(n) "Dollar-Equivalent Basis" means, for any date of determination, that amounts denominated in a currency other than Dollars are converted into the equivalent amount of Dollars based on the "Euro foreign exchange reference rate" and such other foreign exchange reference rate published by the European Central Bank as may be necessary to convert the applicable currency from such currency to Euros (if necessary) and from Euros to Dollars.

(o) "Effective Date" means the date on which the Offer Closing (as defined in the Tender Offer Agreement) occurs.

(p) "Equity Securities" of any Person means (i) all common stock, preferred stock, participations, shares, partnership interests or other equity interests in and of such Person (regardless of how designated and whether or not voting or non-voting) and (ii) all warrants, options and other rights to acquire any of the foregoing.

(q) "Euro" and "€" mean the official currency of the European Union.

(r) "Examination Period" means any period during which (a) 10% or more of the initial face amount of all then-outstanding L/Cs issued under the Guaranteed Facilities has been drawn during the preceding twelve (12) consecutive months and (b) such drawn L/Cs relate to three (3) or more projects that are developed or owned by at least three (3) unrelated sponsors; provided, that an Examination Period shall be deemed not to be in effect if, following the satisfaction of the preceding conditions, (x) the Company has undertaken an executive-level analysis of the reasons that the L/Cs were drawn upon, (y) the Company has proposed a course of action responding to the reasons for the draws on the L/Cs that, in the reasonable opinion of the Guarantor's Authorized Officer, will prevent the occurrence of an Examination Period in the future, and (z) the Company has implemented such course of action to the reasonable satisfaction of the Guarantor's Authorized Officer; and provided, further, that the first L/C that is drawn upon shall not be considered for purposes of the foregoing determination of whether an Examination Period is in effect if, after the draw on such L/C, (x) the Company has undertaken an executive-level analysis of the reasons that such L/C was drawn upon, (y) the Company has proposed a course of action responding to the reasons for the draw on such L/C that, in the reasonable opinion of the Guarantor's Authorized Officer, will prevent the occurrence of similar draws on L/Cs in the future, and (z) the Company has implemented such course of action to the reasonable satisfaction of the Guarantor's Authorized Officer.

(s) "Free Transfer Period" means the period from January 1, 2014, through June 30, 2016.

(t) "GAAP" means generally accepted accounting principles in the United States of America.

(u) "Guarantee Fee" has the meaning given in Section 3(a).

(v) "Guaranteed Facility" means a Letter of Credit Facility that is guaranteed by the Guarantor pursuant to a Guaranty.

(w) "Guarantor" has the meaning given in the Preamble.

(x) "Guarantor's Authorized Officer" means the Guarantor's Vice President for Operating Subsidiaries.

(y) "Guaranty" or "Guaranties" has the meaning given in the Recitals.

(z) "Indebtedness" means and includes the aggregate amount of, without duplication (i) all obligations for borrowed money, (ii) all obligations evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations to pay the deferred purchase price of property or services (other than accounts payable and accrued expenses incurred in the ordinary course of business determined in accordance with GAAP), (iv) all obligations with respect to capital leases, (v) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (vi) all reimbursement and other payment obligations, contingent or otherwise, in respect of letters of credit and similar surety instruments (including construction performance bonds), and (vii) all guaranty obligations with respect to the types of Indebtedness listed in clauses (i) through (vi) above.

(aa) "L/Cs" has the meaning given in the Recitals.

(bb) "LComm" means the large commercial portion of the residential and commercial business segment of the Company with projects of at least 1 megawatt (DC or direct current) in peak capacity sold directly to a commercial end-user and not via a dealer.

(cc) "Letter of Credit Facilities" has the meaning given in the Recitals.

(dd) "LIBOR" means, as of any date of determination

(i) the rate per annum equal to the rate determined by the Guarantor to be the offered rate that appears on the page of the Telerate screen (or any successor thereto) that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars with a term equivalent to six months, determined as of approximately 11:00 a.m. (London time) on such date; or

(ii) if the rate referenced in the preceding clause (i) does not appear on such page or service or such page or service is not available, the rate per annum equal to the rate determined by the Guarantor to be the offered rate on such other page or other service that

displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars with a term equivalent to six months, determined as of approximately 11:00 a.m. (London time) on such date.

(ee) "Lien" means any lien, mortgage, pledge, security interest, or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

(ff) "Make-Whole Amount" means the amount, if any, actually paid by the Company to the Banks that are party to Guaranteed Facilities and Non-Guaranteed Facilities and to lenders in any revolving credit facility permitted under this Agreement in increased costs to the Company as a result of Total S.A.'s assignment of its rights and obligations under this Agreement during the Free Transfer Period (as certified to the Guarantor by the Company's Chief Financial Officer in connection with each invoice for payment during the remainder of the Free Transfer Period), calculated as follows:

Increased L/C Costs + Increased Revolver Costs = Make-Whole Amount payable for such quarter, where

"Increased L/C Costs" means, with respect to L/Cs eligible for a Guaranty under this Agreement, Non-Guaranteed Facilities and Guaranteed Facilities the repayment of which is not guaranteed by Total S.A. under this Agreement (but in each case that would have been permitted under this Agreement), the positive number, if any, that is the difference between (x) the sum of all Commission Fees and Guaranty Fees paid by the Company for such calendar quarter under such facilities less (y) the aggregate amount of all Commission Fees and Guaranty Fees that the Company would have paid for such calendar quarter based on the weighted average Commission Fees and Guaranty Fees that were payable by the Company over the six-month period immediately prior to the assignment date.

"Increased Revolver Costs" means, with respect to revolving credit facilities up to a maximum of $200,000,000 and otherwise permitted under this Agreement, the positive number, if any, that is the difference between (x) interest amounts paid by the Company for such calendar quarter less (y) interest amounts that the Company would have paid pursuant to its revolving credit facility in effect immediately prior to the assignment date (based in each case on actual borrowings during such calendar quarter and solely due to a difference in the margin-over-base rate charged before and after the assignment date); provided, that Increased Revolver Costs will only be paid for the remainder of the Free Transfer Period.

(gg) "Material Adverse Effect" means a material adverse effect on (i) the business, assets, operations or financial or other condition of the Company and its Subsidiaries (including the joint venture with AU Optronics Corp.), when taken as a whole, (ii) the ability of the Company to pay or perform the Obligations in accordance with the terms of this Agreement, (iii) the rights and remedies of the Guarantor under this Agreement, or (iv) the validity or enforceability of this Agreement or the rights and remedies of the Guarantor hereunder.

(hh) "Maximum L/C Amount" means, in each case, calculated non-cumulatively and on a Dollar-Equivalent Basis, and as may be adjusted pursuant to Section 4(b):

(i) for the period from the Effective Date through December 31, 2011, $445 million;

(ii) for the period from January 1, 2012 through December 31, 2012, $725 million;

(iii) for the period from January 1, 2013 through December 31, 2013, $771 million;

(iv) for the period from January 1, 2014 through December 31, 2014, $878 million;

(v) for the period from January 1, 2015 through December 31, 2015, $936 million; and

(vi) for the period from January 1, 2016 through the termination of this Agreement, $1 billion;

provided, that (a) in the event that the Company's Board of Directors approves an Annual Operating Plan for any period that provides for credit support requirements for the Company's UPP and LComm businesses in excess of the amounts specified above for such period, the Guarantor, may, in its sole discretion, increase the Maximum L/C Amount for such period up to an amount equal to the credit support requirements set forth in such Annual Operating Plan, or (b) in the event that the Company's Board of Directors, by Supermajority Board Approval (as defined in the Affiliation Agreement), approves an Annual Operating Plan for any period that provides for credit support requirements for the Company's UPP and LComm businesses in amounts less than 90% of those specified above for such period, the Maximum L/C Amount for such period shall be automatically reduced to an amount equal to the credit support requirements set forth in such Annual Operating Plan (such reduced amount the "Reduced Maximum Amount");

provided, further, that if following a reduction in the Maximum L/C Amount to the Reduced Maximum Amount, the Company's management approves UPP and LComm projects that, together with the existing credit support requirements for the Company's UPP and LComm businesses, require credit support requirements up to, but not exceeding, 110% of the Reduced Maximum Amount, then the Reduced Maximum Amount will automatically be increased (without approval by the Guarantor or the Company's Board of Directors) to such higher amount (but not to exceed the Maximum L/C Amount for such period as in effect prior to any reduction);

provided, further, that if following a reduction in the Maximum L/C Amount to the Reduced Maximum Amount (and without limiting the provisions of the immediately preceding proviso), the Company's Board of Directors approves UPP and LComm projects that, together with the existing credit support requirements for the Company's UPP and LComm businesses, require credit support requirements in excess of the Reduced Maximum Amount, then the Reduced Maximum Amount will automatically be increased (without approval by the Guarantor) to such

higher amount (but not to exceed the Maximum L/C Amount for such period as in effect prior to any reduction);

provided, further, that the Maximum L/C Amount set forth in clause (i) above will be increased to $645 million to support the Company's performance of construction services related to the CVSR Project if (a) the Company is the prime EPC contractor for the CVSR Project and (b) the EPC arrangements for the CVSR Project, including contracts with prime contractors and sub-contractors and related credit support, performance guaranty and completion guaranty arrangements, are reasonably satisfactory to the Guarantor; and

provided, further, that notwithstanding anything herein to the contrary, at no time may the Maximum L/C Amount exceed $1 billion.

(ii) "Montalto Project" means the Montalto di Castro solar park in Lazio, Italy, which was sold by the Company prior to the Effective Date.

(jj) "Moody's" means Moody's Investors Service, Inc.

(kk) "Non-Guaranteed Facility" has the meaning given in Section 4(a).

(ll) "Non-Recourse Indebtedness" means Indebtedness of the Company or any of its Subsidiaries that relates solely to the acquisition, construction, improvement and/or development of a UPP or LComm project, including Indebtedness assumed in connection with the acquisition of any such project, and that is secured by no assets of the Company or any of its Subsidiaries other than (a) such Subsidiary's project assets and/or (b) the equity interest of the Company or a Subsidiary in such Subsidiary; provided, that the sole purpose of such Subsidiary is such project.

(mm) "NorSun Supply Agreement" means the Long-Term Polysilicon Supply Agreement, dated as of August 9, 2007, by and between the Company and NorSun AS.

(nn) "Obligations" means and includes all liabilities and obligations arising in connection with this Agreement and the issuance of, maintenance of or payment by the Guarantor under any Guaranty, owed by the Company to the Guarantor of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), now existing or hereafter arising, including all interest, fees, charges, expenses, attorneys' fees and costs and accountants' fees and costs chargeable to and payable by the Company hereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U.S.C. § 101 et seq.), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

(oo) "Other Permitted Purposes" means (a) development obligations or guaranties of the Company or a Wholly-Owned Subsidiary with respect to project development obligations such as transmission reservations and land options for the Company's UPP and LComm businesses, (b) remediation work, landscaping and other related obligations or guarantees of the Company or a Wholly-Owned Subsidiary in favor of government entities for reparation of land and surrounding environment after construction for the Company's UPP and

LComm businesses, and (c) obligations or guarantees of the Company or a Wholly-Owned Subsidiary with respect to obligations to local tax authorities relating to doing business in that locality with respect to the Company's UPP or LComm businesses.

(pp) "Permitted Assignee" means a Person that (a) is a Transferee to whom the Terra Group (as defined in the Affiliation Agreement) has Transferred, in any one transaction or series of transactions, either 40% or more of the Total Current Voting Power of the Company then in effect or 40% or more of the Voting Stock (as each such term in this clause (a) is defined in the Affiliation Agreement) and (b) has a Credit Rating of BBB+/Baa1 or better or, if such Person does not have a Credit Rating from S&P or Moody's, would have a Credit Rating of at least BBB+/Baa1 if it were rated by S&P or Moody's, as determined by a leading investment bank in a letter to the Guarantor (a copy of which shall be delivered to the Company at the time that the Guarantor provides initial notice of the proposed assignment); provided, that, in event that such Person has a Credit Rating from both S&P and Moody's and has a Credit Rating of BBB+ or better by S&P or Baa1 or better by Moody's, but not both, such Person shall satisfy the requirements of clause (b) if the S&P and Moody's Credit Ratings do not differ by more than one rating (for example, if the S&P Credit Rating is BBB+ and the Moody's Credit Rating is Baa2, such Person would satisfy the requirements of clause (b), but if the S&P Credit Rating is BBB+ and the Moody's Credit Rating is Baa3, such Person would not satisfy the requirements of clause (b)); provided, further, that, in the case of a proposed assignee that does not have a Credit Rating from S&P or Moody's, the Company shall have the option to retain a second leading investment bank to confirm that the proposed assignee's Credit Rating, if it were rated by S&P or Moody's, would be at least BBB+/Baa1, by delivering written notice to the Guarantor within ten (10) business days of the Company's receipt of the initial notice of the proposed assignment and such second leading investment bank shall be provided with the same information used by the initial leading investment bank in making its initial determination of such Credit Rating, including information (including financial projections) from the proposed assignee, and in the event that such second leading investment bank issues a letter, within thirty (30) days of the second leading investment bank's receipt of the required information described above, advising the Company that the proposed assignee's Credit Rating, if it were rated by S&P or Moody's, would not be at least BBB+/Baa1, representatives of each of the Guarantor and the Company shall confer to resolve the discrepancy between the two leading investment banks (which may include retaining a third mutually acceptable leading investment bank to resolve such discrepancy).

(qq) "Permitted Secured Indebtedness" means:

(i) Indebtedness existing on the date hereof and listed on Schedule V hereto;

(ii) Indebtedness of any Person who becomes a Subsidiary after the Effective Date so long as such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary and is secured solely by the assets and equity of such Subsidiary;

(iii) Indebtedness incurred by the Company in accordance with Section 5.12(c) of the Tender Offer Agreement;

(iv) Indebtedness that represents an extension, refinancing or renewal of any of the Indebtedness described in clauses (i), (ii) and (iii); provided, that such extension, refinancing or renewal may not increase the amount of such Indebtedness or secure such Indebtedness with collateral additional to the collateral securing such Indebtedness immediately prior to such extension, refinancing or renewal;

(v) Non-Recourse Indebtedness;

(vi) Indebtedness to customers and suppliers incurred in connection with the purchase of equipment, supplies and inventory from such suppliers and customers under supply agreements, secured only by liens on such equipment, supplies and inventory;

(vii) Indebtedness with respect to letters of credit issued with respect to a project for which the Guarantor has not given its approval under Section 6(b)(vi), so long as the aggregate undrawn amount of such letters of credit (when combined with letters of credit described in clause (vii) below) does not exceed (a) $60,000,000 at any time from the date hereof until the second anniversary of the Effective Date or (b) $125,000,000 at any time on or after the second anniversary of the Effective Date;

(viii) Indebtedness with respect to letters of credit that, at the time of the issuance thereof, could not be issued under a Guaranteed Facility or a Non-Guaranteed Facility, so long as the aggregate undrawn amount of such letters of credit (when combined with letters of credit described in clause (vi) above) does not exceed (a) $60,000,000 at any time from the date hereof until the second anniversary of the Effective Date or (b) $125,000,000 at any time on or after the second anniversary of the Effective Date; and

(ix) other Indebtedness in an aggregate outstanding principal amount not to exceed (a) $25,000,000 at any time from the date hereof until the second anniversary of the Effective Date or (b) $50,000,000 at any time on or after the second anniversary of the Effective Date.

(rr) "Person" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

(ss) "Potential Trigger Event" means any event or condition that, with the giving of notice or the passage of time, or both, would be a Trigger Event.

(tt) "Proposed Facility" has the meaning given in Section 2(a).

(uu) "Restricted Transfer Period" means the period from the date hereof through December 31, 2013.

(vv) "S&P" means Standard & Poor's Financial Services LLC, a subsidiary of the McGraw-Hill Companies, Inc.

(ww) "Subsidiary" means (a) any corporation of which at least 50% of the issued and outstanding Equity Securities having ordinary voting power to elect a majority of the

board of directors of such corporation is at the time directly or indirectly owned or controlled by the Company, (b) any partnership, joint venture, or other association of which at least 50% of the equity interest having the power to vote, direct or control the management of such partnership, joint venture or other association is at the time directly or indirectly owned and controlled by the Company, or (c) any other entity included in the financial statements of the Company on a consolidated basis; provided, that the joint venture with AU Optronics Corp. will not be considered a Subsidiary for purposes of this Agreement unless specifically stated otherwise.

(xx) "Tender Offer Agreement" means that certain Tender Offer Agreement, dated as of the date hereof, by and between the Company and Total Gas & Power USA, SAS.

(yy) "Trigger Event" has the meaning given in Section 8(a).

(zz) "Upfront Fee" means the fees payable by the Company to a Bank upon the issuance of an L/C under a Letter of Credit Facility.

(aaa) "UPP" means the utility and power plant business segment of the Company, which includes power plant project development, construction and project sales, turn-key engineering, procurement and construction services for power plant construction, and power plant operations and maintenance services, but excludes component sales.

(bbb) "Wholly-Owned Subsidiary" has the meaning given in the Recitals.

Section 2. Guaranty.

(a) Request for Guaranty. At any time from the Effective Date until the fifth anniversary of the Effective Date, the Company may present to the Guarantor a written request for the Guarantor to provide a Guaranty in support of the Company's payment obligations with respect to a Letter of Credit Facility (the "Proposed Facility"), which request shall include copies of all proposed documents relating to the Proposed Facility. For the avoidance of doubt, the Proposed Facility may be a Letter of Credit Facility that was in effect as of the Effective Date pursuant to which the Company proposes to arrange for L/Cs to be issued after the Effective Date that are guaranteed by a Guaranty.

(b) Conditions to Issuance of Guaranty. The Guarantor shall issue and enter into a Guaranty and such other documents as may be reasonably requested by the applicable Bank relating to the Proposed Facility (to the extent reasonably acceptable to the Guarantor) as soon as reasonably practicable after its receipt of the documentation relating to the Proposed Facility and in light of the Company's timing needs with respect to the L/Cs to be issued under such Proposed Facility (and in any event within ten (10) business days after its receipt of such documentation); provided, that the following conditions are either satisfied or waived by the Guarantor:

(i) after giving effect to such requested Guaranty and such Proposed Facility, the Aggregate L/C Amount will not exceed the Maximum L/C Amount in effect at such time;

(ii) such Proposed Facility requires the Company to reimburse the Bank for any drawn L/Cs within five (5) business days;

(iii) such Proposed Facility does not permit issuance of L/Cs after the fifth anniversary of the Effective Date or with an expiration date after the seventh anniversary of the Effective Date;

(iv) such Proposed Facility does not permit the issuance of L/Cs for any obligations of the Company or a Wholly-Owned Subsidiary other than (A) performance guarantees (for a period of up to two (2) years after completion of the applicable project) and completion guarantees (until completion of the applicable project) of the Company or such Wholly-Owned Subsidiary with respect to engineering, procurement and construction services provided in connection with the Company's UPP and LComm businesses (including replacing unguaranteed L/Cs in existence as of the Effective Date for such purposes with new L/Cs to be issued under such Proposed Facility), (B) performance guarantees for engineered hardware packages not including engineering, procurement and construction services for UPP projects for a period of up to two (2) years after completion of the applicable project, (C) the Other Permitted Purposes for a period of up to two (2) years, and (D) certain purchase, repayment and tax indemnity obligations of the Company or a Wholly-Owned Subsidiary existing as of the Effective Date supported by no more than three (3) L/Cs (of which two (2) L/Cs in an aggregate face amount of €10,675,609 relate to the Montalto Project and one (1) L/C in a face amount of $40,000,000 relates to the NorSun Supply Agreement) (which existing L/Cs will be replaced by L/Cs issued pursuant to a Guaranteed Facility with an expiration date no later than the fifth anniversary of the Effective Date); provided, that, notwithstanding anything to the contrary in this Section 2(b)(iv), the Company will be permitted to have outstanding at any one time during the period described in Section 2(b)(iii) letters of credit for the purposes described in clauses (A) and (B) above with a period of between two (2) and three (3) years and for an aggregate initial face amount of up to fifteen per cent (15%) of the then-applicable Maximum L/C Amount;

(v) no Trigger Event has occurred and is continuing, or would result from the Company entering into such Proposed Facility and all other documents contemplated by such Proposed Facility; and

(vi) the Guaranty required to be provided by the Guarantor in connection with the Proposed Facility is substantially in the form of Exhibit A hereto or such other form as Guarantor may agree with the applicable Bank (it being understood that the Guarantor will negotiate the form of Guaranty with such Bank in good faith), which Guaranty shall, in any case, include (A) a right of the Guarantor to direct such Bank to suspend the issuance of any additional L/Cs upon the occurrence and during the continuation of a Trigger Event or following the reduction of the Maximum L/C Amount pursuant to this Agreement and (B) an obligation of such Bank to notify the Guarantor in writing of each issuance or drawdown of an L/C under the Letter of Credit Facility (including delivery of a copy thereof).

Section 3. Fees, Expenses and Interest. In consideration for the Guarantor's commitment set forth in this Agreement and for entering into the Guaranties, the Company hereby agrees to make the following payments to the Guarantor:

(a) Guarantee Fee. Within thirty (30) days after the last day of each calendar quarter, the Company shall pay to the Guarantor a guarantee fee (the "Guarantee Fee") for each L/C that was the subject of a Guaranty and was outstanding for all or any part of the preceding calendar quarter calculated as follows:

X times Y times (Z/365)

where:

(i) X is the average daily amount of (A) the undrawn amount of such L/C plus (B) the amount drawn on such L/C that has not yet been reimbursed either by the Company to the applicable Bank or by the Guarantor to the applicable Bank under the Guaranty;

(ii) Y is:

(A) 1.00% for L/Cs issued or extended prior to the second anniversary of the Effective Date;

(B) 1.40% for L/Cs issued or extended during the period from the second anniversary of the Effective Date until the third anniversary of the Effective Date;

(C) 1.85% for L/Cs issued or extended during the period from the third anniversary of the Effective Date until the fourth anniversary of the Effective Date; and

(D) 2.35% for L/Cs issued or extended during the period from the fourth anniversary of the Effective Date until the fifth anniversary of the Effective Date; and

(iii) Z is the number of days during such calendar quarter that the L/C was outstanding.

(b) Repayment. Within thirty (30) days after the date on which the Guarantor makes any payment to a Bank under a Guaranty and the Company's receipt of written or electronic notice of such payment from the Guarantor, the Company shall pay to the Guarantor (i) the full amount of such payment made by the Guarantor plus (ii) interest on such amount, for the period from and including the date of payment by the Guarantor to the Bank to and including the date of payment by the Company to the Guarantor, at a rate per annum equal to LIBOR as in effect as of the date of the payment by the Guarantor to the Bank plus 3.00%. Notwithstanding the fact that the Company may have a Bank issue L/Cs for the account of a Wholly-Owned Subsidiary, the Company shall remain liable to such Bank for repayments under any such L/Cs (whether as a primary obligor or as a guarantor of such Wholly-Owned Subsidiary's repayment obligations) and the Company's obligations under this Section 3(b) apply to payments under Guaranties that relate to L/Cs issued for the account of any such Wholly-Owned Subsidiary.

(c) Expenses.

(i) The Company shall pay and reimburse the Guarantor for all reasonable out-of-pocket expenses incurred by the Guarantor after the Effective Date in the performance of its services under this Agreement. The Guarantor will provide the Company

with a good faith estimate of any such expenses to be incurred in connection with a Proposed Facility and will deliver to the Company invoices for such expenses. All such expenses for which invoices were delivered to the Company during a fiscal quarter of the Company are due and payable within 15 days after the end of such fiscal quarter.

(ii) The Company shall pay all reasonable out-of-pocket attorneys' fees and expenses incurred by the Guarantor in connection with (A) the payment to a Bank under a Guaranty or (B) any enforcement or attempt to enforce any of the obligations of the Company under this Agreement.

(d) Interest on Overdue Amounts. Any payment obligations of the Company to the Guarantor that are not paid when due shall accrue interest at a rate equal to LIBOR as in effect as of the time such payment was due plus 5.00% per annum.

(e) Bank Fees. For the avoidance of doubt, all fees and amounts (other than L/C draw reimbursement obligations and interest thereon), including but not limited to Commission Fees, Commitment Fees and Upfront Fees, required to be paid by the Company to a Bank pursuant to a Guaranteed Facility are solely the obligations of the Company and will not be payable by the Guarantor pursuant to a Guaranty or otherwise.

Section 4. Benchmarking.

(a) Solicitation of Terms. Not later than June 30, 2012 and June 30 of each year thereafter, and also at any time the Company wishes to obtain a Letter of Credit Facility that would be subject to a Guaranty, the Company shall, with the assistance of the Guarantor, solicit terms from a panel of banks (such banks to be reasonably acceptable to the Company) for a Letter of Credit Facility that would provide for the issuance of L/Cs without the benefit of a Guaranty or collateral or any required minimum cash balance or other restrictions on the Company's cash or liquidity (such other facility, a "Non-Guaranteed Facility"). The Company shall report the results of such solicitation of terms to the Guarantor using a form substantially similar to Schedule IV hereto.

(b) Use of Alternate Facility. If (i) the per-L/C Commission Fee under a proposed Non-Guaranteed Facility is equal to or less than 110% of the aggregate per-L/C Commission Fee and the Guarantee Fee payable by the Company to the Bank and the Guarantor pursuant to a Guaranteed Facility and this Agreement, (ii) the other fees payable under such Non-Guaranteed Facility (including, without limitation, any Commitment Fees or Upfront Fees) are reasonable in light of the fees payable under a Guaranteed Facility and the anticipated uses of such Non-Guaranteed Facility and (iii) the other terms and conditions of such Non-Guaranteed Facility (including, without limitation, restrictive covenants) are reasonable in light of the anticipated use of such Non-Guaranteed Facility, including the L/Cs issued thereunder, then (A) the Company will be required to enter into the Non-Guaranteed Facility as promptly as is commercially reasonable (and until such Non-Guaranteed Facility is available to the Company, the Company's prior Guaranteed Facilities, and the Guaranties corresponding thereto, shall remain in effect), (B) the Company will be required to reduce the commitments under Guaranteed Facilities in an amount equal to such Non-Guaranteed Facility and (C) for so long as such Non-Guaranteed Facility remains in effect, the Maximum L/C Amount during such period

will be reduced by the maximum aggregate amount of L/Cs that may be issued under the Non-Guaranteed Facility (it being understood that the reduction of the Maximum L/C Amount contemplated by this Section 4(b) only applies with respect to Non-Guaranteed Facilities that the Company is required to enter into under this Section 4(b) and the Maximum L/C Amount will not be reduced with respect to Non-Guaranteed Facilities that the Company enters into for any other purpose).

Section 5. Representations and Warranties.

(a) Company Representations and Warranties. On and as of the date of this Agreement, the Company represents and warrants to the Guarantor that:

(i) Due Incorporation, Qualification, etc. The Company is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation or formation and has the requisite corporate power and authority to conduct its business as it is presently being conducted.

(ii) Authority. The execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby (A) are within the corporate power and authority of the Company and (B) have been duly authorized by all necessary corporate actions on the part of the Company.

(iii) Enforceability. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(iv) Non-Contravention. The execution and delivery by the Company of this Agreement and the performance and consummation of the transactions contemplated hereby do not and will not (A) violate the articles or certificate of incorporation or bylaws of the Company, (B) violate any judgment, order, writ, decree, statute, rule or regulation applicable to the Company, (C) violate any provision of, or result in the breach or the acceleration of, or entitle any other person to accelerate (whether after the giving of notice or lapse of time or both), any material mortgage, indenture, agreement, instrument or contract to which the Company is a party or by which it is bound, or (D) result in the creation or imposition of any Lien upon any property or asset of the Company (other than those in favor of the Guarantor), except, in the case of each of clauses (B), (C) and (D) above, for such violations, or breaches or Liens that could not reasonably be expected to (1) have a Material Adverse Effect or (2) materially impede or delay the Company's performance of its obligations under this Agreement.

(v) Approvals. Other than those already obtained, no consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority or other person or entity (including, without limitation, the shareholders of the Company) is required in connection with the execution and delivery by the Company of this Agreement and the performance and consummation by the Company of the transactions contemplated hereby and thereby.

(vi) Litigation. There are no actions, suits, proceedings or investigations pending against the Company or its properties, nor has the Company received notice of any threat thereof, and the Company is not a party or to its knowledge subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality, that question the validity of this Agreement, or the right of the Company to enter into this Agreement, or to consummate the transactions contemplated hereby, or that could reasonably be expected to have a Material Adverse Effect or result in any change in the current equity ownership of the Company, nor is the Company aware that there is any basis for any of the foregoing.

(vii) Full Disclosure. Neither this Agreement, the exhibits hereto, nor any other document delivered by the Company to the Guarantor or its attorneys or agents in connection herewith or therewith or with the transactions contemplated hereby or thereby, contains any untrue statement of a material fact nor omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made.

(b) Guarantor Representations and Warranties. On and as of the date of this Agreement, the Guarantor represents and warrants to the Company that:

(i) Due Incorporation, Qualification, etc. The Guarantor is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation and has requisite power and authority to conduct its business as it is presently being conducted.

(ii) Authority. The execution, delivery and performance by the Guarantor of this Agreement and the consummation of the transactions contemplated hereby (A) are within the corporate power and authority of the Guarantor and (B) have been duly authorized by all necessary corporate actions on the part of the Guarantor.

(iii) Enforceability. This Agreement has been duly executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(iv) Non-Contravention. The execution and delivery by the Guarantor of this Agreement and the performance and consummation of the transactions contemplated hereby do not and will not violate the formative or governing documents of the Guarantor or any material judgment, order, writ, decree, statute, rule or regulation applicable to the Guarantor.

(v) Approvals. Other than those already obtained, no consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority or other person or entity is required in connection with the execution and delivery by the Guarantor of this Agreement and the performance and consummation by the Guarantor of the transactions contemplated hereby and thereby.

(vi) Litigation. There are no actions, suits, proceedings or investigations pending against the Guarantor, nor has the Guarantor received notice of any threat thereof, and the Guarantor is not a party or to its knowledge subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality, that question the validity of this Agreement, or the right of the Guarantor to enter into this Agreement, or to consummate the transactions contemplated hereby, nor is the Guarantor aware that there is any basis for any of the foregoing.

Section 6. Covenants of the Company.

(a) Affirmative Covenants. The Company agrees:

(i) to give the Guarantor prompt written notice of any Trigger Event under this Agreement or any event of default under any Guaranteed Facility;

(ii) to give the Guarantor prompt written notice each time an L/C is issued under a Guaranteed Facility (including providing a copy of the applicable L/C); and

(iii) to ensure that the payment obligations of the Company to the Guarantor under this Agreement rank at least equal in right of payment with all other present and future Indebtedness of the Company other than Permitted Secured Indebtedness.

(b) Negative Covenants. From and after the Effective Date, the Company agrees that, without the prior written consent of the Guarantor (such consent to be given or withheld by the Guarantor's Authorized Officer and such decision not to be unreasonably delayed), it will not:

(i) request, during the continuance of an Examination Period, the issuance of an L/C under a Guaranteed Facility if the Aggregate L/C Amount, after giving effect to the issuance of such L/C, would be greater than the greater of (A) the Aggregate L/C Amount immediately prior to the issuance of such L/C plus 25% of the Available Facility Amount immediately prior to the issuance of such L/C and (B) 50% of the then-applicable Maximum L/C Amount (it being agreed that at any time during the continuance of an Examination Period, the Guarantor may, after prior notice to the Company, notify the Banks under Guaranteed Facilities of the reduced Available Facility Amount as provided above);

(ii) request the issuance of an L/C under a Guaranteed Facility if any Potential Trigger Event or Trigger Event described in Section 8(a)(i), (iv), (vi) or (vii) has occurred and is continuing;

(iii) amend any agreements related to any Guaranteed Facility;

(iv) grant any Lien to secure any Indebtedness (other than Permitted Secured Indebtedness) unless (A) an identical lien is granted to the Guarantor to secure the Company's obligations under this Agreement pursuant to such agreements, instruments and other documents as are reasonably satisfactory to the Guarantor and (B) such other Lien is at all times equal or subordinate to the priority of the Lien granted to the Guarantor under clause (A) above

pursuant to an intercreditor agreement in form and substance reasonably satisfactory to the Guarantor;

(v) make any equity distributions for so long as it has any outstanding repayment obligation to the Guarantor under this Agreement resulting from a draw on an L/C that is the subject of a Guaranty; and

(vi) request the issuance of an L/C under a Guaranteed Facility for any project (or series of projects located within 500 meters of one another) with a nameplate capacity rating in excess of fifty (50) megawatts (ac – alternating current) (other than any L/C for the CVSR Project), it being understood that (A) the Guarantor will endeavor to provide its response to any request for its consent in connection with any such L/C within two (2) weeks after receiving appropriate due diligence documentation relating to such project, and (B) the Guarantor will be deemed to have consented to the issuance of such an L/C if it has not responded to any request for its consent within four (4) weeks after receiving all documentation reasonably requested by the Guarantor in order to evaluate the proposed L/C issuance (it being understood if the Guarantor objects to such proposed issuance of an L/C within four (4) weeks after receiving all documentation reasonably requested by the Guarantor in order to evaluate the proposed L/C issuance, the Company shall (subject to clause (vi) of the definition of Permitted Secured Indebtedness) be permitted to obtain an L/C for such purpose under a Letter of Credit Facility that is not the subject of a Guaranty pursuant to this Agreement, such Letter of Credit Facility may be secured without the requirement to grant the Guarantor a Lien, and any L/Cs issued thereunder shall not count toward the calculation of the Aggregate L/C Amount or Maximum L/C Amount for purposes of this Agreement).

(c) Reporting Requirements. The Company agrees to deliver to the Guarantor as of and after the Effective Date:

(i) not later than fifteen (15) days prior to the beginning of each fiscal year of the Company, a draft Annual Operating Plan for such fiscal year that includes the aggregate amount of L/Cs anticipated to be issued under Letter of Credit Facilities and guaranteed pursuant to this Agreement during such fiscal year and promptly when an Annual Operating Plan for a fiscal year is approved by the Company's Board of Directors, a copy of such Annual Operating Plan together with copies of all supporting materials reviewed by the Company's Board of Directors in connection with such Annual Operating Plan (including regional MW, ASPs and COGS) and a report substantially in the form of Schedule I hereto, certified by the Chief Financial Officer of the Company;

(ii) within ten (10) days after the last day of each calendar quarter, a report substantially in the form of Schedule II hereto, detailing the terms of all Guaranteed Facilities then in effect, certified by the Chief Financial Officer of the Company;

(iii) promptly upon learning of a draw under an L/C, written notice of such draw, and within five (5) business days of such draw a report substantially in the form of Schedule III hereto, detailing the number and amounts of all draws on L/Cs over the preceding twelve (12) months; and

(iv) such additional information and documents (including documents relating to Permitted Secured Indebtedness) as may be requested by the Guarantor for the purpose of verifying the Company's compliance with its obligations under this Agreement.

Section 7. Covenants of the Guarantor.

(a) Commencing promptly after the Effective Date, the Guarantor will use its reasonable efforts to assist the Company in obtaining a $200,000,000 revolving credit facility with lenders and on terms as may be agreed from time to time between the Guarantor and the Company.

(b) The Guarantor acknowledges that any Liens granted to the Guarantor as provided for in Section 6(b)(iv) shall at all times be junior and subordinate to the priority of the Liens granted to the holders of Permitted Secured Indebtedness and the Guarantor agrees to enter into intercreditor agreements with the holders of Permitted Secured Indebtedness to effectuate the foregoing.

(c) On the Effective Date, the Guarantor will notify the Company of the name and contact information for the Guarantor's Authorized Officer and from time to time thereafter will promptly notify the Company of the name and contact information for any replacement thereof.

Section 8. Trigger Events and Remedies.

(a) Trigger Events. Each of the following events occurring as of or after the Effective Date shall constitute a "Trigger Event" for purposes of this Agreement:

(i) the Company defaults with respect to (A) its reimbursement obligations under Section 3(b) or (B) any other payment obligation hereunder if such obligation remains unpaid thirty (30) days after the due date therefor and the Guarantor's written demand therefor;

(ii) any representation or warranty made by the Company in this Agreement or as an inducement to the Guarantor to enter into any Guaranty is false, incorrect, incomplete or misleading in any material respect when made and the Company has failed to cure such misrepresentation within fifteen (15) days after notice thereof from the Guarantor;

(iii) the Company fails to observe or perform any other material covenant, obligation, condition or agreement contained in this Agreement and such failure continues for fifteen (15) days;

(iv) the Company defaults in the observance or performance of any agreement, term or condition contained in any Guaranteed Facility that would constitute an event of default or similar event thereunder (other than an obligation to pay any amount the payment of which is guaranteed by the Guarantor pursuant to a Guaranty), up to or beyond any grace period provided in the Guaranteed Facility; provided, that if the applicable Bank waives the Company's failure to observe or perform its obligations under a Guaranteed Facility, and if the Company wishes the Guarantor to waive the Trigger Event described in this clause (iv) based on the

Bank's waiver, then the Company shall notify the Guarantor's Authorized Officer of the Bank's waiver and the Guarantor's Authorized Officer, on behalf of the Guarantor, shall promptly consider in good faith whether to waive the Trigger Event described in this clause (iv) on the basis that the Company's default of its obligations under the Guaranteed Facility is immaterial to the Company's performance of its obligations under this Agreement and the Guarantor's rights under this Agreement;

(v) the Company or any of its Subsidiaries defaults in the observance or performance of any other agreement, term or condition contained in any bond, debenture, note or other evidence of Indebtedness (other than any Guaranteed Facility), and the effect of such failure or default is to cause, or permit the holder or holders of such Indebtedness thereof to cause, Indebtedness in an aggregate amount for all such collective defaults of $25 million or more to become due prior to its stated date of maturity;

(vi) the Company or any of its Subsidiaries (A) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (B) is unable, or admits in writing its inability, to pay its debts generally as they mature, (C) makes a general assignment for the benefit of its or any of its creditors, (D) is dissolved or liquidated, (E) becomes insolvent (as such term may be defined or interpreted under any applicable statute), (F) commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (G) takes any action for the purpose of effecting any of the foregoing; provided, that to the extent that any of the foregoing applies only to one or more Subsidiaries of the Company and not to the Company itself, then a Trigger Event shall be deemed to have occurred only if such event or occurrence could reasonably be expected to have a Material Adverse Effect; and

(vii) proceedings are commenced (and such proceedings are not dismissed within sixty (60) days of such commencement) for the appointment of a receiver, trustee, liquidator or custodian of the Company, or of all or a substantial part of its property or any of its Subsidiaries, or an involuntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any of its Subsidiaries or its or their debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; provided, that to the extent that any of the foregoing applies only to one or more Subsidiaries of the Company and not to the Company itself, then a Trigger Event shall be deemed to have occurred only if such event or occurrence could reasonably be expected to have a Material Adverse Effect.

(b) Action Following a Trigger Event.

(i) Following the occurrence of a Trigger Event and during its continuation, the Guarantor may:

(A) elect not to enter into any additional Guaranties;

(B) by written notice to the Company, declare all or any portion of the outstanding amounts owed by the Company to the Guarantor hereunder to be due and payable, whereupon the full unpaid amount of such amounts shall be and become immediately due and payable, without further notice, demand or presentment;

(C) after providing prior written notice to the Company, direct each Bank to immediately halt all issuances of any additional L/Cs under any Guaranteed Facility;

(D) access and inspect the Company's relevant financial records and other documents upon reasonable notice to the Company and make extracts from and copies of such financial records and other documents; and

(E) exercise all other rights of the Guarantor under applicable law.

(ii) Any declaration made by the Guarantor pursuant to Section 8(b) may be rescinded by written notice to the Company or a Bank, as applicable; provided, that no such rescission or annulment shall extend to or affect any subsequent Trigger Event or impair any right consequent thereon.

(iii) For the avoidance of doubt, the occurrence of a Trigger Event will not affect the Guarantor's obligations to a Bank under any Guaranty that is then in effect.

Section 9. Termination. This Agreement shall terminate following the later of (a) the payment in full of all Obligations and (b) the termination or expiration of each Guaranty provided hereunder following the fifth anniversary of the Effective Date. Notwithstanding the foregoing, this Agreement shall terminate automatically and be of no further force or effect upon the Tender Offer Agreement being terminated in accordance with its terms prior to the Effective Date.

Section 10. Miscellaneous.

(a) Notices. Except as otherwise provided herein, all notices, requests, demands, consents, instructions or other communications to or upon the Company and the Guarantor under this Agreement shall be in writing and delivered by facsimile, hand delivery, overnight courier service or certified mail, return receipt requested, to each party at the address set forth below (or to such other address most recently provided by such party to the other party). All such notices and communications shall be effective (i) when sent by Federal Express or other overnight service of recognized standing, on the business day following the deposit with such service, (ii) when mailed, by registered or certified mail, first class postage prepaid and addressed as aforesaid through the United States Postal Service, upon receipt, (iii) when delivered by hand, upon delivery, and (iv) when faxed, upon confirmation of receipt.

The Guarantor:

Total S.A.
2, place Jean Millier
La Défense 6
92400 Courbevoie
France
Attention: Olivier Devouassoux, VP Subsidiary Finance Operations
Telephone: +33 1 47 44 45 64
Facsimile: + 33 1 47 44 48 74
Email: olivier.devouassoux@total.com

With a copy to:

Total S.A.
2, place Jean Millier
La Défense 6
92400 Courbevoie
France
Attention: Christine Souchet, Subsidiary Finance Operations - Gas and Power
Telephone: +33 1 47 44 72 11
Facsimile: +33 1 47 44 47 92
Email: christine.souchet@total.com

With a copy to:

Total S.A.
2, place Jean Millier
La Défense 6
92400 Courbevoie
France
Attention: Jonathan Marsh, Vice President, Legal Director
Mergers, Acquisitions & Finance
Telephone: +33 (0) 1 47 44 74 70
Facsimile: +33 (0)1 47 44 43 05
Email: jonathan.marsh@total.com

The Company:

SunPower Corporation
3939 North First Street
San Jose, CA 95134
Attention: Dennis Arriola, Senior Vice President and Chief Financial Officer
Telephone: 408-240-5500

Facsimile: 408-240-5404
E-mail: dennis.arriola@sunpowercorp.com

With a copy to:

SunPower Corporation
77 Rio Robles Street
San Jose, CA 95134
Attention: Navneet Govil, Vice President, Treasury & Project Finance
Telephone: 408-457-2655
E-mail: navneet.govil@sunpowercorp.com

With a copy to:

SunPower Corporation
1414 Harbour Way South
Richmond, CA 94804
Attention: Bruce Ledesma, Executive Vice President and General Counsel
Telephone: 510-540-0550
Facsimile: 510-540-0552
E-mail: bruce.ledesma@sunpowercorp.com

(b) Nonwaiver. No failure or delay on the Guarantor's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(c) Amendments and Waivers. This Agreement may not be amended or modified, nor may any of its terms be waived, except by written instruments signed by the Company and the Guarantor. Each waiver or consent under any provision hereof shall be effective only in the specific instances for the purpose for which given.

(d) Assignments.

(i) Assignment by Company. This Agreement may not be assigned by the Company without the prior written consent of the Guarantor, which may be withheld in the Guarantor's sole discretion.

(ii) Assignment by Guarantor.

(A) During the Restricted Transfer Period, the Guarantor may not assign its rights and obligations under this Agreement without the prior written consent of the Company.

(B) During the Free Transfer Period, Total S.A., as the initial Guarantor (but not any assignee of Total S.A.), may assign its rights and obligations under this

Agreement without consent of the Company to any Permitted Assignee. For the avoidance of doubt, no assignee of Total S.A. may assign its rights and obligations under this Agreement without the prior written consent of the Company, including during the Free Transfer Period.

(C) Any assignment by the Guarantor of its rights and obligations under this Agreement will not release such assigning Guarantor from its obligations to guarantee L/Cs issued pursuant to a Guaranteed Facility and outstanding as of the date of such assignment, so long as the Company continues to pay the Guaranty Fee relating to such L/Cs. The Company agrees that the Guarantor may, in connection with any assignment of its rights and obligations under this Agreement, notify the Banks that have issued such outstanding L/Cs of the continuing guaranty of such L/Cs as well as that no new L/Cs may be issued under Guaranteed Facilities and guaranteed by such assigning Guarantor. In addition, the Company agrees not to renew or extend any of such outstanding L/Cs in a manner that could cause the assigning Guarantor's guaranty of such L/Cs to be extended beyond the initial stated expiration of such L/Cs.

(D) In connection with any assignment during the Free Transfer Period to an assignee that is rated lower than A/A2, the Guarantor may either (1) pay to the Company an Assignment Fee on the assignment date or (2) agree to pay the Company the Make-Whole Amount at the end of each calendar quarter (pro-rated for partial quarters) from the assignment date through the fifth anniversary of the Effective Date.

(E) In connection with any assignment at any time by Total S.A. of its rights and obligations under this Agreement, Total S.A. and the Company agree that, prior to such assignment, this Agreement will be amended and restated in its entirety so as to (1) delete Section 4, (2) delete Section 6(b)(i) if at such time no L/C issued under a Guaranteed Facility has been drawn upon, and (3) delete this Section 10(d)(ii)(E), in each case together with all definitions and Schedules associated therewith that are not otherwise used or referred to in other provisions of this Agreement.

(iii) Successors and Assigns. No assignment of this Agreement shall be valid until all of the obligations of the assignor hereunder shall have been assumed by the assignee by written agreement delivered to the other party. This Agreement shall be binding upon and inure to the benefit of the Guarantor and the Company and their respective successors and permitted assigns.

(e) Cumulative Rights, etc. The rights, powers and remedies of the Guarantor under this Agreement shall be in addition to all rights, powers and remedies given to the Guarantor by virtue of any applicable law, rule or regulation of any governmental authority or any other agreement, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing the Guarantor's rights hereunder.

(f) Partial Invalidity; Reinstatement. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby. If claim is ever made upon

the Guarantor for rescission, repayment, recovery or restoration of any amount or amounts received by the Guarantor in payment or on account of any of the Obligations and the Guarantor repays all or part of said amount by reason of any judgment, decree or order of any court or administrative body having jurisdiction over the Guarantor or any of its property, then and in such event (A) the Company shall be and remain liable to the Guarantor hereunder for the amount so repaid or otherwise recovered or restored to the same extent as if such amount had never originally been received by the Guarantor, and (B) this Agreement shall continue to be effective or be reinstated, as the case may be, all as if such repayment or other recovery had not occurred.

(g) Entire Agreement. This Agreement, together with any separate agreements that may be entered into from time to time as described in Section 7(a), constitutes and contains the entire agreement of the Company and the Guarantor with respect to the subject matter hereof and supersedes any and all prior agreements, negotiations, correspondence, understandings and communications among the parties, whether written or oral, respecting the subject matter hereof.

(h) Applicable Law; Jurisdiction; Etc.

(i) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(ii) SUBMISSION TO JURISDICTION. THE COMPANY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER FINANCING DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY PARTY HERETO MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT AGAINST ANY OTHER PARTY HERETO OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(iii) WAIVER OF VENUE. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO IN SECTION 10(h)(ii). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(iv) WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10(h).

(i) Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals.

[Remainder of page intentionally left blank]

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

SUNPOWER CORPORATION,
as the Company

By: /s/ Thomas H. Werner
Name: Thomas H. Werner
Title: Chief Executive Officer

TOTAL S.A.,
as the Guarantor

By: /s/ Patrick de La Chevardière
Name: Patrick de La Chevardière
Title: Chief Executive Officer

Exhibit A

Form of Guaranty

This **GUARANTY** (the "Guaranty"), dated _____, is between Total S.A., a société anonyme organized under the laws of the Republic of France (the "Guarantor"), and **[BANK],** a _____, having its registered office at _____ (the "Bank").

RECITALS

A. SunPower Corporation (the "Obligor") wishes to enter into a Letter of Credit Facility Agreement (the "Contract") with the Bank, the form of which Contract has been provided to the Obligor and to the Guarantor.

B. It is a condition precedent to the Bank's extension of credit under the Contract that the Guarantor guarantee the payment to the Bank of the Obligor's payment obligations under the Contract with respect to the reimbursement of draws on letters of credit and interest thereon.

C. Guarantor owns a portion of the equity interest in the Obligor and will receive direct and indirect benefits from the Bank's performance of the Contract.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. Guaranty. (a) Guarantor unconditionally guarantees and promises to pay to the Bank, in accordance with the payment instructions contained in the Contract, on demand after the default by the Obligor in the performance of its payment obligations under the Contract, in lawful money of the United States, any and all Obligations (as hereinafter defined) consisting of payments due to the Bank. For purposes of this Guaranty, the term "Obligations" means and includes the obligations of the Obligor to reimburse to the Bank the amount of any draw on any letter of credit issued pursuant to the Contract and all interest accrued on such reimbursement obligation from the date of such reimbursement until the date paid. For the avoidance of doubt, the term "Obligations" does not include fees, expenses or other amounts payable by the Obligor to the Bank.

(b) This Guaranty is absolute, unconditional, continuing and irrevocable, constitutes an independent guaranty of payment and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part any of the Obligor's Obligations to the Bank, the existence or continuance of the Obligor as a legal entity, the consolidation or merger of the Obligor with or into any other entity, the sale, lease or disposition by the Obligor of all or substantially all of its assets to any other entity, or the bankruptcy or insolvency of the Obligor, the admission by the Obligor of its inability to pay its debts as they mature, or the making by the Obligor of a general assignment for the benefit of, or entering into a composition or arrangement

with, creditors. If the Obligor fails to pay or perform any Obligations to the Bank that are subject to this Guaranty as and when they are due, the Guarantor shall forthwith pay to the Bank all such liabilities or obligations in immediately available funds. Each failure by the Obligor to pay any Obligations shall give rise to a separate cause of action, and separate suits may be brought hereunder as each cause of action arises.

(c) The Bank, may at any time and from time to time, without the consent of or notice to the Guarantor, except such notice as may be required by applicable statute that cannot be waived, without incurring responsibility to the Guarantor, and without impairing or releasing the obligations of the Guarantor hereunder, (i) exercise or refrain from exercising any rights against the Obligor or others (including the Guarantor) or otherwise act or refrain from acting, (ii) settle or compromise any Obligations hereby guaranteed and/or any other obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any obligations and liabilities which may be due to the Bank or others, and (iii) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property pledged or mortgaged by anyone to secure or in any manner securing the Obligations hereby guaranteed.

(d) The Bank may not, without the prior written consent of the Guarantor, (i) change the manner, place and terms of payment or change or extend the time of payment of, renew, or alter any Obligation hereby guaranteed, or in any manner modify, amend or supplement the terms of the Contract or any documents, instruments or agreements executed in connection therewith, (ii) take and hold security or additional security for any or all of the obligations or liabilities covered by this Guaranty, or (iii) assign its rights and interests under this Guaranty, in whole or in part.

(e) No invalidity, irregularity or unenforceability of the Obligations hereby guaranteed shall affect, impair, or be a defense to this Guaranty. This is a continuing Guaranty for which Guarantor receives continuing consideration and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon and this Guaranty is therefore irrevocable without the prior written consent of the Bank.

2. Representations and Warranties. The Guarantor represents and warrants to the Bank that (a) the Guarantor is a société anonyme duly organized, validly, existing and in good standing under the laws of its jurisdiction of incorporation or formation, (b) the execution, delivery and performance by the Guarantor of this Guaranty are within the power of the Guarantor and have been duly authorized by all necessary actions on the part of the Guarantor, (c) this Guaranty has been duly executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally, (d) the execution, delivery and performance of this Guaranty do not (i) violate any law, rule or regulation of any governmental authority or (ii) result in the creation or imposition of any material lien, charge, security interest or encumbrance upon any property, asset or revenue of the Guarantor, (e) no consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority

or other person (including, without limitation, the shareholders of the Guarantor) is required in connection with the execution, delivery and performance of this Guaranty, except such consents, approvals, orders, authorizations, registrations, declarations and filings that are so required and which have been obtained and are in full force and effect, (f) the Guarantor is not in violation of any law, rule or regulation other than those the consequences of which cannot reasonably be expected to have material adverse effect on the ability of the Guarantor to perform its obligations under this Guaranty, and (g) no litigation, investigation or proceeding of any court or other governmental tribunal is pending or, to the knowledge of the Guarantor, threatened against the Guarantor which, if adversely determined, could reasonably be expected to have a material adverse effect on the ability of the Guarantor to perform its obligations under this Guaranty.

3. Waivers. (a) The Guarantor, to the extent permitted under applicable law, hereby waives any right to require Bank to (i) proceed against the Obligor or any other guarantor of the Obligor's obligations under the Contract, (ii) proceed against or exhaust any security received from the Obligor or any other guarantor of the Obligor's Obligations under the Contract, or (iii) pursue any other right or remedy in the Bank's power whatsoever.

(b) The Guarantor further waives, to the extent permitted by applicable law, (i) any defense resulting from the absence, impairment or loss of any right of reimbursement, subrogation, contribution or other right or remedy of the Guarantor against the Obligor, any other guarantor of the Obligations or any security, (ii) any setoff or counterclaim of the Obligor or any defense which results from any disability or other defense of the Obligor or the cessation or stay of enforcement from any cause whatsoever of the liability of the Obligor (including, without limitation, the lack of validity or enforceability of the Contract), (iii) any right to exoneration of sureties that would otherwise be applicable, (iv) any right of subrogation or reimbursement and, if there are any other guarantors of the Obligations, any right of contribution, and right to enforce any remedy that the Bank now has or may hereafter have against the Obligor, and any benefit of, and any right to participate in, any security now or hereafter received by Bank, (v) all presentments, demands for performance, notices of non-performance, notices delivered under the Contract, protests, notice of dishonor, and notices of acceptance of this Guaranty and of the existence, creation or incurring of new or additional Obligations and notices of any public or private foreclosure sale, (vi) the benefit of any statute of limitations, (vii) any appraisement, valuation, stay, extension, moratorium redemption or similar law or similar rights for marshalling, and (viii) any right to be informed by the Bank of the financial condition of the Obligor or any other guarantor of the Obligations or any change therein or any other circumstances bearing upon the risk of nonpayment or nonperformance of the Obligations. The Guarantor has the ability to and assumes the responsibility for keeping informed of the financial condition of the Obligor and any other guarantors of the Obligations and of other circumstances affecting such nonpayment and nonperformance risks.

4. Notice of Issuance of Letters of Credit and Draws Thereon; Block Notice.

(a) Notice of Issuance of Letter of Credit and Draws Thereon. Within ten (10) days after each issuance of a letter of credit under the Contract, the Bank will notify the Guarantor of (i) the amount of such letter of credit (including a copy thereof) and (ii) the aggregate amount of letters of credit that are outstanding under the Contract, after giving effect to such issuance. In addition the Bank will notify the Guarantor of any draw on any letter of

credit (including the date and amount of such draw) issued pursuant to the Contract within two business days of such draw, even if such draw is reimbursed by the Obligor to the Bank prior to the delivery of such notice.

(b) Right of Guarantor to Block Issuances of Letters of Credit.

(i) Delivery of Block Notice. The Guarantor may (A) suspend the right of the Obligor to obtain additional issuances of letters of credit under the Contract that are subject to this Guaranty at any time following the occurrence and during the continuance of a Trigger Event (as defined in the Credit Support Agreement, dated _____, between the Obligor and the Guarantor) or (B) limit the aggregate undrawn amount of letters of credit that are subject to this Guaranty at any time following a reduction of the Maximum L/C Amount or Available Facility Amount pursuant to such Credit Support Agreement, in each case by delivering to the Bank a written notice to such effect (a "Notice of Block"). Such Notice of Block shall be made and shall be deemed effective when properly given in the manner specified in Section 5(a) of this Guaranty. The Bank will have no duty to investigate or make any determination with respect to any Notice of Block received by it and will comply with any Notice of Block given by the Guarantor. The Bank may rely upon any instructions from any person that it reasonably believes to be an authorized representative of the Guarantor.

(ii) Compliance with Notice. From and after the date a Notice of Block is delivered to the Bank pursuant to and in accordance with the provisions of clause (i) above, and until either (A) the Guarantor delivers to the Bank a written notice rescinding such Notice of Block or (B) this Guaranty is terminated, no additional letters of credit may be issued by the Bank for the benefit of the Obligor pursuant to the Contract without the prior written consent of the Guarantor.

5. Miscellaneous.

(j) Notices. All notices, requests, demands and other communications that are required or may be given under this Guaranty shall be in writing and shall be personally delivered or sent by certified or registered mail. If personally delivered, notices, requests, demands and other communications will be deemed to have been duly given at time of actual receipt. If delivered by certified or registered mail, deemed receipt will be at time evidenced by confirmation of receipt with return receipt requested. In each case notice shall be sent:

if to the Bank, to:

_____

_____

_____

Attention: _____

if to the Guarantor, to:

_____

_____

_____

Attention: _____

or to such other place and with such other copies as the Bank or the Guarantor may designate as to itself by written notice to the other pursuant to this Section 5(a).

(b) Nonwaiver. No failure or delay on the Bank's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(c) Amendments and Waivers. This Guaranty may not be amended or modified, nor may any of its terms be waived, except by written instruments signed by the Guarantor and the Bank. Each waiver or consent under any provision hereof shall be effective only in the specific instances for the purpose for which given.

(d) Assignments. This Guaranty shall be binding upon and inure to the benefit of the Bank and the Guarantor and their respective successors and permitted assigns. This Guaranty may not be assigned by the Guarantor without the express written approval of the Bank, which may not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Guarantor may, without approval of the Bank, assign this Guaranty to any entity that **[**minimum credit standards for assignee to be agreed**]**.

(e) Cumulative Rights, etc. The rights, powers and remedies of the Bank under this Guaranty shall be in addition to all rights, powers and remedies given to the Bank by virtue of any applicable law, rule or regulation, the Contract or any other agreement, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing the Bank's rights hereunder.

(f) Partial Invalidity. If at any time any provision of this Guaranty is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Guaranty nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

(g) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(h) JURISDICTION. EACH PARTY (A) IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF AND (B) WAIVES ANY OBJECTION WHICH SUCH PARTY MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT.

(i) Jury Trial. EACH OF THE GUARANTOR AND THE BANK, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN

ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS GUARANTY.

[Remainder of page intentionally left blank]

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

TOTAL S.A.

By _____
Name:
Title:

[BANK]

By _____
Name:
Title:

Schedule I

Yearly Maximum L/C Amount Report
for
the Fiscal Year Ending _____

To: Total S.A.

Date: _____

I, _____, Chief Financial Officer of SunPower Corporation (the "Company"), hereby deliver this report pursuant to Section 6(c)(i) of the Credit Support Agreement, dated as of _____ (the "Credit Support Agreement"), by and between Total S.A. and the Company, and certify as follows (capitalized terms used and not otherwise defined below have the meanings given them in the Credit Support Agreement):

1. Attached hereto is the Annual Operating Plan for the fiscal year ending _____ (the "Fiscal Year"), as approved by the Board of Directors of the Company and showing funding authorizations and credit support requirements for the Company's UPP and LComm businesses.
2. Pursuant to the Credit Support Agreement, the Maximum L/C Amount for the Fiscal Year is $_____. This amount is **[**greater than/less than/the same as**]** the amount specified in the definition of Maximum L/C Amount due to **[**explain**]**.
3. As of this date, the Aggregate L/C Amount is $_____ **[**break down into components of the Aggregate L/C Amount**]** and the Aggregate L/C Amount as of the first day of the Fiscal Year was $_____.

Sincerely,

_____
Chief Financial Officer
SunPower Corporation

Schedule II

Quarterly Guaranteed Facility Report
(to be provided for each outstanding Guaranteed Facility)

Name of Facility	Issuing Bank	Date	Maturity	Amount of Facility	Issued Amount	Amount Available to be Issued	Drawn Amount	Commission Fee	Commitment Fee	Upfront Fee

Schedule III

Drawn Letter of Credit Report
(to be provided for each Letter of Credit that has been drawn on in last 12 months)

Name of Project	Applicable Contract	Issuing Bank	Date of Issuance	Expiration Date	Initial Face Amount	Drawn Amount	Guaranty Fee	Commission Fee	Upfront Fee

Total of all draws on all letters of credit last 12 months: $_____.

Aggregate initial face amount of all outstanding letters of credit: $_____.

Percentage of total draws versus aggregate initial face amount: _____%

Projects (including name of developer/owner) on which letters of credit have been drawn last 12 months: _____.

Schedule IV

Benchmarking Report

To: Total S.A.

Date: _____

I, _____, Chief Financial Officer of SunPower Corporation (the "Company"), hereby deliver this report pursuant to Section 4(a) of the Credit Support Agreement, dated as of _____ (the "Credit Support Agreement"), by and between Total S.A. and the Company, and certify as follows (capitalized terms used and not otherwise defined below have the meanings given them in the Credit Support Agreement):

1. As required by Section 4(a) of the Credit Support Agreement, we have solicited terms for alternative Non-Guaranteed Facilities.
2. The banks from which we solicited terms were _____.
3. The amounts of the facilities proposed by such banks were _____.
4. The Commission Fees proposed by such banks for L/Cs to be issued under Non-Guaranteed Facilities without the benefit of a Guaranty or any cash collateral were _____.
5. The Commission Fee we are currently paying for our Guaranteed Facilities is _____ and the Guaranty Fee for L/Cs issued this year is ____.
6. The most favorable Commission Fee offered to us by the banks listed above for a Non-Guaranteed Facility is ____% of the sum of the Commission Fee we are currently paying plus the current Guaranty Fee. The amount of the Non-Guaranteed Facility offered with such Commission Fee is $____.
7. The other fees and relevant terms and conditions of Non-Guaranteed Facilities are as follows: **[**describe**]**.
8. We **[**will/will not**]** be entering into a Non-Guaranteed Facility in accordance with Section 4 of the Credit Support Agreement because **[**explain**]**.

Sincerely,

Chief Financial Officer
SunPower Corporation

Schedule V

Existing Secured Indebtedness

1. Credit Agreement, dated October 29, 2010, by and among SunPower Corporation, the Guarantors party thereto, Union Bank, N.A. as Administrative Agent, Sole Lead Arranger and a Lender, and the other Lenders party thereto, as may be amended from time to time.

2. First Amended and Restated Purchase Agreement, dated November 1, 2010, between SunPower North America LLC and Technology Credit Corporation, as may be amended from time to time.

3. Reimbursement Agreement, dated December 1, 2010, between SunPower Corporation and Barclays Bank PLC, relating to $30,000,000 California Enterprise Development Authority Tax Exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010; and related letter of credit, as may be amended from time to time.

4. Loan Agreement, dated December 1, 2010, by and among California Enterprise Development Authority and SunPower Corporation, relating to $30,000,000 California Enterprise Development Authority Tax Exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010.

5. Letter of Credit Facility Agreement, dated April 12, 2010, by and among SunPower Corporation, the Subsidiary Guarantors, the Subsidiary Applicants parties thereto from time to time, the Banks thereto from time to time, Bank of America, N.A., as Syndication Agent and Deutsche Bank AG New York Branch, as Issuing Bank and Administrative Agent, and Deutsche Bank Securities Inc., as Sole Bookrunner and Arranger, as may be amended from time to time.

6. (a) Master Agreement to Lease Equipment, dated July 25, 2007, between Cisco Systems Capital Corporation and SunPower Corporation, as may be amended from time to time and (b) Installment Payment Agreement, dated May 29, 2009, between Cisco Systems Capital Corporation and SunPower Corporation, as may be amended from time to time.

7. (a) Escrow Agreement, dated August 24, 2007, between SunPower Corporation and Norsun AS, as amended on June 25, 2008 and June 27, 2008; Escrow Increase Letters dated October 27, 2009 and January 26, 2010 and (b) Mortgage, dated September 26, 2008, between the SunPower Philippines Manufacturing Ltd. and Norsun A.S.

8. Financing Agreement for the Development or Rehabilitation of Property in Milpitas California for Specified Solar Panel Manufacturing Purposes, dated February 1, 2011, between The Redevelopment Agency of the City of Milpitas and SunPower Corporation.

9. Capital Equipment and Assistance Agreement, dated as of March 28, 2011, by and between The Redevelopment Agency of the City of San Jose, the City of San Jose and SunPower Corporation.

10. Agreement (Non-recourse), dated April 27, 2009, by and between SunPower Corporation and Addison Avenue Federal Credit Union, as amended from time to time.

11. Guarantee Agreement, dated May 6, 2010, by and between SunPower Corporation and International Finance Corporation, in connection with that certain Mortgage Loan Agreement, dated May 6, 2010, by and among SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation, as amended on November 2, 2010, as may be amended from time to time.

Exhibit 10.3

EXECUTION VERSION

AFFILIATION AGREEMENT

BY AND

BETWEEN

TOTAL GAS & POWER USA, SAS

AND

SUNPOWER CORPORATION

TABLE OF CONTENTS

AFFILIATION AGREEMENT

This Affiliation Agreement (hereinafter the "**Agreement**") is made as of April 28, 2011, by and between Total Gas & Power USA, SAS, a *société par actions simplifiée* organized under the laws of the Republic of France ("**Terra**") and SunPower Corporation, a Delaware corporation (the "**Company**").

A. The Company and Terra have executed the Tender Offer Agreement and entered into those certain Related Agreements (as defined in the Tender Offer Agreement);

B. The Company and Terra desire, in connection with the consummation of the several transactions contemplated by the Tender Offer Agreement and the Related Agreements, to make certain covenants and agreements with one another pursuant to this Agreement; and

C. It is a mutual condition to Terra's and the Company's willingness to enter into the Tender Offer Agreement that Terra and the Company shall have entered into this Agreement.

NOW THEREFORE, in consideration of the covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

For the purpose of this Agreement, the following terms shall have the meanings specified with respect thereto below:

"**13D Group**" shall mean any group of Persons formed for the purpose of acquiring, holding, voting, disposing of or beneficially owning Voting Stock, which group of Persons would be required under Section 13(d) of the Exchange Act, and the rules and regulations promulgated thereunder, to file a statement on Schedule 13D pursuant to Rule 13d-1(a) or a Schedule 13G pursuant to Rule 13d-1(c) with the SEC as a "person" within the meaning of Section 13(d)(3) of the Exchange Act if such group beneficially owned Voting Stock representing more than five percent (5%) of any class of Voting Stock then outstanding.

"**Affiliate**" shall have the meaning set forth in Rule 12b-2 of the rules and regulations promulgated under the Exchange Act.

"**Agreement**" shall have the meaning set forth in the Preamble.

"**Applicable Right to Maintain Percentage**" shall mean (including in the Beneficial Ownership of the Terra Group all Voting Stock and Convertible Securities for which the applicable Grace Period, if any, has not expired) as of the time that is immediately prior to the applicable

issuance of New Securities: (i) during any period prior to the Recapitalization, the aggregate percentage of the Total Current Voting Power then in effect that is Beneficially Owned by the Terra Group, and (ii) during any period following the Recapitalization, the aggregate percentage of the Voting Stock that is Beneficially Owned by the Terra Group.

"**Applicable Standstill Limit**" shall mean the applicable percentage of the lower of (i) the then outstanding Voting Stock or (ii) the then outstanding Total Current Voting Power of the Company then in effect, in each case for the time periods set forth as follows: (x) from the Offer Closing until 11:59 p.m. California time on the two (2) year anniversary of the Offer Closing: sixty-three percent (63%); (y) from 12:00 a.m. California time on the day following the two (2) year anniversary of the Offer Closing until 11:59 p.m. California time on December 31, 2014: sixty-six and two-thirds percent (66-$^{2}/_{3}$%); and (z) at any time thereafter: seventy percent (70%).

"**Asset Acquisition Value**" shall mean the aggregate net present value of the consideration paid or to be paid by the Company or a Company Controlled Corporation to acquire or otherwise obtain ownership or exclusive use of a business, property or assets of a Person or Persons.

"**Asset Disposition Value**" shall mean the aggregate net present value of the consideration received or to be received by the Company or a Company Controlled Corporation for property or assets being sold or otherwise disposed of in order to provide a Person or Persons.

"**beneficially owning**" or "**beneficial owned**" shall have the meaning set forth in Rule 13d-3 of the rules and regulations promulgated under the Exchange Act.

"**Beneficially Own**" or "**Beneficial Ownership**" shall have the meaning set forth in Rule 13d-3 of the rules and regulations promulgated under the Exchange Act; *provided* that, for purposes of this definition, any Convertible Securities which have not yet been converted, exchanged or exercised to acquire Voting Stock of the Company shall not be deemed to be Beneficially Owned or outstanding (whether or not owned by members of the Terra Group).

"**Board Reduction Event**" shall have the meaning set forth in Section 3.2(c).

"**Business Acquisition Transaction**" shall have the meaning set forth in Section 3.1(c)(i).

"**Business Day**" shall mean any day, other than Saturday, Sunday or any day which is a legal holiday under the laws of the State of California or State of New York or is a day on which banking institutions in the State of California or State of New York are authorized or required by law or other governmental action to close.

"**Change in Control of the Company**" shall mean any of the following: (i) a merger, consolidation or other business combination or transaction to which the Company is a party (but to which no member of the Terra Group is a party) if the stockholders of the Company immediately prior to the effective date of such merger, consolidation or other business combination or transaction have aggregate beneficial ownership of voting securities representing less than fifty percent (50%) of the Total Current Voting Power of the surviving corporation following such merger, consolidation or

other business combination or transaction; (ii) an acquisition by any Person or 13D Group (which is not and does not include any member of the Terra Group or any Person or 13D Group which is permitted to file a statement on a Schedule 13G pursuant to Rule 13d-1(c) with the SEC as a "person" within the meaning of Section 13(d)(3) of the Exchange Act) of direct or indirect Beneficial Ownership of fifty percent (50%) or more of the Total Current Voting Power of the Company then in effect; (iii) a sale of all or substantially all the assets of the Company to a third party (which is not and does not include any member of the Terra Group); (iv) a liquidation or dissolution of the Company; or (v) during any period of two consecutive years, individuals who at the beginning of such two year period constituted members of the Company Board (together with any new members of the Company Board whose appointment to office or whose nomination for election by the stockholders of the Company was (A) approved by a vote of a majority of the Company Board then still in office who were either members of the Company Board at the beginning of such period or whose appointment or nomination for election was previously so approved or (B) otherwise effected pursuant to the terms of Article III) cease for any reason to constitute a majority of the members of the Company Board then in office.

"**Class A Common Stock**" shall mean shares of Class A common stock, $0.001 par value per share, of the Company.

"**Class B Common Stock**" shall mean shares of Class B common stock, $0.001 par value per share, of the Company.

"**Company**" shall have the meaning set forth in the Preamble.

"**Company Board**" shall mean the Board of Directors of the Company.

"**Company Common Stock**" shall mean, collectively, shares of the Class A Common Stock and shares of the Class B Common Stock, or any successor classes or combination thereof.

"**Company Controlled Corporation**" shall mean a Subsidiary of the Company.

"**Company Acquisition Issuance Notice**" shall have the meaning set forth in Section 3.1(c)(i).

"**Company Consolidation Package**" shall have the meaning set forth in Section 5.3.

"**Company Equity Plan**" shall mean any option or other equity benefit plan of the Company.

"**Company Financing Issuance Notice**" shall have the meaning set forth in Section 3.1(b)(ii).

"**Company Other Issuance**" shall have the meaning set forth in Section 3.1(d)(i).

"**Company Other Issuance Notice**" shall have the meaning set forth in Section 3.1(d)(i).

"**Convertible Debentures**" shall mean the convertible debentures disclosed in the Company's annual report on Form 10-K for the fiscal year ended January 2, 2011 that are outstanding on the date hereof.

"**Convertible Securities**" shall mean any securities of the Company which are or by their terms will be convertible into, exchangeable for or otherwise exercisable to acquire Voting Stock of the Company, including convertible securities, warrants, rights or options to purchase Voting Stock of the Company whether or not then in the money.

"**Credit Support Agreement**" shall mean that certain Credit Support Agreement, of even date herewith, by and between Parent and the Company.

"**DGCL**" shall mean the Delaware General Corporation Law.

"**Designated Independent Directors**" shall mean those current members of the Company Board set forth on **Schedule A** attached hereto.

"**Disinterested Board Approval**" shall mean the affirmative vote or written consent of a majority of the Disinterested Directors, duly obtained in accordance with the applicable provisions of the Company's bylaws and applicable law.

"**Disinterested Director**" shall mean any member of the Company Board who is (i) an "independent director" within the meaning of Rule 5605(a)(2) of the listing standards of the Nasdaq and (ii) not a Terra Director.

"**Disinterested Stockholder**" shall mean any stockholder of the Company who is not: (a)(i) a member of the Terra Group or (ii) an executive officer or director of the Company or a Company Controlled Corporation, and (b) with respect to any Transferee Tender Offer or Transferee Merger, (i) such Transferee or an Affiliate of such Transferee or (ii) a member of a 13D Group in which such Transferee or an Affiliate of such Transferee is also a member.

"**Direct Purchase Securities**" shall have the meaning set forth in Section 3.1(b)(iii).

"**EBITDA**" shall mean, for any period, the total of the following calculated for Company and its Subsidiaries on a consolidated basis and without duplication, with each component thereof determined in accordance with GAAP consistently applied by the Company for such period (except as otherwise required by GAAP): (a) consolidated net income; plus (b) any deduction for (or less any gain from) income, franchise or other taxes included in determining such consolidated net income; plus (c) interest expense deducted in determining such consolidated net income; plus (d) amortization and depreciation expense deducted in determining such consolidated net income; plus (e) any non-recurring charges and any non-cash charges resulting from application of GAAP insofar as GAAP requires a charge against earnings for the impairment of goodwill and other acquisition related charges to the extent deducted in determining such consolidated net income and not added back pursuant to another clause of this definition; plus (f) any non-cash expenses that arose in connection with the grant of equity or equity-based awards stock to officers, directors, employees

and consultants of the Company and its Subsidiaries and were deducted in determining such consolidated net income; plus (g) non-cash restructuring charges; plus (h) non-cash charges related to negative mark-to-market valuation adjustments as may be required by GAAP from time to time; plus (i) non-cash charges arising from changes in GAAP occurring after the date hereof; less (j)(x) non-cash adjustments related to positive mark-to-market valuation adjustments as may be required by GAAP from time to time and (y) any extraordinary gains; and less (k) other quarterly cash and non-cash adjustments that are deemed by the Controller and Chief Financial Officer of the Company not to be part of the normal course of business and not necessary to reflect the regular, ongoing operations of the Company and its Subsidiaries. As used in this definition, "non-cash charge" shall mean a charge in respect of which no cash is paid during the applicable period (whether or not cash is paid with respect to such charge in a subsequent period) and "non-cash item of income" shall mean an item of income in respect of which no cash is received during the applicable period (whether or not cash is received with respect to such item of income in a subsequent period).

"**Excess Directors**" shall have the meaning set forth in Section 3.2(e).

"**Excess Repurchase Notice**" shall have the meaning set forth in Section 2.2(b)(i).

"**Excess Shares**" shall have the meaning set forth in Section 2.2(a)(i).

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

"**Excluded Debt Incurrence**" shall mean (i) in connection with refinancing or replacing a Convertible Debenture, a new convertible debenture issued on no less favorable terms than the Convertible Debenture being refinanced or replaced with respect to ranking (senior/senior sub/subordinated), financial covenants, operational covenants, and events of default, and whether issued prior to or after the replacement of such Convertible Debenture, (ii) Non-Recourse Debt, and (iii) Tenesol Debt.

"**Exempt Excess Converted Shares**" shall have the meaning set forth in Section 2.2(a)(ii).

"**Exempt Excess Shares**" shall have the meaning set forth in Section 2.2(a)(iii).

"**Fair Market Value**" shall mean, with respect to the securities of any Person as of any date of determination, the average of the closing sale prices of such securities of such Person during the twenty (20) trading days immediately preceding such date of determination on the principal U.S. or foreign securities exchange on which such securities of such Person is listed or, if such securities are not listed or primarily traded on any such exchange, the average of the closing sale prices or, in the absence of a closing sale price, the closing bid quotations, of such security during the twenty (20) trading day period preceding such date of determination on any quotation system then in use; *provided* that, all such closing sales prices or, in the absence of a closing sale price, closing bid quotations, shall be appropriately adjusted to take into account the effect of any dividends, stock splits, recapitalization, spin-offs or similar transactions that affect such closing sale prices or bid quotations during such twenty (20) trading day period.

"**Financing Transaction**" shall have the meaning set forth in Section 3.1(b)(i).

"**GAAP**" shall mean generally accepted accounting principles in the United States as consistently applied by the relevant Person, except as required by changes in GAAP.

"**Grace Period**" shall mean with respect to any Voting Stock or Convertible Securities that are subject to a Terra Maintenance Notice, the earlier of (a) 11:59 p.m. California time on the nine (9) month anniversary of the delivery of the applicable Terra Financing Issuance Notice, Company Acquisition Issuance Notice or Company Other Issuance Notice, and (b) with respect to the number of shares of Voting Stock or Convertible Securities that are reduced by the delivery by Terra of a revised Terra Maintenance Notice stating a determination to acquire a lesser number of, or no, shares of Voting Stock or Convertible Securities, the date of delivery of such revised Terra Maintenance Notice (*provided* that the Grace Period set forth in the foregoing clause (a) shall continue to apply to the shares of Voting Stock and Convertible Securities that continue to be subject to such revised Terra Maintenance Notice).

"**Guarantees**" shall mean Guaranty Agreements provided by Parent pursuant to the Credit Support Agreement in favor of a bank that provides a letter of credit facility to the Company.

"**HSR Act**" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"**Indebtedness**" shall mean and include the aggregate amount of, without duplication (i) all obligations for borrowed money, (ii) all obligations evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations to pay the deferred purchase price of property or services (other than accounts payable and accrued expenses incurred in the ordinary course of business determined in accordance with GAAP), (iv) all obligations with respect to capital leases, (v) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (vi) all reimbursement and other payment obligations, contingent or otherwise, in respect of letters of credit and similar surety instruments (including construction performance bonds), and (vii) all guaranty obligations with respect to the types of Indebtedness listed in clauses (i) through (vi) above.

"**LComm**" shall mean the large commercial portion of the residential and commercial business segment of the Company with projects of at least 1 megawatt (DC or direct current) in peak capacity sold directly to a commercial end-user and not via a dealer.

"**LTM EBITDA**" shall mean EBITDA for the four completed fiscal quarters of the Company most recently preceding the date of determination. For each quarter as to which a periodic report shall have been filed by the Company with the SEC, the calculation of EBITDA shall be based on the financial results of the Company set forth in such periodic report, and for each quarter as to which such a periodic report shall not have been so filed, the calculation of EBITDA shall be based on the Company's good faith calculation of its financial results for such quarter as reviewed with the Audit Committee of the Company Board.

"**Nasdaq**" shall mean The Nasdaq Stock Market, LLC.

"**New Securities**" shall mean an issuance by the Company of Voting Stock or Convertible Securities, excluding (i) any such issuance upon exercise, conversion or exchange of any Convertible Security convertible into or exercisable or exchangeable for Voting Stock outstanding at the Offer Closing, (ii) securities issued pursuant to the exercise by Terra of its rights pursuant to Section 3.1(b) and, to the extent the securities purchased by Terra upon exercise of its rights pursuant to Section 3.1(b) are Convertible Securities, any such issuance upon exercise, conversion or exchange of such Convertible Securities, or (iii) Convertible Securities issued or granted pursuant to any Company Equity Plan, as distinguished from the issuance of Voting Stock upon the exercise, vesting or conversion of such Convertible Securities, which Voting Stock shall be considered New Securities as of such issuance.

"**Non-Recourse Debt**" shall mean Indebtedness of the Company or any of its Subsidiaries that relates solely to the acquisition, construction, improvement and/or development of a UPP or LComm project, including Indebtedness assumed in connection with the acquisition of any such project, and that is secured by no assets of the Company or any of its Subsidiaries other than (a) such Subsidiary's project assets and/or (b) the equity interest of the Company or a Subsidiary in such Subsidiary; provided, that the sole purpose of such Subsidiary is such project.

"**Offer Closing**" shall have the meaning set forth in the Tender Offer Agreement.

"**Outstanding Gross Debt**" shall mean all outstanding Indebtedness of the Company minus the sum of (i) Non-Recourse Debt, and (ii) Tenesol Debt.

"**Ownership Notice**" shall have the meaning set forth in Section 2.2(b).

"**Parent**" shall mean Total S.A., a *société anonyme* organized under the laws of the Republic of France.

"**Person**" shall mean an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization.

"**Purchase Price**" shall have the meaning set forth in Section 3.1(b)(i).

"**Recapitalization**" shall mean the conversion of any or all of the Class B Common Stock to Class A Common Stock or other transaction contemplated by Section 5.9 of the Tender Offer Agreement.

"**Rights Plan**" shall have the meaning set forth in Section 5.2(a).

"**SEC**" shall mean the U.S. Securities and Exchange Commission.

"**Securities Act**" shall mean the Securities Act of 1933, as amended.

"**Short Form Merger**" shall mean a merger effected pursuant to Section 253 of the DGCL.

"**Standstill Period**" shall mean the period beginning on the date hereof and ending on the earlier to occur of: (i) a Change in Control of the Company; (ii) the first time that the Terra Group beneficially owns less than fifteen percent (15%) of the Total Current Voting Power of the Company then in effect; (iii) during the Terra Stockholder Approval Period, (A) the Company or the Company Board takes any action specified in Section 4.3(a) (but only if the effect thereof is to defeat the purposes of the bylaw amendments described in Section 5.1(a)), (b), (e), (g) or (h) without first obtaining Terra Stockholder Approval (unless such action is approved by a majority of the Terra Directors or the action specified in Section 4.3(a) (but only if the effect thereof is to defeat the purposes of the bylaw amendments described in Section 5.1(a)), (b), (e) or (h) is cured within five (5) Business Days after written notice of such action is delivered by Terra to the Company, unless such action is of a type that the consequence of taking such action cannot be cured, in which case no notice or cure period shall be required), or (B) fails to take any of the actions specified in Section 5.1 (and such failure is not cured within five (5) Business Days after written notice of such failure is delivered by Terra to the Company, unless such failure is of a type that the consequence of taking such action cannot be cured, in which case no notice or cure period shall be required); (iv) following the expiration of the Terra Stockholder Approval Period, the commencement of a Third Party Tender Offer; *provided*, *however*, that upon a Standstill Reinstatement Event, the commencement of such Third Party Tender Offer shall be deemed not to have occurred, the Standstill Period shall be deemed to be reinstated and any Excess Shares, Exempt Excess Shares and Exempt Excess Converted Shares shall be subject to the provisions of Section 2.2(a); and (v) the termination of this Agreement pursuant to its terms.

"**Standstill Reinstatement Event**" shall mean the occurrence of either of the following during the Standstill Period: (i) withdrawal or termination of a Third Party Tender Offer at any time during which a Terra Tender Offer is not then pending or (ii) withdrawal, termination or material alteration of a Terra Tender Offer following the initiation of a Third Party Tender Offer other than an increase in price or an extension thereof.

"**Subsidiary**" of any Person shall mean (i) a corporation at least fifty percent (50%) of the combined voting power of the outstanding voting stock of which is owned, directly or indirectly, by such Person or by one of more other Subsidiaries of such Person or by such Person and one or more other Subsidiaries thereof, (ii) a partnership of which such Person, or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, is the general partner and has the power to direct the policies, management and affairs of such partnership, (iii) a limited liability company of which such Person or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, is the managing member, hold the right to appoint a majority of the board of managers or, if member managed, have the power to direct the policies, management and affairs of such company or (iv) any other Person (other than a corporation, partnership or limited liability company) in which such Person, or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, hold at least fifty percent (50%) ownership and power to direct the policies, management and affairs thereof.

"**Supermajority Board Approval**" shall mean the affirmative vote or written consent of two thirds (2/3) of the directors of the Company rounded down to the nearest whole number, and including the affirmative vote or written consent of at least one Disinterested Director, duly obtained in accordance with the applicable provisions of the Company's bylaws and applicable law.

"**Tender Offer Agreement**" shall mean that certain Tender Offer Agreement, of even date herewith, by and between the parties hereto.

"**Tenesol**" shall mean Tenesol SA.

"**Tenesol Debt**" shall mean any financing which, in the reasonable judgment of a majority of the Disinterested Directors, is related to funding the operating requirements or liabilities of the Tenesol business and which is consummated within one (1) year after the closing of the acquisition of Tenesol by the Company.

"**Terra**" shall have the meaning set forth in the Preamble.

"**Terra Acquisition Issuance Notice**" shall have the meaning set forth in Section 3.1(c)(ii).

"**Terra Controlled Corporation**" shall mean a Subsidiary of Parent, other than the Company or any Company Controlled Corporation.

"**Terra Director**" shall mean a member of the Company Board who (a) is or has been designated for such position by Terra in accordance with Section 3.2 or (b) is an officer or employee of Parent or any Terra Controlled Corporation.

"**Terra Financing Issuance Notice**" shall have the meaning set forth in Section 3.1(b)(iii).

"**Terra Group**" shall mean Parent, any Affiliate of Parent, any 13D Group of which Parent or any of its Affiliates is a member, and any member(s) of any 13D Group of which Parent or any of its Affiliates is a member; *provided*, *however*, that none of the Company nor any Company Controlled Corporation nor any Disinterested Director of the Company shall be deemed to be a member of the Terra Group.

"**Terra Maintenance Notice**" shall mean, collectively, a Terra Financing Issuance Notice, Terra Acquisition Issuance Notice and Terra Other Issuances Notice.

"**Terra Merger**" shall mean a statutory merger under applicable law providing for the acquisition by the Terra Group of one hundred percent (100%) of the Total Current Voting Power of the Company then in effect, which is conditioned (which condition may not be waived) on a majority of the shares of the Voting Stock that is held by Disinterested Stockholders being voted in favor of such merger.

"**Terra Other Issuances Notice**" shall have the meaning set forth in Section 3.1(d)(ii).

"**Terra Stockholder Approval**" shall mean the affirmative vote or written consent of Terra.

"**Terra Stockholder Approval Period**" shall have the meaning set forth in Section 4.3.

"**Terra Tender Offer**" shall mean a bona fide public tender offer subject to the provisions of Regulation 14D when first commenced within the meaning of Rule 14d-2(a) of the rules and regulations under the Exchange Act, by any combination of members of the Terra Group to purchase or exchange for cash or other consideration Voting Stock and which consists of an offer to acquire one hundred percent (100%) of the Total Current Voting Power of the Company then in effect (other than shares of Voting Stock owned by the Terra Group) and is conditioned (which conditions may not be waived) on (i) a majority of the shares of the Voting Stock that is held by Disinterested Stockholders being tendered and not withdrawn with respect to such offer and (ii) at least ninety percent (90%) of the Total Current Voting Power of the Company then in effect being owned by the Terra Group upon completion of the tender offer, and which is accompanied by an irrevocable, unwaivable commitment by the offeror(s), subject to such ninety percent (90%) condition being met, to promptly acquire in a merger any shares of Voting Stock not purchased in such offer, to the extent any shares are purchased in such offer, for the same amount and form of consideration per share offered in such Terra Tender Offer, and the effectuation of a Short Form Merger promptly thereafter.

"**Third Party Tender Offer**" shall mean a bona fide public tender offer subject to the provisions of Regulation 14D when first commenced within the meaning of Rule 14d-2(a) of the rules and regulations under the Exchange Act, by a person or 13D Group (which is not made by and does not include any of the Company or any member of the Terra Group) to purchase or exchange for cash or other consideration any Voting Stock and which consists of an offer to acquire at least fifty percent (50%) of the Total Current Voting Power of the Company then in effect.

"**Total Current Voting Power**" shall mean, with respect to any corporation or entity, the total number of votes which may be cast in the election of members of the board of directors or similar governing body if all securities entitled to vote in the election of such directors are present and voted.

"**Total Outstanding Company Equity**" shall mean the total number of shares of Company capital stock outstanding on a fully diluted basis, assuming the conversion, exchange or exercise of all outstanding securities, whether vested or unvested, convertible, exchangeable or exercisable into or for shares of Company capital stock.

"**Transfer**" shall mean the direct or indirect assignment, sale, transfer, pledge, or granting of any option, right or warrant to purchase or otherwise dispose of, any Voting Stock or Convertible Securities of the Company.

"**Transferee**" shall have the meaning set forth in Section 2.3.

"**Transferee Merger**" shall mean a statutory merger under applicable law providing for the acquisition of one hundred percent (100%) of the Total Current Voting Power of the Company then

in effect by a Transferee that is conditioned (which condition may not be waived) on shares of Voting Stock representing a majority of the shares of Voting Stock held by Disinterested Stockholders being voted in favor of such merger.

"**Transferee Tender Offer**" shall mean a bona fide public tender offer subject to the provisions of Regulation 14D when first commenced within the meaning of Rule 14d-2(a) of the rules and regulations under the Exchange Act, by a Transferee to purchase or exchange for cash or other consideration any Voting Stock and which consists of an offer to acquire one hundred percent (100%) of the Total Current Voting Power of the Company then in effect (other than shares of Voting Stock owned by such Transferee), that is conditioned (which condition may not be waived) on a majority of the shares of Voting Stock held by Disinterested Stockholders being tendered and not withdrawn with respect to such offer, and which is accompanied by an irrevocable, unwaivable commitment by the Transferee to promptly acquire in a subsequent merger any shares not purchased in such offer, to the extent any shares are purchased in such offer, for the same amount and form of consideration per share offered in such tender offer.

"**UPP**" shall mean the utility and power plant business segment of the Company, which includes power plant project development, construction and project sales, turn-key engineering, procurement and construction services for power plant construction, and power plant operations and maintenance services, but excludes component sales.

"**Voting Stock**" shall mean shares of Company Common Stock and any other securities of the Company having the power to vote in the election of members of the Company Board.

ARTICLE II

TERRA STANDSTILL AND CERTAIN TRANSFER OBLIGATIONS

2.1 Terra Standstill Obligations.

(a) Subject to Section 2.2 and notwithstanding anything to the contrary contained herein, during the Standstill Period, no member of the Terra Group shall:

(i) effect or seek, offer or agree to effect, or announce any intention to effect or cause or participate in or seek, offer or agree to effect or participate in any transaction that would result in the Terra Group Beneficially Owning Voting Stock in excess of the Applicable Standstill Limit;

(ii) take any action which would or would reasonably be expected to require the Company to make a public announcement regarding the matters set forth in (i) above;

(iii) request that the Company or the Disinterested Directors, or officers or employees of the Company, directly or indirectly, amend or waive any of the provisions of this Section 2.1; or

(iv) enter into any discussions or arrangements with any third party with respect to any of the foregoing;

provided that, notwithstanding the foregoing, nothing in this Agreement shall prohibit any member of the Terra Group from:

(w) during the period beginning from the Offer Closing and continuing until 11:59 p.m. California time on the second anniversary of the Offer Closing, and in response to a written invitation from the Disinterested Directors, either (i) making and consummating a Terra Tender Offer that is approved and recommended by the Disinterested Directors, or (ii) proposing and effecting a Terra Merger that is approved and recommended by the Disinterested Directors;

(x) during the period beginning at 12:00 a.m. California time on the date following the second anniversary of the Offer Closing and continuing until 11:59 p.m. California time on December 31, 2014, either (i) making and consummating a Terra Tender Offer that is approved and recommended by the Disinterested Directors or (ii) proposing and effecting a Terra Merger that is approved and recommended by the Disinterested Directors;

(y) during the period beginning at 12:00 a.m. California time on January 1, 2015 and at any time thereafter, either (i) making and consummating a Terra Tender Offer or (ii) proposing and effecting a Terra Merger; *provided* that, no such Terra Tender Offer or Terra Merger shall be publicly proposed or effected unless (A) at least one hundred and twenty (120) days prior to commencing such Terra Tender Offer within the meaning of Rule 14d-2(a) of the rules and regulations promulgated under the Exchange Act or soliciting stockholder approval of such Terra Merger within the meaning of Rule 14a-2 of the rules and regulations under the Exchange Act, (1) Terra has provided written notice to the Company that it is prepared to commence negotiations with the Disinterested Directors regarding such Terra Tender Offer or Terra Merger and will make its designees reasonably available during normal business hours on reasonable advance notice to Terra from the Disinterested Directors for the purpose of engaging in such negotiations and (2) Terra has caused its designees to be so available for such negotiations during such one hundred twenty (120)-day period (it being understood that the Disinterested Directors shall have the authority to hire independent legal and financial advisors for such purposes, the fees and expenses of which will be borne by the Company), and (B) each member of the Terra Group has not made any coercive or retributive threats to members of the Company Board, the Disinterested Directors or stockholders of the Company in connection with such Terra Tender Offer or Terra Merger; *provided* that prior to asserting any breach by a member of the Terra Group of this Section 2.1(a)(y), the Company shall have, within five (5) Business Days of the occurrence of such breach, provided Terra with written notice of such breach and provided Terra with five (5) Business Days from the date of such notice to cure such breach (even if such cure period would extend beyond the one hundred and twenty (120) day period contemplated by subclause (A) of this Section 2.1(a)(y)), which breach, if cured within such five (5) Business Days, shall be deemed to have never occurred; or

(z) making any public disclosure regarding (w), (x) or (y) above that is required by applicable law in connection with actions taken in compliance with the terms of (w), (x) and (y) above.

(b) Terra shall notify the Company of, and publicly announce, the acquisition of Beneficial Ownership of Voting Stock or Convertible Securities by a member of the Terra Group within two (2) Business Days after becoming aware of such acquisition by any other member of the Terra Group; *provided* that such notice shall be deemed to have been made for purposes of this Section 2.1(b) by virtue of the filing of a Form 4, Form 5 or Schedule 13D, or one or more amendments thereto, within such two (2) Business Day period with the SEC that discloses such acquisition.

(c) Without first obtaining Disinterested Board Approval, no member of the Terra Group shall (i) make, participate in or encourage any "solicitation" (as such term is used in the proxy rules of the SEC) of proxies with respect to any Voting Stock relating to the election of directors of the Company; *provided* that no member of the Terra Group shall be deemed to be a participant in any "solicitation" merely by reason of the membership of the Terra Directors on the Company Board pursuant to the terms of this Agreement, or (ii) deposit any Voting Stock in a voting trust or, subject any Voting Stock to any arrangement or agreement with any third party outside the Terra Group with respect to the voting of such Voting Stock.

2.2 Exception to Certain Standstill Obligations.

(a) No member of the Terra Group shall be deemed to have violated the obligations applicable to the Terra Group under Section 2.1(a):

(i) Subject to Sections 2.2(a)(ii) and 2.2(a)(iii), if the members of the Terra Group Beneficially Own shares of Voting Stock constituting a percentage of the Voting Stock then outstanding that is in excess of than the Applicable Standstill Limit (any such shares, "Excess Shares"), inadvertently and without knowledge that the transaction in which the Terra Group acquired Beneficial Ownership of such Excess Shares would cause the Terra Group to Beneficially Own Voting Stock constituting a percentage of the Voting Stock then outstanding that is greater than the Applicable Standstill Limit (it being understood that the Terra Group shall be deemed to have knowledge of the reports provided to Terra by the Company pursuant to Section 3.1(e)(vi)), so long as (A) Terra provides prompt written notice of the acquisition of such Excess Shares to the Company, (B) the Terra Group disposes of such Excess Shares pursuant to and in accordance with Section 2.2(b) and (C) the Terra Group causes such Excess Shares to be voted in accordance with the provisions of Section 2.2(c);

(ii) To the extent that the members of the Terra Group Beneficially Owns shares of Voting Stock resulting from the conversion into Voting Stock of Convertible Securities that were acquired directly from the Company pursuant to Section 3.1 by a member of the Terra Group and such conversion causes the Terra Group to Beneficially Own shares of Voting Stock constituting a percentage of the Voting Stock then outstanding that is in excess of the Applicable

Standstill Limit (such shares Beneficially Owned by the Terra Group that are greater than the Applicable Standstill Limit, the "**Exempt Excess Converted Shares**"), so long as (A) Terra provides prompt written notice of the acquisition of such Exempt Excess Converted Shares to the Company, and (B) the Terra Group causes such Exempt Excess Converted Shares to be voted in accordance with the provisions of Section 2.2(c); and

(iii) To the extent that Excess Shares result solely from any increase in the aggregate percentage of Beneficial Ownership of Voting Stock held by the Terra Group that results from: (i) a recapitalization of the Company, a repurchase of securities by the Company or other actions taken by the Company or any Company Controlled Corporation (which recapitalization, repurchase or other actions shall have received Disinterested Board Approval, if a majority of the members of the Company Board are then Terra Directors) that have the effect of reducing the number of shares of Voting Stock then outstanding; (ii) the issuance of Voting Stock to Terra in connection with the acquisition by the Company of Tenesol; or (iii) the rights specified in any "poison pill" share purchase rights plan of the Company having separated from the Company Common Stock and a member of the Terra Group having exercised such rights (such Excess Shares resulting from the circumstances described in this Section 2.2(a)(iii), the "**Exempt Excess Shares**").

(b) In the event that Terra becomes aware that the members of the Terra Group Beneficially Own Excess Shares (that are not Exempt Excess Shares or Exempt Excess Converted Shares), Terra will provide prompt written notice to the Company of the number of such Excess Shares (that are not Exempt Excess Shares or Exempt Excess Converted Shares). In the event that the Company becomes aware that members of the Terra Group Beneficially Own Excess Shares (that are not Exempt Excess Shares or Exempt Excess Converted Shares), the Company will promptly provide written notice to Terra. Following delivery of notice by Terra to the Company or by the Company to Terra pursuant to the foregoing two sentences (the "**Ownership Notice**"), Terra shall, and shall cause members of the Terra Group to, as soon as reasonably practicable (but not in a manner that would require a member of the Terra Group to (A) incur liability under Section 16(b) of the Exchange Act or (B) Transfer to a Person other than the Company during a period in which such member of the Terra Group is in possession of material nonpublic information relating to the Company) either:

(i) sell all or any portion of the Excess Shares (other than Exempt Excess Shares and Exempt Excess Converted Shares) to the Company, *provided* that it receives from the Company an irrevocable election to purchase any portion of such shares within sixty (60) days after the delivery of the Ownership Notice (the "**Excess Repurchase Notice**"), at the Fair Market Value of the Company's Common Stock on the day prior to the date of the Ownership Notice; or

(ii) if no such Excess Repurchase Notice is received from the Company, or such Excess Repurchase Notice does not apply to all of such Excess Shares, sell such shares through open market sales, or privately negotiated sales to Disinterested Stockholders, within thirty (30) days of the delivery of the Ownership Notice;

in each case to cause the number of shares of Voting Stock Beneficially Owned by the Terra Group to no longer exceed a percentage of the Voting Stock then outstanding that is greater than the Applicable Standstill Limit (excluding, for purposes of determining both the number of shares of Voting Stock Beneficially Owned by the Terra Group and the number of shares of Voting Stock outstanding, any Exempt Excess Shares or Exempt Excess Converted Shares).

(c) If, as of the record date for determining the stockholders of the Company entitled to vote at any annual or special meeting of stockholders of the Company (however noticed or called), the Terra Group holds any Excess Shares or Exempt Excess Converted Shares (in either case that are not Exempt Excess Shares), then at each such meeting the Terra Group will vote all such shares, or cause all such shares to be voted, in a manner that is in direct proportion to the manner in which Disinterested Stockholders vote (including, for this purpose, any abstentions and "withhold" votes) on each matter, resolution, action or proposal that is submitted to the stockholders of the Company. With respect to any meeting of stockholders of the Company (however noticed or called), the number of Excess Shares and Exempt Excess Converted Shares (in either case that are not Exempt Excess Shares), if any, will be determined by the Company as promptly as practicable following the record date established for determining the stockholders of the Company entitled to vote at such meeting. From time to time before the scheduled date for any such meeting at the request of any member of the Terra Group, the Company shall inform the Terra Group of the voting tabulations (including, for this purpose, all votes "for" or "against" and all "abstentions" and "withhold" votes) for such meeting (it being understood and agreed by the parties that the Company shall request the proxy solicitation firm engaged by it, if any, in connection with such meeting to provide such tabulations directly to the Terra Group from time to time as such tabulations are provided to the Company) for the purpose of facilitating the Terra Group's agreement to vote the Excess Shares and Exempt Excess Converted Shares (in either case that are not Exempt Excess Shares) in accordance with the requirements of this Section 2.2(c); *provided*, *however*, that the failure of the Company to obtain, or the Terra Group to receive, voting tabulations on a daily basis pursuant to this Section 2.2(c) shall not relieve the Terra Group of its obligation to vote any such shares as provided in this Section 2.2(c). For so long as the Applicable Standstill Limit is applicable to the Terra Group, the Terra Group shall not take any action (or omit to take any action), or enter into any transaction, contract, agreement, arrangement, plan, commitment or understanding with any Person or 13D Group, to vote, give instructions with respect to or grant a proxy or proxies in any manner inconsistent with the provisions of this Section 2.2(c).

2.3 Terra's Transfer of Control.

(a) In the event that any member or members of the Terra Group seek to Transfer, in any one transaction or series of transactions, either forty percent (40%) or more of the Total Current Voting Power of the Company then in effect or forty percent (40%) or more of the Voting Stock, in either case to a single Person or 13D Group that is not a Terra Controlled Corporation (a "**Transferee**"), such Transfer shall be conditioned upon and shall not be effected unless such Transferee either: (i) makes a Transferee Tender Offer or (ii) proposes a Transferee Merger, in each case, at the same price per share of Voting Stock and using the same form of consideration to be paid, by the Transferee(s) to such member or members of the Terra Group; it being understood that

the actual consummation of the Transferee Tender Offer or effectuation of such Transferee Merger shall not be a condition to the consummation of such Transfer by such member or members of the Terra Group to the Transferee if the sole reason that such Transferee Tender Offer or Transferee Merger is not consummated is a failure of the unwaivable condition relating to Disinterested Stockholder approval or tender set forth therein, but that, absent the failure of such unwaivable condition, the actual consummation or effectuation shall be a condition to the consummation of such Transfer by such member or members of the Terra Group to the Transferee. Any attempted Transfer by Terra or any member or members of the Terra Group which is not in compliance with this Section 2.3(a) shall be null and void.

(b) Any Transfer by Terra or a Terra Controlled Corporation to a Terra Controlled Corporation shall be conditioned upon the Terra Controlled Corporation that is a transferee in such Transfer becoming a party to this Agreement and in so doing, agreeing with the Company to hold the shares of Voting Stock or Convertible Securities received pursuant to such Transfer subject to all of the provisions of this Agreement, and such Terra Controlled Corporation agreeing to transfer, and Terra agreeing to cause such Terra Controlled Corporation to transfer ownership of such shares of Voting Stock and/or Convertible Securities to Terra or another Terra Controlled Corporation that is controlled by Terra if it ceases to be a Terra Controlled Corporation. Any attempted Transfer by Terra to a Terra Controlled Corporation which is not in compliance with this Section 2.3(b) shall be null and void. Upon a Transfer by Terra of all of the Voting Stock then owned by it to another Terra Controlled Corporation, such other Terra Controlled Corporation shall acquire and be entitled to exercise all of the rights and shall be subject to all of the obligations, of Terra pursuant to this Agreement and Terra shall no longer be entitled to exercise the rights ascribed to Terra in this Agreement.

(c) No transferee of shares of Voting Stock or Convertible Securities sold, transferred or otherwise disposed of by Terra or a Terra Controlled Corporation shall be bound (other than a Terra Controlled Corporation after a Transfer in accordance with the provisions of Section 2.3(b) or a Transferee by the provisions of Section 2.3(a)) by the terms of this Agreement, nor shall such transferee be entitled, in any manner whatsoever, to any rights afforded Terra under this Agreement (other than a Terra Controlled Corporation after a Transfer in accordance with the provisions of Section 2.3(b)).

ARTICLE III

TERRA RIGHTS TO MAINTAIN AND BOARD REPRESENTATION RIGHTS

3.1 Terra's Rights to Maintain.

(a) In General.

(i) Subject to Section 2.1, and in addition to any other rights set forth in this Section 3.1, the Terra Group may directly or indirectly acquire, through open market purchases, privately negotiated purchases from Disinterested Stockholders or, subject to Section 4.1, purchases

from the Company, securities of the Company that result in the Terra Group Beneficially Owning securities of the Company that constitute no more than the Applicable Standstill Limit.

(ii) The rights provided to the Terra Group under this Section 3.1 shall terminate and be of no further force or effect at all times after (A) the first time that Terra, together with the Terra Controlled Corporations, owns less than forty percent (40%) of the Total Current Voting Power of the Company then in effect (including if owning less than forty percent (40%) of the Total Current Voting Power of the Company then in effect results from a recapitalization of the Company, a repurchase of securities by the Company or other actions taken by the Company or any Company Controlled Corporation and regardless of whether there is a subsequent increase above forty percent (40%) in the aggregate percentage of the Total Current Voting Power of the Company then in effect that is held by the Terra Group), or (B) the first time that Terra, or any Terra Controlled Corporation, Transfers any shares of Voting Stock or Convertible Securities to a Person other than a Terra Controlled Corporation such that Terra, together with the Terra Controlled Corporations, owns less than fifty percent (50%) of the Total Current Voting Power of the Company then in effect (including if owning less than fifty percent (50%) of the Total Current Voting Power of the Company then in effect results from a recapitalization of the Company, a repurchase of securities by the Company or other actions taken by the Company or any Company Controlled Corporation and regardless of whether there is a subsequent increase above fifty percent (50%) in the aggregate percentage of the Total Current Voting Power of the Company then in effect and held by the Terra Group), in each case of (A) and (B) above taking into account the Grace Period provisions of Section 3.1(f).

(b) Financing Issuances.

(i) If the Company proposes to issue New Securities primarily for cash consideration in a financing transaction (except in any transaction specifically described in Section 3.1(c)) and the effect of consummating such transaction would result in a reduction in the percentage interest of the Total Outstanding Company Equity held by Terra and the Terra Controlled Corporations (a "**Financing Transaction**"), Terra shall have the right to purchase for cash Terra's Applicable Right to Maintain Percentage, or any part thereof, of the aggregate amount of such New Securities sold in such Financing Transaction at the same price per New Security at which such New Securities are sold in such Financing Transaction to the other ultimate investors (the "**Purchase Price**"), as further described in this Section 3.1(b).

(ii) No less than seventeen (17) Business Days prior to the issuance and sale of any New Securities in a Financing Transaction, the Company shall notify Terra of the Company's intention to make such issuance by written dated notice setting forth: (v) the proposed date of the closing of the Financing Transaction, (w) the number, type and material terms of New Securities to be sold in the Financing Transaction, (x) the calculation of Terra's estimated Applicable Right to Maintain Percentage of the New Securities to be sold in the Financing Transaction (on the basis of information filed by members of the Terra Group with the SEC), (y) the closing price or in the absence of a closing price, the closing bid price, of the Company Common Stock on the prior trading day on the principal securities exchange on which the Company Common

Stock is then trading and (z) the capitalization of the Company on an actual and pro forma basis after giving effect to the issuance of New Securities (the "**Company Financing Issuance Notice**").

(iii) At least two (2) Business Days prior to the proposed date of the closing of the Financing Transaction as set forth in the Company Financing Issuance Notice, Terra shall notify the Company by written dated notice, stating (A) the number of New Securities to be purchased by Terra in the Financing Transaction, which shall not exceed Terra's Applicable Right to Maintain Percentage, (the "**Direct Purchase Securities**") and/or (B) whether or not Terra has made a bona fide determination to acquire Voting Stock or Convertible Securities in open market purchases, or privately negotiated purchases from Disinterested Stockholders, so as, together with any Direct Purchase Securities, to satisfy any portion of Terra's Applicable Right to Maintain Percentage within the applicable Grace Period relating to the Company Financing Issuance Notice (the "**Terra Financing Issuance Notice**"). If Terra fails to deliver a Terra Financing Issuance Notice at least two (2) Business Days prior to the proposed date of the closing of the Financing Transaction as set forth in the Company Financing Issuance Notice, Terra shall be deemed to have elected not to acquire any Direct Purchase Securities or to satisfy any portion of its Applicable Right to Maintain Percentage with respect to such Financing Transaction; *provided*, *however*, that if the actual closing of such Financing Transaction does not occur within ten (10) Business Days following the proposed date of the closing set forth in, and on the terms and conditions in all material respects as set forth in, the Company Financing Issuance Notice, the Company shall be obligated to deliver a revised Company Financing Issuance Notice and Terra shall have ten (10) Business Days following the date of receipt of the revised Company Financing Issuance Notice to provide a new Terra Financing Issuance Notice, which revised Company Financing Issuance Notice and Terra Financing Issuance Notice shall supersede and replace any prior delivered Company Financing Issuance Notice and Terra Financing Issuance Notice, respectively, and shall otherwise be subject to the terms and processes set forth in this Section 3.1(b).

(iv) If the Company issues and sells the New Securities in a Financing Transaction that was subject to a Company Financing Issuance Notice, then Terra shall be obligated to purchase the number of Direct Purchase Securities, if any, that are subject to the Terra Financing Issuance Notice delivered to the Company pursuant to Section 3.1(b)(iii) for the per share Purchase Price; *provided*, *however*, that if a preliminary "red herring" prospectus is filed in connection with such Company Financing Transaction and (A) the Fair Market Value of the Company's Common Stock is, as of the close of the trading day on Nasdaq or other principal securities exchange on which the Company Common Stock is then trading, on the date three (3) trading days after such filing, fifteen percent (15%) greater than (B) the closing price (or in the absence of a closing price, the closing bid price) of the Company Common Stock on Nasdaq or such other principal securities exchange on which the Company Common Stock is traded on the day prior to the delivery of a Terra Financing Issuance Notice, Terra shall be under no obligation to purchase the Direct Purchase Securities. The closing of the Direct Purchase Securities, if any, shall take place contemporaneously with such Financing Transaction, subject to the provisions of Section 3.1(e).

(v) If, pursuant to the terms of Section 3.1(b)(iv), Terra is no longer obligated to purchase Direct Purchase Securities that were subject to a validly delivered Terra

Financing Issuance Notice, Terra shall have the right, within fifteen (15) Business Days after the closing of the Financing Transaction, to deliver to the Company an amended Terra Financing Issuance Notice stating whether or not Terra has made a bona fide determination to acquire Voting Stock or Convertible Securities in open market purchases, or privately negotiated purchases from Disinterested Stockholders, so as, together with any New Securities subject to the previously delivered Terra Financing Issuance Notice, to satisfy any portion of Terra's Applicable Right to Maintain Percentage within the applicable Grace Period relating to the any then effective Terra Financing Issuance Notice. If Terra fails to deliver an amended Terra Financing Issuance Notice within such fifteen (15) Business Day Period, Terra shall be deemed to have elected not to satisfy any portion of Terra's Applicable Right to Maintain Percentage other than with respect to Voting Stock or Convertible Securities, if any, that are subject to any then effective Terra Financing Issuance Notice and that were not Direct Purchase Securities.

(vi) If at any time Terra has determined to reduce the shares of Voting Stock or Convertible Securities that are the subject of a then effective Terra Financing Issuance Notice, Terra shall as promptly as practicable deliver to the Company an amended Terra Financing Issuance Notice stating the lower number of shares of Voting Stock or Convertible Securities for which Terra has made a bona fide determination to acquire in open market purchases, or privately negotiated purchases from Disinterested Stockholders, within the applicable Grace Period relating to the then effective Company Financing Issuance Notice and only such lower number of shares of Voting Stock or Convertible Securities, if any, shall thereafter be deemed to be subject to the applicable Terra Financing Issuance Notice.

(vii) Notwithstanding anything in this Section 3.1(b) to the contrary, in the event the Company issues New Securities that are Convertible Securities in a Financing Transaction:

(1) If Terra purchases Direct Purchase Securities constituting one hundred percent (100%) of Terra's Applicable Right to Maintain Percentage in such Financing Transaction, the Company shall not be obligated to subsequently deliver a Company Financing Issuance Notice relating to the issuance of New Securities that are Voting Stock that are issued upon conversion or exercise of the Convertible Securities that were purchased by the other purchasers in the Financing Transaction; and

(2) If Terra purchases Direct Purchase Securities constituting less than one hundred percent (100%) of Terra's Applicable Right to Maintain Percentage in such Financing Transaction, the Company shall only be obligated to subsequently deliver a Company Financing Issuance Notice pursuant to Section 3.1(d) relating to the issuance of New Securities that are Voting Stock that are issued upon conversion of the Convertible Securities that were purchased by the other purchasers in the Financing Transaction, and Terra shall have the right to acquire, in open market purchases, or privately negotiated purchases from Disinterested Stockholders, up to the number of shares of Voting Stock issuable upon conversion of the number of Direct Purchase Securities constituting one hundred percent (100%) of Terra's Applicable Right to Maintain Percentage that were not purchased by Terra. Within fifteen (15) Business Days after receipt by Terra of such Company Financing Issuance Notice, Terra shall notify the Company by written dated

notice stating whether or not Terra has made a bona fide determination to acquire Voting Stock in open market purchases, or privately negotiated purchases from Disinterested Stockholders, so as to acquire within the applicable Grace Period relating to the Company Financing Issuance Notice, all or any portion of the shares of Voting Stock that are the subject to such Company Financing Issuance Notice.

(c) Acquisition Issuances.

(i) No less than fifteen (15) Business Days after the issuance and sale of any New Securities in consideration for a business or assets of a business (a "**Business Acquisition Transaction**"), the Company shall notify Terra of the Company's issuance by written dated notice setting forth: (x) the number, type and material terms of New Securities issued in such Business Acquisition Transaction, (y) a description of the material elements of the consideration therefor and (z) the capitalization of the Company after giving effect to the issuance of such New Securities and the calculation of Terra's estimated Applicable Right to Maintain Percentage of such New Securities (on the basis of information filed by members of the Terra Group with the SEC) (a "**Company Acquisition Issuance Notice**").

(ii) Within fifteen (15) Business Days after receipt by Terra of the Company Acquisition Issuance Notice, Terra shall notify the Company by written dated notice stating whether or not Terra has made a bona fide determination to acquire Voting Stock or Convertible Securities in open market purchases, or privately negotiated purchases from Disinterested Stockholders, so as to satisfy any portion of Terra's Applicable Right to Maintain Percentage within the applicable Grace Period relating to the Company Acquisition Issuance Notice (the "**Terra Acquisition Issuance Notice**"). If Terra fails to deliver a Terra Acquisition Issuance Notice within fifteen (15) Business Days after the receipt by Terra of the Company Acquisition Issuance Notice relating to such Business Acquisition Transaction, Terra shall be deemed to have elected not to satisfy any portion of its Applicable Right to Maintain Percentage with respect to such Business Acquisition Transaction.

(iii) If at any time Terra has determined to reduce the shares of Voting Stock or Convertible Securities that were the subject of a Terra Acquisition Issuance Notice, Terra shall as promptly as practicable deliver to the Company an amended Terra Acquisition Issuance Notice stating the lower number of shares of Voting Stock or Convertible Securities for which Terra has made a bona fide determination to acquire in open market purchases, or privately negotiated purchases from Disinterested Stockholders, within the applicable Grace Period relating to the Company Acquisition Issuance Notice and only such lower number of shares of Voting Stock or Convertible Securities, if any, shall be deemed to be subject to the Terra Acquisition Issuance Notice.

(d) Other Issuances.

(i) If the Company issues any New Security that is not the subject of a Company Financing Issuance Notice or a Company Acquisition Issuance Notice (a "**Company**

Other Issuance"), the Company shall provide Terra with written dated notice within (A) fifteen (15) Business Days after the date of such issuance, if such issuance is not pursuant to a Company Equity Plan and such issuance, together with all other Company Other Issuances since the end of the preceding fiscal quarter (other than issuances pursuant to a Company Equity Plan), aggregate to more than one percent (1%) of the Total Outstanding Company Equity, (B) fifteen (15) Business Days after the end of the fiscal quarter in which such issuance occurs if such issuance is not pursuant to a Company Equity Plan and such issuance, together with all other Company Other Issuances since the end of the preceding fiscal quarter (other than issuances pursuant to a Company Equity Plan), aggregate to one percent (1%) or less than the Total Outstanding Company Equity and (C) within fifteen (15) Business Days after the end of the fiscal quarter in which such issuance occurs if such issuance is pursuant to a Company Equity Plan or results from the exercise or exchange of a Convertible Security that was issued under a Company Equity Plan. The Company Other Issuances Notice shall set forth: (x) the number, type and material terms of New Securities (such number to be, with respect to New Securities issued pursuant to a Company Equity Plan, net of any New Securities returned to a Company Equity Plan during the applicable fiscal quarter), (y) the consideration paid to the Company therefor and the capitalization of the Company after giving effect to the issuance of such New Securities and (z) the calculation of Terra's estimated Applicable Right to Maintain Percentage of such New Securities (on the basis of information filed by members of the Terra Group with the SEC) (in either case, a "**Company Other Issuances Notice**").

(ii) Within fifteen (15) Business Days after receipt by Terra of the Company Other Issuances Notice, Terra shall notify the Company by written dated notice stating whether or not Terra has made a bona fide determination to acquire shares of Voting Stock or Convertible Securities in open market purchases, or privately negotiated purchases from Disinterested Stockholders, so as to satisfy any portion of Terra's Applicable Right to Maintain Percentage within the applicable Grace Period relating to the Company Other Issuances Notice (the "**Terra Other Issuances Notice**"). If Terra fails to deliver a Terra Other Issuances Notice within fifteen (15) Business Days after the receipt by Terra of the Company Other Issuances Notice relating to such Company Other Issuance, Terra shall be deemed to have elected not to satisfy any portion of its Applicable Right to Maintain Percentage with respect to such Company Other Issuance.

(iii) If at any time Terra has determined to reduce the shares of Voting Stock or Convertible Securities that were the subject of a Terra Other Issuances Notice, Terra shall as promptly as practicable deliver to the Company an amended Terra Other Issuances Notice stating the lower number of shares of Voting Stock or Convertible Securities for which Terra has made a bona fide determination to acquire in open market purchases, or privately negotiated purchases from Disinterested Stockholders, within the applicable Grace Period relating to the Company Other Issuances Notice and only such lower number of shares of Voting Stock or Convertible Securities, if any, shall be deemed to be subject to the Terra Other Issuances Notice.

(e) Financing Right to Maintain Closing; Other Matters.

(i) Subject to subsection (iii) of this Section 3.1(e), the purchase and sale of any New Securities pursuant to Section 3.1(b) shall take place at the offices of the Company set

forth in this Agreement at 10:00 a.m. on the later of the: (A) closing date specified in Section 3.1(b)(iv) or (B) the third (3rd) Business Day following the expiration or early termination of all waiting periods imposed on such purchase and sale by the HSR Act or any similar required non-U.S. regulatory scheme, or at such other time and place as the Company and Terra may agree. The Company and Terra shall use their reasonable best efforts to comply with the HSR Act or similar required non-U.S. regulatory scheme applicable to such purchase and sale of shares of New Securities under Section 3.1. The issuance of such shares shall be subject to compliance with the HSR Act or similar required non-U.S. regulatory scheme applicable to such purchase and sale of shares of New Securities under Section 3.1.

(ii) Subject to subsection (iii) of this Section 3.1(e), the Company and Terra shall use their reasonable best efforts to comply with all federal and state laws and regulations and Nasdaq and stock exchange listing requirements applicable to any purchase and sale of shares of New Securities under Section 3.1. The issuance of such shares shall be subject to compliance with applicable laws and regulations and requirements of Nasdaq or any other applicable stock exchange.

(iii) Except as otherwise specifically provided herein, upon receipt of the applicable Terra Financing Issuance Notice by the Company, Terra and the Company each shall be obligated, subject to the other terms and conditions of this Agreement, to consummate the purchase and sale of Direct Purchase Securities contemplated by Section 3.1(b), if any, and shall use their reasonable best efforts to secure any approvals required in connection therewith; *provided* that, notwithstanding anything to the contrary set forth in this Agreement, nothing in this Section 3.1(e) or elsewhere in this Agreement shall be deemed to require Terra or the Company or any Subsidiary thereof to litigate with any governmental entity or agree to any divesture by itself or any of its Affiliates of shares of capital stock or of any business, assets or property, or the imposition of any limitation on the ability of any of them to conduct their business or to own or exercise control of such assets, properties and stock.

(iv) Notwithstanding anything in this Section 3.1 to the contrary, if a purchase of New Securities that are the subject of a Financing Transaction by Terra is not able to be consummated at the same time as the purchase and sale to other purchasers of such New Securities as a result of a legal or regulatory delay, such as a delay related to compliance with the HSR Act or any similar required non-U.S. regulatory scheme or to compliance with applicable laws and regulations and requirements of Nasdaq or any other applicable stock exchange, the applicable Grace Period relating to such New Securities shall be extended for the same period of time as such regulatory delay or until it is determined that the acquisition by the Terra Group of such securities is no longer legally permitted or feasible, and the Company shall be entitled to issue New Securities to third parties in advance of the issuance of New Securities to Terra.

(v) Any shares of Voting Stock and Convertible Securities acquired by Terra under this Article III, and all of Terra's rights to maintain under Section 3.1, shall be subject to all restrictions and obligations on the Terra Group set forth elsewhere in this Agreement including Section 2.1.

(vi) Following the end of each fiscal quarter, the Company shall (within the deadlines for filing of the Company's Form 10-Q or Form 10-K, as applicable) provide to Terra the following information: (A) the number of shares of Voting Stock or Convertible Securities that are outstanding as of the end of such fiscal quarter; (B) the number of New Securities issued during such fiscal quarter; (C) the grants and cancellations of Convertible Securities pursuant to each Company Equity Plan during such fiscal quarter; and (D) the total number of shares of Common Stock repurchased by the Company in such fiscal quarter.

(f) Grace Periods Under This Agreement. Notwithstanding anything in this Agreement to the contrary, all shares of Voting Stock and Convertible Securities that are subject to a then outstanding Terra Maintenance Notice delivered within the applicable time period set forth in Section 3.1(b), Section 3.1(c) or Section 3.1(d) and for which the Grace Period as to such shares of Voting Stock or Convertible Securities has not yet expired shall be deemed to have at all times been shares of Voting Stock or Convertible Securities owned by Terra for all purposes of this Agreement.

3.2 Terra's Board Representation Rights.

(a) Effective as of the Offer Closing and until the Board Reduction Event, the size of the Company Board shall be fixed at eleven (11) directors. Effective as of the Board Reduction Event and until Terra, together with the Terra Controlled Corporations, owns (taking into account Section 3.1(f)) less than ten percent (10%) of the Total Current Voting Power of the Company then in effect, the size of the Company Board shall be fixed at nine (9) directors.

(b) Effective as of and after the Offer Closing, the Company Board shall consist of (i) the Chief Executive Officer of the Company, who shall serve as Chairman of the Company Board, (ii) subject to Section 3.2(c), the Designated Independent Directors, (iii) subject to Section 3.2(c) and (d), the Terra Directors, and (iv) such number of Disinterested Directors as to fill any vacancies on the Company Board resulting from a reduction in the number of Terra Directors pursuant to Section 3.2(d), in each case taking into account the provisions of Section 3.1(f).

(c) On the first anniversary of the Offer Closing, (i) the Disinterested Directors shall cause one (1) of the Designated Independent Directors selected by a majority of the Disinterested Directors to resign from the Company Board, (ii) upon the effectiveness of such resignation, Terra will promptly cause one of the Terra Directors to resign from the Company Board and (iii) thereafter the Company Board will take all action necessary to reduce the number of authorized members of the Company Board to nine (9) directors (such actions, collectively, the "**Board Reduction Event**").

(d) Until Terra, together with the Terra Controlled Corporations, owns (taking into account Section 3.1(f)) less than ten percent (10%) of the Total Current Voting Power of the Company then in effect, the Company shall include in the slate of nominees recommended by the Company Board to stockholders for election to the Company Board at any special or annual meeting of stockholders of the Company, commencing with the first meeting of stockholders following the Offer Closing, and shall use its reasonable best efforts in all other respects, as reasonably requested

by Terra, to cause the election of that number of persons designated by Terra to the Company Board as follows:

(i) until the first time that Terra, together with the Terra Controlled Corporations, owns (or is deemed pursuant to Section 3.1(f) to own) less than fifty percent (50%) of the Total Current Voting Power of the Company then in effect, Terra shall be entitled to designate (A) six (6) nominees to serve on the Company Board until the Board Reduction Event; and (B) five (5) nominees to serve on the Company Board thereafter;

(ii) upon the first time that Terra, together with the Terra Controlled Corporations, owns (or is deemed pursuant to Section 3.1(f) to own) less than fifty percent (50%) but not less than forty percent (40%) of the Total Current Voting Power of the Company then in effect, Terra shall be entitled to designate (A) five (5) nominees to serve on the Company Board until the Board Reduction Event; and (B) four (4) nominees to serve on the Company Board thereafter;

(iii) upon the first time that Terra, together with the Terra Controlled Corporations, owns (or is deemed pursuant to Section 3.1(f) to own) less than forty percent (40%) but not less than thirty percent (30%) of the Total Current Voting Power of the Company then in effect, Terra shall be entitled to designate (A) four (4) nominees to serve on the Company Board until the Board Reduction Event; and (B) three (3) nominees to serve on the Company Board thereafter;

(iv) upon the first time that Terra, together with the Terra Controlled Corporations, owns (or is deemed pursuant to Section 3.1(f) to own) less than thirty percent (30%) but not less than twenty percent (20%) of the Total Current Voting Power of the Company then in effect, Terra shall be entitled to designate (A) three (3) nominees to serve on the Company Board until the Board Reduction Event; and (B) two (2) nominees to serve on the Company Board thereafter; and

(v) upon the first time that Terra, together with the Terra Controlled Corporations, owns (or is deemed pursuant to Section 3.1(f) to own) less than twenty percent (20%) but not less than ten percent (10%) of the Total Current Voting Power of the Company then in effect, Terra shall be entitled to designate (A) two (2) nominees to serve on the Company Board until the Board Reduction Event; and (B) one (1) nominee to serve on the Company Board thereafter.

(e) In the event that the number of Terra Directors exceeds the number of designees that Terra is entitled to designate pursuant to Section 3.2(d) (the "**Excess Directors**"), Terra shall as promptly as practicable cause such number of Excess Directors to resign from the Company Board and the Nominating and Governance Committee of the Company Board shall as promptly as practicable recommend to the Company Board a nominee that would qualify as a Disinterested Director to fill the vacancy that is caused by such resignation. The Company Board shall as promptly as practicable take all action (and Terra shall cause all Terra Directors to as promptly as practicable take all action) necessary to appoint the nominee identified by the Nominating and Governance Committee of the Company Board to serve on the Company Board.

(f) In the event that any Terra Director shall cease to serve as a director for any reason (other than in connection with the resignation of one (1) Terra Director upon the Board Reduction Event), the vacancy resulting thereby shall be filled by a designee of Terra and the Company Board shall as promptly as practicable take all actions necessary to appoint such designee of Terra and, during any period in which such a vacancy remains open, *provided* that Terra has designated a nominee to fill such vacancy, the Company Board shall not, without Terra's written consent, take any action with respect to an event requiring Supermajority Board Approval, other than to elect Terra's designee to fill such vacancy.

(g) In the event that any Disinterested Director or the Chief Executive Officer of the Company shall cease to serve as a director for any reason (other than in connection with the resignation of one (1) Disinterested Director upon the Board Reduction Event), the Nominating and Governance Committee of the Company Board shall nominate a replacement director that meets the qualifications of a Disinterested Director or is the Chief Executive Officer of the Company, as applicable, and the Company Board shall as promptly as practicable take all actions necessary to appoint such nominee and, during any period in which such a vacancy remains open, *provided* that the Nominating and Governance Committee of the Company has nominated a nominee to fill such vacancy, the Company Board shall not take any action with respect to an event requiring Supermajority Board Approval.

(h) Notwithstanding anything to the contrary contained herein, Terra shall not at any time while Terra is entitled to nominate directors under this Section 3.2 be entitled to, and Terra agrees not to cast votes for, Terra Directors in excess of the number of Terra Directors which Terra is entitled to designate pursuant to Section 3.2(d).

(i) So long as Terra Directors serve as members of the Company Board, such Terra Directors shall be allocated across the three classes that comprise the Company Board staggered terms for reelection in as equal an allocation as is practicable. The six (6) Terra Directors that serve on the Company Board effective as of the Offer Closing shall be allocated across the three classes that comprise the Company Board staggered terms for reelection such that, subject to Section 3.2(d), the election of two (2) Terra Directors shall be submitted to a vote of the Company's stockholders in the first year following the Offer Closing, the election of two (2) Terra Directors shall be submitted to a vote of the Company's stockholders in the second year following the Offer Closing, and the election of two (2) Terra Directors shall be submitted to a vote of the Company's stockholders in the third year following the Offer Closing.

(j) The Company shall elect, to the extent available and required in order for the Company to fulfill its obligations under Section 3.2 and 3.3, to be treated as a "controlled company" in accordance with Rule 5615(c) of the Nasdaq or other similar rule of any applicable securities exchange on which the shares of Company Common Stock are then traded.

(k) Until the first time that Terra, together with the Terra Controlled Corporations, owns (or is deemed pursuant to Section 3.1(f) to own) less than ten percent (10%) of the Total Current Voting Power of the Company then in effect, each director nominee, other than a

Terra Director designated by Terra and other than the Chief Executive Officer, shall meet the qualifications of a Disinterested Director and be selected by the Nominating and Governance Committee of the Company Board. The Company Board shall as promptly as practicable take all action necessary (and Terra shall cause all Terra Directors to promptly take all action and shall vote as a stockholder and shall cause any member of the Terra Group to vote as a stockholder if necessary) to (i) appoint or elect any such nominee identified by the Nominating and Governance Committee of the Company Board to serve on the Company Board and (ii) implement a Board Reduction Event in accordance with Section 3.2(c).

3.3 Board Committee Composition. Subject to the listing requirements of the principal securities exchange on which the Company's Common Stock is listed, until the first time that Terra, together with the Terra Controlled Corporations, owns (or is deemed pursuant to Section 3.1(f) to own) less than thirty percent (30%) of the Total Current Voting Power of the Company then in effect:

(a) the Audit Committee of the Company Board shall solely comprise three (3) Disinterested Directors;

(b) the Compensation Committee of the Company Board shall solely comprise two (2) Disinterested Directors and one (1) Terra Director;

(c) the Nominating and Governance Committee of the Company Board shall solely comprise two (2) Disinterested Directors and one (1) Terra Director; and

(d) any other standing or ad hoc committee of the Company Board shall comprise a majority of Disinterested Directors and shall include one Terra Director;

provided that, a Terra Director shall not be included in the membership of any such committee the sole purpose of which is to consider any transaction for which there exists an actual conflict of interest between any member of the Terra Group, on the one hand, and the Company or its Affiliates, on the other hand, in the reasonable judgment of the Disinterested Directors.

3.4 Board and Committee Observers and Executive Sessions. Until the first time that Terra, together with the Terra Controlled Corporations, owns (or is deemed pursuant to Section 3.1(f) to own) less than ten percent (10%) of the Total Current Voting Power of the Company then in effect and to the extent Terra is not entitled to membership of a Terra Director on any standing or ad hoc committee of the Company Board now or hereafter existent pursuant to Section 3.3, the Company Board and each standing or ad hoc committee of the Company (other than any such committee, the sole purpose of which is to consider any transaction for which there exists an actual conflict of interest between any member of the Terra Group, on the one hand, and the Company or its Affiliates, on the other hand, in the reasonable judgment of the Disinterested Directors) will permit a representative of Terra to attend all meetings of the Company Board or such committee in a non-voting, observer capacity. A majority of the Disinterested Directors serving on the Company Board or any standing or ad hoc committee of the Company Board shall be entitled to recuse any

such observer from portions of any meeting of the Company Board or such committee and the secretary of any such meeting shall be entitled to redact portions of any materials delivered to the observer, in each case, to the extent that a majority of such Disinterested Directors determine, in good faith that (a) such recusal is reasonably necessary to preserve attorney-client privilege with respect to any matter, or (b) there exists, with respect to any deliberation or Board materials, an actual conflict of interest between any member of the Terra Group, on the one hand, and the Company or its Affiliates, on the other hand, in the reasonable judgment of a majority of such Disinterested Directors. Any such observer shall be bound by confidentiality obligations with respect to the Company and its business to the same extent as are the members of the Company Board, and Terra shall be required to enter into a reasonable and customary confidentiality agreement covering all persons who may from time to time serve as an observer under this Section 3.4.

3.5 Terra Director Recusal. The parties hereby acknowledge and agree that each Terra Director, in the exercise of his or her fiduciary duties as a member of the Company Board shall, among other things, recuse himself or herself from any board discussions or deliberations when required by applicable Delaware corporate law.

ARTICLE IV

EVENTS REQUIRING SPECIFIC BOARD OR STOCKHOLDER APPROVAL

4.1 Events Requiring Disinterested Board Approval. At any time when Terra, together with the Terra Controlled Corporations, owns (or is deemed pursuant to Section 3.1(f) to own) at least thirty percent (30%) of the Total Current Voting Power of the Company then in effect, no party hereto (including any Affiliate of such party) shall effect, without first having obtained Disinterested Board Approval with respect to such event:

(a) any amendment to the Company's bylaws or certificate of incorporation;

(b) any transaction that, in the reasonable judgment of the Disinterested Directors, involves an actual conflict of interest between any member of the Terra Group, on the one hand, and the Company or its Affiliates, on the other hand;

(c) the adoption of any "poison pill" share purchase rights plan or any amendment of, termination of (other than by its terms), renewal of or failure to renew the Rights Plan, or any implementation or amendment of, or redemption or exchange of, rights issued pursuant to the Rights Plan;

(d) except as otherwise provided in Section 2.1(a) hereof, commencing a tender offer or exchange offer by Terra or any member of the Terra Group to purchase or exchange for cash or other consideration any Voting Stock or Convertible Securities, or approving a merger of the Company or any Company Controlled Corporation with a member of the Terra Group;

(e) any voluntary dissolution or liquidation of the Company or a Company Controlled Corporation;

(f) any voluntary filing of a petition for bankruptcy or receivership by the Company or a Company Controlled Corporation, or the failure to oppose any other person's petition for bankruptcy or any other person's action to appoint a receiver of the Company or a Company Controlled Corporation;

(g) any delegation of all or a portion of the authority of the Company Board to any committee of the Company Board;

(h) any amendment, modification or waiver (including a termination other than in accordance with the various termination provisions contained herein) of any of the provisions of this Agreement or any of the Related Agreements;

(i) any modification of (including a failure to maintain current levels of coverage in any successor policy), or action with respect to, director's and officer's insurance coverage; or

(j) any reduction in the compensation of Disinterested Directors.

Notwithstanding anything in this Section 4.1 to the contrary, Disinterested Board Approval shall not be required for (i) a Terra Tender Offer or Terra Merger or a Transferee Tender Offer or Transferee Merger that complies with Sections 2.1 and 2.3, as applicable, or (ii) the renewal of the Rights Plan upon its expiration substantially in its then current form.

4.2 Event Requiring Supermajority Board Approval. At any time when Terra, together with the Terra Controlled Corporations, owns (or is deemed pursuant to Section 3.1(f) to own) at least thirty percent (30%) of the Total Current Voting Power of the Company then in effect, no party hereto (including any Affiliate of such party) shall effect, without first having obtained Supermajority Board Approval, approval or adoption of an Annual Operating Plan or budget of the Company that reduces or has the effect of reducing the planned L/Cs (as defined in the Credit Support Agreement) utilization in any given year by more than ten percent (10%) below the applicable "Maximum L/C Amount" set forth in Section 1(hh) of the Credit Support Agreement.

4.3 Events Requiring Terra Stockholder Approval. Until the first time that Terra, together with the Terra Controlled Corporations, owns (taking into account the provisions of Section 3.1(f)): (x) fifty percent (50%) or less of the Total Current Voting Power of the Company then in effect or (y) forty percent (40%) or less of the Total Current Voting Power of the Company then in effect when at least $100 Million of Guarantees are outstanding (the "**Terra Stockholder Approval Period**"), neither the Company (including any Company Controlled Corporation) nor the Company Board shall effect, without first having obtained Terra Stockholder Approval with respect to such event:

(a) any amendment to the Company's bylaws;

(b) any amendment to the Company's certificate of incorporation;

(c) any transaction pursuant to which the Company or any Company Controlled Corporation acquires or otherwise obtains the ownership or exclusive use of any business, property or assets of a Person or Persons that is not the Company or a Company Controlled Corporation (including by merger, amalgamation, consolidation, tender offer, asset or stock purchase), if as of the date of the consummation of such transaction the Asset Acquisition Value thereof exceeds the lower of (A) fifteen percent (15%) of the Company's then-consolidated total assets as determined in accordance with GAAP or (B) fifteen percent (15%) of the market capitalization of the Company as determined on the basis of the Fair Market Value of the Company Common Stock immediately preceding such date of the consummation of such transaction;

(d) any transaction pursuant to which a Person or Persons that is not the Company or a Company Controlled Corporation obtains ownership or exclusive use of any business, property or assets of the Company or a Company Controlled Corporation (including any sale, lease, license, transfer or other disposition), if as of the date of the consummation of such transaction the Asset Disposition Value thereof exceeds the lower of (A) ten percent (10%) of the Company's then consolidated total assets as determined in accordance with GAAP or (B) ten percent (10%) of the market capitalization of the Company determined on the basis of the Fair Market Value of the Company Common Stock immediately preceding the date of the consummation of such transaction;

(e) the adoption of any "poison pill" share purchase rights plan, other than the Rights Plan, and any implementation or amendment of, or redemption or exchange of, rights issued pursuant to the Rights Plan or any amendment of the Rights Plan, that in any case has the effect of excluding from the definition of "Acquiring Person" (or any similar term) therein any Person other than Terra, any Terra Controlled Corporation, any Terra Group member, and any Transferee, beneficially owning (as defined in the Rights Plan) ten percent (10%) or more of the Total Current Voting Power of the Company then in effect, *provided* that notwithstanding the foregoing, Terra Stockholder Approval shall not be required for the renewal of the Rights Plan upon its expiration, substantially in its then current form;

(f) the incurrence of additional Indebtedness in excess of the difference, if any, of 3.5 times the Company's LTM EBITDA less the Company's then Outstanding Gross Debt, *provided* that, no Terra Stockholder Approval shall be required hereunder in respect of the incurrence of any Excluded Debt Incurrence;

(g) any voluntary dissolution or liquidation of the Company or a Company Controlled Corporation; *provided*, *however*, that Terra Stockholder Approval shall not be required where any such dissolution or liquidation of a Company Controlled Corporation results in the automatic succession of the Company or any Company Controlled Corporation to the dissolved or liquidated assets of such Company Controlled Corporation; or

(h) any voluntary filing of a petition for bankruptcy or receivership by the Company or a Company Controlled Corporation, or the failure to oppose any other person's petition

for bankruptcy or any other person's action to appoint a receiver of the Company or a Company Controlled Corporation within the time periods established therefor under applicable law.

4.4 Certain Amendments to the Rights Plan. Until the first time as the Terra Group Beneficially Owns less than fifteen percent (15%) of the Total Current Voting Power of the Company then in effect, neither the Company (including any Company Controlled Corporation) nor the Company Board shall effect, without first having obtained Terra Stockholder Approval with respect to such event, the adoption of any "poison pill" share purchase rights plan, other than the Rights Plan, and any implementation or amendment of, or redemption or exchange of, rights issued pursuant to the Rights Plan or any amendment of the Rights Plan, that has the effect of (a) including within the definition of "Acquiring Person" (or any similar term) therein Terra, any Terra Controlled Corporation, or any member of the Terra Group, unless such Persons shall have breached its obligations under Sections 2.1 and 2.3 of this Agreement, as applicable (in which case of breach, no Terra Stockholder Approval of any such action shall be required), or (b) adversely affecting the interests of Terra, any Terra Controlled Corporation, any Terra Group member, or any Transferee as a holder of "rights" under such a "poison pill" share purchase rights plan, in each case different from other holders of such "rights."

4.5 Disinterested Director Action. If the Company Board amends the Rights Plan without Disinterested Director Approval at a time when Disinterested Director Approval is required for such amendment pursuant to Section 4.1(c), then the Disinterested Directors shall be empowered and entitled to take all action necessary to amend the Rights Plan to reverse such amendment and cure the breach of Section 4.1(c).

ARTICLE V

ADDITIONAL COVENANTS OF THE COMPANY AND TERRA

5.1 Amendment of Bylaws; Taking of Other Company Board Actions. Not later than the Offer Closing, the Company Board shall, effective at the Offer Closing, take all action necessary to (a) amend the Company's bylaws substantially as set forth on **Schedule B** to permit Terra or any member of the Terra Group to call a special meeting of stockholders of the Company to consider and vote upon a proposal to effect a Terra Merger pursuant to Section 2.1(a) or a Transferee Merger pursuant to Section 2.3(a), as applicable; (b) adopt the resolutions set forth on **Schedule C** to exculpate Parent, Terra, any Terra Controlled Corporation and the Terra Directors with respect to corporate opportunities to the fullest extent permitted under applicable law; and (c) adopt the resolutions set forth on **Schedule D** determining to waive the implications of Section 203 of the DGCL to Parent, Terra, any Terra Controlled Corporation and any Transferee.

5.2 Rights Plan Matters.

(a) Not later than the Offer Closing, the Company Board shall, effective at and after the Offer Closing, amend the Company's "poison pill" share purchase rights plan (as it may be amended or supplemented from time to time, the "**Rights Plan**") in the manner set forth on

Schedule E1 to (i) exclude from the definition of "Acquiring Person" therein Terra, any Terra Controlled Corporation and any Terra Group member so long as such Persons have not breached their obligations under Sections 2.1 or 2.3 of this Agreement; (ii) exclude from the definition of "Acquiring Person" therein a Transferee who has not breached its obligations under Section 2.3 of this Agreement, so long as such Transferee does not thereafter acquire Voting Stock in excess of the amount of Voting Stock acquired from Terra pursuant to Section 2.3(a) and Section 2.3(b) or in any Transferee Tender Offer or Transferee Merger; and (iii) during the Terra Stockholder Approval Period, include in the definition of "Acquiring Person" any Person (other than as provided in the foregoing clauses (i) and (ii) of this Section 5.2(a)) beneficially owning (as defined in the Rights Plan) ten percent (10%) or more of the Total Current Voting Power of the Company then in effect.

(b) Not later than the effective time of the Recapitalization and contingent upon the consummation of the Recapitalization, the Company Board (acting through a committee composed of Disinterested Directors) shall amend and restate the Rights Plan in its entirety in the manner set forth on **Schedule E2**.

(c) Until the first time that the Terra Group beneficially owns less than fifteen percent (15%) of the Total Current Voting Power of the Company then in effect, the Company and the Company Board and Terra shall, and Terra shall cause each member of the Terra Group to, take all action necessary to renew the Rights Plan upon its expiration, substantially in its then current form.

5.3 Financial Information.

(a) The Company shall continue to appoint an accounting firm of international reputation to perform independent audit services for the Company. The Company shall, at the Company's expense, prepare its financial reports in accordance with GAAP. The Company shall provide routine reports to Terra as reasonably requested by it in formats it may reasonably specify. Terra shall also request the Company to prepare and provide within six days of the end of each fiscal quarter financial statements prepared in accordance with International Financial Reporting Standards as applied by Terra, and any other documents reasonably required for consolidated accounting or to satisfy any mandatory disclosure requirement (collectively, the "**Company Consolidation Package**"). The contents and formats of those documents in the Company Consolidation Package shall be determined in each case through consultation between the Company and Terra; provided, however, that during the transition period prior to the end of the second fiscal quarter of 2012, the timing for delivery of such Company Consolidation Package shall be determined in good faith between the parties, taking into account the Company's ongoing transition to shorter close processes, as well as the legally required financial reporting deadlines imposed on Terra for its consolidated financial statements. Terra shall also request the Company to prepare and provide within five days of the end of each month financial statements and any other documents reasonably required for consolidated accounting or to satisfy any mandatory disclosure requirement, and the contents and formats of those documents shall be determined in each case through consultation between the Company and Terra; provided, however, that during the transition period prior to the end of the second fiscal quarter of 2012, the timing for the delivery of such financial statements shall be

determined in good faith between the parties, taking into account the Company's ongoing transition to shorter close processes, as well as the legally required financial reporting deadlines imposed on Terra for its consolidated financial statements. The Company shall no longer be required to deliver a Company Consolidation Package after such time as Terra is no longer required pursuant to International Financial Reporting Standards to consolidate the financial results of the Company into its financial statements. Terra shall reimburse the Company for any reasonable out-of-pocket expenses incurred in connection with altering its information technology systems in order to comply with this Section 5.3(a). Except as set forth in the preceding sentence, the Company shall bear the expense of compliance with this Section 5.3(a).

(b) Subject to any restrictions imposed under applicable laws, at all times during the Terra Stockholder Approval Period, the Company shall afford Terra and its designees reasonable access during normal business hours, upon 72 hours notice, to any assets, properties (including projects), contracts, books, records and personnel of the Company and its Subsidiaries as Terra may reasonably request in connection with its status as a stockholder of the Company; *provided*, *however*, that the Company may restrict or otherwise prohibit access to (i) any portion of any documents or information to the extent that (x) any applicable law requires the Company or any of its Subsidiaries to restrict or otherwise prohibit access to such portion of any documents or information, or (y) access to such portion of such documents or information would result in the waiver of any attorney-client privilege, work product doctrine or other applicable privilege applicable to such portion of documents or information, or (ii) any contracts, agreements or other documents of the Company or any of its Subsidiaries would violate or cause a material default under, or give a third party the right terminate or accelerate the rights under, such contract, agreement or other document. In the event that the Company does not provide access or information in reliance on the preceding sentence, it shall use its reasonable best efforts to communicate the applicable information to Terra in a way that would not violate the applicable law, contract, agreement, document or obligation or to waive such a privilege. Any investigation conducted pursuant to the access contemplated by this Section 5.3(b) shall be conducted in a manner that does not unreasonably interfere with the conduct of the business of the Company and its Subsidiaries or create a risk of damage or destruction to any property or assets of the Company or any of its Subsidiaries. Any access to the Company's properties shall be subject to the Company's reasonable security measures and insurance requirements and shall not include the right to perform invasive testing. Notwithstanding the foregoing, the Company shall provide to Terra and its designees such information as is required in order for Terra to determine the Company's ongoing compliance with Section 4.3(c), Section 4.3(d) and Section 4.3(f). Terra shall execute and deliver a reasonable and customary confidentiality agreement in connection with the delivery of any confidential information by the Company or its Subsidiaries in connection with the granting of the access contemplated by this Section 5.3(b).

5.4 Compliance with Securities Laws. Any Transfers effected pursuant to this Agreement shall be made in compliance with applicable securities laws and shall, upon reasonable request of the Company in connection with a private placement, be made conditional upon delivery of an opinion of counsel reasonably acceptable to the Company.

5.5 Breach by Members of Terra Group. If Parent, any Terra Controlled Corporation or any agent thereof takes an action that would constitute a breach of this Agreement by Terra if Terra had taken such action, Terra shall be deemed for purposes of this Agreement to have taken such action and to have so breached this Agreement. Terra hereby agrees to use its best efforts to prevent any member of the Terra Group from taking any action that would constitute a breach of this Agreement, and if any such action is taken to cause such breach and the consequence resulting therefrom to be cured as promptly as practicable.

ARTICLE VI

MISCELLANEOUS

6.1 Applicable Law; Jurisdiction; Etc.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof.

(b) Each of the parties hereto irrevocably consents and submits itself and its properties and assets to the exclusive jurisdiction and venue in any state court within the State of Delaware (or, if a state court located within the State of Delaware declines to accept jurisdiction over a particular matter, any court of the United States located in the State of Delaware) in connection with any matter based upon or arising out of this Agreement or the transactions contemplated hereby, agrees that process may be served upon them in any manner authorized by the laws of the State of Delaware for such Persons and waives and covenants not to assert or plead any objection which such Person might otherwise have to such jurisdiction, venue and process. Each party hereto hereby agrees not to commence any legal proceedings relating to or arising out of this Agreement or the transactions contemplated hereby in any jurisdiction or courts other than as provided herein.

(c) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF A PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

6.2 Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns. Subject to Section 2.3(b) in connection with a Transfer by Terra or a Terra Controlled Corporation to a Terra Controlled Corporation, which shall be permitted in accordance with Section 2.3(b), this Agreement may not be assigned by a party without the prior written consent of the other party except by operation of law, in which case the assignee shall be subject to all of the provisions of this Agreement.

6.3 Entire Agreement; Amendment. This Agreement and the Related Agreements constitute the full and entire understanding and agreement between the parties with-regard to the subject hereof, and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, modified, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought, including on behalf of the Company, without the Disinterested Director Approval.

6.4 Notices, Etc. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly delivered and received hereunder (i) four (4) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; (iii) if sent by facsimile transmission before 5:00 p.m. in the time zone of the receiving party, when transmitted and receipt is confirmed; (iv) if sent by facsimile transmission after 5:00 p.m. in the time zone of the receiving party and receipt is confirmed, on the following Business Day; and (v) if otherwise actually personally delivered by hand, when delivered, in each case to the intended recipient, at the following addresses or facsimile numbers (or at such other address or telecopy numbers for a party as shall be specified by similar notice):

(a) If to Terra, to:

Total Gas & Power USA, SAS
2, place Jean Millier
La Défense 6
92400 Courbevoie
France
Attn: Arnaud Chaperon

cc: Stephen Douglas
Legal Director, Gas & Power
TOTAL S.A.
2 place Jean Millier, La Défense 6
92078 Paris La Défense Cedex
France
Telephone: +331 4744 6768
Facsimile: +331 4744 3807

With a copy (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, CA 94304
Attn: David Segre
Attn: Richard Cameron Blake
Telephone: (650) 493-9300
Facsimile: (650) 493-6811

(b) If to the Company, to:

SunPower Corporation
77 Rio Robles
San Jose, CA 95134
Attn: Dennis Arriola
Attn: Bruce Ledesma
Facsimile: (510) 540-0552

With a copy (which shall not constitute notice) to:

Jones Day
1755 Embarcadero Road
Palo Alto, CA 94303
Attn: R. Todd Johnson
Attn: Steve Gillette
Telephone: (650) 739-3939
Facsimile: (650) 739-3900

and

Jones Day
3161 Michelson Drive, 8th Floor
Irvine, CA 92612
Attn: Jonn R. Beeson
Telephone: (949) 851-3939
Facsimile: (949) 553-7539

6.5 Delays or Omissions. Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to a party under this Agreement, shall impair any such right, power or remedy nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring.

6.6 Expenses. Except as otherwise specifically provided, the Company and Terra shall bear their own expenses incurred with respect to this Agreement and the transactions contemplated hereby.

6.7 Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that money damages or other legal remedies would not be an adequate remedy for any such damages. It is accordingly agreed among the parties hereto that, in addition to any other remedy to which they are entitled at law or in equity, in the event of any breach or threatened breach by the Company, on the one hand, or Terra, on the other hand, of any of their respective covenants or obligations set forth in this Agreement, the Company, on the one hand, and Terra, on the other hand, shall be entitled to an injunction or injunctions to prevent or restrain breaches or threatened breaches of this Agreement or to enforce compliance with, the covenants and obligations of the other under this Agreement. The Company, on the one hand, and Terra, on the other hand hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches or threatened breaches of this Agreement by such party (or parties), and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the

covenants and obligations of such party (or parties) under this Agreement. The parties hereto further agree that (x) by seeking the remedies provided for in this Section 6.7, a party shall not in any respect waive its right to seek any other form of relief that may be available to a party under this Agreement (including monetary damages), and (y) nothing set forth in this Section 6.7 shall require any party hereto to institute any proceeding for (or limit any party's right to institute any proceeding for) specific performance under this Section 6.7, nor shall the commencement of any legal proceeding pursuant to this Section 6.7 or anything set forth in this Section 6.7 restrict or limit any party's right to pursue any other remedies for damages resulting from a breach of this Agreement.

6.8 Further Assurances. The parties hereto shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments or documents as any other party may reasonably request from time to time in order to carry out the intent and purposes of this Agreement and the consummation of the transactions contemplated hereby. Neither the Company nor Terra shall voluntarily undertake any course of action inconsistent with satisfaction of the requirements applicable to them set forth in this Agreement and each shall promptly do all such acts and take all such measures as may be appropriate to enable them to perform as early as practicable the obligations herein and therein required to be performed by them.

6.9 Counterparts. This Agreement may be executed in one or more counterparts (including by fax and .pdf), all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

6.10 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other Persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such illegal, void or unenforceable provision of this Agreement with a legal, valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such illegal, void or unenforceable provision.

6.11 Other Remedies. Any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

6.12 Attorneys' Fees. In any action at law or suit in equity in relation to this Agreement, the prevailing party in such action or suit shall be entitled to receive a reasonable sum for its attorneys' fees and all other reasonable costs and expenses incurred in such action or suit.

6.13 Certain Interpretations.

(a) Unless otherwise indicated, all references herein to Articles, Sections, Annexes, Exhibits or Schedules, shall be deemed to refer to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement, as applicable.

(b) Unless otherwise indicated, the words “include,” “includes” and “including,” when used herein, shall be deemed in each case to be followed by the words “without limitation.”

(c) As used in this Agreement, the word “extent” and the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such word or phrase shall not mean simply “if.”

(d) As used in this Agreement, the singular or plural number shall be deemed to include the other whenever the context so requires.

(e) The table of contents and headings set forth in this Agreement are for convenience of reference purposes only and shall not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision hereof.

(f) The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(g) No parol evidence shall be introduced in the construction or interpretation of this Agreement unless the ambiguity or uncertainty in issue is plainly discernable from a reading of this Agreement without consideration of any extrinsic evidence.

6.14 Term and Termination. (a) The terms of this Agreement shall commence and become effective immediately prior to the Offer Closing, and prior to such time this Agreement shall be of no force or effect. This Agreement shall terminate and be of no further force or effect upon the earliest to occur of: (i) the Tender Offer Agreement being terminated in accordance with its terms, (ii) Terra, together with the Terra Controlled Corporations, owning (or being deemed pursuant to Section 3.1(f) to own) less than ten percent (10%) of the Total Current Voting Power of the Company then in effect, taking into account the provisions of Section 3.1(f), or (iii) Terra, together with the Terra Controlled Corporations, owning one hundred percent (100%) of the Total Current Voting Power of the Company then in effect.

[*Execution page follows*.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

"COMPANY"

SUNPOWER CORPORATION

By /s/ Thomas H. Werner
Name: Thomas H. Werner
Title: Chief Executive Officer

"TERRA"

TOTAL GAS & POWER USA, SAS

By /s/ Arnaud Chaperon
Name: Arnaud Chaperon
Title: President

SCHEDULE A

DESIGNATED INDEPENDENT DIRECTORS

W. Steve Albrecht

Betsy S. Atkins

Uwe-Ernst Bufe

Thomas R. McDaniel

Pat Wood III

SCHEDULE B

BY-LAWS

OF

SUNPOWER CORPORATION

(a Delaware corporation)

As Amended and Restated on [_____ __, 2011]

TABLE OF CONTENTS

BY-LAWS

OF

SUNPOWER CORPORATION

(a Delaware corporation)

ARTICLE I

OFFICES

1.1 Principal Office. The Board of Directors (the "Board") shall fix the location of the principal executive office of the Corporation at any place within or outside the State of Delaware.

1.2 Additional Offices. The Board may at any time establish branch or subordinate offices at any place or places.

ARTICLE II

MEETING OF STOCKHOLDERS

2.1 Place of Meeting. Meetings of stockholders may be held at such place, either within or without Delaware, as determined by the Board. The Board may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Delaware law. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication: (i) participate in a meeting of stockholders; and (ii) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

2.2 Annual Meeting. Annual meetings of stockholders shall be held at such date and time as shall be designated from time to time by the Board and stated in the notice of the meeting. At such annual meetings, the stockholders shall elect directors and transact such other business as may properly be brought before the meetings pursuant to Sections 2.5 and 2.6.

2.3 Special Meetings. Special meetings of the stockholders may be called for any purpose or purposes, unless otherwise prescribed by statute or by the Restated Certificate of Incorporation of the Corporation (the "Restated Certificate of Incorporation"), at the request of the Board, the Chairman of the Board, or the Chief Executive Officer. The Secretary shall call a special meeting of stockholders promptly following receipt by the Chief Executive Officer or the Chief Financial Officer of written notice from any member of the Terra Group (as such term is defined in the Affiliation Agreement by and between the Corporation and Total Gas & Power USA, SAS ("Terra"), dated April 28, 2011 (the "Affiliation Agreement")) solely for the purpose of considering and voting on a proposal to effect (i) a Terra Merger (as defined in the Affiliation Agreement), to be effected pursuant to and in accordance with the terms of Section 2.1(a) of the Affiliation Agreement, together with any stockholder approval as is required by law in connection with such Terra Merger, or (ii) a Transferee Merger (as such term is defined in the Affiliation Agreement) to be effected pursuant to and in accordance with Section 2.3(a) of the Affiliation Agreement, together with any stockholder approval as is required by law in connection with such Transferee Merger. Other than as set forth in this Section 2.3, the ability of stockholders to call a special meeting is specifically denied.

2.4 Notice of Meetings. Written notice of stockholders' meetings, stating the place, if any, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and the purpose or purposes for which the meeting is called, shall be given to each stockholder entitled to vote at such meeting not less than ten (10), nor more than sixty (60), days prior to the meeting.

When a meeting is adjourned to another place, date or time, written notice need not be given of the adjourned meeting if the place, if any, date and time thereof and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, written notice of the place, date and time of the adjourned meeting shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

2.5 Business Matter of an Annual Meeting. Only such business (other than nominations for election to the Board, which must comply with the provisions of Section 2.7) may be transacted at an annual meeting of stockholders as is (a) specified in the notice (or any supplement thereto) given by or at the direction of the Board (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board (or any duly authorized committee thereof), or (c) otherwise properly brought before the annual meeting by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.5 and on the record date for the determination of stockholders entitled to notice of and to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 2.5.

In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice to the Secretary must be delivered to or be mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within twenty five (25) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure (as defined below) of the date of the annual meeting was made, whichever first occurs. In no event shall the public disclosure of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above.

To be in proper written form, a stockholder's notice to the Secretary must set forth as to each matter such stockholder proposes to bring before the annual meeting a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting and as to the stockholder giving the notice and any Stockholder Associated Person (as defined below), (i) the name and record address of such person, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such person, (iii) the nominee holder for, and number of, shares owned beneficially but not of record by such person, (iv) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any derivative or short positions, profit interests, options or borrowed or loaned shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such person with respect to any share of stock of the Corporation, (v) to the extent known by the stockholder giving the notice, the name and address of any other stockholder supporting the proposal of business on the date of such stockholder's notice, (vi) a description of all arrangements or understandings between or among such persons in connection with the proposal of such business by such stockholder and any material interest in such business and (vii) a representation that the stockholder giving the notice intends to appear in person or by proxy at the annual meeting to bring such business before the meeting. Any information required pursuant to this paragraph shall be supplemented by the stockholder giving the notice not later than ten (10) days after the record date for the meeting as of the record date.

No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.5 (including the provision of the information required pursuant to the immediately preceding paragraph); provided, however, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.5 shall be deemed to preclude discussion by any stockholder of any such business. If the chairman of an annual meeting determines that business was not properly brought before the annual meeting in

accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

For purposes of Sections 2.5 and 2.7 hereof:

"public disclosure" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

"Stockholder Associated Person" of any stockholder shall mean (i) any person acting in concert, directly or indirectly, with such stockholder and (ii) any person controlling, controlled by or under common control with such stockholder or any Stockholder Associated Person.

2.6 Business Matter of a Special Meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

2.7 Nomination of Directors. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Restated Certificate of Incorporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board may be made at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors, (a) by or at the direction of the Board (or any duly authorized committee thereof) or (b) directly by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.7 and on the record date for the determination of stockholders entitled to notice of and to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 2.7.

In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice to the Secretary must be delivered to or be mailed and received at the principal executive offices of the Corporation (a) in the case of an annual meeting, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within twenty five (25) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure (as defined in Section 2.5) of the date of the annual meeting was made, whichever first occurs; and (b) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the tenth (10th) day following the day on which notice of the date of the special meeting was mailed or public

disclosure of the date of the special meeting was made, whichever first occurs. In no event shall the public disclosure of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above.

To be in proper written form, a stockholder's notice to the Secretary must set forth as to each person whom the stockholder proposes to nominate for election as a director and as to the stockholder giving the notice and any Stockholder Associated Person (as defined in Section 2.5) (i) the name, age, business address, residence address and record address of such person, (ii) the principal occupation or employment of such person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such person, (iv) any information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder, (v) the nominee holder for, and number of, shares owned beneficially but not of record by such person, (vi) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any derivative or short positions, profit interests, options or borrowed or loaned shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such person with respect to any share of stock of the Corporation, (vii) to the extent known by the stockholder giving the notice, the name and address of any other stockholder supporting the nominee for election or reelection as a director on the date of such stockholder's notice, (viii) a description of all arrangements or understandings between or among such persons pursuant to which the nomination(s) are to be made by the stockholder and any relationship between or among the stockholder giving notice and any Stockholder Associated Person, on the one hand, and each proposed nominee, on the other hand, and (ix) a representation that the stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice. Any information required pursuant to this paragraph shall be supplemented by the stockholder giving the notice not later than ten (10) days after the record date for the meeting as of the record date. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.7 (including the provision of the information required pursuant to the immediately preceding paragraph). If the chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

2.8 List of Stockholders. The officer in charge of the stock ledger of the Corporation or the transfer agent shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

2.9 Organization and Conduct of Business. The Chairman of the Board or, in his or her absence, the Chief Executive Officer of the Corporation or, in their absence, such person as the Board may have designated or, in the absence of such a person, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as chairman of the meeting. In the absence of the Secretary of the Corporation, the Secretary of the meeting shall be such person as the Chairman appoints.

The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seems to him or her in order.

2.10 Quorum and Adjournments. Except where otherwise provided by law or in the Restated Certificate of Incorporation or these By-laws, the holders of a majority of the stock issued and outstanding and entitled to vote, present in person or represented in proxy, shall constitute a quorum at all meetings of the stockholders. The stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting. At such adjourned meeting at which a quorum is present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

2.11 Voting Rights. Unless otherwise provided in the Restated Certificate of Incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder.

2.12 Majority Vote. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the statutes or of the Restated Certificate of Incorporation or of these By-laws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

2.13 Record Date for Stockholder Notice and Voting.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than sixty or fewer than ten days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution, or allotment of any rights, or the stockholders entitled to exercise any rights in respect of any change, conversion, or exchange of capital stock, or for the purpose of any other lawful action, except as may otherwise be provided in these Bylaws, the Board may fix a record date. Such record date shall not precede the date upon which the resolution fixing such record date is adopted, and shall not be more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be the close of business on the day on which the Board adopts the resolution relating thereto.

2.14 Proxies. Every person entitled to vote for directors or on any other matter shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the Secretary of the Corporation. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, electronic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (a) revoked by the person executing it, before the vote pursuant to that proxy, by a writing delivered to the Corporation stating that the proxy is revoked or by a subsequent proxy executed by the maker of the proxy, or by that person's attendance and vote at the meeting; or (b) written notice of the death or incapacity of the maker of that proxy is received by the Corporation before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of eleven months from the date of the proxy, unless otherwise provided in the proxy.

2.15 Inspectors of Election. Before any meeting of stockholders, the Board may appoint any person other than nominees for office to act as inspectors of election at the meeting

or its adjournment. If no inspectors of election are so appointed, the chairman of the meeting may, and on the request of any stockholder or a stockholder's proxy shall, appoint inspectors of election at the meeting. The number of inspectors shall be either one (1) or three (3). If inspectors are appointed at a meeting on the request of one or more stockholders or proxies, the holders of a majority of shares or their proxies present at the meeting shall determine whether one (1) or three (3) inspectors are to be appointed. If any person appointed as inspector fails to appear or fails or refuses to act, the chairman of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy or to act in place of such inspector.

2.16 No Action Without Meeting by Written Consent. No action required or permitted to be taken at any annual or special meeting of the stockholders of the Corporation may be taken without a meeting and the power of the stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

ARTICLE III

DIRECTORS

3.1 Number; Qualifications; Election. The Board shall consist of the number of directors as shall be determined from time to time by resolution adopted by the affirmative vote of the majority of the entire Board at any regular or special meeting.

The Board shall be divided into three classes, designated Class I, Class II and Class III, with each class to serve for a term of three (3) years and to be as nearly equal in number as possible. Additional directorships resulting from an increase in number of directors shall be apportioned among the classes as determined by the decision of the affirmative vote of a majority of the entire Board, subject to the requirement that the classes be as nearly equal in number as possible.

The initial term of office of directors of Class I shall expire at the next annual meeting of stockholders to be held in 2009, the initial term of office of directors of Class II shall expire at the annual meeting of stockholders to be held in 2010 and the initial term of office of directors of Class III shall expire at the annual meeting of stockholders to be held in 2011, and in all cases as to each director until his or her successor shall be elected and shall qualify or until his or her earlier resignation, removal from office, death or incapacity. Subject to the provisions of the Restated Certificate of Incorporation, at each annual meeting of stockholders the number of directors equal to the number of directors of the class whose term expires at the time of such meeting (or, if less, the number of directors properly nominated and qualified for election) shall be elected to hold office until the third succeeding annual meeting of stockholders after their election. Directors need not be stockholders. All elections of directors shall be by written ballot, unless otherwise provided in the Restated Certificate of Incorporation; if authorized by the Board, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic

transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

3.2 Resignation and Vacancies. A vacancy or vacancies in the Board, however occurring, shall be filled in the manner specified in the Restated Certificate of Incorporation. If the Board accepts the resignation of a director tendered to take effect at a future time, the Board shall have power to elect a successor to take office when the resignation is to become effective. If there are no directors in office, then an election of directors may be held in the manner provided by statute. In the event of a vacancy in the Board, the remaining directors, except as otherwise provided by law, the Corporation's Restated Certificate of Incorporation or these By-laws, may exercise the powers of the full Board until the vacancy is filled.

3.3 Removal of Directors. Any director or the entire Board may be removed from office by stockholders in the manner specified in the Restated Certificate of Incorporation.

3.4 Powers. Subject to the provisions of the Delaware General Corporation Law and the Corporation's Restated Certificate of Incorporation, the business of the Corporation shall be managed by or under the direction of the Board which may exercise all such powers of the Corporation and do all such lawful acts and things which are not by statute or by the Restated Certificate of Incorporation or by these By-laws directed or required to be exercised or done by the stockholders.

Without prejudice to these general powers, the directors shall have the power to:

(a) Select and remove all officers, agents, and employees of the Corporation; prescribe any powers and duties for them that are consistent with law, with the Restated Certificate of Incorporation, and with these By-laws and fix their compensation;

(b) Confer upon any office the power to appoint, remove and suspend subordinate officers, employees and agents;

(c) Change the principal executive office or the principal business office in the State of California, or any other state, from one location to another; cause the Corporation to be qualified to do business in any other state, territory, dependency or country, and conduct business within or without the State of California; and designate any place within or without the State of California for the holding of any stockholders meeting, or meetings, including annual meetings;

(d) Adopt, make, and use a corporate seal; prescribe the forms of certificates of stock; and alter the form of the seal and certificates;

(e) Authorize the issuance of shares of stock of the Corporation on any lawful terms;

(f) Borrow money and incur indebtedness on behalf of the Corporation, and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecation and other evidences of debt and securities;

(g) Declare dividends from time to time in accordance with law;

(h) Adopt from time to time such stock option, stock purchase, bonus or other compensation plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine; and

(i) Adopt from time to time policies not inconsistent with these By-laws for the management of the Corporation's business and affairs.

3.5 Place of Meetings. The Board may hold meetings, both regular and special, either within or without the State of Delaware.

3.6 Annual Meetings. The annual meeting of the Board shall be held immediately following the annual meeting of stockholders, and no notice of such meeting shall be necessary to the Board, provided a quorum shall be present. The annual meetings shall be for the purposes of organization, for an election of officers, and for the transaction of other business.

3.7 Regular Meetings. Regular meetings of the Board may be held without notice at such time and place as may be determined from time to time by the Board.

3.8 Special Meetings. Special meetings of the Board may be called by the Chairman of the Board, the Chief Executive Officer or any two members of the Board, upon one (1) day's notice to each director.

3.9 Quorum and Adjournments. At all meetings of the Board, a majority of the directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may otherwise be specifically provided by law or by the Restated Certificate of Incorporation. If a quorum is not present at any meeting of the Board, the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting at which the adjournment is taken, until a quorum shall be present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved of by at least a majority of the required quorum for that meeting.

3.10 Action Without Meeting. Unless otherwise restricted by the Restated Certificate of Incorporation or these By-laws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

3.11 Telephone Meetings. Unless otherwise restricted by the Restated Certificate of Incorporation or these By-laws, any member of the Board or of any committee may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.12 Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice or provides a waiver by electronic transmission or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, either prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents and approvals or any waiver by electronic transmission shall be filed with the corporate records or made a part of the minutes of the meeting.

3.13 Fees and Compensation of Directors. Unless otherwise restricted by the Restated Certificate of Incorporation or these By-laws, the Board shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board, and may be paid a fixed sum for attendance at each meeting of the Board or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor; provided, that, no person who concurrently serves as a member of the Board and also serves as an officer of the Corporation or as an officer of any "Parent" (as defined in Article III, Section D.8.(c) of the Corporation's Restated Certificate of Incorporation) of the Corporation shall receive additional compensation from the Corporation, other than the reimbursement of expenses, for service on the Board. Members of special or standing committees may be allowed like compensation for attending committee meetings.

ARTICLE IV

COMMITTEES OF DIRECTORS

4.1 Selection. The Board may, by resolution passed by a majority of the entire Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

4.2 Power. Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to

be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Restated Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board as provided in section 151(a) of the General Corporation Law of Delaware, fix any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation), adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of dissolution, removing or indemnifying directors or amending the By-laws of the Corporation; and, unless the resolution or the Restated Certificate of Incorporation expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock or to adopt a certificate of ownership and merger. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board.

4.3 Committee Minutes. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

ARTICLE V

OFFICERS

5.1 Officers Designated. The officers of the Corporation shall be chosen by the Board and shall be a Chief Executive Officer, a President, a Secretary and a Chief Financial Officer. The Board may also choose a Chairman of the Board, Chief Operating Officer, one or more Vice Presidents and one or more assistant Secretaries. Any number of offices may be held by the same person, unless the Restated Certificate of Incorporation or these By-laws otherwise provide.

5.2 Appointment of Officers. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 or 5.5 hereof, shall be appointed by the Board, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

5.3 Subordinate Officers. The Board or any duly authorized committee may appoint, and may empower the Chief Executive Officer to appoint, such other officers and agents as the business of the Corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the By-laws or as the Board or duly authorized committee may from time to time determine.

5.4 Removal and Resignation of Officers. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board or authorized committee, at any

regular or special meeting of the Board or such committee, or, except in case of an officer chosen by the Board or authorized committee, by any officer upon whom such power of removal may be conferred by the Board or authorized committee.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

5.5 Vacancies in Offices. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these By-laws for regular appointment to that office.

5.6 Compensation. The salaries of all officers of the Corporation shall be fixed from time to time by the Board, and no officer shall be prevented from receiving a salary because he is also a director of the Corporation.

5.7 The Chairman of the Board. If the Board appoints a Chairman of the Board, such Chairman shall, when present, preside at all meetings of the stockholders and the Board. The Chairman shall perform such duties and possess such powers as are customarily vested in the office of the Chairman of the Board or as may be vested in the Chairman by the Board.

5.8 The Chief Executive Officer. Subject to such supervisory powers, if any, as may be given by the Board to the Chairman of the Board, the Chief Executive Officer shall preside at all meetings of the stockholders and in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board, shall have general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board are carried into effect. He or she shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Corporation.

5.9 The President. The President shall, in the event there be no Chief Executive Officer or in the absence of the Chief Executive Officer or in the event of his or her disability or refusal to act, perform the duties of the Chief Executive Officer, and when so acting, shall have the powers of and subject to all the restrictions upon the Chief Executive Officer. The President shall perform such other duties and have such other powers as may from time to time be prescribed for such person by the Board, the Chairman of the Board, the Chief Executive Officer or these By-laws.

5.10 The Vice President. The Vice President (or in the event there be more than one, the Vice Presidents in the order designated by the directors, or in the absence of any designation, in the order of their election), shall, in the absence of the President or in the event of his disability or refusal to act, perform the duties of the President, and when so acting, shall have

the powers of and be subject to all the restrictions upon the President. The Vice President(s) shall perform such other duties and have such other powers as may from time to time be prescribed for them by the Board, the Chief Executive Officer, the President, the Chairman of the Board or these By-laws.

5.11 The Secretary. The Secretary shall attend all meetings of the Board and the stockholders and record all votes and the proceedings of the meetings in a book to be kept for that purpose, and shall perform like duties for the standing committees, when required. The Secretary shall give, or cause to be given, notice of all meetings of stockholders and special meetings of the Board, and shall perform such other duties as may from time to time be prescribed by the Board, the Chairman of the Board, the Chief Executive Officer or the President, under whose supervision he or she shall act. The Secretary shall have custody of the seal of the Corporation, and the Secretary, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and, when so affixed, the seal may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature. The Secretary shall keep, or cause to be kept, at the principal executive office or at the office of the Corporation's transfer agent or registrar, as determined by resolution of the Board, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

5.12 The Assistant Secretary. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order designated by the Board (or in the absence of any designation, in the order of their election) shall, in the absence of the Secretary, or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as may from time to time be prescribed by the Board.

5.13 The Chief Financial Officer. The Chief Financial Officer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Chief Financial Officer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the Chief Executive Officer and the Board, at its regular meetings, or when the Board so requires, an account of all his or her transactions as Chief Financial Officer and of the financial condition of the Corporation.

5.14 The Chief Technical Officer. The Chief Technical Officer shall be the senior technical officer of the Corporation. He or she shall be responsible for the creation and maintenance of appropriate records as to the design, technical specifications, and performance criteria of the Corporation's products. As directed by the Board and the Chief Executive Officer,

the Chief Technical Officer shall be responsible for research, technical development and manufacturing of existing and future products of the Corporation.

5.15 Representation of Shares of Other Corporations. The Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer or the Secretary or Assistant Secretary of this Corporation, or any other person authorized by the Board or the Chief Executive Officer, is authorized to vote, represent and exercise on behalf of this Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

6.1 Indemnification of Directors And Officers. The Corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, indemnify each of its directors and officers against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise, arising by reason of the fact that such person is or was an agent of the Corporation. For purposes of this Section 6.1, a "director" or "officer" of the Corporation includes any person (a) who is or was a director or officer of the Corporation, (b) who, while serving as a director of officer of the Corporation, is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was a director or officer of a corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation.

6.2 Indemnification of Others. The Corporation shall have the power, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its employees and agents (other than directors and officers) against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the Corporation. For purposes of this Section 6.2, an "employee" or "agent" of the Corporation (other than a director or officer) includes any person (a) who is or was an employee or agent of the Corporation, (b) who is or was serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was an employee or agent of a corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation.

6.3 Payment Of Expenses In Advance. Expenses incurred in defending any action or proceeding for which indemnification is required pursuant to Section 6.1 hereof, or for

which indemnification is permitted pursuant to Section 6.2 hereof, following authorization thereof by the Board, shall be paid by the Corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount, if it shall ultimately be determined that the indemnified party is not entitled to be indemnified as authorized in this Article 6.

6.4 Indemnity Not Exclusive. The indemnification provided by this Article 6 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent that such additional rights to indemnification are authorized in the Restated Certificate of Incorporation.

6.5 Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the General Corporation Law of Delaware.

6.6 Conflicts. No indemnification or advance shall be made under this Article 6, except where such indemnification or advance is mandated by law or the order, judgment or decree of any court of competent jurisdiction, in any circumstance where it appears:

(a) That it would be inconsistent with a provision of the Restated Certificate of Incorporation, these By-laws, a resolution of the stockholders or an agreement in effect at the time of the accrual of the alleged cause of the action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

6.7 Amendment. The duties of the Corporation to indemnify and to advance expenses to any Person as provided in the Restated Certificate of Incorporation or these By-laws shall be in the nature of a contract between the Corporation and each such Person, and neither any amendment nor repeal of the Restated Certificate of Incorporation or these By-laws, nor the adoption of any provision of these By-laws inconsistent with this Article VI, shall eliminate or reduce the effect of this Article VI in respect of any matter occurring, or action or proceeding accruing or arising or that, but for this Article VI, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE VII

STOCK CERTIFICATES

7.1 Certificates for Shares. The shares of the Corporation shall be represented by certificates or shall be uncertificated. Certificates shall be signed by, or be in the name of the Corporation by, the Chairman of the Board, the Chief Executive Officer or the President or a Vice President and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation.

Within a reasonable time after the issuance or transfer of uncertified stock, the Corporation shall send to the registered owner thereof a written notice containing the information required by the General Corporation Law of the State of Delaware or a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof, and the qualifications, limitations or restrictions of such preferences and/or rights.

7.2 Signatures on Certificates. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

7.3 Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate of shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, to cancel the old certificate and record the transaction upon its books. Upon receipt of proper transfer instructions from the registered owner of uncertificated shares, such uncertificated shares shall be canceled, and issuance of new equivalent uncertificated shares or certificated shares shall be made to the person entitled thereto, and the transaction shall be recorded upon the books of the Corporation.

7.4 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a percent registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

7.5 Lost, Stolen or Destroyed Certificates. The Board may direct that a new certificate or certificates be issued to replace any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing the issue of a new certificate or certificates, the Board may, in its discretion and as a

condition precedent to the issuance thereof, require the owner of the lost, stolen or destroyed certificate or certificates, or his or her legal representative, to advertise the same in such manner as it shall require, and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

ARTICLE VIII

NOTICES

8.1 Notice. Whenever, under the provisions of the statutes or of the Restated Certificate of Incorporation or of these By-laws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his or her address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telegram, telephone or electronic transmission.

8.2 Waiver. Whenever any notice is required to be given under the provisions of the statutes or of the Restated Certificate of Incorporation or of these By-laws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE IX

GENERAL PROVISIONS

9.1 Dividends. Dividends upon the capital stock of the Corporation, subject to any restrictions contained in the General Corporation Laws of Delaware or the provisions of the Restated Certificate of Incorporation, if any, may be declared by the Board at any regular or special meeting. Dividends may be paid in cash, in property or in shares of the capital stock, subject to the provisions of the Restated Certificate of Incorporation.

9.2 Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends, such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

9.3 Checks. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

9.4 Corporate Seal. The Board may provide a suitable seal, containing the name of the Corporation, which seal shall be in charge of the Secretary. If and when so directed by the Board or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

9.5 Execution of Corporate Contracts and Instruments. The Board, except as otherwise provided in these By-laws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit or to render it liable for any purpose or for any amount.

9.6 Books and Records. The Corporation shall keep at its principal executive office or, if its principal executive office is not in the State of California, at its principal business office in California the original or a copy of these By-laws as amended to date, which By-laws shall be open to inspection by the stockholders at all reasonable times during office hours. If the principal executive office of the Corporation is outside the State of California and the Corporation has no principal business office in such state, then the secretary shall, upon the written request of any stockholder, furnish to that stockholder a copy of these By-laws as amended to date.

ARTICLE X

AMENDMENTS

In addition to the right of the stockholders of the Corporation to make, alter, amend, change, add to or repeal the By-laws of the Corporation, the Board is expressly authorized to adopt, amend or repeal the By-laws of the Corporation by vote of at least a majority of the members of the Board; provided, however, that prior to the termination of the Affiliation Agreement, so long as [Terra], together with the Terra Controlled Corporations (as defined in the Affiliation Agreement) collectively owns (or is deemed pursuant to Section 3.1(f) of the Affiliation Agreement to own) at least thirty percent (30%) of the Total Current Voting Power (as defined in the Affiliation Agreement) of the Corporation, the By-laws may not be amended without first having obtained Disinterested Board Approval (as defined in the Affiliation Agreement); provided, further, that prior to the termination of the Affiliation Agreement and during the Terra Stockholder Approval Period (as defined in the Affiliation Agreement), the By-laws may not be amended without first having obtained Terra Stockholder Approval (as defined in the Affiliation Agreement).

SCHEDULE C

CORPORATE OPPORTUNITIES

NOW, THEREFORE, BE IT RESOLVED, except as may be otherwise provided in a written agreement between the Company and Total, Purchaser or any Terra Controlled Corporation, upon the effectiveness of the Affiliation Agreement and the election or appointment of Terra Directors (as such term is defined in the Affiliation Agreement) to the Board (i) the Company hereby renounces any interest or expectancy of the Company in, or in being offered an opportunity to participate in, and shall not be deemed to have an interest or expectancy in any business opportunity, transaction, or other matter in which Total, Purchaser any Terra Controlled Corporation, or any of their respective officers, directors, employees or agents engages or seeks to engage and (ii) neither Total, Purchaser nor any Terra Controlled Corporation nor any officer, director, employee or agent thereof shall be deemed to have acted in bad faith or in a manner inconsistent with the best interests of the Company or its stockholders or to have acted in a manner inconsistent with or opposed to any fiduciary duty to the Company or its stockholders by reason of Total, Purchaser or any Terra Controlled Subsidiary, or any officer, director, employee or agent thereof exercising its right to engage in any business opportunity, transaction or other matter, or to pursue (or fail to offer or communicate to the Company) any business opportunity, transaction or other matter, in either case of the foregoing (i) or (ii), except for business opportunities, transactions or other matters that are specifically offered to one or more Terra Directors solely in his, her or their capacity as directors of the Company.

SCHEDULE D

DELAWARE GENERAL CORPORATION LAW 203 WAIVER

NOW, THEREFORE, BE IT RESOLVED, that the Board has determined and intends that the transactions contemplated by the Tender Offer Agreement and the other Transaction Documents, including the acquisition of Class A Common Stock and Class B Common Stock by Purchaser pursuant to the Tender Offer Agreement, and the transactions contemplated by the Affiliation Agreement, including the acquisition of Class A Common Stock, Class B Common Stock or any Voting Securities (as such term is defined in the Affiliation Agreement) or Convertible Securities (as such term is defined in the Affiliation Agreement) by, Total, Purchaser or any Terra Controlled Corporation (as such term is defined in the Affiliation Agreement) or any Transferee (as such term is defined in the Affiliation Agreement), is hereby authorized and approved by the Board, and that this authorization and approval is intended to satisfy the requirements of Section 203(a)(1) of the Delaware General Corporation Law (the "***DGCL***") and, as a result, renders the provisions of Section 203 of the DGCL inapplicable to any of the transactions contemplated by the Tender Offer Agreement, the Affiliation Agreement and any other Transaction Document, including any subsequent transfer of shares of Class A Common Stock, Class B Common Stock or any Voting Securities to any Transferee in accordance with the terms and conditions of the Affiliation Agreement.

SCHEDULE E1

AMENDMENT NO. 2 TO RIGHTS AGREEMENT

Amendment No. 2, dated as of _____, 2011 (this "***Amendment***"), to the Rights Agreement, dated as of August 12, 2008, as amended on April _____, 2011 (the "***Rights Agreement***"), by and between SunPower Corporation (the "***Company***") and Computershare Trust Company, N.A., as rights agent (the "***Rights Agent***"). Capitalized terms used without other definition in this Amendment are used as defined in the Rights Agreement.

RECITALS

WHEREAS, the Company and Total Gas & Power USA, SAS, a société par actions simplifiée organized under the laws of the Republic of France, have entered into a Tender Offer Agreement, dated as of April 28, 2011 (as it may be amended or supplemented from time to time, the "***Tender Offer Agreement***"), and an Affiliation Agreement, dated as of April 28, 2011 (as it may be amended or supplemented from time to time, the "***Affiliation Agreement***");

WHEREAS, the Board of Directors of the Company has determined that it is in the best interests of the Company and its stockholders to amend the Rights Agreement as set forth in this Amendment;

WHEREAS, no Distribution Date has occurred and no Person is an Acquiring Person;

WHEREAS, pursuant to Section 27 of the Rights Agreement, prior to the time at which the Rights cease to be redeemable pursuant to Section 23 of the Rights Agreement, and subject to the penultimate sentence of Section 27 of the Rights Agreement, the Company may in its sole and absolute discretion, and the Rights Agent will if the Company so directs, supplement or amend any provision of the Rights Agreement in any respect without the approval of any holders of Rights or Common Shares; and

WHEREAS, pursuant to the terms of the Rights Agreement and in accordance with Section 27 thereof, the Company has directed that the Rights Agreement be amended as set forth in this Amendment, and hereby directs the Rights Agent to execute this Amendment.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the mutual agreements set forth in the Rights Agreement and in this Amendment, the parties hereto hereby amend the Rights Agreement as follows:

1. Section 1(a) of the Rights Agreement is hereby amended and restated in its entirety as follows:

"(a) "***Acquiring Person***" means any Person (other than the Company, any Related Person or any Restricted Person) who or which, together with all Affiliates and Associates of such Person, is or becomes the Beneficial Owner of (i) during the Terra Stockholder Approval Period (as defined in the Affiliation Agreement), 10% or more of the Total Current Voting Power of the Company then in effect or (ii) other than during the Terra Stockholder Approval Period, (A) 20% or more of the then-outstanding

Common Shares or (B) 20% or more of the then-outstanding Class B Common Shares; provided, however, in each case that a Person will not be deemed to have become an Acquiring Person solely as a result of a reduction in the number of Common Shares or Class B Common Shares outstanding unless and until such time as (A) such Person or any Affiliate or Associate of such Person thereafter becomes the Beneficial Owner of additional Common Shares or Class B Common Shares representing 1% or more of the then-outstanding Common Shares or Class B Common Shares, as the case may be, other than as a result of a stock dividend, stock split or similar transaction effected by the Company in which all holders of Common Shares or Class B Common Shares, as the case may be, are treated equally, or (B) any other Person who is the Beneficial Owner of Common Shares or Class B Common Shares representing 1% or more of the then-outstanding Common Shares or Class B Common Shares, as the case may be, thereafter becomes an Affiliate or Associate of such Person. Notwithstanding the foregoing, if the Board of Directors of the Company determines in good faith that a Person who would otherwise be an "Acquiring Person" as defined pursuant to the foregoing provisions of this Section 1(a) has become such inadvertently, and such Person divests as promptly as practicable or agrees in writing with the Company to divest, a sufficient number of Common Shares or Class B Common Shares, as the case may be, so that such Person would no longer be an "Acquiring Person" as defined pursuant to the foregoing provisions of this Section 1(a), then such Person shall not be deemed to be an "Acquiring Person" for any purposes of this Agreement."

2. Section 1 of the Rights Agreement is hereby amended by adding the following new Sections 1(nn), 1(oo) and 1(pp) immediately following Section 1(mm):

"(nn) "***Affiliation Agreement***" means the Affiliation Agreement, dated as of April __, 2011, as it may be amended or supplemented from time to time, by and between Terra and the Company.

(oo) "***Restricted Person***" means, during the Standstill Period (as defined in the Affiliation Agreement), (i) Terra, any Terra Controlled Corporation (as defined in the Affiliation Agreement) and any member of the Terra Group (as defined in the Affiliation Agreement), in each case only for so long as none of Terra, any Terra Controlled Corporation or any member of the Terra Group has breached any of its obligations set forth in Section 2.1 or Section 2.3 of the Affiliation Agreement (subject to any applicable cure period under Section 2.1(a)(y) of the Affiliation Agreement), or (ii) a Transferee (as defined in the Affiliation Agreement) who has acquired Common Shares from any member of the Terra Group in compliance with Sections 2.3(a) and 2.3(b) of the Affiliation Agreement, but only for so long as (A) such Transferee has not breached any of its obligations set forth in Section 2.3 of the Affiliation Agreement, (B) such Transferee or any Affiliate or Associate of such Transferee does not thereafter become the Beneficial Owner of any Common Shares in excess of the number of Common Shares Beneficially Owned prior to such acquisition from Terra plus such Common Shares that are acquired (1) from Terra pursuant to Sections 2.3(a) and 2.3(b) of the Affiliation Agreement or (2) in any Transferee Tender Offer or Transferee Merger (each as defined in the Affiliation Agreement), in each case other than as a result of a stock dividend, stock split or similar transaction effected by the Company in which all holders of

Common Shares are treated equally, and (C) no other Person who is the Beneficial Owner of Common Shares thereafter becomes an Affiliate or Associate of such Transferee.

(pp) "***Total Current Voting Power***" means the total number of votes which may be cast in the election of members of the Board of Directors of the Company if all securities entitled to vote in the election of such directors are present and voted."

3. Exhibits C and D to the Rights Agreement are deemed to be amended in a manner consistent with this Amendment.

4. This Amendment will be deemed to be a contract made under the internal substantive laws of the State of Delaware and for all purposes will be governed by and construed in accordance with the internal substantive laws of such State applicable to contracts to be made and performed entirely within such State.

5. The Rights Agreement will not otherwise be supplemented or amended by virtue of this Amendment, and will remain in full force and effect.

6. This Amendment may be executed in any number of counterparts (including by fax and .pdf) and each of such counterparts will for all purposes be deemed to be an original, and all such counterparts will together constitute but one and the same instrument.

7. This Amendment will be effective as of, and immediately prior to, the Offer Closing (as defined in the Tender Offer Agreement), and all references to the Rights Agreement will, from and after such time, be deemed to be references to the Rights Agreement as amended hereby. A signature to this Amendment transmitted electronically will have the same authority, effect and enforceability as an original signature.

8. The undersigned officer of the Company, being duly authorized on behalf of the Company, hereby certifies to the Rights Agent in his or her capacity as an officer on behalf of the Company that this Amendment is in compliance with the terms of Section 27 of the Rights Agreement. The Company will notify the Rights Agent promptly after this Amendment becomes effective to confirm such effectiveness.

9. By its execution and delivery hereof, the Company directs the Rights Agent to execute this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the effective time stated above.

SUNPOWER CORPORATION

By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY, N.A.

By: _____
Name:
Title:

SCHEDULE E2

AMENDED AND RESTATED RIGHTS AGREEMENT

DATED AS OF **[—]**, 2011

BY AND BETWEEN

SUNPOWER CORPORATION

AND

COMPUTERSHARE TRUST COMPANY, N.A.,
AS RIGHTS AGENT

TABLE OF CONTENTS

AMENDED AND RESTATED RIGHTS AGREEMENT

This Amended and Restated Rights Agreement, dated as of **[—], 2011** (this "***Agreement***"), is made and entered into by and between SunPower Corporation, a Delaware corporation (the "***Company***"), and Computershare Trust Company, N.A., as Rights Agent.

RECITALS

A. The Company and the Rights Agent are parties to a Rights Agreement, dated as of August 12, 2008, as amended on April 28, 2011 and **[—], 2011** (the "***Original Rights Agreement***").

B. On August 12, 2008, the Board of Directors of the Company authorized a Rights Committee of the Board of Directors of the Company to declare a dividend distribution of one Class A right (a "***Class A Right***") for each share of Class A common stock, par value $0.001 per share, of the Company (a "***Class A Common Share***") and one Class B right (a "***Class B Right***," and together with the Class A Rights, the "***Original Rights***") for each share of Class B common stock, par value $0.001 per share, of the Company (a "***Class B Common Share***") outstanding as of the Close of Business (as hereinafter defined) on September 29, 2008 (the "***Record Date***"), each Original Right initially representing the right to purchase one one-hundredth of a Preferred Share (as hereinafter defined), on the terms and subject to the conditions herein set forth, and further authorized and directed the issuance of one Class A Right (subject to adjustment as provided herein) with respect to each Class A Common Share and one Class B Right with respect to each Class B Common Share issued or delivered by the Company (whether originally issued or delivered from the Company's treasury) after the Record Date but prior to the earlier of the Distribution Date (as hereinafter defined) and the Expiration Date (as hereinafter defined) or as provided in Section 22.

C. On **[—], 2011,** the stockholders of the Company approved a**[n] [Amended and]** Restated Certificate of Incorporation of the Company (the "***Restated Certificate of Incorporation***"), that, among other things, reclassified each outstanding Class A Common Share and each outstanding Class B Common Share on a share-for-share basis into a single class of Common Shares (as hereinafter defined) (such reclassification, the "***Reclassification***").

D. In connection with the Reclassification, the Board of Directors of the Company determined that it is necessary, desirable and in the best interests of the stockholders of the Company to amend and restate the Original Rights Agreement as set forth herein and in connection therewith to amend and restate the Original Rights.

E. As of the date of this Agreement, no Distribution Date has occurred and no Person is an Acquiring Person.

F. Pursuant to Section 27 of the Original Agreement, prior to the time at which the Rights cease to be redeemable pursuant to Section 23 of the Original Agreement, and subject to the penultimate sentence of Section 27 of the Original Agreement, the Company may in its sole

and absolute discretion, and the Rights Agent will if the Company so directs, supplement or amend any provision of the Original Agreement in any respect without the approval of any holders of Rights or Common Shares.

G. Pursuant to the terms of the Original Agreement and in accordance with Section 27 thereof, the Company has directed that the Original Agreement be amended as set forth in this Agreement, and hereby directs the Rights Agent to execute this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto hereby agree as follows:

1. Certain Definitions. For purposes of this Agreement, the following terms have the meanings indicated:

(a) "***Acquiring Person***" means any Person (other than the Company, any Related Person or any Restricted Person) who or which, together with all Affiliates and Associates of such Person, is or becomes the Beneficial Owner of (i) during the Terra Stockholder Approval Period (as defined in the Affiliation Agreement), 10% or more of the Total Current Voting Power of the Company then in effect or (ii) other than during the Terra Stockholder Approval Period, 20% or more of the then-outstanding Common Shares; provided, however, in each case that a Person will not be deemed to have become an Acquiring Person solely as a result of a reduction in the number of Common Shares outstanding unless and until such time as (A) such Person or any Affiliate or Associate of such Person thereafter becomes the Beneficial Owner of additional Common Shares representing 1% or more of the then-outstanding Common Shares, other than as a result of a stock dividend, stock split or similar transaction effected by the Company in which all holders of Common Shares are treated equally, or (B) any other Person who is the Beneficial Owner of Common Shares representing 1% or more of the then-outstanding Common Shares thereafter becomes an Affiliate or Associate of such Person. Notwithstanding the foregoing, if the Board of Directors of the Company determines in good faith that a Person who would otherwise be an "Acquiring Person" as defined pursuant to the foregoing provisions of this Section 1(a) has become such inadvertently, and such Person has divested, divests as promptly as practicable or agrees in writing with the Company to divest, a sufficient number of Common Shares so that such Person is not or would no longer be an "Acquiring Person" as defined pursuant to the foregoing provisions of this Section 1(a), then such Person shall not be deemed to be an "Acquiring Person" for any purposes of this Agreement.

(b) "***Affiliate***" and "***Associate***" will have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of this Agreement, provided, however, that a Person will not be deemed to be the Affiliate or Associate of another Person solely because either or both Persons are or were Directors of the Company.

(c) "***Affiliation Agreement***" means the Affiliation Agreement, dated as of April 28, 2011, as it may be amended or supplemented from time to time, by and between Terra and the Company.

(d) "***Agreement***" has the meaning set forth in the Preamble to this Agreement.

(e) A Person will be deemed the "***Beneficial Owner***" of, and to "***Beneficially Own***," any securities:

(i) which such Person or any of such Person's Affiliates or Associates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d-3 of the General Rules and Regulations under the Exchange Act as in effect on the date of this Agreement;

(ii) the beneficial ownership of which such Person or any of such Person's Affiliates or Associates, directly or indirectly, has the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (whether or not in writing), or upon the exercise of conversion rights, exchange rights, warrants, options or other rights (in each case, other than upon exercise or exchange of the Rights); provided, however, that a Person will not be deemed the Beneficial Owner of, or to Beneficially Own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange; or

(iii) which such Person or any of such Person's Affiliates or Associates, directly or indirectly, has or shares the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); or

(iv) of which any other Person is the Beneficial Owner, if such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) with such other Person (or any of such other Person's Affiliates or Associates) with respect to acquiring, holding, voting or disposing of any securities of the Company; provided, however, that a Person will not be deemed the Beneficial Owner of, or to Beneficially Own, any security (A) if such Person has the right to vote such security pursuant to an agreement, arrangement or understanding (whether or not in writing) which (1) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations of the Exchange Act and (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report), or (B) if such beneficial ownership arises solely as a result of such Person's status as a "clearing agency," as defined in Section 3(a)(23) of the Exchange Act; provided further, however, that nothing in this Section 1(c) will cause a Person engaged in business as an underwriter of securities to be the Beneficial Owner of, or to Beneficially Own, any securities acquired through such Person's participation in good faith in an underwriting syndicate until the expiration of 40 calendar days after the

date of such acquisition, or such later date as the Directors of the Company may determine in any specific case.

(f) "***Business Day***" means any day other than a Saturday, Sunday or a day on which banking institutions in the Commonwealth of Massachusetts are authorized or obligated by law or executive order to close.

(g) "***Class A Common Share***" has the meaning set forth in the Recitals to this Agreement.

(h) "***Class A Right***" has the meaning set forth in the Recitals to this Agreement.

(i) "***Class B Common Share***" has the meaning set forth in the Recitals to this Agreement.

(j) "***Class B Right***" has the meaning set forth in the Recitals to this Agreement.

(k) "***Close of Business***" on any given date means 5:00 p.m., New York City time, on such date; provided, however, that if such date is not a Business Day, it means 5:00 p.m., New York City time, on the next succeeding Business Day.

(l) "***Common Shares***" when used with reference to the Company means the shares of **[common stock, par value $0.001 per share]**, of the Company; provided, however, that if the Company is the continuing or surviving corporation in a transaction described in Section 13(a)(ii), "Common Shares" when used with reference to the Company means shares of the capital stock or units of the equity interests with the greatest aggregate voting power of the Company. "Common Shares" when used with reference to any corporation or other legal entity other than the Company, including an Issuer, means shares of the capital stock or units of the equity interests with the greatest aggregate voting power of such corporation or other legal entity.

(m) "***Company***" has the meaning set forth in the Preamble to this Agreement.

(n) "***current market price***" has the meaning set forth in Section 11(d)(ii).

(o) "***Distribution Date***" means the earlier of: (i) the Close of Business on the tenth calendar day following the Share Acquisition Date (or, if the tenth calendar day after the Share Acquisition Date occurs before the Record Date, the Close of Business on the Record Date), or (ii) the Close of Business on the tenth Business Day (or, unless the Distribution Date shall have previously occurred, such later date as may be specified by the Board of Directors of the Company) after the commencement of a tender or exchange offer by any Person (other than the Company or any Related Person), if upon the consummation thereof such Person would be or become an Acquiring Person.

(p) "***equivalent common shares***" has the meaning set forth in Section 11(a)(iii).

(q) "***equivalent preferred shares***" has the meaning set forth in Section 11(a)(iii).

(r) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

(s) "***Exchange Ratio***" has the meaning set forth in Section 24(a).

(t) "***Exercise Value***" has the meaning set forth in Section 11(a)(iii).

(u) "***Expiration Date***" means the earliest of (i) the Close of Business on the tenth anniversary of the Record Date, (ii) the time at which the Rights are redeemed as provided in Section 23, and (iii) the time at which all exercisable Rights are exchanged as provided in Section 24.

(v) "***Flip-in Event***" means any event described in clauses (A), (B) or (C) of Section 11(a)(ii).

(w) "***Flip-over Event***" means any event described in clauses (i), (ii) or (iii) of Section 13(a).

(x) "***Issuer***" has the meaning set forth in Section 13(b).

(y) "***Nasdaq***" means The Nasdaq Stock Market.

(z) "***Original Rights***" has the meaning set forth in the Recitals to this Agreement.

(aa) "***Original Rights Agreement***" has the meaning set forth in the Recitals to this Agreement.

(bb) "***Person***" means any individual, firm, corporation, limited liability company or other legal entity, and includes any successor (by merger or otherwise) of such entity.

(cc) "***Preferred Shares***" means shares of Series A Junior Participating Preferred Stock, par value $0.001 per share, of the Company having substantially the rights and preferences set forth in the Certificate of Designation of Series A Junior Participating Preferred Stock, as amended, attached as Exhibit A.

(dd) "***Purchase Price***" means initially $450.00 per one one-hundredth of a Preferred Share, subject to adjustment from time to time as provided in this Agreement.

(ee) "***Reclassification***" has the meaning set forth in the Recitals to this Agreement.

(ff) "***Record Date***" has the meaning set forth in the Recitals to this Agreement.

(gg) "***Redemption Price***" means $0.001 per Right, subject to adjustment by resolution of the Board of Directors of the Company to reflect any stock split, stock dividend or similar transaction occurring after the Record Date.

(hh) "***Related Person***" means (i) any Subsidiary of the Company or (ii) any employee benefit or stock ownership plan of the Company or of any Subsidiary of the Company or any entity holding Common Shares for or pursuant to the terms of any such plan.

(ii) "***Restated Certificate of Incorporation***" has the meaning set forth in the Recitals to this Agreement.

(jj) "***Restricted Person***" means, during the Standstill Period (as defined in the Affiliation Agreement), (i) Terra, any Terra Controlled Corporation (as defined in the Affiliation Agreement) and any member of the Terra Group (as defined in the Affiliation Agreement), in each case only for so long as none of Terra, any Terra Controlled Corporation or any member of the Terra Group has breached any of its obligations set forth in Section 2.1 or Section 2.3 of the Affiliation Agreement (subject to any applicable cure period under Section 2.1(a)(y) of the Affiliation Agreement), or (ii) a Transferee (as defined in the Affiliation Agreement) who has acquired Common Shares from any member of the Terra Group in compliance with Sections 2.3(a) and 2.3(b) of the Affiliation Agreement, but only for so long as (A) such Transferee has not breached any of its obligations set forth in Section 2.3 of the Affiliation Agreement, (B) such Transferee or any Affiliate or Associate of such Transferee does not thereafter become the Beneficial Owner of any Common Shares in excess of the number of Common Shares Beneficially Owned prior to such acquisition from Terra plus such Common Shares that are acquired (1) from Terra pursuant to Sections 2.3(a) and 2.3(b) of the Affiliation Agreement or (2) in any Transferee Tender Offer or Transferee Merger (each as defined in the Affiliation Agreement), in each case other than as a result of a stock dividend, stock split or similar transaction effected by the Company in which all holders of Common Shares are treated equally, and (C) no other Person who is the Beneficial Owner of Common Shares thereafter becomes an Affiliate or Associate of such Transferee.

(kk) "***Right***" means the Original Rights as amended and restated by this Agreement.

(ll) "***Right Certificates***" means the certificates evidencing the Rights, in substantially the form attached as Exhibit B.

(mm) "***Rights Agent***" means Computershare Trust Company, N.A., unless and until a successor Rights Agent has become such pursuant to the terms of this Agreement, and thereafter, "Rights Agent" means such successor Rights Agent.

(nn) "***Securities Act***" means the Securities Act of 1933, as amended.

(oo) "***Share Acquisition Date***" means the first date of public announcement by the Company (by press release, filing made with the Securities and Exchange Commission or otherwise) that an Acquiring Person has become such.

(pp) "***Subsidiary***" when used with reference to any Person means any corporation or other legal entity of which a majority of the voting power of the voting equity securities or equity interests is owned, directly or indirectly, by such Person; provided, however, that for purposes of Section 13(b), "Subsidiary" when used with reference to any Person means any corporation or other legal entity of which at least 20% of the voting power of the voting equity securities or equity interests is owned, directly or indirectly, by such Person.

(qq) "***Terra***" means Total Gas & Power USA, SAS, a société par actions simplifiée organized under the laws of the Republic of France.

(rr) "***Total Current Voting Power***" means the total number of votes which may be cast in the election of members of the Board of Directors of the Company if all securities entitled to vote in the election of such directors are present and voted.

(ss) "***Trading Day***" means any day on which the principal national securities exchange or quotation system on which the Common Shares are listed or admitted to trading is open for the transaction of business or, if the Common Shares are not listed or admitted to trading on any national securities exchange or quotation system, a Business Day.

(tt) "***Triggering Event***" means any Flip-in Event or Flip-over Event.

(uu) "***Trust***" has the meaning set forth in Section 24(a).

(vv) "***Trust Agreement***" has the meaning set forth in Section 24(a).

2. Appointment of Rights Agent. The Company hereby appoints the Rights Agent to act as agent for the Company in accordance with the terms and conditions of this Agreement, and the Rights Agent hereby accepts such appointment and hereby certifies that it complies with the applicable requirements governing transfer agents and registrars. The Company may from time to time act as Co-Rights Agent or appoint such Co-Rights Agents as it may deem necessary or desirable upon 10 days' prior notice to the Rights Agent. The Rights Agent shall have no duty to supervise, and in no event be liable for, the acts or omissions of any such Co-Rights Agent. Any actions which may be taken by the Rights Agent pursuant to the terms of this Agreement may be taken by any such Co-Rights Agent. To the extent that any Co-Rights Agent takes any action pursuant to this Agreement, such Co-Rights Agent will be entitled to all of the rights and protections of, and subject to all of the applicable duties and obligations imposed upon, the Rights Agent pursuant to the terms of this Agreement.

3. Issue of Right Certificates. (a) Until the Distribution Date, (i) the Rights will be evidenced by the certificates representing Common Shares registered in the names of the record holders thereof, which certificates representing Common Shares will also be deemed to be Right Certificates (or, if the Common Shares are uncertificated, by the registration of the associated Common Shares on the stock transfer books of the Company), (ii) the Rights will be transferable only in connection with the transfer of the underlying Common Shares, and (iii) the transfer of any Common Shares in respect of which Rights have been issued will also constitute the transfer of the Rights associated with such Common Shares. Commencing as promptly as practicable after the Record Date, the Company will make available a copy of a Summary of Rights to Purchase Preferred Stock in substantially the form attached as Exhibit C to any holder of Rights who may request it from time to time prior to the Expiration Date.

(b) Rights will be issued by the Company in respect of all Common Shares (other than Common Shares issued upon the exercise or exchange of any Right) issued or delivered by the Company (whether originally issued or delivered from the Company's treasury) after the Record Date but prior to the earlier of the Distribution Date and the Expiration Date. Certificates evidencing such Common Shares will have stamped on, impressed on, printed on, written on, or otherwise affixed to them the following legend or such similar legend as the Company may deem appropriate and as is not inconsistent with the provisions of this Agreement, or as may be

required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange or quotation system on which the Common Shares may from time to time be listed or quoted, or to conform to usage:

This Certificate also evidences and entitles the holder hereof to certain Rights as set forth in an Amended and Restated Rights Agreement between SunPower Corporation and Computershare Trust Company, N.A., dated as of **[—]**, 2011 (as it may be amended or supplemented from time to time, the "***Rights Agreement***"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of SunPower Corporation. The Rights are not exercisable prior to the occurrence of certain events specified in the Rights Agreement. Under certain circumstances, as set forth in the Rights Agreement, such Rights may be redeemed, may be exchanged, may expire, may be amended, or may be evidenced by separate certificates and no longer be evidenced by this Certificate. SunPower Corporation will mail to the holder of this Certificate a copy of the Rights Agreement, as in effect on the date of mailing, without charge promptly after receipt of a written request therefor. Under certain circumstances as set forth in the Rights Agreement, Rights that are or were beneficially owned by an Acquiring Person or any Affiliate or Associate of an Acquiring Person (as such terms are defined in the Rights Agreement) may become null and void.

(c) Any Right Certificate issued pursuant to this Section 3 that represents Rights beneficially owned by an Acquiring Person or any Associate or Affiliate thereof and any Right Certificate issued at any time upon the transfer of any Rights to an Acquiring Person or any Associate or Affiliate thereof or to any nominee of such Acquiring Person, Associate or Affiliate and any Right Certificate issued pursuant to Section 6 or 11 hereof upon transfer, exchange, replacement or adjustment of any other Right Certificate referred to in this sentence, shall be subject to and contain the following legend or such similar legend as the Company may deem appropriate and as is not inconsistent with the provisions of this Agreement, or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Rights may from time to time be listed, or to conform to usage:

The Rights represented by this Right Certificate are or were beneficially owned by a Person who was an Acquiring Person or an Affiliate or an Associate of an Acquiring Person (as such terms are defined in the Rights Agreement). This Right Certificate and the Rights represented hereby may become null and void in the circumstances specified in Section 11(a)(ii) or Section 13 of the Rights Agreement.

(d) As promptly as practicable after the Distribution Date, the Company will prepare and execute, the Rights Agent will countersign and the Company will send or cause to be sent (and the Rights Agent will, if requested, send), by first class, insured, postage prepaid mail, to each record holder of Common Shares as of the Close of Business on the Distribution Date, at the address of such holder shown on the records of the Company, a Right Certificate evidencing

one Right for each Common Share so held, subject to adjustment as provided herein. As of and after the Distribution Date, the Rights will be evidenced solely by such Right Certificates.

(e) In the event that the Company purchases or otherwise acquires any Common Shares after the Record Date but prior to the Distribution Date, any Rights associated with such Common Shares will be deemed canceled and retired so that the Company will not be entitled to exercise any Rights associated with the Common Shares so purchased or acquired.

4. Form of Right Certificates. The Right Certificates (and the form of election to purchase and the form of assignment to be printed on the reverse thereof) will be substantially in the form attached as Exhibit B with such changes and marks of identification or designation, and such legends, summaries or endorsements printed thereon, as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange or quotation system on which the Rights may from time to time be listed or quoted, or to conform to usage. Subject to the provisions of Section 22, the Right Certificates, whenever issued, on their face will entitle the holders thereof to purchase such number of one one-hundredths of a Preferred Share as are set forth therein at the Purchase Price set forth therein, but the Purchase Price, the number and kind of securities issuable upon exercise of each Right and the number of Rights outstanding will be subject to adjustment as provided herein.

5. Countersignature and Registration. (a) The Right Certificates will be executed on behalf of the Company by its Chairman of the Board, its President or any Vice President, either manually or by facsimile signature, and will have affixed thereto the Company's seal or a facsimile thereof which will be attested by the Secretary or an Assistant Secretary of the Company, either manually or by facsimile signature. The Right Certificates will be countersigned by the Rights Agent, either manually or by facsimile signature, and will not be valid for any purpose unless so countersigned. In case any officer of the Company who signed any of the Right Certificates ceases to be such officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Right Certificates, nevertheless, may be countersigned by the Rights Agent, and issued and delivered by the Company with the same force and effect as though the person who signed such Right Certificates had not ceased to be such officer of the Company; and any Right Certificate may be signed on behalf of the Company by any person who, at the actual date of the execution of such Right Certificate, is a proper officer of the Company to sign such Right Certificate, although at the date of the execution of this Agreement any such person was not such officer.

(b) Following the Distribution Date, the Rights Agent will keep or cause to be kept, at the principal office of the Rights Agent designated for such purpose and at such other offices as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange or any quotation system on which the Rights may from time to time be listed or quoted, books for registration and transfer of the Right Certificates issued hereunder. Such books will show the names and addresses of the respective holders of the Right Certificates, the number of Rights evidenced on its face by each of the Right Certificates and the date of each of the Right Certificates.

6. Transfer, Split Up, Combination and Exchange of Right Certificates; Mutilated, Destroyed, Lost or Stolen Right Certificates. (a) Subject to the provisions of Sections 7(d) and 14, at any time after the Close of Business on the Distribution Date and prior to the Expiration Date, any Right Certificate or Right Certificates representing exercisable Rights may be transferred, split up, combined or exchanged for another Right Certificate or Right Certificates, entitling the registered holder to purchase a like number of one one-hundredths of a Preferred Share (or other securities, as the case may be) as the Right Certificate or Right Certificates surrendered then entitled such holder (or former holder in the case of a transfer) to purchase. Any registered holder desiring to transfer, split up, combine or exchange any such Right Certificate or Right Certificates must make such request in a writing delivered to the Rights Agent and must surrender the Right Certificate or Right Certificates to be transferred, split up, combined or exchanged at the principal office of the Rights Agent designated for such purpose. Thereupon or as promptly as practicable thereafter, subject to the provisions of Sections 7(d) and 14, the Company will prepare, execute and deliver to the Rights Agent, and the Rights Agent will countersign and deliver, a Right Certificate or Right Certificates, as the case may be, as so requested. The Company may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up, combination or exchange of Right Certificates.

(b) Upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Right Certificate and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to them, and, if requested by the Company, reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Right Certificate if mutilated, the Company will prepare, execute and deliver a new Right Certificate of like tenor to the Rights Agent and the Rights Agent will countersign and deliver such new Right Certificate to the registered holder in lieu of the Right Certificate so lost, stolen, destroyed or mutilated.

7. Exercise of Rights; Purchase Price; Expiration Date of Rights. (a) The registered holder of any Right Certificate may exercise the Rights evidenced thereby (except as otherwise provided herein) in whole or in part at any time after the Distribution Date and prior to the Expiration Date, upon surrender of the Right Certificate, with the form of election to purchase on the reverse side thereof duly executed, to the Rights Agent at the office or offices of the Rights Agent designated for such purpose, together with payment in cash, in lawful money of the United States of America by certified check or bank draft payable to the order of the Company, equal to the sum of (i) the exercise price for the total number of securities as to which such surrendered Rights are exercised and (ii) an amount equal to any applicable transfer tax required to be paid by the holder of such Right Certificate in accordance with the provisions of Section 9(d).

(b) Upon receipt of a Right Certificate representing exercisable Rights with the form of election to purchase duly executed, accompanied by payment as described above, the Rights Agent will promptly (i) requisition from any transfer agent of the Preferred Shares (or make available, if the Rights Agent is the transfer agent) certificates representing the number of one one-hundredths of a Preferred Share to be purchased or, in the case of uncertificated shares or other securities, requisition from any transfer agent therefor a notice setting forth such number of

shares or other securities to be purchased for which registration will be made on the stock transfer books of the Company (and the Company hereby irrevocably authorizes and directs its transfer agent to comply with all such requests), or, if the Company elects to deposit Preferred Shares issuable upon exercise of the Rights hereunder with a depositary agent, requisition from the depositary agent depositary receipts representing such number of one one-hundredths of a Preferred Share as are to be purchased (and the Company hereby irrevocably authorizes and directs such depositary agent to comply with all such requests), (ii) after receipt of such certificates (or notices or depositary receipts, as the case may be), cause the same to be delivered to or upon the order of the registered holder of such Right Certificate, registered in such name or names as may be designated by such holder, (iii) when appropriate, requisition from the Company or any transfer agent therefor (or make available, if the Rights Agent is the transfer agent) certificates representing the number of equivalent common shares (or, in the case of uncertificated shares, a notice of the number of equivalent common shares for which registration will be made on the stock transfer books of the Company) to be issued in lieu of the issuance of Common Shares in accordance with the provisions of Section 11(a)(iii), (iv) when appropriate, after receipt of such certificates or notices, cause the same to be delivered to or upon the order of the registered holder of such Right Certificate, registered in such name or names as may be designated by such holder, (v) when appropriate, requisition from the Company the amount of cash to be paid in lieu of the issuance of fractional shares in accordance with the provisions of Section 14 or in lieu of the issuance of Common Shares in accordance with the provisions of Section 11(a)(iii), (vi) when appropriate, after receipt, deliver such cash to or upon the order of the registered holder of such Right Certificate, and (vii) when appropriate, deliver any due bill or other instrument provided to the Rights Agent by the Company for delivery to the registered holder of such Right Certificate as provided by Section 11(l).

(c) In case the registered holder of any Right Certificate exercises less than all the Rights evidenced thereby, the Company will prepare, execute and deliver a new Right Certificate evidencing Rights equivalent to the Rights remaining unexercised and the Rights Agent will countersign and deliver such new Right Certificate to the registered holder of such Right Certificate or to his duly authorized assigns, subject to the provisions of Section 14.

(d) Notwithstanding anything in this Agreement to the contrary, neither the Rights Agent nor the Company will be obligated to undertake any action with respect to any purported transfer, split up, combination or exchange of any Right Certificate pursuant to Section 6 or exercise of a Right Certificate as set forth in this Section 7 unless the registered holder of such Right Certificate has (i) completed and signed the certificate following the form of assignment or the form of election to purchase, as applicable, set forth on the reverse side of the Right Certificate surrendered for such transfer, split up, combination, exchange or exercise and (ii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company may reasonably request.

8. Cancellation and Destruction of Right Certificates. All Right Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange will, if surrendered to the Company or to any of its stock transfer agents, be delivered to the Rights Agent for cancellation or in canceled form, or, if surrendered to the Rights Agent, will be canceled by it, and no Right Certificates will be issued in lieu thereof except as expressly permitted by the provisions of this Agreement. The Company will deliver to the Rights Agent for

cancellation and retirement, and the Rights Agent will so cancel and retire, any other Right Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Rights Agent will deliver all canceled Right Certificates to the Company, or will, at the written request of the Company, destroy such canceled Right Certificates, and in such case will deliver a certificate of destruction thereof to the Company.

9. Company Covenants Concerning Securities and Rights. The Company covenants and agrees that:

(a) It will cause to be reserved and kept available out of its authorized and unissued Preferred Shares or any Preferred Shares held in its treasury, a number of Preferred Shares that will be sufficient to permit the exercise in full of all outstanding Rights in accordance with Section 7.

(b) So long as the Preferred Shares (and, following the occurrence of a Triggering Event, Common Shares and/or other securities) issuable upon the exercise of the Rights may be listed on a national securities exchange or quoted on a quotation system, it will endeavor to cause, from and after such time as the Rights become exercisable, all securities reserved for issuance upon the exercise of Rights to be listed on such exchange or quoted on such system, upon official notice of issuance upon such exercise.

(c) It will take all such action as may be necessary to ensure that all Preferred Shares (and, following the occurrence of a Triggering Event, Common Shares and/or other securities) delivered (or evidenced by registration on the stock transfer books of the Company) upon exercise of Rights, at the time of delivery of the certificates for (or registration of) such securities, will be (subject to payment of the Purchase Price) duly authorized, validly issued, fully paid and nonassessable securities.

(d) It will pay when due and payable any and all federal and state transfer taxes and charges that may be payable in respect of the issuance or delivery of the Right Certificates and of any certificates representing securities issued upon the exercise of Rights (or, if such securities are uncertificated, the registration of such securities on the stock transfer books of the Company); provided, however, that the Company will not be required to pay any transfer tax or charge which may be payable in respect of any transfer or delivery of Right Certificates to a person other than, or the issuance or delivery of certificates or depositary receipts representing (or the registration of) securities issued upon the exercise of Rights in a name other than that of, the registered holder of the Right Certificate evidencing Rights surrendered for exercise, or to issue or deliver any certificates, depositary receipts or notices representing securities issued upon the exercise of any Rights until any such tax or charge has been paid (any such tax or charge being payable by the holder of such Right Certificate at the time of surrender) or until it has been established to the Company's reasonable satisfaction that no such tax is due.

(e) It will use its best efforts (i) to file on appropriate forms, as soon as practicable following the later of the Share Acquisition Date and the Distribution Date, registration statements under the Securities Act with respect to the securities issuable upon exercise of the Rights, (ii) to cause such registration statements to become effective as soon as practicable after such filing, and (iii) to cause such registration statements to remain effective (with prospectuses

at all times meeting the requirements of the Securities Act) until the earlier of (A) the date as of which the Rights are no longer exercisable for such securities and (B) the Expiration Date. The Company will also take such action as may be appropriate under, or to ensure compliance with, the applicable state securities or "blue sky" laws in connection with the exercisability of the Rights. The Company may temporarily suspend, for a period of time after the date set forth in clause (i) of the first sentence of this Section 9(e), the exercisability of the Rights in order to prepare and file such registration statements and to permit them to become effective. Upon any such suspension, the Company will issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension is no longer in effect. In addition, if the Company determines that registration statements should be filed under the Securities Act or any state securities laws following the Distribution Date, the Company may temporarily suspend the exercisability of the Rights in each relevant jurisdiction until such time as registration statements have been declared effective and, upon any such suspension, the Company will issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension is no longer in effect. Notwithstanding anything in this Agreement to the contrary, the Rights will not be exercisable in any jurisdiction if the requisite registration or qualification in such jurisdiction has not been effected or the exercise of the Rights is not permitted under applicable law.

(f) Notwithstanding anything in this Agreement to the contrary, after the later of the Share Acquisition Date and the Distribution Date the Company will not take (or permit any Subsidiary to take) any action if at the time such action is taken it is reasonably foreseeable that such action will eliminate or otherwise diminish the benefits intended to be afforded by the Rights.

(g) In the event that the Company is obligated to issue other securities of the Company and/or pay cash pursuant to Section 11, 13, 14 or 24, it will make all arrangements necessary so that such other securities and/or cash are available for distribution by the Rights Agent, if and when appropriate.

10. Record Date. Each Person in whose name any certificate representing Preferred Shares (or Common Shares and/or other securities, as the case may be) is issued (or in which such securities are registered upon the stock transfer books of the Company) upon the exercise of Rights will for all purposes be deemed to have become the holder of record of the Preferred Shares (or Common Shares and/or other securities, as the case may be) represented thereby on, and such certificate (or registration) will be dated, the date upon which the Right Certificate evidencing such Rights was duly surrendered and payment of the Purchase Price and all applicable transfer taxes was made; provided, however, that if the date of such surrender and payment is a date upon which the transfer books of the Company for the Preferred Shares (or Common Shares and/or other securities, as the case may be) are closed, such Person will be deemed to have become the record holder of such securities on, and such certificate (or registration) will be dated, the next succeeding Business Day on which the transfer books of the Company for the Preferred Shares (or Common Shares and/or other securities, as the case may be) are open. Prior to the exercise of the Rights evidenced thereby, the holder of a Right Certificate will not be entitled to any rights of a holder of any security for which the Rights are or may become exercisable, including, without limitation, the right to vote, to receive dividends

or other distributions, or to exercise any preemptive rights, and will not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

11. Adjustment of Purchase Price, Number and Kind of Securities or Number of Rights. The Purchase Price, the number and kind of securities issuable upon exercise of each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.

(a)(i) In the event that the Company at any time after the Record Date (A)declares a dividend on the Preferred Shares payable in Preferred Shares, (B)subdivides the outstanding Preferred Shares, (C)combines the outstanding Preferred Shares into a smaller number of Preferred Shares, or (D)issues any shares of its capital stock in a reclassification of the Preferred Shares (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11(a), the Purchase Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification and/or the number and/or kind of shares of capital stock issuable on such date upon exercise of a Right, will be proportionately adjusted so that the holder of any Right exercised after such time is entitled to receive upon payment of the Purchase Price then in effect the aggregate number and kind of shares of capital stock which, if such Right had been exercised immediately prior to such date and at a time when the transfer books of the Company for the Preferred Shares were open, the holder of such Right would have owned upon such exercise (and, in the case of a reclassification, would have retained after giving effect to such reclassification) and would have been entitled to receive by virtue of such dividend, subdivision, combination or reclassification; provided, however, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock issuable upon exercise of one Right. If an event occurs which would require an adjustment under both this Section 11(a)(i) and Section 11(a)(ii) or Section 13, the adjustment provided for in this Section 11(a)(i) will be in addition to, and will be made prior to, any adjustment required pursuant to Section 11(a)(ii) or Section 13.

(ii) Subject to the provisions of Section 24, if:

(A) any Person becomes an Acquiring Person; or

(B) any Acquiring Person or any Affiliate or Associate of any Acquiring Person, directly or indirectly, (1) merges into the Company or otherwise combines with the Company and the Company is the continuing or surviving corporation of such merger or combination (other than in a transaction subject to Section 13), (2) merges or otherwise combines with any Subsidiary of the Company, (3) in one or more transactions (otherwise than in connection with the exercise, exchange or conversion of securities exercisable or exchangeable for or convertible into shares of any class of capital stock of the Company or any of its Subsidiaries) transfers cash, securities or any other property to the Company or any of its Subsidiaries in exchange (in whole or in part) for shares of any class of capital stock of the Company or any of its Subsidiaries or for securities exercisable or exchangeable for or convertible into shares of any class of capital

stock of the Company or any of its Subsidiaries, or otherwise obtains from the Company or any of its Subsidiaries, with or without consideration, any additional shares of any class of capital stock of the Company or any of its Subsidiaries or securities exercisable or exchangeable for or convertible into shares of any class of capital stock of the Company or any of its Subsidiaries (otherwise than as part of a pro rata distribution to all holders of shares of any class of capital stock of the Company, or any of its Subsidiaries), (4) sells, purchases, leases, exchanges, mortgages, pledges, transfers or otherwise disposes (in one or more transactions) to, from, with or of, as the case may be, the Company or any of its Subsidiaries (otherwise than in a transaction subject to Section 13), any property, including securities, on terms and conditions less favorable to the Company than the Company would be able to obtain in an arm's-length transaction with an unaffiliated third party, (5) receives any compensation from the Company or any of its Subsidiaries other than compensation as a director or a regular full-time employee, in either case at rates consistent with the Company's (or its Subsidiaries') past practices, or (6) receives the benefit, directly or indirectly (except proportionately as a stockholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantage provided by the Company or any of its Subsidiaries; or

(C) during such time as there is an Acquiring Person, there is any reclassification of securities of the Company (including any reverse stock split), or any recapitalization of the Company, or any merger or consolidation of the Company with any of its Subsidiaries, or any other transaction or series of transactions involving the Company or any of its Subsidiaries (whether or not with or into or otherwise involving an Acquiring Person), other than a transaction subject to Section 13, which has the effect, directly or indirectly, of increasing by more than 1% the proportionate share of the outstanding shares of any class of equity securities of the Company or any of its Subsidiaries, or of securities exercisable or exchangeable for or convertible into equity securities of the Company or any of its Subsidiaries, of which an Acquiring Person, or any Affiliate or Associate of any Acquiring Person, is the Beneficial Owner;

then, and in each such case, from and after the latest of the Distribution Date, the Share Acquisition Date and the date of the occurrence of such Flip-in Event, proper provision will be made so that each holder of a Right, except as provided below, will thereafter have the right to receive, upon exercise thereof in accordance with the terms of this Agreement at an exercise price per Right equal to the product of the then-current Purchase Price multiplied by the number of one one-hundredths of a Preferred Share for which a Right was exercisable immediately prior to the date of the occurrence of such Flip-in Event (or, if any other Flip-in Event shall have previously occurred, the product of the then-current Purchase Price multiplied by the number of one one-hundredths of a Preferred Share for which a Right was exercisable immediately prior to the date of the first occurrence of a Flip-in Event), in lieu of Preferred Shares, such number of Common Shares as equals the result obtained by (x) multiplying the then-current Purchase Price by the number of one one-hundredths of a Preferred Share for which a Right was exercisable immediately prior to the date of the occurrence of such Flip-in Event (or, if any other

Flip-in Event shall have previously occurred, multiplying the then-current Purchase Price by the number of one one-hundredths of a Preferred Share for which a Right was exercisable immediately prior to the date of the first occurrence of a Flip-in Event), and dividing that product by (y) 50% of the current per share market price of the Common Shares (determined pursuant to Section 11(d)) on the date of the occurrence of such Flip-in Event. Notwithstanding anything in this Agreement to the contrary, from and after the first occurrence of a Flip-in Event, any Rights that are Beneficially Owned by (A) any Acquiring Person (or any Affiliate or Associate of any Acquiring Person), (B) a transferee of any Acquiring Person (or any such Affiliate or Associate) who becomes a transferee after the occurrence of a Flip-in Event, or (C) a transferee of any Acquiring Person (or any such Affiliate or Associate) who became a transferee prior to or concurrently with the occurrence of a Flip-in Event pursuant to either (1) a transfer from an Acquiring Person to holders of its equity securities or to any Person with whom it has any continuing agreement, arrangement or understanding regarding the transferred Rights or (2) a transfer which the Directors of the Company have determined is part of a plan, arrangement or understanding which has the purpose or effect of avoiding the provisions of this Section 11(a)(ii), and subsequent transferees of any of such Persons, will be void without any further action and any holder of such Rights will thereafter have no rights whatsoever with respect to such Rights under any provision of this Agreement. The Company will use all reasonable efforts to ensure that the provisions of this Section 11(a)(ii) are complied with, but will have no liability to any holder of Right Certificates or any other Person as a result of its failure to make any determinations with respect to an Acquiring Person or its Affiliates, Associates or transferees hereunder. Upon the occurrence of a Flip-in Event, no Right Certificate that represents Rights that are or have become void pursuant to the provisions of this Section 11(a)(ii) will thereafter be issued pursuant to Section 3 or Section 6, and any Right Certificate delivered to the Rights Agent that represents Rights that are or have become void pursuant to the provisions of this Section 11(a)(ii) will be canceled. Upon the occurrence of a Flip-over Event, any Rights that shall not have been previously exercised pursuant to this Section 11(a)(ii) shall thereafter be exercisable only pursuant to Section 13 and not pursuant to this Section 11(a)(ii).

(iii) Upon the occurrence of a Flip-in Event, if there are not sufficient Common Shares authorized but unissued or issued but not outstanding to permit the issuance of all the Common Shares issuable in accordance with Section 11(a)(ii) upon the exercise of a Right, the Board of Directors of the Company will use its best efforts promptly to authorize and, subject to the provisions of Section 9(e), make available for issuance additional Common Shares or other equity securities of the Company having equivalent voting rights and an equivalent value (as determined in good faith by the Board of Directors of the Company) to the Common Shares (for purposes of this Section 11(a)(iii), "***equivalent common shares***"). In the event that equivalent common shares are so authorized, upon the exercise of a Right in accordance with the provisions of Section 7, the registered holder will be entitled to receive (A) Common Shares to the extent any are available, and (B) a number of equivalent common shares, which the Board of Directors of the Company has determined in good faith to have a value equivalent to the excess of (x) the aggregate current per share market value on the date of the occurrence of the most recent Flip-in Event of all the Common Shares issuable in accordance with

Section 11(a)(ii) upon the exercise of a Right (the "***Exercise Value***") over (y) the aggregate current per share market value on the date of the occurrence of the most recent Flip-in Event of any Common Shares available for issuance upon the exercise of such Right; provided, however, that if at any time after 90 calendar days after the latest of the Share Acquisition Date, the Distribution Date and the date of the occurrence of the most recent Flip-in Event, there are not sufficient Common Shares and/or equivalent common shares available for issuance upon the exercise of a Right, then the Company will be obligated to deliver, upon the surrender of such Right and without requiring payment of the Purchase Price, Common Shares (to the extent available), equivalent common shares (to the extent available) and then cash (to the extent permitted by applicable law and any agreements or instruments to which the Company is a party in effect immediately prior to the Share Acquisition Date), which securities and cash have an aggregate value equal to the excess of (1) the Exercise Value over (2) the product of the then-current Purchase Price multiplied by the number of one one-hundredths of a Preferred Share for which a Right was exercisable immediately prior to the date of the occurrence of the most recent Flip-in Event (or, if any other Flip-in Event shall have previously occurred, the product of the then-current Purchase Price multiplied by the number of one one-hundredths of a Preferred Share for which a Right would have been exercisable immediately prior to the date of the occurrence of such Flip-in Event if no other Flip-in Event had previously occurred). To the extent that any legal or contractual restrictions prevent the Company from paying the full amount of cash payable in accordance with the foregoing sentence, the Company will pay to holders of the Rights as to which such payments are being made all amounts which are not then restricted on a pro rata basis and will continue to make payments on a pro rata basis as promptly as funds become available until the full amount due to each such Rights holder has been paid.

(b) In the event that the Company fixes a record date for the issuance of rights, options or warrants to all holders of Preferred Shares entitling them (for a period expiring within 45 calendar days after such record date) to subscribe for or purchase Preferred Shares (or securities having equivalent rights, privileges and preferences as the Preferred Shares (for purposes of this Section 11(b), "***equivalent preferred shares***")) or securities convertible into Preferred Shares or equivalent preferred shares at a price per Preferred Share or equivalent preferred share (or having a conversion price per share, if a security convertible into Preferred Shares or equivalent preferred shares) less than the current per share market price of the Preferred Shares (determined pursuant to Section 11(d)) on such record date, the Purchase Price to be in effect after such record date will be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which is the number of Preferred Shares outstanding on such record date plus the number of Preferred Shares which the aggregate offering price of the total number of Preferred Shares and/or equivalent preferred shares so to be offered (and/or the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such current per share market price and the denominator of which is the number of Preferred Shares outstanding on such record date plus the number of additional Preferred Shares and/or equivalent preferred shares to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible); provided, however, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock issuable upon exercise of one Right. In case such subscription price may be paid in a consideration part or all of which is

in a form other than cash, the value of such consideration will be as determined in good faith by the Board of Directors of the Company, whose determination will be described in a statement filed with the Rights Agent. Preferred Shares owned by or held for the account of the Company will not be deemed outstanding for the purpose of any such computation. Such adjustment will be made successively whenever such a record date is fixed, and in the event that such rights, options or warrants are not so issued, the Purchase Price will be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

(c) In the event that the Company fixes a record date for the making of a distribution to all holders of Preferred Shares (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing or surviving corporation) of evidences of indebtedness, cash (other than a regular periodic cash dividend), assets, stock (other than a dividend payable in Preferred Shares) or subscription rights, options or warrants (excluding those referred to in Section 11(b)), the Purchase Price to be in effect after such record date will be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which is the current per share market price of the Preferred Shares (as determined pursuant to Section 11(d)) on such record date or, if earlier, the date on which Preferred Shares begin to trade on an ex-dividend or when issued basis for such distribution, less the fair market value (as determined in good faith by the Board of Directors of the Company, whose determination will be described in a statement filed with the Rights Agent) of the portion of the evidences of indebtedness, cash, assets or stock so to be distributed or of such subscription rights, options or warrants applicable to one Preferred Share, and the denominator of which is such current per share market price of the Preferred Shares; provided, however, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock issuable upon exercise of one Right. Such adjustments will be made successively whenever such a record date is fixed; and in the event that such distribution is not so made, the Purchase Price will again be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

(d)(i) For the purpose of any computation hereunder, the “current per share market price” of Common Shares on any date will be deemed to be the average of the daily closing prices per share of such Common Shares for the 30 consecutive Trading Days immediately prior to such date; provided, however, that in the event that the current per share market price of the Common Shares is determined during a period following the announcement by the Company of (A) a dividend or distribution on such Common Shares payable in such Common Shares or securities convertible into such Common Shares (other than the Rights) or (B) any subdivision, combination or reclassification of such Common Shares, and prior to the expiration of 30 Trading Days after the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification, then, and in each such case, the current per share market price will be appropriately adjusted to take into account ex-dividend trading or to reflect the current per share market price per Common Share equivalent. The closing price for each day will be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated quotation system with respect to securities listed or admitted to trading on The Nasdaq Stock Market or, if the Common Shares are not listed or admitted to trading on The Nasdaq Stock Market, as reported in the principal

consolidated quotation system with respect to securities listed on the principal national securities exchange on which the Common Shares are listed or admitted to trading or, if the Common Shares are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by such market then in use, or, if on any such date the Common Shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Common Shares selected by the Board of Directors of the Company. If the Common Shares are not publicly held or not so listed or traded, or are not the subject of available bid and asked quotes, "current per share market price" will mean the fair value per share as determined in good faith by the Board of Directors of the Company, whose determination will be described in a statement filed with the Rights Agent.

(ii) For the purpose of any computation hereunder, the "***current per share market price***" of the Preferred Shares will be determined in the same manner as set forth above for Common Shares in Section 11(d)(i), other than the last sentence thereof. If the current per share market price of the Preferred Shares cannot be determined in the manner provided above, the "current per share market price" of the Preferred Shares will be conclusively deemed to be an amount equal to the current per share market price of the Common Shares multiplied by one hundred (as such number may be appropriately adjusted to reflect events such as stock splits, stock dividends, recapitalizations or similar transactions relating to the Common Shares occurring after the date of this Agreement). If neither the Common Shares nor the Preferred Shares are publicly held or so listed or traded, or the subject of available bid and asked quotes, "current per share market price" of the Preferred Shares will mean the fair value per share as determined in good faith by the Board of Directors of the Company, whose determination will be described in a statement filed with the Rights Agent. For all purposes of this Agreement, the current per share market price of one one-hundredth of a Preferred Share will be equal to the current per share market price of one Preferred Share divided by one hundred.

(e) Except as set forth below, no adjustment in the Purchase Price will be required unless such adjustment would require an increase or decrease of at least 1% in such price; provided, however, that any adjustments which by reason of this Section 11(e) are not required to be made will be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 will be made to the nearest cent or to the nearest one one-millionth of a Preferred Share or one ten-thousandth of a Common Share or other security, as the case may be. Notwithstanding the first sentence of this Section 11(e), any adjustment required by this Section 11 will be made no later than the earlier of (i) three years from the date of the transaction which requires such adjustment and (ii) the Expiration Date.

(f) If as a result of an adjustment made pursuant to Section 11(a), the holder of any Right thereafter exercised becomes entitled to receive any securities of the Company other than Preferred Shares, thereafter the number and/or kind of such other securities so receivable upon exercise of any Right (and/or the Purchase Price in respect thereof) will be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Preferred Shares (and the Purchase Price in respect thereof) contained in this

Section 11, and the provisions of Sections 7, 9, 10, 13 and 14 with respect to the Preferred Shares (and the Purchase Price in respect thereof) will apply on like terms to any such other securities (and the Purchase Price in respect thereof).

(g) All Rights originally issued by the Company subsequent to any adjustment made to the Purchase Price hereunder will evidence the right to purchase, at the adjusted Purchase Price, the number of one one-hundredths of a Preferred Share issuable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

(h) Unless the Company has exercised its election as provided in Section 11(i), upon each adjustment of the Purchase Price pursuant to Section 11(b) or Section 11(c), each Right outstanding immediately prior to the making of such adjustment will thereafter evidence the right to purchase, at the adjusted Purchase Price, that number of one one-hundredths of a Preferred Share (calculated to the nearest one one-millionth of a Preferred Share) obtained by (i) multiplying (x) the number of one one-hundredths of a Preferred Share issuable upon exercise of a Right immediately prior to such adjustment of the Purchase Price by (y) the Purchase Price in effect immediately prior to such adjustment of the Purchase Price and (ii) dividing the product so obtained by the Purchase Price in effect immediately after such adjustment of the Purchase Price.

(i) The Company may elect, on or after the date of any adjustment of the Purchase Price, to adjust the number of Rights in substitution for any adjustment in the number of one one-hundredths of a Preferred Share issuable upon the exercise of a Right. Each of the Rights outstanding after such adjustment of the number of Rights will be exercisable for the number of one one-hundredths of a Preferred Share for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights will become that number of Rights (calculated to the nearest one ten-thousandth) obtained by dividing the Purchase Price in effect immediately prior to adjustment of the Purchase Price by the Purchase Price in effect immediately after adjustment of the Purchase Price. The Company will make a public announcement of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. Such record date may be the date on which the Purchase Price is adjusted or any day thereafter, but, if the Right Certificates have been issued, will be at least 10 calendar days later than the date of the public announcement. If Right Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 11(i), the Company will, as promptly as practicable, cause to be distributed to holders of record of Right Certificates on such record date Right Certificates evidencing, subject to the provisions of Section 14, the additional Rights to which such holders are entitled as a result of such adjustment, or, at the option of the Company, will cause to be distributed to such holders of record in substitution and replacement for the Right Certificates held by such holders prior to the date of adjustment, and upon surrender thereof if required by the Company, new Right Certificates evidencing all the Rights to which such holders are entitled after such adjustment. Right Certificates so to be distributed will be issued, executed, and countersigned in the manner provided for herein (and may bear, at the option of the Company, the adjusted Purchase Price) and will be registered in the names of the holders of record of Right Certificates on the record date specified in the public announcement.

(j) Without respect to any adjustment or change in the Purchase Price and/or the number and/or kind of securities issuable upon the exercise of the Rights, the Right Certificates

theretofore and thereafter issued may continue to express the Purchase Price and the number and kind of securities which were expressed in the initial Right Certificate issued hereunder.

(k) Before taking any action that would cause an adjustment reducing the Purchase Price below one one-hundredth of the then par value, if any, of the Preferred Shares or below the then par value, if any, of any other securities of the Company issuable upon exercise of the Rights, the Company will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable Preferred Shares or such other securities, as the case may be, at such adjusted Purchase Price.

(l) In any case in which this Section 11 otherwise requires that an adjustment in the Purchase Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such event the issuance to the holder of any Right exercised after such record date the number of Preferred Shares or other securities of the Company, if any, issuable upon such exercise over and above the number of Preferred Shares or other securities of the Company, if any, issuable upon such exercise on the basis of the Purchase Price in effect prior to such adjustment; provided, however, that the Company delivers to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional Preferred Shares or other securities upon the occurrence of the event requiring such adjustment.

(m) Notwithstanding anything in this Agreement to the contrary, the Company will be entitled to make such reductions in the Purchase Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that in its good faith judgment the Board of Directors of the Company determines to be advisable in order that any (i) consolidation or subdivision of the Preferred Shares, (ii) issuance wholly for cash of Preferred Shares at less than the current per share market price therefor, (iii) issuance wholly for cash of Preferred Shares or securities which by their terms are convertible into or exchangeable for Preferred Shares, (iv) stock dividends, or (v) issuance of rights, options or warrants referred to in this Section 11, hereafter made by the Company to holders of its Preferred Shares is not taxable to such stockholders.

(n) Notwithstanding anything in this Agreement to the contrary, in the event that the Company at any time after the Record Date prior to the Distribution Date (i) pays a dividend on the outstanding Common Shares payable in Common Shares, (ii) subdivides the outstanding Common Shares, (iii) combines the outstanding Common Shares into a smaller number of shares, or (iv) issues any shares of its capital stock in a reclassification of the outstanding Common Shares (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), the number of Rights associated with each Common Share then outstanding, or issued or delivered thereafter but prior to the Distribution Date, will be proportionately adjusted so that the number of Rights thereafter associated with each Common Share following any such event equals the result obtained by multiplying the number of Rights associated with each Common Share immediately prior to such event by a fraction the numerator of which is the total number of Common Shares outstanding immediately prior to the occurrence of the event and the denominator of which is the total number of Common Shares outstanding immediately following the occurrence of such event. The adjustments provided for in this Section 11(n) will be made successively whenever such a dividend is paid or such a subdivision, combination or reclassification is effected.

12. Certificate of Adjusted Purchase Price or Number of Securities. Whenever an adjustment is made as provided in Section 11 or Section 13, the Company will promptly (a) prepare a certificate setting forth such adjustment and a brief statement of the facts accounting for such adjustment, (b) file with the Rights Agent and with each transfer agent for the Preferred Shares and the Common Shares a copy of such certificate, and (c) if such adjustment is made after the Distribution Date, mail a brief summary of such adjustment to each holder of a Right Certificate in accordance with Section 26.

13. Consolidation, Merger or Sale or Transfer of Assets or Earning Power. (a) In the event that:

(i) at any time after a Person has become an Acquiring Person, the Company consolidates with, or merges with or into, any other Person and the Company is not the continuing or surviving corporation of such consolidation or merger; or

(ii) at any time after a Person has become an Acquiring Person, any Person consolidates with the Company, or merges with or into the Company, and the Company is the continuing or surviving corporation of such merger or consolidation and, in connection with such merger or consolidation, all or part of the Common Shares is changed into or exchanged for stock or other securities of any other Person or cash or any other property; or

(iii) at any time after a Person has become an Acquiring Person, the Company, directly or indirectly, sells or otherwise transfers (or one or more of its Subsidiaries sells or otherwise transfers), in one or more transactions, assets or earning power (including, without limitation, securities creating any obligation on the part of the Company and/or any of its Subsidiaries) representing in the aggregate more than 50% of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to any Person or Persons other than the Company or one or more of its wholly owned Subsidiaries;

then, and in each such case, proper provision will be made so that from and after the latest of the Share Acquisition Date, the Distribution Date and the date of the occurrence of such Flip-over Event (A) each holder of a Right thereafter has the right to receive, upon the exercise thereof in accordance with the terms of this Agreement at an exercise price per Right equal to the product of the then-current Purchase Price multiplied by the number of one one-hundredths of a Preferred Share for which a Right was exercisable immediately prior to the Share Acquisition Date, such number of duly authorized, validly issued, fully paid, nonassessable and freely tradeable Common Shares of the Issuer, free and clear of any liens, encumbrances and other adverse claims and not subject to any rights of call or first refusal, as equals the result obtained by (x) multiplying the then-current Purchase Price by the number of one one-hundredths of a Preferred Share for which a Right is exercisable immediately prior to the Share Acquisition Date and dividing that product by (y) 50% of the current per share market price of the Common Shares of the Issuer (determined pursuant to Section 11(d)), on the date of the occurrence of such Flip-over Event; (B) the Issuer will thereafter be liable for, and will assume, by virtue of the occurrence of such Flip-over Event, all the obligations and duties of the Company pursuant to this Agreement; (C) the term “Company” will thereafter be deemed to refer to the Issuer; and (D) the Issuer will take such steps (including, without limitation, the reservation of a sufficient number of its

Common Shares to permit the exercise of all outstanding Rights) in connection with such consummation as may be necessary to assure that the provisions hereof are thereafter applicable, as nearly as reasonably may be possible, in relation to its Common Shares thereafter deliverable upon the exercise of the Rights.

(b) For purposes of this Section 13, "***Issuer***" means (i) in the case of any Flip-over Event described in Sections 13(a)(i) or (ii) above, the Person that is the continuing, surviving, resulting or acquiring Person (including the Company as the continuing or surviving corporation of a transaction described in Section 13(a)(ii) above), and (ii) in the case of any Flip-over Event described in Section 13(a)(iii) above, the Person that is the party receiving the greatest portion of the assets or earning power (including, without limitation, securities creating any obligation on the part of the Company and/or any of its Subsidiaries) transferred pursuant to such transaction or transactions; provided, however, that, in any such case, (A) if (1) no class of equity security of such Person is, at the time of such merger, consolidation or transaction and has been continuously over the preceding 12-month period, registered pursuant to Section 12 of the Exchange Act, and (2) such Person is a Subsidiary, directly or indirectly, of another Person, a class of equity security of which is and has been so registered, the term "Issuer" means such other Person; and (B) in case such Person is a Subsidiary, directly or indirectly, of more than one Person, a class of equity security of two or more of which are and have been so registered, the term "Issuer" means whichever of such Persons is the issuer of the equity security having the greatest aggregate market value. Notwithstanding the foregoing, if the Issuer in any of the Flip-over Events listed above is not a corporation or other legal entity having outstanding equity securities, then, and in each such case, (x) if the Issuer is directly or indirectly wholly owned by a corporation or other legal entity having outstanding equity securities, then all references to Common Shares of the Issuer will be deemed to be references to the Common Shares of the corporation or other legal entity having outstanding equity securities which ultimately controls the Issuer, and (y) if there is no such corporation or other legal entity having outstanding equity securities, (I) proper provision will be made so that the Issuer creates or otherwise makes available for purposes of the exercise of the Rights in accordance with the terms of this Agreement, a kind or kinds of security or securities having a fair market value at least equal to the economic value of the Common Shares which each holder of a Right would have been entitled to receive if the Issuer had been a corporation or other legal entity having outstanding equity securities; and (II) all other provisions of this Agreement will apply to the issuer of such securities as if such securities were Common Shares.

(c) The Company will not consummate any Flip-over Event if, (i) at the time of or immediately after such Flip-over Event, there are or would be any rights, warrants, instruments or securities outstanding or any agreements or arrangements in effect which would eliminate or substantially diminish the benefits intended to be afforded by the Rights, (ii) prior to, simultaneously with or immediately after such Flip-over Event, the stockholders of the Person who constitutes, or would constitute, the Issuer for purposes of Section 13(a) shall have received a distribution of Rights previously owned by such Person or any of its Affiliates or Associates, or (iii) the form or nature of the organization of the Issuer would preclude or limit the exercisability of the Rights. In addition, the Company will not consummate any Flip-over Event unless the Issuer has a sufficient number of authorized Common Shares (or other securities as contemplated in Section 13(b) above) which have not been issued or reserved for issuance to permit the exercise in full of the Rights in accordance with this Section 13 and unless prior to such

consummation the Company and the Issuer have executed and delivered to the Rights Agent a supplemental agreement providing for the terms set forth in subsections (a) and (b) of this Section 13 and further providing that as promptly as practicable after the consummation of any Flip-over Event, the Issuer will:

(A) prepare and file a registration statement under the Securities Act with respect to the Rights and the securities issuable upon exercise of the Rights on an appropriate form, and use its best efforts to cause such registration statement to (1) become effective as soon as practicable after such filing and (2) remain effective (with a prospectus at all times meeting the requirements of the Securities Act) until the Expiration Date;

(B) take all such action as may be appropriate under, or to ensure compliance with, the applicable state securities or "blue sky" laws in connection with the exercisability of the Rights; and

(C) deliver to holders of the Rights historical financial statements for the Issuer and each of its Affiliates which comply in all respects with the requirements for registration on Form 10 under the Exchange Act.

(d) The provisions of this Section 13 will similarly apply to successive mergers or consolidations or sales or other transfers. In the event that a Flip-over Event occurs at any time after the occurrence of a Flip-in Event, except for Rights that have become void pursuant to Section 11(a)(ii), Rights that shall not have been previously exercised will cease to be exercisable in the manner provided in Section 11(a)(ii) and will thereafter be exercisable in the manner provided in Section 13(a).

14. Fractional Rights and Fractional Securities. (a) The Company will not be required to issue fractions of Rights or to distribute Right Certificates which evidence fractional Rights. In lieu of such fractional Rights, the Company will pay as promptly as practicable to the registered holders of the Right Certificates with regard to which such fractional Rights otherwise would be issuable, an amount in cash equal to the same fraction of the current market value of one Right. For the purposes of this Section 14(a), the current market value of one Right is the closing price of the Rights for the Trading Day immediately prior to the date on which such fractional Rights otherwise would have been issuable. The closing price for any day is the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal quotation system with respect to securities listed or admitted to trading on the Nasdaq Global Select Market or, if the Rights are not listed or admitted to trading on the Nasdaq Global Select Market, as reported in the principal quotation system with respect to securities listed on the principal national securities exchange on which the Rights are listed or admitted to trading or, if the Rights are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by such market then in use, or, if on any such date the Rights are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Rights selected by the Board of Directors of the Company. If the Rights are not publicly held or are not so listed or traded, or are not the subject of available

bid and asked quotes, the current market value of one Right will mean the fair value thereof as determined in good faith by the Board of Directors of the Company, whose determination will be described in a statement filed with the Rights Agent.

(b) The Company will not be required to issue fractions of Preferred Shares (other than fractions which are integral multiples of one one-hundredth of a Preferred Share) upon exercise of the Rights or to distribute certificates which evidence fractional Preferred Shares or to register fractional Preferred Shares on the stock transfer books of the Company (other than fractions which are integral multiples of one one-hundredth of a Preferred Share). Fractions of Preferred Shares in integral multiples of one one-hundredth of a Preferred Share may, at the election of the Company, be evidenced by depositary receipts pursuant to an appropriate agreement between the Company and a depositary selected by it, provided that such agreement provides that the holders of such depositary receipts have all the rights, privileges and preferences to which they are entitled as beneficial owners of the Preferred Shares represented by such depositary receipts. In lieu of fractional Preferred Shares that are not integral multiples of one one-hundredth of a Preferred Share, the Company may pay to any Person to whom or which such fractional Preferred Shares would otherwise be issuable an amount in cash equal to the same fraction of the current market value of one Preferred Share. For purposes of this Section 14(b), the current market value of one Preferred Share is the closing price of the Preferred Shares (as determined in the same manner as set forth for Common Shares in the second sentence of Section 11(d)(i)) for the Trading Day immediately prior to the date of such exercise; provided, however, that if the closing price of the Preferred Shares cannot be so determined, the closing price of the Preferred Shares for such Trading Day will be conclusively deemed to be an amount equal to the closing price of the Common Shares (determined pursuant to the second sentence of Section 11(d)(i)) for such Trading Day multiplied by one hundred (as such number may be appropriately adjusted to reflect events such as stock splits, stock dividends, recapitalizations or similar transactions relating to the Common Shares occurring after the date of this Agreement); provided further, however, that if neither the Common Shares nor the Preferred Shares are publicly held or listed or admitted to trading on any national securities exchange, or the subject of available bid and asked quotes, the current market value of one Preferred Share will mean the fair value thereof as determined in good faith by the Board of Directors of the Company, whose determination will be described in a statement filed with the Rights Agent.

(c) Following the occurrence of a Triggering Event, the Company will not be required to issue fractions of Common Shares or other securities issuable upon exercise or exchange of the Rights or to distribute certificates which evidence any such fractional securities or to register any such fractional securities on the stock transfer books of the Company. In lieu of issuing any such fractional securities, the Company may pay to any Person to whom or which such fractional securities would otherwise be issuable an amount in cash equal to the same fraction of the current market value of one such security. For purposes of this Section 14(c), the current market value of one Common Share or other security issuable upon the exercise or exchange of Rights is the closing price thereof (as determined in the same manner as set forth for Common Shares in the second sentence of Section 11(d)(i)) for the Trading Day immediately prior to the date of such exercise or exchange; provided, however, that if neither the Common Shares nor any such other securities are publicly held or listed or admitted to trading on any national securities exchange, or the subject of available bid and asked quotes, the current market value of one Common Share or such other security will mean the fair value thereof as determined

in good faith by the Board of Directors of the Company, whose determination will mean the fair value thereof as will be described in a statement filed with the Rights Agent.

15. Rights of Action. All rights of action in respect of this Agreement, excepting the rights of action given to the Rights Agent under Section 18, are vested in the respective registered holders of the Right Certificates (and, prior to the Distribution Date, the registered holders of the Common Shares); and any registered holder of any Right Certificate (or, prior to the Distribution Date, of the Common Shares), without the consent of the Rights Agent or of the holder of any other Right Certificate (or, prior to the Distribution Date, of the holder of any Common Shares), may in his own behalf and for his own benefit enforce, and may institute and maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of, his right to exercise the Rights evidenced by such Right Certificate in the manner provided in such Right Certificate and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and will be entitled to specific performance of the obligations under this Agreement, and injunctive relief against actual or threatened violations of the obligations of any Person subject to this Agreement.

16. Agreement of Rights Holders. Every holder of a Right by accepting the same consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) Prior to the Distribution Date, the Rights are transferable only in connection with the transfer of the Common Shares;

(b) After the Distribution Date, the Right Certificates are transferable only on the registry books of the Rights Agent if surrendered at the principal office of the Rights Agent designated for such purpose, duly endorsed or accompanied by a proper instrument of transfer, and with the appropriate forms and certificates fully completed and executed;

(c) The Company and the Rights Agent may deem and treat the person in whose name the Right Certificate (or, prior to the Distribution Date, the associated Common Share) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Right Certificate or the associated Common Share certificate, if any, made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent will be affected by any notice to the contrary;

(d) Such holder expressly waives any right to receive any fractional Rights and any fractional securities upon exercise or exchange of a Right, except as otherwise provided in Section 14.

(e) Notwithstanding anything in this Agreement to the contrary, neither the Company nor the Rights Agent will have any liability to any holder of a Right or other Person as a result of its inability to perform any of its obligations under this Agreement by reason of any preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a governmental, regulatory or administrative agency or commission, or any

statute, rule, regulation or executive order promulgated or enacted by any governmental authority, prohibiting or otherwise restraining performance of such obligation; provided, however, that the Company will use its best efforts to have any such order, decree or ruling lifted or otherwise overturned as soon as possible.

17. Right Certificate Holder Not Deemed a Stockholder. No holder, as such, of any Right Certificate will be entitled to vote, receive dividends, or be deemed for any purpose the holder of Preferred Shares or any other securities of the Company which may at any time be issuable upon the exercise of the Rights represented thereby, nor will anything contained herein or in any Right Certificate be construed to confer upon the holder of any Right Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of Directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in Section 25), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by such Right Certificate shall have been exercised in accordance with the provisions of this Agreement or exchanged pursuant to the provisions of Section 24.

18. Concerning the Rights Agent. (a) The Company will pay to the Rights Agent reasonable compensation for all services rendered by it hereunder and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and other disbursements incurred in the administration and execution of this Agreement and the exercise and performance of its duties hereunder. The Company will also indemnify the Rights Agent for, and hold it harmless against, any loss, liability, suit, action, proceeding or expense, incurred without gross negligence, bad faith, or willful misconduct on the part of the Rights Agent, for anything done or omitted to be done by the Rights Agent in connection with the acceptance and administration of this Agreement, including the costs and expenses of defending against any claim of liability arising therefrom, directly or indirectly.

(b) The Rights Agent will be protected and will incur no liability for or in respect of any action taken, suffered, or omitted by it in connection with its administration of this Agreement in reliance upon any Right Certificate or certificate or other notice evidencing Preferred Shares or Common Shares or other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement or other paper or document believed by it to be genuine and to be signed, executed, and, where necessary, verified or acknowledged, by the proper Person or Persons.

19. Merger or Consolidation or Change of Name of Rights Agent. (a) Any corporation into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent is a party, or any corporation succeeding to the corporate trust business of the Rights Agent or any successor Rights Agent, will be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such corporation would be eligible for appointment as a successor Rights Agent under the provisions of Section 21. If at the time such successor Rights Agent succeeds to the agency created by this Agreement any of

the Right Certificates shall have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of the predecessor Rights Agent and deliver such Right Certificates so countersigned; and if at that time any of the Right Certificates shall not have been countersigned, any successor Rights Agent may countersign such Right Certificates either in the name of the predecessor Rights Agent or in the name of the successor Rights Agent; and in all such cases such Right Certificates will have the full force provided in the Right Certificates and in this Agreement.

(b) If at any time the name of the Rights Agent changes and at such time any of the Right Certificates have been countersigned but not delivered, the Rights Agent may adopt the countersignature under its prior name and deliver Right Certificates so countersigned; and if at that time any of the Right Certificates have not been countersigned, the Rights Agent may countersign such Right Certificates either in its prior name or in its changed name; and in all such cases such Right Certificates will have the full force provided in the Right Certificates and in this Agreement.

(c) Notwithstanding anything to the contrary contained herein, the Rights Agent shall not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

20. Duties of Rights Agent. The Rights Agent undertakes the duties and obligations imposed by this Agreement upon the following terms and conditions, by all of which the Company and the holders of Right Certificates, by their acceptance thereof, will be bound:

(a) The Rights Agent may consult with legal counsel (who may be legal counsel for the Company), and the opinion of such counsel will be full and complete authorization and protection to the Rights Agent as to any action taken or omitted by it in good faith and in accordance with such opinion.

(b) Whenever in the performance of its duties under this Agreement the Rights Agent deems it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by any one of the Chairman of the Board, the President, any Vice President, the Secretary or the Treasurer of the Company and delivered to the Rights Agent, and such certificate will be full authorization to the Rights Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon such certificate.

(c) The Rights Agent will be liable hereunder only for its own gross negligence, bad faith or willful misconduct.

(d) The Rights Agent will not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Right Certificates (except its

countersignature thereof) or be required to verify the same, but all such statements and recitals are and will be deemed to have been made by the Company only.

(e) The Rights Agent will not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution and delivery hereof by the Rights Agent) or in respect of the validity or execution of any Right Certificate (except its countersignature thereof); nor will it be responsible for any breach by the Company of any covenant contained in this Agreement or in any Right Certificate; nor will it be responsible for any adjustment required under the provisions of Sections 11 or 13 (including any adjustment which results in Rights becoming void) or responsible for the manner, method or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment (except with respect to the exercise of Rights evidenced by Right Certificates after actual notice of any such adjustment); nor will it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of stock or other securities to be issued pursuant to this Agreement or any Right Certificate or as to whether any shares of stock or other securities will, when issued, be duly authorized, validly issued, fully paid and nonassessable.

(f) The Company will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

(g) The Rights Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from any one of the Chairman of the Board, the President, any Vice President, the Secretary or the Treasurer of the Company, and to apply to such officers for advice or instructions in connection with its duties, and it will not be liable for any action taken or suffered to be taken by it in good faith in accordance with instructions of any such officer.

(h) The Rights Agent and any stockholder, director, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Rights Agent under this Agreement. Nothing herein will preclude the Rights Agent from acting in any other capacity for the Company or for any other Person.

(i) The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents, and the Rights Agent will not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company resulting from any such act, default, neglect or misconduct, provided reasonable care was exercised in the selection and continued employment thereof. The Rights Agent will not be under any duty or responsibility to ensure compliance with any applicable federal or state securities laws in connection with the issuance, transfer or exchange of Right Certificates.

(j) If, with respect to any Right Certificate surrendered to the Rights Agent for exercise, transfer, split up, combination or exchange, either (i) the certificate attached to the form of assignment or form of election to purchase, as the case may be, has either not been completed or indicates an affirmative response to clause 1 or 2 thereof, or (ii) any other actual or suspected irregularity exists, the Rights Agent will not take any further action with respect to such requested exercise, transfer, split up, combination or exchange without first consulting with the Company, and will thereafter take further action with respect thereto only in accordance with the Company's written instructions.

21. Change of Rights Agent. The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Agreement upon 30 calendar days' notice in writing mailed to the Company and to each transfer agent of the Preferred Shares or the Common Shares by registered or certified mail, and to the holders of the Right Certificates by first class mail. In the event the transfer agency relationship in effect between the Company and the Rights Agent terminates, the Rights Agent will be deemed to have resigned automatically and be discharged from its duties under this Agreement as of the effective date of such termination, and the Company shall be responsible for sending any required notice. The Company may remove the Rights Agent or any successor Rights Agent upon 30 calendar days' notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of the Preferred Shares and the Common Shares by registered or certified mail, and to the holders of the Right Certificates by first class mail. If the Rights Agent resigns or is removed or otherwise becomes incapable of acting, the Company will appoint a successor to the Rights Agent. If the Company fails to make such appointment within a period of 30 calendar days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Right Certificate (who will, with such notice, submit his Right Certificate for inspection by the Company), then the registered holder of any Right Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, will be a corporation or other legal entity organized and doing business under the laws of the United States or of the State of New York (or of any other state of the United States so long as such corporation is authorized to do business as a banking institution in the State of New York), in good standing, which is authorized under such laws to exercise corporate trust or stock transfer powers and is subject to supervision or examination by federal or state authority and which has at the time of its appointment as Rights Agent a combined capital and surplus, along with its Affiliates, of at least $50 million. After appointment, the successor Rights Agent will be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent will deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment, the Company will file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Preferred Shares or the Common Shares, and mail a notice thereof in writing to the registered holders of the Right Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, will not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

22. Issuance of New Right Certificates. Notwithstanding any of the provisions of this Agreement or of the Rights to the contrary, the Company may, at its option, issue new Right Certificates evidencing Rights in such form as may be approved by the Board of Directors of the Company to reflect any adjustment or change in the Purchase Price per share and the number or kind of securities issuable upon exercise of the Rights made in accordance with the provisions of this Agreement. In addition, in connection with the issuance or sale by the Company of Common Shares following the Distribution Date and prior to the Expiration Date, the Company (a) will, with respect to Common Shares so issued or sold pursuant to the exercise, exchange or conversion of securities (other than Rights) issued prior to the Distribution Date which are exercisable or exchangeable for, or convertible into Common Shares, and (b) may, in any other case, if deemed necessary, appropriate or desirable by the Board of Directors of the Company, issue Right Certificates representing an equivalent number of Rights as would have been issued in respect of such Common Shares if they had been issued or sold prior to the Distribution Date, as appropriately adjusted as provided herein as if they had been so issued or sold; provided, however, that (i) no such Right Certificate will be issued if, and to the extent that, in its good faith judgment the Board of Directors of the Company determines that the issuance of such Right Certificate could have a material adverse tax consequence to the Company or to the Person to whom or which such Right Certificate otherwise would be issued and (ii) no such Right Certificate will be issued if, and to the extent that, appropriate adjustment otherwise has been made in lieu of the issuance thereof.

23. Redemption. (a) Prior to the Expiration Date, the Board of Directors of the Company may, at its option, redeem all but not less than all of the then-outstanding Rights at the Redemption Price at any time prior to the Close of Business on the later of (i) the Distribution Date and (ii) Share Acquisition Date. Any such redemption will be effective immediately upon the action of the Board of Directors of the Company ordering the same, unless such action of the Board of Directors of the Company expressly provides that such redemption will be effective at a subsequent time or upon the occurrence or nonoccurrence of one or more specified events (in which case such redemption will be effective in accordance with the provisions of such action of the Board of Directors of the Company).

(b) Immediately upon the effectiveness of the redemption of the Rights as provided in Section 23(a), and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights will be to receive the Redemption Price, without interest thereon. Promptly after the effectiveness of the redemption of the Rights as provided in Section 23(a), the Company will publicly announce such redemption and, within 10 calendar days thereafter, will give notice of such redemption to the holders of the then-outstanding Rights by mailing such notice to all such holders at their last addresses as they appear upon the registry books of the Company; provided, however, that the failure to give, or any defect in, any such notice will not affect the validity of the redemption of the Rights. Any notice that is mailed in the manner herein provided will be deemed given, whether or not the holder receives the notice. The notice of redemption mailed to the holders of Rights will state the method by which the payment of the Redemption Price will be made. The Company may, at its option, pay the Redemption Price in cash, Common Shares (based upon the current per share market price of the Common Shares (determined pursuant to Section 11(d)) at the time of redemption), or any other form of consideration deemed appropriate by the Board of Directors of the Company (based upon the fair market value of such other consideration, determined by the

Board of Directors of the Company in good faith) or any combination thereof. The Company may, at its option, combine the payment of the Redemption Price with any other payment being made concurrently to holders of Common Shares and, to the extent that any such other payment is discretionary, may reduce the amount thereof on account of the concurrent payment of the Redemption Price. If legal or contractual restrictions prevent the Company from paying the Redemption Price (in the form of consideration deemed appropriate by the Board of Directors of the Company) at the time of redemption, the Company will pay the Redemption Price, without interest, promptly after such time as the Company ceases to be so prevented from paying the Redemption Price.

24. Exchange. (a) The Board of Directors of the Company may, at its option, at any time after the later of the Share Acquisition Date and the Distribution Date, exchange all or part of the then-outstanding and exercisable Rights (which will not include Rights that have become void pursuant to the provisions of Section 11(a)(ii)) for Common Shares at an exchange ratio of one Common Share per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the Record Date (such exchange ratio being hereinafter referred to as the "***Exchange Ratio***"). Any such exchange will be effective immediately upon the action of the Board of Directors of the Company ordering the same, unless such action of the Board of Directors of the Company expressly provides that such exchange will be effective at a subsequent time or upon the occurrence or nonoccurrence of one or more specified events (in which case such exchange will be effective in accordance with the provisions of such action of the Board of Directors of the Company). Prior to effecting an exchange pursuant to this Section 24, the Board of Directors of the Company may direct the Company to enter into a Trust Agreement in such form and with such terms as the Board of Directors of the Company shall approve (the "***Trust Agreement***"). If the Board of Directors of the Company so directs, the Company shall enter into the Trust Agreement and shall issue to the trust created by such agreement (the "***Trust***") all of the shares of Common Stock issuable pursuant to the exchange, and all Persons entitled to receive shares pursuant to the exchange shall be entitled to receive such shares (and any dividends or distributions made thereon after the date on which such shares are deposited in the Trust) only from the Trust and solely upon compliance with the relevant terms and provisions of the Trust Agreement. Notwithstanding the foregoing, the Board of Directors of the Company will not be empowered to effect such exchange at any time after any Person (other than the Company or any Related Person), who or which, together with all Affiliates and Associates of such Person, becomes the Beneficial Owner of 50% or more of the then-outstanding Common Shares.

(b) Immediately upon the effectiveness of the exchange of any Rights as provided in Section 24(a), and without any further action and without any notice, the right to exercise such Rights will terminate and the only right with respect to such Rights thereafter of the holder of such Rights will be to receive that number of Common Shares equal to the number of such Rights held by such holder multiplied by the Exchange Ratio. Promptly after the effectiveness of the exchange of any Rights as provided in Section 24(a), the Company will publicly announce such exchange and, within 10 calendar days thereafter, will give notice of such exchange to all of the holders of such Rights at their last addresses as they appear upon the registry books of the Rights Agent; provided, however, that the failure to give, or any defect in, such notice will not affect the validity of such exchange. Any notice that is mailed in the manner herein provided will be deemed given, whether or not the holder receives the notice. Each such notice of exchange

will state the method by which the exchange of the Common Shares for Rights will be effected and, in the event of any partial exchange, the number of Rights which will be exchanged. Any partial exchange will be effected pro rata based on the number of Rights (other than Rights which have become void pursuant to the provisions of Section 11(a)(ii)) held by each holder of Rights.

(c) In any exchange pursuant to this Section 24, the Company, at its option, may substitute for any Common Share exchangeable for a Right (i) equivalent common shares (as such term is used in Section 11(a)(iii)), (ii) cash, (iii) debt securities of the Company, (iv) other assets, or (v) any combination of the foregoing, in any event having an aggregate value, as determined in good faith by the Board of Directors of the Company (whose determination will be described in a statement filed with the Rights Agent), equal to the current market value of one Common Share (determined pursuant to Section 11(d)), on the Trading Day immediately preceding the date of the effectiveness of the exchange pursuant to this Section 24.

25. Notice of Certain Events. (a) If, after the Distribution Date, the Company proposes (i) to pay any dividend payable in stock of any class to the holders of Preferred Shares or to make any other distribution to the holders of Preferred Shares (other than a regular periodic cash dividend), (ii) to offer to the holders of Preferred Shares rights, options or warrants to subscribe for or to purchase any additional Preferred Shares or shares of stock of any class or any other securities, rights or options, (iii) to effect any reclassification of its Preferred Shares (other than a reclassification involving only the subdivision of outstanding Preferred Shares), (iv) to effect any consolidation or merger into or with, or to effect any sale or other transfer (or to permit one or more of its Subsidiaries to effect any sale or other transfer), in one or more transactions, of assets or earning power (including, without limitation, securities creating any obligation on the part of the Company and/or any of its Subsidiaries) representing more than 50% of the assets and earning power of the Company and its Subsidiaries, taken as a whole, to any other Person or Persons other than the Company or one or more of its wholly owned Subsidiaries, (v) to effect the liquidation, dissolution or winding up of the Company, or (vi) to declare or pay any dividend on the Common Shares payable in Common Shares or to effect a subdivision, combination or reclassification of the Common Shares then, in each such case, the Company will give to each holder of a Right Certificate, to the extent feasible and in accordance with Section 26, a notice of such proposed action, which specifies the record date for the purposes of such stock dividend, distribution or offering of rights, options or warrants, or the date on which such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution or winding up is to take place and the date of participation therein by the holders of the Common Shares and/or Preferred Shares, if any such date is to be fixed, and such notice will be so given, in the case of any action covered by clause (i) or (ii) above, at least 10 calendar days prior to the record date for determining holders of the Preferred Shares for purposes of such action, and, in the case of any such other action, at least 10 calendar days prior to the date of the taking of such proposed action or the date of participation therein by the holders of the Common Shares and/or Preferred Shares, whichever is the earlier.

(b) In case any Triggering Event occurs, then, in any such case, the Company will as soon as practicable thereafter give to the Rights Agent and each holder of a Right Certificate, in accordance with Section 26, a notice of the occurrence of such event, which specifies the event and the consequences of the event to holders of Rights.

(c) Notwithstanding anything in this Agreement to the contrary, prior to the Distribution Date, a filing by the Company with the Securities and Exchange Commission shall constitute sufficient notice to the holders of any Rights or of any Common Shares for purposes of this Agreement.

26. Notices. (a) Notices or demands authorized by this Agreement to be given or made by the Rights Agent or by the holder of any Right Certificate to or on the Company will be sufficiently given or made if sent by first class mail or overnight delivery service, postage prepaid, addressed (until another address is filed in writing with the Rights Agent) as follows:

SunPower Corporation
3939 North First Street
San Jose, California 95134
Attention: General Counsel

(b) Subject to the provisions of Section 21 hereof, any notice or demand authorized by this Agreement to be given or made by the Company or by the holder of any Right Certificate to or on the Rights Agent will be sufficiently given or made if sent by first-class mail or overnight delivery service, postage prepaid, addressed (until another address is filed in writing with the Company) as follows:

Computershare Trust Company, N.A.
250 Royall Street
Canton, Massachusetts 02021
Attention: Client Services

(c) Notices or demands authorized by this Agreement to be given or made by the Company or the Rights Agent to the holder of any Right Certificate (or, if prior the Distribution Date, to the holder of any Common Shares) will be sufficiently given or made if sent by first class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Company.

27. Supplements and Amendments. Prior to the time at which the Rights cease to be redeemable pursuant to Section 23, and subject to the penultimate sentence of this Section 27, the Company may in its sole and absolute discretion, and the Rights Agent will if the Company so directs, supplement or amend any provision of this Agreement in any respect without the approval of any holders of Rights or Common Shares. From and after the time at which the Rights cease to be redeemable pursuant to Section 23, and subject to the penultimate sentence of this Section 27, the Company may, and the Rights Agent will if the Company so directs, supplement or amend this Agreement without the approval of any holders of Rights or Common Shares in order (i) to cure any ambiguity, (ii) to correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions herein, (iii) to shorten or lengthen any time period hereunder, or (iv) to supplement or amend the provisions hereunder in any manner which the Company may deem desirable; provided, however, that no such supplement or amendment shall adversely affect the interests of the holders of Rights as such (other than an Acquiring Person or an Affiliate or Associate of an Acquiring Person), and no such supplement or amendment shall cause the Rights again to become redeemable or cause this

Agreement again to become supplementable or amendable otherwise than in accordance with the provisions of this sentence. Without limiting the generality or effect of the foregoing, this Agreement may be supplemented or amended to provide for such voting powers for the Rights and such procedures for the exercise thereof, if any, as the Board of Directors of the Company may determine to be appropriate. Upon the delivery of a certificate from an officer of the Company which states that the proposed supplement or amendment is in compliance with the terms of this Section 27, the Rights Agent will execute such supplement or amendment; provided, however, that the Rights Agent may refuse to execute any amendment that adversely affects its rights, duties or obligations under this Agreement. Notwithstanding anything in this Agreement to the contrary, no supplement or amendment may be made which decreases the stated Redemption Price to an amount less than $0.001 per Right. Notwithstanding anything in this Agreement to the contrary, the limitations on the ability of the Board of Directors of the Company to amend this Agreement set forth in this Section 27 shall not affect the power or ability of the Board of Directors of the Company to take any other action that is consistent with its fiduciary duties under Delaware law, including, without limitation, accelerating or extending the Expiration Date or making any other amendment to this Agreement that is permitted by this Section 27 or adopting a new stockholder rights plan with such terms as the Board of Directors of the Company determines in its sole discretion to be appropriate.

28. Successors; Certain Covenants. All the covenants and provisions of this Agreement by or for the benefit of the Company or the Rights Agent will be binding on and inure to the benefit of their respective successors and assigns hereunder.

29. Benefits of This Agreement. Nothing in this Agreement will be construed to give to any Person other than the Company, the Rights Agent, and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Shares) any legal or equitable right, remedy or claim under this Agreement. This Agreement will be for the sole and exclusive benefit of the Company, the Rights Agent, and the registered holders of the Right Certificates (or prior to the Distribution Date, the Common Shares).

30. Governing Law. This Agreement, each Right and each Right Certificate issued hereunder will be deemed to be a contract made under the internal substantive laws of the State of Delaware and for all purposes will be governed by and construed in accordance with the internal substantive laws of such State applicable to contracts to be made and performed entirely within such State.

31. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement will remain in full force and effect and will in no way be affected, impaired or invalidated; provided, however, that nothing contained in this Section 31 will affect the ability of the Company under the provisions of Section 27 to supplement or amend this Agreement to replace such invalid, void or unenforceable term, provision, covenant or restriction with a legal, valid and enforceable term, provision, covenant or restriction.

32. Descriptive Headings, Etc. Descriptive headings of the several Sections of this Agreement are inserted for convenience only and will not control or affect the meaning or

construction of any of the provisions hereof. Unless otherwise expressly provided, references herein to Articles, Sections and Exhibits are to Articles, Sections and Exhibits of or to this Agreement.

33. Determinations and Actions by the Board. For all purposes of this Agreement, any calculation of the number of Common Shares outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding Common Shares of which any Person is the Beneficial Owner, will be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the General Rules and Regulations under the Exchange Act. The Board of Directors of the Company will have the exclusive power and authority to administer this Agreement and to exercise all rights and powers specifically granted to the Board of Directors of the Company or to the Company, or as may be necessary or advisable in the administration of this Agreement, including, without limitation, the right and power to (i) interpret the provisions of this Agreement (including, without limitation, Section 27, this Section 33 and other provisions hereof relating to its powers or authority hereunder) and (ii) make all determinations deemed necessary or advisable for the administration of this Agreement (including, without limitation, any determination contemplated by Section 1(a) or any determination as to whether particular Rights shall have become void). All such actions, calculations, interpretations and determinations (including, for purposes of clause (y) below, any omission with respect to any of the foregoing) which are done or made by the Board of Directors of the Company in good faith will (x) be final, conclusive and binding on the Company, the Rights Agent, the holders of the Rights and all other parties and (y) not subject the Board of Directors of the Company to any liability to any Person, including, without limitation, the Rights Agent and the holders of the Rights.

34. Prior Agreement. This Agreement amends and restates the Original Agreement, which shall, without further action, be superseded as of the time this Agreement becomes effective.

35. Counterparts. This Agreement may be executed in any number of counterparts (including by fax and .pdf) and each of such counterparts will for all purposes be deemed to be an original, and all such counterparts will together constitute but one and the same instrument. A signature to this Agreement transmitted electronically will have the same authority, effect and enforceability as an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the effective time stated above.

SUNPOWER CORPORATION

By: _____

Name:
Title:

COMPUTERSHARE TRUST COMPANY, N.A.

By: _____

Name:
Title:

[Note: This is the original Certificate of Designation, which will need to be amended when the Rights Agreement is amended and restated.]

CERTIFICATE OF DESIGNATION
of
SERIES A JUNIOR PARTICIPATING
PREFERRED STOCK
of
SUNPOWER CORPORATION

(Pursuant to Section 151 of the
General Corporation Law of the State of Delaware)

SunPower Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "***Company***"), DOES HEREBY CERTIFY:

That, pursuant to authority vested in the Board of Directors of the Company by its Restated Certificate of Incorporation, and pursuant to the provisions of Section 151 of the General Corporation Law, the Board of Directors of the Company has adopted the following resolution providing for the issuance of a series of Preferred Stock:

RESOLVED, that pursuant to the authority expressly granted to and vested in the Board of Directors of the Company (the "***Board of Directors***" or the "***Board***") by the Restated Certificate of Incorporation of the Company, a series of Preferred Stock, par value $0.001 per share (the "***Preferred Stock***"), of the Company be, and it hereby is, created, and that the designation and amount thereof and the powers, designations, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof are as follows:

I. Designation and Amount

The shares of such series will be designated as Series A Junior Participating Preferred Stock (the "***Series A Preferred***") and the number of shares constituting the Series A Preferred is **[2,175,000]**. Such number of shares may be increased or decreased by resolution of the Board; provided, however, that no decrease will reduce the number of shares of Series A Preferred to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Company convertible into Series A Preferred.

II. Dividends and Distributions

(a) Subject to the rights of the holders of any shares of any series of Preferred Stock ranking prior to the Series A Preferred with respect to dividends, the holders of shares of Series A Preferred, in preference to the holders of Class A Common Stock, par value $0.001 per share (the "***Class A Common Stock***"), and the holders of Common Stock, par value $0.001 per share (the "***Common Stock***," and together with the Class A Common Stock, the "***Common Stock***") of the Company, and of any other junior stock, will be entitled to receive, when, as and if declared by the Board out of funds legally available for the purpose, dividends payable in cash (except as otherwise provided below) on such dates as are from time to time established for the payment of dividends on the Common Stock (each such date being referred to herein as a "***Dividend Payment Date***"), commencing on the first Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred (the "***First Dividend Payment Date***"), in an amount per share (rounded to the nearest cent) equal to the greater of (i) $1.00 or (ii) subject to the provision for adjustment hereinafter set forth, one hundred times the aggregate per share amount of all cash dividends, and one hundred times the aggregate per share amount (payable in kind) of all non-cash dividends, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Dividend Payment Date or, with respect to the First Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred. In the event that the Company at any time (i) declares a dividend on the outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivides the outstanding shares of Common Stock, (iii) combines the outstanding shares of Common Stock into a smaller number of shares, or (iv) issues any shares of its capital stock in a reclassification of the outstanding shares of Common Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), then, in each such case and regardless of whether any shares of Series A Preferred are then issued or outstanding, the amount to which holders of shares of Series A Preferred would otherwise be entitled immediately prior to such event under clause (ii) of the preceding sentence will be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) The Company will declare a dividend on the Series A Preferred as provided in the immediately preceding paragraph immediately after it declares a dividend on the Common Stock (other than a dividend payable in shares of Common Stock). Each such dividend on the Series A Preferred will be payable immediately prior to the time at which the related dividend on the Common Stock is payable.

(c) Dividends will accrue on outstanding shares of Series A Preferred from the Dividend Payment Date next preceding the date of issue of such shares, unless (i) the date of issue of such shares is prior to the record date for the First Dividend Payment Date, in which case dividends on such shares will accrue from the date of the first issuance of a share of Series A Preferred or (ii) the date of issue is a Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred entitled to receive a dividend and before such Dividend Payment Date, in either of which events such dividends will accrue from

such Dividend Payment Date. Accrued but unpaid dividends will cumulate from the applicable Dividend Payment Date but will not bear interest. Dividends paid on the shares of Series A Preferred in an amount less than the total amount of such dividends at the time accrued and payable on such shares will be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board may fix a record date for the determination of holders of shares of Series A Preferred entitled to receive payment of a dividend or distribution declared thereon, which record date will be not more than 60 calendar days prior to the date fixed for the payment thereof.

III. Voting Rights

The holders of shares of Series A Preferred will have the following voting rights:

(a) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred will entitle the holder thereof to one hundred votes on all matters submitted to a vote of the stockholders of the Company. In the event the Company at any time (i) declares a dividend on the outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivides the outstanding shares of Common Stock, (iii) combines the outstanding shares of Common Stock into a smaller number of shares, or (iv) issues any shares of its capital stock in a reclassification of the outstanding shares of Common Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), then, in each such case and regardless of whether any shares of Series A Preferred are then issued or outstanding, the number of votes per share to which holders of shares of Series A Preferred would otherwise be entitled immediately prior to such event will be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) Except as otherwise provided herein, in any other Preferred Stock Designation creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series A Preferred and the holders of shares of Common Stock and any other capital stock of the Company having general voting rights will vote together as one class on all matters submitted to a vote of stockholders of the Company.

(c) Except as set forth in the Restated Certificate of Incorporation or herein, or as otherwise provided by law, holders of shares of Series A Preferred will have no voting rights.

IV. Certain Restrictions

(a) Whenever dividends or other dividends or distributions payable on the Series A Preferred are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred outstanding have been paid in full, the Company will not:

(i) Declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the shares of Series A Preferred;

(ii) Declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the shares of Series A Preferred, except dividends paid ratably on the shares of Series A Preferred and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) Redeem, purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the shares of Series A Preferred; provided, however, that the Company may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Company ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the shares of Series A Preferred; or

(iv) Redeem, purchase or otherwise acquire for consideration any shares of Series A Preferred, or any shares of stock ranking on a parity with the shares of Series A Preferred, except in accordance with a purchase offer made in writing or by publication (as determined by the Board) to all holders of such shares upon such terms as the Board, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, may determine in good faith will result in fair and equitable treatment among the respective series or classes.

(b) The Company will not permit any majority-owned subsidiary of the Company to purchase or otherwise acquire for consideration any shares of stock of the Company unless the Company could, under paragraph (a) of this Article IV, purchase or otherwise acquire such shares at such time and in such manner.

V. Reacquired Shares

Any shares of Series A Preferred purchased or otherwise acquired by the Company in any manner whatsoever will be retired and canceled promptly after the acquisition thereof. All such shares will upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Restated Certificate of Incorporation of the Company, or in any other Preferred Stock Designation creating a series of Preferred Stock or any similar stock or as otherwise required by law.

VI. Liquidation, Dissolution or Winding Up

Upon any liquidation, dissolution or winding up of the Company, no distribution will be made (a) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the shares of Series A Preferred unless, prior thereto, the holders of shares of Series A Preferred have received $100 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment; provided, however, that the holders of shares of Series A Preferred will be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to one hundred times the aggregate amount to be distributed per share

to holders of shares of Common Stock or (b) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the shares of Series A Preferred, except distributions made ratably on the shares of Series A Preferred and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Company at any time (i) declares a dividend on the outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivides the outstanding shares of Common Stock, (iii) combines the outstanding shares of Common Stock into a smaller number of shares, or (iv) issues any shares of its capital stock in a reclassification of the outstanding shares of Common Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), then, in each such case and regardless of whether any shares of Series A Preferred are then issued or outstanding, the aggregate amount to which each holder of shares of Series A Preferred would otherwise be entitled immediately prior to such event under the proviso in clause (a) of the preceding sentence will be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

VII. Consolidation, Merger, Etc.

In the event that the Company enters into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then, in each such case, each share of Series A Preferred will at the same time be similarly exchanged for or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to one hundred times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Company at any time (a) declares a dividend on the outstanding shares of Common Stock payable in shares of Common Stock, (b) subdivides the outstanding shares of Common Stock, (c) combines the outstanding shares of Common Stock in a smaller number of shares, or (d) issues any shares of its capital stock in a reclassification of the outstanding shares of Common Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), then, in each such case and regardless of whether any shares of Series A Preferred are then issued or outstanding, the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred will be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

VIII. Redemption

The shares of Series A Preferred are not redeemable.

IX. Rank

The Series A Preferred rank, with respect to the payment of dividends and the distribution of assets, pari passu with the Series B Junior Participating Preferred Stock and junior to all other series of the Company's Preferred Stock.

X. Amendment

Notwithstanding anything contained in the Restated Certificate of Incorporation of the Company to the contrary and in addition to any other vote required by applicable law, the Restated Certificate of Incorporation of the Company may not be amended in any manner that would materially alter or change the powers, preferences or special rights of the Series A Preferred so as to affect them adversely without the affirmative vote of the holders of at least 80% of the outstanding shares of Series A Preferred, voting together as a single series.

IN WITNESS WHEREOF, this Certificate of Designation is executed on behalf of the Company by its [ ] and attested by its [ ] this __ day of 20__.

SUNPOWER CORPORATION

By: _____
Name:
Title:

Attest:

_____
Name:
Title:

EXHIBIT B

FORM OF RIGHT CERTIFICATE

Certificate No. R-_____ _____ Rights

NOT EXERCISABLE AFTER THE EXPIRATION DATE (AS DEFINED IN THE RIGHTS AGREEMENT), SUBJECT TO POSSIBLE EXTENSION AT THE OPTION OF THE COMPANY, OR EARLIER IF REDEEMED, EXCHANGED OR AMENDED. THE RIGHTS ARE SUBJECT TO REDEMPTION, EXCHANGE AND AMENDMENT AT THE OPTION OF THE COMPANY, ON THE TERMS SET FORTH IN THE RIGHTS AGREEMENT. UNDER CERTAIN CIRCUMSTANCES SPECIFIED IN THE RIGHTS AGREEMENT, RIGHTS THAT ARE OR WERE BENEFICIALLY OWNED BY AN ACQUIRING PERSON OR AN AFFILIATE OR AN ASSOCIATE OF AN ACQUIRING PERSON (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT) OR A TRANSFEREE THEREOF MAY BECOME NULL AND VOID.

Right Certificate

SUNPOWER CORPORATION

This certifies that _____, or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions, and conditions of the Amended and Restated Rights Agreement, dated as of **[—]**, 2011 (as it may be amended or supplemented from time to time, the "***Rights Agreement***"), between SunPower Corporation, a Delaware corporation (the "***Company***"), and Computershare Trust Company, N.A. (the "***Rights Agent***"), to purchase from the Company at any time after the Distribution Date (as such term is defined in the Rights Agreement) and prior to 5:00 p.m. (New York City time) on the Expiration Date (as such term is defined in the Rights Agreement) at the principal office or offices of the Rights Agent designated for such purpose, one one-hundredth of a fully paid nonassessable share of Series A Junior Participating Preferred Stock, par value $0.001 per share (the "***Preferred Shares***"), of the Company, at a purchase price of $450.00 per one one-hundredth of a Preferred Share (the "***Purchase Price***"), upon presentation and surrender of this Right Certificate with the Form of Election to Purchase and related Certificate duly executed. If this Right Certificate is exercised in part, the holder will be entitled to receive upon surrender hereof another Right Certificate(s) for the number of whole Rights not exercised. The number of Rights evidenced by this Right Certificate (and the number of one one-hundredths of a Preferred Share which may be purchased upon exercise thereof) set forth above, and the Purchase Price set forth above, are the number and Purchase Price as of the date of the Rights Agreement, based on the Preferred Shares as constituted at such date.

As provided in the Rights Agreement, the Purchase Price and/or the number and/or kind of securities issuable upon the exercise of the Rights evidenced by this Right Certificate are subject to adjustment upon the occurrence of certain events.

This Right Certificate is subject to all of the terms, provisions and conditions of the Rights Agreement, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Rights Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities of the Rights Agent, the Company and the holders of the Right Certificates, which limitations of rights include the temporary suspension of the exercisability of the Rights under the circumstances specified in the Rights Agreement. Copies of the Rights Agreement can be obtained from the Company without charge upon written request therefor. Terms used herein with initial capital letters and not defined herein are used herein with the meanings ascribed thereto in the Rights Agreement.

Pursuant to the Rights Agreement, from and after the first occurrence of a Flip-in Event, any Rights that are Beneficially Owned by (i) any Acquiring Person (or any Affiliate or Associate of any Acquiring Person), (ii) a transferee of any Acquiring Person (or any such Affiliate or Associate) who becomes a transferee after the occurrence of a Flip-in Event, or (iii) a transferee of any Acquiring Person (or any such Affiliate or Associate) who became a transferee prior to or concurrently with the occurrence of a Flip-in Event pursuant to either (a) a transfer from an Acquiring Person to holders of its equity securities or to any Person with whom it has any continuing agreement, arrangement or understanding regarding the transferred Rights or (b) a transfer which the Board of Directors of the Company has determined is part of a plan, arrangement or understanding which has the purpose or effect of avoiding certain provisions of the Rights Agreement, and subsequent transferees of any of such Persons, will be void without any further action and any holder of such Rights will thereafter have no rights whatsoever with respect to such Rights under any provision of the Rights Agreement. From and after the occurrence of a Flip-in Event, no Right Certificate will be issued that represents Rights that are or have become void pursuant to the provisions of the Rights Agreement, and any Right Certificate delivered to the Rights Agent that represents Rights that are or have become void pursuant to the provisions of the Rights Agreement will be canceled.

This Right Certificate, with or without other Right Certificates, may be transferred, split up, combined or exchanged for another Right Certificate or Right Certificates entitling the holder to purchase a like number of one one-hundredths of a Preferred Share (or other securities, as the case may be) as the Right Certificate or Right Certificates surrendered entitled such holder (or former holder in the case of a transfer) to purchase, upon presentation and surrender hereof at the principal office of the Rights Agent designated for such purpose, with the Form of Assignment (if appropriate) and the related Certificate duly executed.

Subject to the provisions of the Rights Agreement, the Rights evidenced by this Right Certificate may be redeemed by the Company at its option at a redemption price of $0.001 per Right or may be exchanged in whole or in part. The Rights Agreement may be supplemented and amended by the Company, as provided therein.

The Company is not required to issue fractions of Preferred Shares (other than fractions which are integral multiples of one one-hundredth of a Preferred Share, which may, at the option of the Company, be evidenced by depositary receipts) or other securities issuable upon the exercise of any Right or Rights evidenced hereby. In lieu of issuing such fractional Preferred

Shares or other securities, the Company may make a cash payment, as provided in the Rights Agreement.

No holder of this Right Certificate, as such, will be entitled to vote, receive dividends, or be deemed for any purpose the holder of Preferred Shares or of any other securities of the Company which may at any time be issuable upon the exercise of the Right or Rights represented hereby, nor will anything contained herein or in the Rights Agreement be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in the Rights Agreement), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Right Certificate have been exercised or exchanged in accordance with the provisions of the Rights Agreement.

This Right Certificate will not be valid or obligatory for any purpose until it has been countersigned by the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Company and its corporate seal. Dated as of _____, _____.

ATTEST:

_____

SUNPOWER CORPORATION

By: _____
Name:
Title:

Countersigned:

COMPUTERSHARE TRUST COMPANY, N.A.

By: _____
Authorized Signature

Form of Reverse Side of Right Certificate

FORM OF ASSIGNMENT

(To be executed by the registered holder if such
holder desires to transfer the Right Certificate)

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto

_____

_____

(Please print name and address of transferee)

_____

_____

this Right Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ Attorney, to transfer the within Right Certificate on the books of the within-named Company, with full power of substitution.

Dated: _____, ____

_____

Signature

Signature Guaranteed: _____

CERTIFICATE

The undersigned hereby certifies by checking the appropriate boxes that:

(1) the Rights evidenced by this Right Certificate [ ] are [ ] are not being sold, assigned, transferred, split up, combined or exchanged by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of any such Person (as such terms are defined in the Rights Agreement);

(2) after due inquiry and to the best knowledge of the undersigned, it [ ] did [ ] did not acquire the Rights evidenced by this Right Certificate from any Person who is, was or became an Acquiring Person or an Affiliate or Associate of an Acquiring Person.

Dated: _____, ____

_____

Signature

FORM OF ELECTION TO PURCHASE

(To be executed if holder desires to
exercise the Right Certificate)

To SunPower Corporation:

The undersigned hereby irrevocably elects to exercise _____ Rights represented by this Right Certificate to purchase the one one-hundredths of a Preferred Share or other securities issuable upon the exercise of such Rights and requests that certificates for such securities be issued in the name of and delivered to:

Please insert social security
or other identifying number:

_____

_____

_____

(Please print name and address of transferee)

_____

_____

If such number of Rights is not all the Rights evidenced by this Right Certificate, a new Right Certificate for the balance remaining of such Rights will be registered in the name of and delivered to:

Please insert social security
or other identifying number:

_____

_____

_____

(Please print name and address of transferee)

_____

_____

Dated: _____, ____

_____

Signature

Signature Guaranteed: _____

CERTIFICATE

The undersigned hereby certifies by checking the appropriate boxes that:

(1) the Rights evidenced by this Right Certificate [ ] are [ ] are not being exercised by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of any such Person (as such terms are defined pursuant to the Rights Agreement);

(2) after due inquiry and to the best knowledge of the undersigned, it [ ] did [ ] did not acquire the Rights evidenced by this Right Certificate from any Person who is, was, or became an Acquiring Person or an Affiliate or Associate of an Acquiring Person.

Dated: _____, ____

_____

Signature

NOTICE

Signatures on the foregoing Form of Assignment and Form of Election to Purchase and in the related Certificates must correspond to the name as written upon the face of this Right Certificate in every particular, without alteration or enlargement or any change whatsoever.

Signatures must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved medallion signature program) pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended.

EXHIBIT C

SUMMARY OF RIGHTS TO PURCHASE PREFERRED STOCK

The Board of Directors of SunPower Corporation has adopted a rights plan pursuant to which one preferred share purchase right has been issued in respect of each of the Company's outstanding common shares. The terms of the rights and the rights plan are set forth in an Amended and Restated Rights Agreement, dated as of **[—]**, 2011, as it may be amended from time to time, by and between SunPower and Computershare Trust Company, N.A., as rights agent.

Our Board adopted the rights plan to protect our stockholders from coercive takeover practices or takeover bids that are inconsistent with their best interests. In general terms, the rights plan imposes a significant penalty upon any person or group (other than certain parties related to SunPower and certain "restricted persons," as defined in the rights plan) that acquires (1) during the Terra Stockholder Approval Period (as defined in the rights plan), 10% or more of our total voting power, or (2) other than during the Terra Stockholder Approval Period, 20% or more of our outstanding common shares, in each case without the prior approval of our Board. A person or group that acquires common shares in excess of the applicable threshold is called an "acquiring person." Any rights held by an acquiring person are void and may not be exercised.

This summary of rights provides a general description of the rights plan. Because it is only a summary, this description should be read together with the entire rights plan, which we incorporate in this summary by reference. We have filed the rights plan with the Securities and Exchange Commission as an exhibit to a registration statement on Form 8-A. Upon written request, we will provide a copy of the rights plan free of charge to any stockholder.

The Rights. One right was issued in respect of each of our outstanding common shares on the record date for the issuance of the rights. If the rights become exercisable, each right would allow its holder to purchase from us one one-hundredth of a share of preferred stock for a purchase price of $450.00. Each fractional preferred share would give the stockholder approximately the same dividend, voting and liquidation rights as does one common share. Prior to exercise, however, a right does not give its holder any dividend, voting or liquidation rights.

Exercisability. The rights will not be exercisable until the earlier of:

- 10 days after a public announcement by SunPower that a person or group has become an acquiring person; and
- 10 business days (or a later date determined by our Board) after a person or group begins a tender or exchange offer that, if completed, would result in that person or group becoming an acquiring person.

We refer to the date that the rights become exercisable as the "distribution date." Until the distribution date, our common share certificates will also evidence the rights and will contain a notation to that effect. Any transfer of common shares prior to the distribution date will constitute a transfer of the associated rights. After the distribution date, the rights will separate

from the common shares and be evidenced by right certificates, which we will mail to all holders of rights that have not become void.

Flip-in Event. After the distribution date, if a person or group already is or becomes an acquiring person, all holders rights, except the acquiring person, may exercise their rights upon payment of the purchase price to purchase our common shares (or other securities or assets as determined by the Board), with a market value of two times the purchase price.

Flip-over Event. After the distribution date, if a flip-in event has already occurred and SunPower is acquired in a merger or similar transaction, all holders of rights except the acquiring person may exercise their rights upon payment of the purchase price, to purchase shares of the acquiring corporation with a market value of two times the purchase price of the rights.

Rights may be exercised to purchase our fractional preferred shares only after the distribution date occurs and prior to the occurrence of a flip-in event as described above. A distribution date resulting from the commencement of a tender offer or exchange offer described in the second bullet point above could precede the occurrence of a flip-in event, in which case the rights could be exercised to purchase our fractional preferred shares. A distribution date resulting from any occurrence described in the first bullet point above would necessarily follow the occurrence of a flip-in event, in which case the rights could be exercised to purchase our common shares or other securities as described above.

Expiration. The rights will expire on September 29, 2018, unless earlier redeemed or exchanged.

Redemption. Our Board may redeem all (but not less than all) of the outstanding rights for a redemption price of $0.001 per right at any time before the later of the distribution date and the date of the first public announcement or disclosure by SunPower that a person or group has become an acquiring person. Once the rights are redeemed, the right to exercise rights will terminate, and the only right of the holders of rights will be to receive the redemption price. The redemption price will be adjusted if we declare a stock split or issue a stock dividend on our common shares.

Exchange. After the later of the distribution date and the date of the first public announcement by SunPower that a person or group has become an acquiring person, but before an acquiring person owns 50% or more of our outstanding common shares, our Board may exchange each right (other than rights that have become void) for one common share or an equivalent security.

Anti-Dilution Provisions. Our Board may adjust the purchase price of the preferred shares, the number of preferred shares issuable and the number of outstanding rights to prevent dilution that may occur as a result of certain events, including among others, a stock dividend, a stock split or a reclassification of the preferred shares or our common shares. No adjustments to the purchase price of less than 1% will be made.

Amendments. Before the time at which the rights cease to be redeemable, our Board may amend or supplement the rights plan without the consent of the holders of the rights, except that no amendment may decrease the redemption price below $0.001 per right. At any time thereafter, our Board may amend or supplement the rights plan only to cure an ambiguity, to alter time

period provisions, to correct inconsistent provisions or to make any additional changes to the rights plan, but only to the extent that those changes do not impair or adversely affect the interests of the holders of rights as such and do not result in the rights again becoming redeemable or cause the rights plan again to become supplementable or amendable otherwise than in accordance with the rights plan. The limitations on our Board's ability to amend the rights plan does not affect our Board's power or ability to take any other action that is consistent with its fiduciary duties, including, without limitation, accelerating or extending the expiration date of the rights, making any amendment to the rights plan that is permitted by the rights plan or adopting a new rights plan with such terms as our Board determines in its sole discretion to be appropriate.

Prior Capital Structure. Previously, our capital structure was composed of Class A Common Stock and Class B Common Stock, but now our only outstanding equity securities are the common shares. In connection with changes made to our capital structure, we amended and restated our prior rights plan.

* * *

Exhibit 10.4

EXECUTION VERSION

GUARANTY

This **GUARANTY** (the "Guaranty"), dated April 28, 2011, is between Total S.A., a *société anonyme* organized under the laws of the Republic of France (the "Guarantor"), and SunPower Corporation, a Delaware corporation (the "Company").

RECITALS

A. It is proposed that, on the date hereof, Total Gas & Power USA, SAS, a *société par actions simplifiée* organized under the laws of the Republic of France and an indirect wholly owned subsidiary of the Guarantor ("Acquirer"), and the Company enter into that certain Affiliation Agreement, dated as of the date hereof, by and between the Acquirer and the Company (the "Affiliation Agreement"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Affiliation Agreement.

B. It is a condition to the willingness of the Company to enter into the Affiliation Agreement that the Guarantor guarantee to the Company the performance by the Guarantor, the Acquirer and each Terra Controlled Corporation of their respective obligations under the Affiliation Agreement.

C. The Guarantor owns, indirectly through one or more wholly owned subsidiaries, 100% of the equity interest in the Acquirer and will receive direct and indirect benefits from the Acquirer's performance of the Affiliation Agreement.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. Guaranty.

(a) The Guarantor unconditionally guarantees to the Company, (i) the full and prompt payment when due of all of Guarantor's, Acquirer's, or any Terra Controlled Corporation's payment obligations under the Affiliation Agreement and (ii) the full and prompt performance when due of all of the Guarantor's, Acquirer's, or any Terra Controlled Corporation's representations, warranties, covenants, duties, liabilities, obligations, and agreements (including for breach) contained in the Affiliation Agreement (collectively, the "Obligations").

(b) This Guaranty is a guaranty of payment, and not of collection, and is absolute, unconditional, continuing and irrevocable, constitutes an independent guaranty of the Obligations, and is in no way conditioned on or contingent upon (i) except as otherwise expressly set forth in this Guaranty, any attempt to enforce in whole or in part any of the Obligations, (ii) the existence or continuance of the Acquirer as a legal entity, (iii) the consolidation or merger of the Acquirer with or into any other entity, (iv) the sale, lease or disposition by the Acquirer of all or substantially all of its assets to any other entity, (v) the bankruptcy or insolvency of the Acquirer, (vi) the admission by the Acquirer of its inability to pay its debts as they mature, (vii) the making by the Acquirer of a general assignment for the

benefit of, or entering into a composition or arrangement with, creditors, (viii) the adequacy of any means the Company may have of obtaining payment related to the Obligations, or (ix) the existence of any claim, set-off or other right which the Acquirer or the Guarantor may have at any time against the Company (other than rights of the Acquirer pursuant to the Affiliation Agreement), whether in connection with the Obligations or otherwise. If the Acquirer fails to pay or perform any Obligations to the Company that are subject to this Guaranty as and when they are due and such failure and the consequences thereof have not been cured promptly or of a nature that cannot be cured, then, upon receipt of written notice from the Company specifying the failure, the Guarantor shall forthwith perform, or cause to be performed, any such obligation, responsibility or undertaking as and when required pursuant to the terms and conditions of the Affiliation Agreement, including, without limitation, all payment obligations under the Affiliation Agreement, it being understood and agreed that in no event shall the Company have the right to proceed against the Guarantor under this Guaranty or otherwise in respect of the Obligations unless the Acquirer has failed to cure promptly any failure by Acquirer to pay or perform any Obligations to the Company that are subject to this Guaranty as and when they are due (including the consequences thereof) or such failure or the consequences thereof are of a nature that cannot be cured and the Company has delivered written notice to the Guarantor specifying the failure to cure or that such failure is of a nature that cannot be cured. Each failure by the Acquirer to pay or perform any Obligations shall give rise to a separate cause of action, and separate suits may be brought hereunder as each cause of action arises. If any payment in respect of any Obligation, or any portion thereof, is rescinded or must otherwise be returned for any reason whatsoever, including with respect to an insolvency of the Acquirer, the Guarantor shall remain liable hereunder with respect to such Obligation as if such payment had not been made.

(c) The Company may, at any time and from time to time, without the consent of or notice to the Guarantor, except such notice as may be required by applicable statute that cannot be waived, without incurring responsibility to the Guarantor, and without impairing, discharging or releasing the performance of the Obligations, in whole or in part, (i) exercise or delay or refrain from exercising any rights against the Acquirer or others (including the Guarantor) or otherwise act or delay or refrain from acting, (ii) change the time, place or manner of payment of the Obligations, or rescind, settle waive, compromise, consolidate or otherwise amend or modify any of the terms or provisions of the Affiliation Agreement in accordance with the terms thereof and/or any other obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any obligations and liabilities which may be due to the Company or others, and (iii) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property pledged or mortgaged by anyone to secure or in any manner securing the Obligations hereby guaranteed.

(d) The Company may not, without the prior written consent of the Guarantor, assign its rights and interests under this Guaranty, in whole or in part.

(e) No invalidity, irregularity or unenforceability of the Obligations hereby guaranteed shall affect, impair, or be a defense to this Guaranty. This is a continuing Guaranty for which the Guarantor receives continuing consideration and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in

reliance hereon and this Guaranty is therefore irrevocable without the prior written consent of the Company.

(f) All payments hereunder shall be made in lawful money of the United States, in immediately available funds. The Guarantor promises and undertakes to make all payments hereunder free and clear of any deduction, offset, defense, claim or counterclaim of any kind.

(g) For the avoidance of doubt, if the Acquirer fails to perform any of the Obligations required to be specifically performed by it, the Guarantor shall specifically perform or cause such Obligations to be specifically performed, in each case in accordance with the terms of the Affiliation Agreement.

(h) Guarantor hereby covenants and agrees that it shall not institute, and shall cause its Affiliates not to institute, any proceeding asserting that this Guaranty or any portion thereof is illegal, invalid or unenforceable in accordance with its terms.

2. Representations and Warranties. The Guarantor represents and warrants to the Company that:

(a) the Guarantor is a *société anonyme* duly organized, validly, existing and in good standing under the laws of its jurisdiction of incorporation or formation;

(b) the execution, delivery and performance by the Guarantor of this Guaranty are within the power of the Guarantor and have been duly authorized by all necessary actions on the part of the Guarantor;

(c) this Guaranty has been duly executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally;

(d) the execution, delivery and performance of this Guaranty do not (i) violate any law, rule or regulation of any governmental authority or (ii) result in the creation or imposition of any material lien, charge, security interest or encumbrance upon any property, asset or revenue of the Guarantor;

(e) no consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority or other person (including, without limitation, the shareholders of the Guarantor) is required in connection with the execution, delivery and performance of this Guaranty or the consummation of the transactions contemplated by the Affiliation Agreement, except such consents, approvals, orders, authorizations, registrations, declarations and filings that are so required and which have been obtained and are in full force and effect;

(f) the Guarantor is not in violation of any law, rule or regulation other than those the consequences of which cannot reasonably be expected to have material adverse effect on the ability of the Guarantor to perform its obligations under this Guaranty; and

(g) no litigation, investigation or proceeding of any court or other governmental tribunal is pending or, to the knowledge of the Guarantor, threatened against the Guarantor which, if adversely determined, could reasonably be expected to have a material adverse effect on the ability of the Guarantor to perform its obligations under this Guaranty.

3. Waivers.

(a) Guarantor, to the extent permitted under applicable law, hereby waives any right to require the Company to (i) except as otherwise expressly set forth in this Guaranty, proceed against the Acquirer or any other guarantor of the Acquirer's obligations under the Affiliation Agreement, (ii) proceed against or exhaust any security received from the Acquirer or any other guarantor of the Acquirer's Obligations under the Affiliation Agreement, or (iii) pursue any other right or remedy in the Company's power whatsoever.

(b) Guarantor further waives, to the fullest extent permitted by applicable law, (i) any defense resulting from the absence, impairment or loss of any right of reimbursement, subrogation, contribution or other right or remedy of the Guarantor against the Acquirer, any other guarantor of the Obligations or any security, (ii) any setoff or counterclaim of the Acquirer or any defense which results from any disability or other defense of the Acquirer or the cessation or stay of enforcement from any cause whatsoever of the liability of the Acquirer (including, without limitation, the lack of validity or enforceability of the Affiliation Agreement), (iii) any right to exoneration of sureties that would otherwise be applicable, (iv) any right of subrogation or reimbursement and, if there are any other guarantors of the Obligations, any right of contribution, and right to enforce any remedy that the Company now has or may hereafter have against the Acquirer, and any benefit of, and any right to participate in, any security now or hereafter received by Company, (v) all presentments, demands for performance, notices of non-performance, notices delivered under the Affiliation Agreement, protests, notice of non-performance default, dishonor, and protest and notices of acceptance of this Guaranty and of the Obligations and of the existence, creation or incurring of new or additional Obligations and notices of any public or private foreclosure sale, and all other notices of any kind, (vi) the benefit of any statute of limitations, (vii) any appraisement, valuation, stay, extension, moratorium redemption or similar law now or hereafter in effect or similar rights for marshalling, and (viii) any right to be informed by the Company of the financial condition of the Acquirer or any other guarantor of the Obligations or any change therein or any other circumstances bearing upon the risk of nonpayment or nonperformance of the Obligations. The Guarantor has the ability to and assumes the responsibility for keeping informed of the financial condition of the Acquirer and any other guarantors of the Obligations and of other circumstances affecting such nonpayment and nonperformance risks.

4. Miscellaneous.

(a) Public Disclosure. Guarantor agrees that it will not issue any press release or other public announcement that would constitute a violation of Section 5.7 of the Tender Offer Agreement as if Guarantor was subject to the same restrictions to which the Acquirer is subject thereunder.

(b) Notices. All notices, requests, demands and other communications that are required or may be given under this Guaranty shall be in writing and shall be personally delivered or sent by certified or registered mail or by a reputable nationwide overnight courier service. If personally delivered, notices, requests, demands and other communications will be deemed to have been duly given at time of actual receipt. If delivered by certified or registered mail or by a reputable nationwide overnight courier service, deemed receipt will be at time evidenced by confirmation of receipt with return receipt requested. In each case notice shall be sent:

if to Guarantor to:

Total S.A.
2, place Jean Millier
La Défense 6
92400 Courbevoie
France
Attention: Patrick de la Chevardière
Attention: Jonathan Marsh

with copies (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304-1050
Attention: David Segre and Richard C. Blake

and

Wilson Sonsini Goodrich & Rosati
Professional Corporation
One Market Street
Spear Tower, Suite 3300
San Francisco, California 94105-1126
Attention: Michael S. Ringler and Denny Kwon

if to the Company, to:

SunPower Corporation
77 Rio Robles
San Jose, CA 95134
Attention: Dennis Arriola and Bruce Ledesma

with copies (which shall not constitute notice) to:

Jones Day
1755 Embarcadero Road

Palo Alto, CA 94303
Attention: R. Todd Johnson
Steve Gillette

and

Jones Day
3161 Michelson Drive, 8th Floor
Irvine, California 92612
Attention: Jonn R. Beeson

or to such other place and with such other copies as the Company or the Guarantor may designate as to itself by written notice to the other pursuant to this Section 4(a).

(b) Nonwaiver. No failure or delay on the Company's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(c) Amendments and Waivers. This Guaranty may not be amended or modified, nor may any of its terms be waived, except by written instruments signed by the Guarantor and the Company. Each waiver or consent under any provision hereof shall be effective only in the specific instances for the purpose for which given.

(d) Assignments. This Guaranty shall be binding upon and inure to the benefit of the Company and the Guarantor and their respective successors and assigns; provided, however, that without the prior written consent of the Company, the Guarantor may not assign its rights and obligations hereunder.

(e) Cumulative Rights, etc. The rights, powers and remedies of the Company under this Guaranty shall be in addition to all rights, powers and remedies given to the Company by virtue of any applicable law, rule or regulation, the Affiliation Agreement or any other agreement, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing the Company's rights hereunder.

(f) Partial Invalidity. If at any time any provision of this Guaranty is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Guaranty nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

(g) Applicable Law; Jurisdiction; Etc.

(i) This Guaranty shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof.

(ii) Each of the parties hereto irrevocably consents and submits itself and its properties and assets to the exclusive jurisdiction and venue in any state court within the

State of Delaware (or, if a state court located within the State of Delaware declines to accept jurisdiction over a particular matter, any court of the United States located in the State of Delaware) in connection with any matter based upon or arising out of this Guaranty or the transactions contemplated hereby, agrees that process may be served upon them in any manner authorized by the laws of the State of Delaware for such Persons and waives and covenants not to assert or plead any objection which such Person might otherwise have to such jurisdiction, venue and process. Each party hereto hereby agrees not to commence any legal proceedings relating to or arising out of this Guaranty or the transactions contemplated hereby in any jurisdiction or courts other than as provided herein.

(iii) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE ACTIONS OF A PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

(j) Attorneys Fees. If any legal action or other proceeding relating to this Guaranty or the enforcement of any provision of this Guaranty is brought, then, to the extent the Company prevails in such litigation or proceeding, Guarantor shall pay on demand all reasonable fees and out of pocket expenses of the Company in connection with such legal action or proceeding.

[Remainder of page intentionally left blank]

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

TOTAL, S.A.

By /s/ Patrick de La Chevardière
Name: Patrick de La Chevardière
Title: Chief Financial Officer

SUNPOWER CORPORATION

By /s/ Thomas H. Werner
Name: Thomas H. Werner
Title: Chief Executive Officer

Exhibit 10.5

EXECUTION COPY

RESEARCH & COLLABORATION AGREEMENT

by and between

TOTAL GAS & POWER USA, SAS

and

SUNPOWER CORPORATION

dated

April 28, 2011

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

RESEARCH & COLLABORATION AGREEMENT

This RESEARCH & COLLABORATION AGREEMENT (this "Agreement"), dated as of April 28, 2011 (the "Execution Date") and effective upon the occurrence of the Offer Closing (as defined in the Tender Offer Agreement) (the date of the occurrence of the Offer Closing, the "Effective Date"), is entered in by and between Total Gas & Power USA, SAS, a *société par actions simplifiée* organized under the laws of the Republic of France with an address at 2, place Jean Millier, La Défense 6, 92400 Courbevoie, France ("Total G&P") and SunPower Corporation, a Delaware corporation, with an address at 77 Rio Robles, San Jose, California 95314 ("SunPower"). Each of Total G&P and SunPower are hereinafter referred to as a "Party," and collectively, the "Parties."

R E C I T A L S:

WHEREAS, in connection with a transaction whereby Total G&P will acquire a majority equity interest in SunPower, the Parties wish to establish a framework pursuant to which the Parties may engage in a long-term research and development collaboration as set forth in this Agreement (the "R&D Collaboration").

WHEREAS, SunPower and Total G&P have complementary technical capabilities and resources that they contemplate exploiting through the R&D Collaboration to further the development of advance technologies in the area of Photovoltaics; including, in the case of SunPower, its expertise in manufacturing Photovoltaic products, and, in the case of Total G&P, its depth of scientific resources and capacity to conduct long term fundamental scientific and industrial research in fields including, among others, solar energy.

WHEREAS, the R&D Collaboration is likely to encompass a number of different Long-term Projects (defined below) and Short or Medium-term Projects (defined below) in a wide range of technical and scientific areas (the "R&D Projects").

WHEREAS, the Parties anticipate that the R&D Collaboration will be managed by a joint committee (the "R&D Strategic Committee") that will identify, plan and manage the R&D Collaboration in accordance with this Agreement.

WHEREAS, the Parties acknowledge, however, that it will not be practical to anticipate and establish all of the legal and business terms that will be applicable to the R&D Collaboration or to each R&D Project. Accordingly, they wish to set forth in this Agreement the broad principles applicable to their potential R&D Collaboration and expect that the R&D Strategic Committee will establish the particular terms governing each particular R&D Project consistent with the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, SunPower and Total G&P hereby agree as follows:

ARTICLE I
DEFINITIONS AND CONSTRUCTION

1.1 Definitions.

(a) "Affiliate" means with respect to a Party, any Person that controls, is controlled by or is under common control with such Party. A Person shall be regarded as being in control of another Person if it controls, directly or indirectly, 50% or more of the voting rights to elect directors and controls the day-to-day operations of such Person or, if the Person is not a corporation, the corresponding managing authority; provided that in jurisdictions where applicable law does not permit 50% control, the maximum percentage of control permitted by the applicable Person. For purposes of this Agreement, SunPower shall not be considered an Affiliate of Total G&P.

(b) "Affiliation Agreement" has the meaning ascribed to such term in the Tender Offer Agreement.

(c) "Annual Collaboration Plan and Budget" is defined in Section 2.3(c).

(d) "Annual Provisional Collaboration Plan and Budget" is defined in Section 2.3(a).

(e) "Audited Party" is defined in Section 2.6(g).

(f) "Auditing Party" is defined in Section 2.6(g).

(g) "Background IPR" means, in respect of a Party and a particular R&D Project, the Intellectual Property Rights, other than Foreground IPR, owned or controlled by that Party or its Affiliates relevant to the particular R&D Project and developed by that Party prior to or otherwise outside of the particular R&D Project.

(h) "Background Technology" means, in respect of a Party and a particular R&D Project, all Technology, other than Foreground Technology, owned or controlled by that Party or its Affiliates, embodying the Background IPR or necessary or useful to the conduct of the applicable R&D Project.

(i) "Co-General Managers" is defined in Section 3.5(b).

(j) "Confidential Information" is defined in Section 8.1.

(k) "Dispute" is defined in Section 10.3(a).

(l) "Extended Term" is defined in Section 6.1.

(m) "Filing Party" is defined in Section 5.8(a).

(n) "Foreground IPR" means all Intellectual Property Rights in the Foreground Technology, whether owned individually or jointly by the Parties.

(o) "Foreground Technology" means, in respect of a particular R&D Project, any Technology developed either individually or jointly by or on behalf of the Parties in the course of the applicable R&D Project.

(p) "Initial R&D Strategic Committee Meeting" is defined in Section 2.2.

(q) "Initial Term" is defined in Section 6.1.

(r) "IPR" or "Intellectual Property Rights" means the rights associated with the following: (a) patents, patent applications (including provisional applications), utility models, design patents, design registrations, certificates of invention and other governmental grants for the protection of inventions or industrial designs anywhere in the world and all reissues, renewals, re-examinations, continuations, continuations-in-part, divisionals, substitutions and extensions of any of the foregoing ("Patents"); (b) trade secret rights and all other rights in or to confidential business or technical information; (c) copyrights in any original works of authorship fixed in any tangible medium of expression as set forth in 17 U.S.C. Section 101 et. seq., any corresponding non-U.S. copyrights under the laws of any jurisdiction, in each case, whether registered or unregistered, and any applications for registration thereof, and moral rights under the laws of any jurisdiction ("Copyrights"); (d) industrial design rights and any registrations and applications therefor; (e) rights in databases and data collections (including knowledge databases, customer lists and customer databases), under the laws of the United States or any other jurisdiction, whether registered or unregistered, and any applications for registration thereof; (f) any rights in mask works, as defined in 17 U.S.C. Section 901, whether registered or unregistered, including applications for registration thereof, and any non-U.S. rights in semiconductor topologies under the laws of any jurisdiction, whether registered or unregistered, including applications for registration thereof; and (g) any similar, corresponding or equivalent rights to any of the foregoing anywhere in the world. Intellectual Property Rights specifically excludes (i) contractual rights (including license grants), (ii) the tangible embodiment of any of the foregoing, and (iii) trademarks, service marks, trade dress rights and similar designation of origin and rights therein; and (iv) Uniform Resource Locators, Web site addresses and domain names.

(s) "Joint Foreground IPRT" is defined in Section 5.3(c).

(t) "Joint IPRT Committee" is defined in Section 5.8(a).

(u) "Long-term Project" means an R&D Project designated by the R&D Strategic Committee as a "*Long-term Project*" in accordance with the terms of this Agreement.

(v) "Material Contract" has the meaning ascribed to such term in the Tender Offer Agreement.

(w) "Non-Filing Party" is defined in Section 5.8(a).

(x) "Non-Technical Business Information" means any and all Confidential Information that does not include information of a technical nature, including but not limited to, any and all Confidential Information that does not include or comprise inventions (patentable or unpatentable), discoveries, know-how, developments, improvements, techniques, formulas,

samples, apparatus, experimental results, correlations, models, technical data, design information.

(y) "Person" means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or other similar entity or organization, including a government or political subdivision, department or agency of a government.

(z) "Photovoltaics" means devices that generate electrical power by directly converting light into electricity at the atomic level.

(aa) "Project IPRT Agreement" is defined in Section 5.1.

(bb) "Project Lead" is defined in Section 3.6.

(cc) "Project Research Plan and Budget" is defined in Section 2.3.

(dd) "Project Staff" is defined in Section 3.7.

(ee) "R&D Collaboration" is defined in the Recitals.

(ff) "R&D Project" is defined in the Recitals.

(gg) "R&D Strategic Committee" is defined in the Recitals.

(hh) "R&D Technical Committee" is defined in Section 3.5(a).

(ii) "Short or Medium-term Project" means an R&D Project designated by the R&D Strategic Committee as a "*Short or Medium-term Project*" in accordance with the terms of this Agreement.

(jj) "Software" means computer programs in source or object code format, computer program changes, computer program enhancements, and/or any documentation related to computer programs.

(kk) "Technology" means Software, designs, design and manufacturing documentation (such as bill of materials, build instructions and test reports), schematics, algorithms, databases, lab notebooks, development and lab equipment, devices, know-how, inventions, invention disclosures (whether or not patentable and whether or not reduced to practice), inventor rights, reports, discoveries, developments, research and test data, blueprints, ideas, compositions, quality records, engineering notebooks, models, processes, procedures, prototypes, patent records, manufacturing and product procedures and techniques, troubleshooting procedures, failure/defect analysis data, drawings, specifications, ingredient or component lists, formulae, plans, proposals, technical data, works of authorship, financial, marketing, customer and business data, pricing and cost information, business and marketing plans, selling information, marketing information, customer and supplier lists and information, and all other confidential and proprietary information and the like, and all tangible embodiments,

whether in electronic, written or other media, of any of the foregoing. Technology does not include Intellectual Property Rights.

(ll) "Tender Offer Agreement" means that certain Tender Offer Agreement, dated of even date herewith, by and between Total G&P and SunPower.

(mm) "Term" is defined in Section 6.1.

1.2 Construction.

(a) For purposes of this Agreement, whenever the context requires: the singular number will include the plural, and vice versa; the masculine gender will include the feminine and neuter genders; the feminine gender will include the masculine and neuter genders; and the neuter gender will include the masculine and feminine genders.

(b) The Parties hereto agree that they have had the opportunity to discuss this Agreement with and obtain advice from their legal counsel, have had sufficient time to, and have carefully read and fully understand all the provisions of this Agreement, and are knowingly and voluntarily entering into this Agreement. Therefore, the Parties waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

(c) As used in this Agreement, the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation."

(d) Except as otherwise indicated, all references in this Agreement to "Sections" and "Exhibits" are intended to refer to Sections of this Agreement and Exhibits to this Agreement.

(e) The headings in this Agreement are for convenience of reference only, will not be deemed to be a part of this Agreement, and will not be referred to in connection with the construction or interpretation of this Agreement.

ARTICLE II
R&D COLLABORATION

2.1 R&D Collaboration. The R&D Collaboration will focus on advancing technologies in the area of Photovoltaics. The primary purpose of the R&D Collaboration is to (a) maintain and expand SunPower's technology leadership position in crystalline silicon domain; (ii) ensure SunPower's industrial competitiveness in the short, mid and long term; and (iii) prepare for the future and guarantee a sustainable position for both SunPower and Total G&P to be best-in-class solar players. SunPower and Total G&P will conduct the R&D Collaboration, managed by the R&D Strategic Committee, in accordance with this Agreement.

2.2 Initial R&D Collaboration Meeting. The R&D Strategic Committee shall meet initially at a mutually agreeable date, but no later than ninety (90) calendar days after the Effective Date (the "Initial R&D Strategic Committee Meeting").

2.3 Annual Collaboration Plan and Budget.

(a) At the Initial R&D Strategic Committee Meeting and no less frequently than annually thereafter, the R&D Strategic Committee shall meet to establish an overall directional plan and provisional budget for the R&D Collaboration as a whole for the upcoming year (the "Annual Provisional Collaboration Plan and Budget"). The Annual Provisional Collaboration Plan and Budget shall include (i) a listing of anticipated R&D Projects, (ii) the generally-anticipated objectives, activities, timelines, funding and resource requirements for such R&D Projects for the upcoming year, and (ii) a provisional budget for such R&D Projects for the upcoming year, specifying each Party's anticipated contribution.

(b) In the event the R&D Strategic Committee cannot agree on an initial Annual Provisional Collaboration Plan and Budget within ninety (90) calendar days after the date of the initial meeting of the R&D Strategic Committee, the matter will be escalated to the executive management of each Party as set forth in Section 10.3.

(c) As soon as reasonably practical following the establishment of each Annual Provisional Collaboration Plan and Budget, the R&D Strategic Committee shall, as necessary pursuant to Section 3.3, (i) seek the independent review and approval of the independent board members of SunPower with respect to the Annual Provisional Collaboration Plan and Budget or (ii) if no approval by the independent board members of SunPower is necessary, approve the Annual Provisional Collaboration Plan and Budget, in whole or in part. Those portions of the Annual Provisional Collaboration Plan and Budget which (i) require approval and are approved by the independent board members of SunPower; and which (ii) do not require approval by the independent board members but were approved by the R&D Strategic Committee shall be deemed the "Annual Collaboration Plan and Budget." The Annual Collaboration Plan and Budget shall not be binding on the Parties, but the R&D Strategic Committee shall have the authority, pursuant to this Agreement, to agree to implement and/or proceed with all or any portion of the Annual Collaboration Plan and Budget or any R&D Project included therein.

(d) Notwithstanding anything in this Section 2.3 to the contrary, with respect to any R&D Project that was not included in the applicable Annual Provisional Plan and Budget or was not initially approved as of the applicable Annual Collaboration Plan and Budget, in accordance with Section 3.3, the R&D Strategic Committee may, subsequent to or separately from the establishment of any particular Annual Collaboration Plan and Budget, seek the approval of the independent board members of SunPower or, if no such approval is necessary, agree to approve such R&D Project. Upon the approval of any such R&D Project by the independent board members of SunPower or the R&D Strategic Committee, as applicable, the applicable Annual Collaboration Plan and Budget shall be deemed to be amended to include such R&D Project.

2.4 Project Research Plans and Budgets. Prior to the commencement of any R&D Project, the R&D Strategic Committee shall establish individual detailed objectives, activities, timelines, funding and resource requirements, and allocations of rights in and licenses to IPR and Technology for such R&D Project (each, a "Project Research Plan and Budget"). Each Project Research Plan and Budget shall include, in addition to other information, an indication of whether such R&D Project is to be a considered "Long-term Project" or a "Short or Medium-term Project."

2.5 Updates and Modifications. The R&D Strategic Committee will develop and institute a mechanism for quarterly updating the Annual Collaboration Plan and Budget and each Project Research Plan and Budget, subject to Section 3.3 as applicable. In addition, each of Total G&P and SunPower may request changes to the Annual Collaboration Plan and Budget or any Project Research Plan and Budget, for example, to accommodate changes that the requesting Party reasonably requires or that are directed to the requesting Party's marketing or commercial needs. In each such case, the non-requesting Party agrees not to unreasonably withhold or delay approval for such changes.

2.6 Commitments of the Parties. Subject to Section 3.3 (as applicable) and unless otherwise specified by the R&D Strategic Committee in accordance with Section 3.1(d):

(a) Each Party shall make available appropriate resources, including capital, and research and manufacturing facilities to perform timely and efficiently R&D Projects, as may be directed by the R&D Strategic Committee.

(b) Each Party's funding obligation will be determined by the R&D Strategic Committee for each R&D Project. If such funding obligation is not specified by the R&D Strategic Committee, then each Party shall contribute equally to the funding of that R&D Project.

(c) Without limiting the foregoing and while the R&D Strategic Committee may specify unequal funding for a particular R&D Project (including, as provided in Section 3.2(b)) it is expected that over the Term of this Agreement, each Party will contribute in equal amounts to the funding of all R&D Projects under this Agreement.

(d) In addition to a Party's cash contribution to funding, a Party's in-kind contributions of personnel, equipment, materials, facilities, and space, valued at such Party's cost, shall also be considered for the foregoing purposes.

(e) Subject to ARTICLE IV, the Parties agree that this Agreement does not limit either Party from assigning or reassigning its employees in any way. However, SunPower will use reasonable efforts to maintain personnel with at least experience and skill set comparable to that of the SunPower employees listed as participating employees in the applicable Project Research Plan and Budget, Total G&P will use reasonable efforts to maintain personnel with at least experience and skill set comparable to that of the Total G&P employees listed as participating employees in the applicable Project Research Plan and Budget, and SunPower and Total G&P will use reasonable efforts to keep the personnel resources for the R&D Collaboration generally stable and persistent so as not to negatively affect the conduct of activities under the R&D Collaboration.

(f) Each Party shall perform this Agreement in accordance with its terms and with reasonable care, technical skill, and diligence and in a professional manner that is consistent with industry standards and practices.

(g) Each Party shall keep (and shall cause its Affiliates and sublicensees, as applicable, to keep) complete and accurate records pertaining to their respective R&D costs (including the valuation of in-kind contributions to the R&D Projects) in sufficient detail to permit the other Party (the "Auditing Party") to confirm the amount of the incurred costs and the equitable sharing of the R&D Projects costs. Such records shall be kept for a period of two (2) years following the year when such costs are incurred. Once a year and for each R&D Project, the Auditing Party shall have the right to cause an independent, certified public accountant reasonably acceptable to the other Party (the "Audited Party") to audit such records to confirm their accuracy.

ARTICLE III
MANAGEMENT OF THE R&D COLLABORATION

3.1 R&D Strategic Committee.

(a) The Parties shall establish the R&D Strategic Committee to identify, plan and manage the R&D Collaboration in accordance with this Agreement. The R&D Strategic Committee will include an equal number of representatives from each of SunPower and Total G&P. The specific number of R&D Strategic Committee representatives from each Party shall be no less than three (3) (that is, at least a total of six (6) from both Parties).

(b) The Parties shall appoint the initial R&D Strategic Committee members at the latest twenty-one (21) calendar days before the date of the first meeting of the R&D Strategic Committee as per Section 2.2 of the Agreement. Upon reasonable written notice, either Party may change its members of the R&D Strategic Committee at any time and in its sole discretion with other personnel having generally the same level of experience, skill and authority. The Chairperson of the R&D Strategic Committee shall be appointed by Total G&P from among Total G&P's R&D Strategic Committee members, and shall be a Total G&P Director of R&D.

(c) Each Party has the right to invite to attend any meeting of the R&D Strategic Committee one or more experts in support of the activities and responsibilities of the R&D Strategic Committee, provided that: (a) the inviting Party shall provide the other Party with a prior notice of such invitation, (b) the other Party shall have the right to refuse such invitation if the expert is not a member of the former Party's personnel, (c) such invited expert shall in no event have the right to vote within the R&D Strategic Committee and (d) any expert attending a R&D Strategic Committee meeting who is not a member of any Party's personnel shall have agreed in writing to the confidentiality provisions of ARTICLE VIII.

(d) Subject to 3.1(e), all R&D Strategic Committee decisions must be unanimous.

(e) The R&D Strategic Committee may not meet or make any decisions or determinations without the participation of at least two (2) representatives from each of Total G&P and SunPower; provided that if a Party fails to send at least two representatives to an R&D

Strategic Committee meeting after being given adequate notice and opportunity to attend such meeting then, provided both Parties are given adequate notice of the matter to be decided, at the next following meeting at which at least one R&D Strategic Committee Member from each of Total G&P and SunPower is present, such matters may be decided by the unanimous vote of those present. If there is a deadlock in the R&D Strategic Committee, the matter will be escalated to the executive management of each Party as set forth in Section 10.3. If there is a deadlock in the R&D Strategic Committee with respect to any matters, to the maximum extent practicable the R&D Collaboration will continue to be managed within the scope of the existing Annual Collaboration Plan and Budget and the existing Project Research Plans and Budgets, in each case, with respect to matters as to where there is agreement until such deadlock is resolved.

(f) Subject to Section 3.3 (as applicable), the R&D Strategic Committee will be responsible to (i) set the overall direction for the R&D Collaboration, (ii) set the plans and budgets for the R&D Collaboration (including Annual Provisional Collaboration Plans and Budgets and Project Plans and Budgets) and (iii) approve changes to the Annual Collaboration Plan and Budget and any Project Research Plan and Budget, which includes making decisions and determinations on the following matters:

(i) Whether or not to proceed with any proposed R&D Project;

(ii) Whether each R&D Project is to be a considered "Long-term Project" or a "Short or Medium-term Project";

(iii) Technology roadmaps for each R&D Project and the R&D Collaboration;

(iv) Goals, purposes, time lines and milestones for each R&D Project;

(v) The resources (including personnel and facilities) that each Party is required to allocate to each R&D Project;

(vi) The R&D Collaboration budget running and reporting;

(vii) The funding for each R&D Project and each Party's required contribution;

(viii) Where individual R&D Projects will be conducted;

(ix) Leadership of each R&D Project, including choice of a Project Leader;

(x) Providing recommendations to SunPower and Total G&P on possible implementations of the results of R&D Projects in each Party's production plants; and

(xi) With respect to each individual R&D Project, establishing applicable fields of use, if any, with respect to any licenses and other terms and conditions applicable to the ownership and licensing of Intellectual Property Rights and Technology (taking into account, among other things, the actual or potential competition in such fields).

(g) Additional responsibilities of the individual R&D Strategic Committee members will include representing the R&D Collaboration within their respective organizations, interfacing to broader R&D and business organizations, and monitoring the progress of work under the R&D Collaboration.

3.2 Project Classification. Each R&D Project will be classified by the R&D Strategic Committee, as either a "Long-term Project" or a "Short or Medium-term Project".

(a) A Short or Medium-term Project is generally one expected to reach its specified goals with two (2) to three (3) years. Short or Medium-term Projects are intended to improve upon existing Technology and with a specific intended outcome or endpoint (including specific milestones). Short or Medium-term Projects are currently anticipated to relate primarily to testing the applicability of a Total G&P Technology to SunPower's business, a Technology transfer from Total G&P to SunPower, or a Technology development request from SunPower to Total G&P.

(b) The R&D Strategic Committee shall identify before the start of any Short or Medium-term Project if such R&D Project and its result shall be (i) in the exclusive interest and for the exclusive benefit of SunPower or (ii) in the joint interest or for the joint benefit of both of Total G&P and SunPower. Subject to Section 3.3 (as applicable) and the ultimate determination of the R&D Strategic Committee and Section 2.6(b), accordingly it is currently anticipated that in such cases (i) and (ii) above R&D costs shall be, in the case of (i), assumed only and fully by SunPower or, in the case of (ii), equally shared by Total G&P and SunPower.

(c) A Long-term Project is generally one with an expected term of three (3) years or more, and is intended to result in new Technology, products or manufacturing processes. A Long-term Project may be focused on fundamental scientific research and may not have a specific outcome or endpoint determined at the beginning of the project. A Long-term Project can also be defined by a specific applied goal, the success of which requires significant technological or scientific progress. Long-term Projects may involve collaboration with academic and other research organizations (including private partners). The allocation of costs for Long-term Projects will be determined by the R&D Strategic Committee.

3.3 Independent Review. Notwithstanding anything to the contrary in this Agreement, the Parties agree to comply with Section 4.1(b) of the Affiliation Agreement and any applicable laws that require the independent review and approval of the independent board members of SunPower, including any related party transactions between SunPower and Total G&P related to any R&D Project when applicable.

3.4 Meetings.

(a) The R&D Strategic Committee shall meet at least quarterly, or more frequently as determined by the R&D Strategic Committee or as reasonably requested by a Party. Any decisions or determinations of the R&D Strategic Committee shall not constitute any amendment or change to this Agreement unless the provisions of Section 10.11 have been fully complied with.

(b) The R&D Strategic Committee shall establish the location(s) where the foregoing meetings shall be held and the agenda of such meetings. The meetings may be held in person or by means of telecommunications (audio and/or video). Each Party shall bear its own personnel and travel costs and expenses relating to R&D Strategic Committee meetings.

(c) In the course of each R&D Strategic Committee meeting, each Party shall inform the other of all new material independent R&D projects and, subject to obligations owed to third parties, all new material joint R&D projects with third parties, that such Party is then contemplating to conduct in the field of Photovoltaics.

(d) Each Party shall promptly provide the R&D Strategic Committee with a written report upon becoming aware of events or circumstances that may reasonably be expected to have a material adverse affect on the performance of any aspect of the Agreement, including reasonable details of such events or circumstances, the potential effect, and, if practicable, a proposed strategy to avoid or mitigate such effect.

(e) Total G&P shall be responsible for preparing the R&D Strategic Committee meeting agendas and minutes, always reflecting in the same comments from SunPower. Such minutes shall be distributed in draft form not later than thirty (30) days following each meeting and shall be deemed approved upon receipt by Total G&P of confirmation of approval in writing or by e-mail from SunPower.

(f) No later than one (1) year after the Effective Date, the Parties shall meet in order to assess the necessity (i) to review the existing working processes of the R&D Collaboration and (ii) to amend the existing processes and/or add new processes as necessary.

3.5 R&D Technical Committee.

(a) In addition to the R&D Strategic Committee, the parties shall establish an "R&D Technical Committee" to identify the best topics for potential R&D Projects and to manage the R&D Projects approved by the R&D Strategic Committee. The R&D Technical Committee will include one representative from each of SunPower and Total G&P. The Parties shall appoint the initial R&D Technical Committee members at the latest twenty-one (21) calendar days before the date of the first meeting of the R&D Strategic Committee as per Section 2.2 of the Agreement. Upon reasonable written notice, either Party may change its members of the R&D Technical Committee at any time and in its sole discretion with other personnel at the same general level.

(b) The R&D Technical Committee members will act as "Co-General Managers" of the R&D Projects and be responsible for managing the overall conduct of the R&D Projects within the scope of each applicable Project Research Plan and Budget approved by the R&D Strategic Committee.

(c) All decisions of the R&D Technical Committee and Co-General Managers must be unanimous; provided that, if notwithstanding being given adequate notice and opportunity to attend such meetings of the R&D Technical Committee, a Party's representative or representatives fail to attend two consecutive meetings of the R&D Technical Committee then, provided both Parties are given adequate notice of the matter to be decided, at the next

following meeting at which at least one R&D Technical Committee Member from each of Total G&P and SunPower is present, such matters may be decided by the unanimous vote of those present.

(d) The Co-General Managers will conduct periodic reviews as they deem necessary in order to manage the conduct each R&D Project in accordance with the applicable Project Research Plan & Budget. Responsibilities of the Co-General Managers will also include working with the Project Leads to set project-specific goals, driving creation of high-quality project plans, tracking overall goals and progress, managing overall staff allocation across projects, assisting with budgeting, focusing on overall success of programs, and paying particular attention to cross-company dynamics. Each Party's Co-General Manager shall make him or herself reasonably available for consultation with the other Party's Co-General Manager during regular business hours on regular business days. If either Party is displeased with the other Party's Co-General Manager for any reason, the R&D Strategic Committee shall meet in order to resolve the issue and, if required, the Parties shall work together to appoint a new, replacement, Co-General Manager.

3.6 Project Leads. The R&D Strategic Committee will appoint a "Project Lead" for each R&D Project. On a R&D Project-by-R&D Project basis, the Project Lead may be an employee of either SunPower or Total G&P, as determined by the R&D Strategic Committee, depending on the nature of the R&D Project and which of SunPower and Total G&P has the best qualified resources. The Project Lead will be responsible for the R&D Project and will report to the R&D Technical Committee on (i) the status of the performance of the related R&D Project including if any a detailed description of the Foreground Technology and (ii) a financial, technical and environmental, health and safety status. Project Leads will focus on successful project outcomes, creating project plans and specific goals, managing Project Staff, working towards and tracking project goals, ensuring successful cooperation, information exchange, and team dynamics.

3.7 Project Staff. Individuals working on each R&D Project ("Project Staff') will be provided by SunPower and Total G&P as determined by the R&D Strategic Committee, consistent with the applicable Project Research Plan and Budget and Section 2.6 of this Agreement. Each Project Research Plan and Budget will include an initial statement of the SunPower and Total G&P staff to be assigned to the applicable R&D Project. The number of Project Staff assigned to a particular R&D Project will vary on a R&D Project-by-R&D Project basis, though there will be at least one (1) Total G&P and one (1) SunPower participant on each R&D Project. All Project Staff for each R&D Project will be responsible to work as an integrated team towards common goals. Except as expressly agreed by the R&D Strategic Committee, no Party may subcontract its activities under any Project Research Plan and Budget to any third party.

3.8 R&D Collaboration Results. No less frequently than quarterly, the Co-General Managers shall ensure that each of SunPower and Total G&P receive the results of all R&D Projects, including (i) a description of all Foreground IPR and Foreground Technology and the developing Party thereof; and (ii) a copy of any tangible embodiments of the foregoing.

3.9 Compliance with Applicable Laws. Each Party shall conduct the R&D Collaboration in compliance with all requirements of applicable laws, rules and regulations.

3.10 Board Presentation. The Parties agree that, at the request of either Party, the other Party will reasonably assist the requesting Party in preparing for and will participate in a presentation to the requesting Party's Board of Directors (or any committee thereof to which the Board of Directors has delegated responsibility for reviewing related party transactions) regarding the Annual Provisional Collaboration Plan and Budget, any Annual Collaboration Plan and Budget, any R&D Project or the status of the R&D Collaboration generally; provided, however, that the requesting Party shall be primarily responsible for preparing and making such presentation.

ARTICLE IV
PREFERRED RELATIONSHIP

4.1 Preferred Partners. Each Party undertakes and agrees to consider the other Party as its preferred R&D partner in the field of Photovoltaics subject to, inter alia, then-existing obligations owed to third parties.

4.2 Updates. Before committing in writing to any new material R&D project and/or new material joint R&D project with a third party, in each case primarily related to Photovoltaics, each Party shall use reasonable efforts to inform the other Party with sufficient advance notice to allow the Parties to discuss whether the Parties should collaborate together or participate jointly with respect to such R&D project.

ARTICLE V
INTELLECTUAL PROPERTY RIGHTS AND TECHNOLOGY

5.1 General Principles and Role of R&D Strategic Committee.

(a) This ARTICLE V sets forth general principles applicable to the ownership of, and licenses to, Intellectual Property Rights and Technology related to R&D Projects. Notwithstanding the foregoing, the Parties acknowledge that they cannot anticipate and foresee as of the date hereof all of the specific details of the future R&D Projects or the appropriate allocation of rights to Intellectual Property Rights and Technology that may be related to such R&D Projects. As such, the Parties agree that the R&D Strategic Committee shall have the right, subject to Section 3.3 (as applicable), to agree to the allocation of rights and licenses with respect to Intellectual Property Rights and Technology related to a particular R&D Project that may differ from the terms set forth in this ARTICLE V.

(b) The Parties agree that, notwithstanding the provisions of this ARTICLE V or this Agreement, no Intellectual Property Rights or Technology are licensed or allocated pursuant to this Agreement. Rather, in accordance with Section 5.1(a), and subject to Section 3.3 as applicable, the R&D Strategic Committee shall, prior to the commence of each R&D Project, establish written terms and conditions with respect to Intellectual Property Rights and Technology related to the applicable R&D Project, including the ownership and licensing (including sublicensing) thereof (each set of terms and conditions, a "Project IPRT Agreement").

5.2 Background IPR and Background Technology Ownership and Licensing. Subject to Section 3.3 (as applicable), and unless otherwise agreed by the R&D Strategic Committee in accordance with Section 5.1:

(a) Each Party shall retain full ownership of its Background IPR and Background Technology and unless otherwise agreed by the R&D Strategic Committee, neither Party may use the other Party's Background IPR or Background Technology for any purpose other than carrying out a Party's obligations regarding the applicable R&D Project.

(b) Each Party will disclose and otherwise make available, at no charge, its Background Technology to the other Party as may be necessary for such other Party to perform its duties with respect to the particular R&D Project.

(c) Each Party will grant to the other Party or any of its Affiliates, under its Background IPR, a non-exclusive, royalty-free license (with a right to sublicense to any of its Affiliates) of sufficient scope to permit the licensed Party to conduct its responsibilities and tasks under the applicable R&D Project.

(d) Notwithstanding the foregoing, each Party shall reasonably consider any request from the other Party to acquire exclusive ownership or license of any Background IPR or Background Technology from it.

5.3 Short or Medium-term Projects - Foreground IPR and Technology Ownership. Subject to Section 3.3 (as applicable), and unless otherwise agreed by the R&D Strategic Committee in accordance with Section 5.1:

(a) If a Short or Medium-term Project has been identified by the R&D Strategic Committee as being in the sole interest of SunPower and SunPower has fully assumed all the R&D costs, the Foreground IPR and Foreground Technology resulting from such R&D Project shall be owned by SunPower.

(b) SunPower shall grant Total G&P or any of its Affiliates a non-exclusive, royalty free license to use such Foreground IPR and Foreground Technology for the sole purpose of carrying out Total G&P's obligations regarding the applicable R&D Project.

(c) If a Short or Medium-term Project has been identified as in the interest of both Total G&P and SunPower and Total G&P and SunPower have shared all the R&D costs, the Foreground IPR and Foreground Technology resulting from such R&D Project shall be jointly owned (without the duty to account) by SunPower and Total G&P (collectively, "Joint Foreground IPRT").

5.4 Short or Medium-term Projects - Licenses to Joint Foreground IPRT. Subject to Section 3.3 (as applicable), and unless otherwise agreed by the R&D Strategic Committee in accordance with Section 5.1:

(a) With respect to any Joint Foreground IPRT resulting from any Short or Medium-term Project, each Party shall grant to the other Party or any of its Affiliates a field-restricted, exclusive, royalty-bearing license (with a right to sublicense to any of its Affiliates)

under such Party's interest such Joint Foreground IPRT to make, use, produce, and/or commercialize within an agreed upon field of use (which shall be different for each Party) the Foreground Technology or a product, service, or process that employs or is produced by the use of the Foreground Technology within such field of use.

(b) Each Party shall notify the other of any project that involves the exploitation of Foreground IPR or Foreground Technology.

5.5 Long-term Projects - Foreground IPR and Technology Ownership. Subject to Section 3.3 (as applicable), and unless otherwise agreed by the R&D Strategic Committee in accordance with Section 5.1:

(a) In the case of a Long-term Project, as designated by the R&D Strategic Committee, all Foreground IPR and Foreground Technology, regardless of which party created such rights or would otherwise own such rights, shall be deemed Joint Foreground IPRT.

(b) In accordance with the foregoing, if a Party owns any Foreground IPR or Foreground Technology exclusively (for example as a result of such Party's employee being the sole inventor on a Patent) then it shall assign to the other Party without charge an irrevocable undivided half interest in such Foreground IPR or Foreground Technology such that such Foreground IPR and Foreground Technology is jointly owned by the Parties (without the duty to account).

(c) The Parties shall prosecute and protect any such Joint Foreground IPRT in accordance with Section 5.8(a).

(d) Notwithstanding the foregoing, each Party shall reasonably consider any request from the other Party to acquire exclusive ownership or license of any Foreground IPR (excluding the Joint Foreground IPRT) or Foreground Technology from it.

5.6 Long-term Projects - Licenses to Joint Foreground IPRT. Subject to Section 3.3 (as applicable), and unless otherwise agreed by the R&D Strategic Committee in accordance with Section 5.1:

(a) With respect to any Joint Foreground IPRT resulting from any Long-term Project, each Party shall grant to the other Party or any of its Affiliates a field-restricted, exclusive, royalty-bearing license (with a right to sublicense to any of its Affiliates) under such Party's interest in Joint Foreground IPRT to make, use, produce, and/or commercialize within an agreed upon field of use (which shall be different for each Party) the Foreground Technology or a product, service, or process that employs or is produced by the use of the Foreground Technology within such field of use.

(b) Each Party shall notify the other of any project that involves the exploitation of Foreground IPR or Foreground Technology.

5.7 Additional Licenses to a Party's Background IPR and Background Technology. Subject to Section 3.3 (as applicable), and unless otherwise agreed by the R&D Strategic Committee in accordance with Section 5.1:

(a) With respect to any Joint Foreground IPRT, each Party will grant to the other Party or any of its Affiliates under its Background IPR relevant to the R&D Project that resulted in such Joint Foreground IPRT a royalty-bearing, non-exclusive license (with a right to sublicense to any of its Affiliates) to use and exploit its relevant Background Technology which (i) is required or necessary to use and exploit such Joint IPRT within the agreed-upon field of use specified pursuant to Section 5.4(a) or Section 5.6(a), as applicable, and (ii) which would be infringed without a license to such Background IPR by the use or exploitation of such Joint IPRT in the agreed-upon field. The terms of such license, including royalties, shall be as reasonably agreed by the Parties in the course of R&D Strategic Committee deliberations relating to a specific R&D Project.

(b) In the case of any Short or Medium-term Project that is determined by the R&D Strategic Committee to be in the exclusive interest of SunPower, Total G&P will grant SunPower or any of its Affiliates a royalty-bearing, non-exclusive license (with a right to sublicense to any of its Affiliates) under its Background IPR which (i) is required or necessary to use and exploit the SunPower's Foreground Technology arising from such R&D Project and (ii) which would be infringed without a license to such Background IPR by such use of the SunPower's Foreground Technology. The Parties shall determine the terms and condition of the appropriate licensing fees with regard to the specific Background IPR.

(c) Total G&P will grant to SunPower or any of its Affiliates under its Background IPR a royalty-bearing, non-exclusive license (with a right to sublicense to any of its Affiliates) of sufficient scope to permit the direct use of such Total G&P Background IPR in connection with SunPower's production processes and facilities.

5.8 Joint IPRT Committee; Prosecution, Abandonment, Assignment and Enforcement of Joint Foreground IPRT. Subject to Section 3.3 (as applicable), and unless otherwise agreed by the R&D Strategic Committee in accordance with Section 5.1:

(a) The Parties will, under the auspices of the R&D Strategic Committee, establish a "Joint IPRT Committee" to coordinate regarding Patent and Copyright filings related to Joint Foreground IPRT to ensure that proper inventors and authors are listed, to coordinate filings for Joint Foreground IPRT and to coordinate on similar matters. Each Party will appoint an equal number of representatives to the Joint IPRT Committee and all Joint IPRT Committee decisions must be unanimous. The Parties shall reasonably cooperate in the filing of any such Intellectual Property Rights and, unless otherwise specified by the Joint IPRT Committee shall share equally all costs of filing, prosecuting and maintaining such Intellectual Property Rights. In the event that only one Party (the "Filing Party") wishes to file for and prosecute a Patent or Copyright that would otherwise be Joint Foreground IPRT and the other Party (the "Non-Filing Party") does not wish to maintain the particular Joint IPRT confidential (e.g. as a trade secret), then (i) the Non-Filing Party shall transfer its ownership interest in such Patent or Copyright to the Filing Party, and (ii) the Filing Party shall grant the Non-Filing Party a non-exclusive license to such Patent or Copyright. Each Party may file Patent or Copyright applications for its exclusively owned Intellectual Property Rights, but will not disclose confidential information of the other Party without permission.

(b) In the event that a Party owning an exclusive or joint interest (with the other Party) wishes to abandon or not prosecute any Patent included in any Foreground IPR, it shall notify the other Party and, upon the other Party request, it shall without further consideration assign such rights to the other Party subject to terms and conditions to be agreed upon by the Parties (subject to a retained non-exclusive irrevocable, royalty-free, fully paid-up license).

(c) If a Party decides to assign its ownership rights in Joint Foreground IPRT to a third party, it shall provide written notice to, and obtain the prior written approval of, the other Party before doing so, provided always that the other Party shall have a right of first offer to acquire such Joint Foreground IPRT within three (3) months of such written notice, upon payment of the same or equivalent compensation or financial conditions as being offered by such third party. The other Party's first offer right shall be forfeited if not exercised within the foregoing three (3) month period. Failing the first offer right being positively exercised by the other Party, then the assignor Party shall be free to assign its ownership interest in the Joint Foreground IPRT to a third party, subject to the third-party assignee's agreement to comply with all of the assignor Party's obligations as a condition precedent. The conditions of the assignment shall not be more favorable for the third party assignee than the conditions proposed to the other Party, it being understood that in no case may such third party assignee can be a competitor of the other Party.

(d) The Parties acknowledge that neither Party may bring any action for infringement of any Patent included in the Joint Foreground IPRT without the consent and participation of the other Party. The Parties agree to reasonably cooperate with one another in the bringing of such actions and, unless otherwise agreed, to share the cost and benefit of such enforcement actions.

5.9 No Implied Licenses. Subject to Section 5.1, (a) each Party acknowledges that the rights and licenses granted pursuant to any Project IPRT Agreement are limited to the scope expressly granted, and all other rights are expressly reserved and (b) no rights or licenses are granted under any Project IPRT Agreement, by implication, estoppel, or otherwise, other than the rights and licenses expressly granted in such Project IPRT Agreement.

5.10 Survival of Licenses. Subject to Section 5.1, all licenses granted by one Party to the other pursuant to any Project IPRT Agreement shall survive any termination of such Project IPRT Agreement or this Agreement.

5.11 Third Party Intellectual Property Rights and Technology. Except with the express consent of the R&D Strategic Committee, (a) neither Party shall, in connection with the applicable R&D Project, incorporate any third party Technology in any Background Technology or Foreground Technology, and (b) neither Party shall knowingly infringe the Intellectual Property Rights of any third party in connection with any R&D Project.

5.12 Representations and Warranties. Subject to Section 5.1, in the applicable Project IPRT Agreement each Party shall represent and warrant to the other upon the commencement of the applicable R&D Project that, unless otherwise disclosed to the R&D Strategic Committee, at the time it provides any Background Technology or Background IPR identified in the applicable

IPRT Agreement to the other or incorporates any such Background Technology into any Foreground IPR that (i) it owns such Background Technology free and clear of all liens encumbrances and security interests and has full rights to grant the rights and licenses to its IPR granted to the other Party in connection with the R&D Project, (ii) no claim has been threatened or asserted in writing against such Party which challenges the legality, validity, enforceability, use, ownership or inventorship of such Background Technology or Background IPR and (iii) to its knowledge there is no unauthorized use, infringement, or misappropriation of such Background IPR by any third party.

5.13 Royalties. In those cases set forth in this ARTICLE V or included in any Project IPRT Agreement where a royalty is payable from one Party to the other, the Parties agree to negotiate such royalty in good faith. In making this determination, the Parties will take into account, among other factors, (i) the overall materiality of the IPR at issue, (ii) the profit anticipated to be made by the licensee from the sale of applicable products and/or services and (iii) the increased profit that the licensed Party will realize as a result of the utilization of the other Party's IPR.

ARTICLE VI
TERM AND TERMINATION

6.1 Term. This Agreement shall commence on the Effective Date and shall continue for an initial term of five (5) years thereafter ("Initial Term"). The Initial Term may be extended by written agreement of the Parties for one or more two (2)-year renewal terms (each such renewal term, an "Extended Term"). The Initial Term and any Extended Term shall be referred to in this Agreement collectively as the "Term".

6.2 Termination. Either Party has the right to terminate this Agreement immediately upon written notice to the other Party if the other Party breaches any material term of this Agreement and such breach is not cured within sixty (60) days after the date of the terminating Party's notice of the breach. In addition, if Total G&P no longer holds a majority equity interest in SunPower, both Total G&P and SunPower shall have the right on thirty (30) days notice to terminate this Agreement. Termination shall be in addition to all other available remedies.

6.3 Termination of Tender Offer Agreement. If the Tender Offer Agreement is terminated in accordance with its terms, this Agreement will, without any further action of the Parties hereto, be immediately terminated and considered void from the beginning. In addition, notwithstanding anything in this Agreement to the contrary, no Party shall have any obligations under this Agreement prior to the occurrence of the Offer Closing.

6.4 Survival.

(a) Upon any termination of this Agreement, both Parties shall complete any R&D Projects then in progress.

(b) The following provisions shall survive any expiration or termination of this Agreement: Article V (solely to the extent provided in any applicable Project IPRT Agreement), Article VIII, Article IX, Article X (except for Sections 10.9 and 10.15) and Sections 6.4 and 7.2.

(c) Any provisions required to interpret or enforce the Parties' rights and obligations set forth above in this section also shall survive, but only to extent required for such interpretation or enforcement.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

7.1 Right to enter into Agreement. Each Party represents and warrants to the other Party as of the Execution Date (i) that it has the legal right, power, and authority to enter into this Agreement, and to fully perform its obligations under this Agreement, (ii) that the performance of such obligations will not conflict with its charter documents or any agreements, contracts or other arrangements to which it is a party, and (iii) it is not a party to any contract or other legally binding agreement materially limiting the right of such Party to disclose to the other, or jointly conduct, any material R&D projects in the field of Photovoltaics under this Agreement; provided that this representation and warranty shall not be considered breached by the operation of any provisions contained in any Material Contract identified on Section 3.13(a) of the Company Disclosure Schedule to the Tender Offer Agreement.

7.2 Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING ANY WARRANTIES OF FITNESS FOR ANY PURPOSE, MERCHANTABILITY, NONINFRINGEMENT, AND TITLE. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR OTHERWISE AGREED IN WRITING BY THE R&D STRATEGIC COMMITTEE, ALL LICENSES ARE GRANTED "AS IS," ALL TECHNOLOGY CONTRIBUTED TO THE R&D COLLABORATION IS PROVIDED "AS IS," AND ALL RESULTS OF THE R&D COLLABORATION ARE PROVIDED "AS IS."

ARTICLE VIII
CONFIDENTIAL INFORMATION

8.1 Confidential Information. The term "Confidential Information" shall mean any information disclosed by one Party to the other pursuant to this Agreement, which is in written, graphic, machine readable or other tangible form and is marked "Confidential", "Proprietary" or in some other manner to indicate its confidential nature. Confidential Information may also include information disclosed by access to products or facilities or oral information disclosed by one Party to the other provided that such oral information is designated as confidential at the time of disclosure and (i) is reduced to a written summary by the disclosing Party, within thirty (30) business days after its oral disclosure, which is marked in a manner to indicate its confidential nature and delivered to the receiving Party or (ii) would, by its nature or means of communication, be reasonably understood to be of a confidential nature.

The disclosing Party represents and warrants that (i) it has the right to disclose Confidential Information to the receiving Party under this Agreement; (ii) it has the right to convey to receiving Party the right to use the Confidential Information in accordance with the terms of this Agreement; (iii) neither the receipt, possession or use of Confidential Information

by receiving Party according to the terms of this Agreement violate any obligation owed to any third party by disclosing Party (and/or by disclosing Party's employees, officers, directors or representatives) or is otherwise known by the disclosing Party to infringe any right belonging to a third party; and (iv) neither the execution and delivery of this Agreement by disclosing Party, nor the performance of disclosing Party's obligations and rights contained herein, will conflict with, result in a breach of, or constitute a default under any contract to which disclosing Party (or its employee, officer, director or representative) is a party.

8.2 Confidentiality. Each Party shall treat as confidential all Confidential Information of the other Party's, shall not use such Confidential Information except for the purposes of this Agreement (including the exercise of the rights and licenses granted in this Agreement) or otherwise authorized in writing, shall disclose Confidential Information only to those of its employees, agents, or subcontractors or the employees, agents, or subcontractors of its Affiliates with a need to know for the purposes of this Agreement, and shall implement reasonable procedures to prohibit the disclosure, unauthorized duplication, misuse or removal of the other Party's Confidential Information. Without limiting the foregoing, each of the Parties shall use at least the same procedures and degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other Party under this Agreement, but in no event less than reasonable care. Each Party's obligations pursuant to this section with respect to any particular item of Confidential Information shall expire ten (10) years after the initial disclosure of such item of Confidential Information; provided, however, that solely with respect to Confidential Information that is Non-Technical Business Information, each Party's obligations will expire five (5) years after the initial disclosure of such Confidential Information.

8.3 Exceptions. Notwithstanding the above, neither Party shall have liability to the other with regard to any Confidential Information of the other which:

(a) was generally known and available at the time it was disclosed or becomes generally known and available through no fault of the receiving Party;

(b) was known to the receiving Party, without restriction, at the time of disclosure as shown by the files of the receiving Party in existence at the time of disclosure;

(c) is disclosed with the prior written approval of the disclosing Party;

(d) was independently developed by the receiving Party without any use of the Confidential Information;

(e) becomes known to the receiving Party, without restriction, from a source other than the disclosing Party without breach of this Agreement by the receiving Party and otherwise not in violation of the disclosing Party's rights; or

(f) is inherently disclosed in the course of the normal use, lease, sale or other distribution of products by the receiving Party or any of its Affiliates.

In addition, each Party shall be entitled to disclose the other Party's Confidential Information to the extent such disclosure is required by the order or requirement of a court, administrative

agency, or other governmental body; provided, that the Party required to make the disclosure shall provide prompt, advance notice thereof to the disclosing Party to enable the disclosing Party to seek a protective order or otherwise prevent such disclosure. Further, the receiving Party shall have the right at any time to disclose portions of the disclosing Party's Confidential Information, under a confidentiality agreement, to its customers on a need-to-know basis only to the extent deemed necessary by such Party to market and sell products to such customers and distributors.

8.4 Residuals. Notwithstanding anything else in this Agreement, however, each Party's employees shall be entitled to use, without restriction (subject to the above nondisclosure obligations, but not subject to the above use restriction) and for any purpose, the other Party's Confidential Information retained in such employees' unaided memory as a result of rightful access to the other Party's Confidential Information pursuant to this Agreement, subject only to the other Party's Patents and Copyrights. An employee's memory will be considered to be unaided if the employee has not intentionally memorized the Confidential Information for the purposes of retaining it and subsequently using or disclosing it. Nothing in this Agreement will restrict either Party's right to assign or reassign its employees, including those who have had access to the other Party's Confidential Information, to any project in its discretion.

ARTICLE IX
LIABILITY LIMITATIONS

9.1 DAMAGES. NEITHER PARTY SHALL BE LIABLE IN ANY ACTION (ON THE BASIS OF BREACH OF CONTRACT, BREACH OF WARRANTY OR TORT, INCLUDING STRICT OR ABSOLUTE LIABILITY, BREACH OF STATUTORY DUTY, OR OTHERWISE) INITIATED BY OR AGAINST THE OTHER PARTY OR ANY OF ITS AFFILIATES FOR CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES RESULTING FROM OR ARISING OUT OF THIS AGREEMENT; PROVIDED HOWEVER, THE FOREGOING LIMITATION SHALL NOT APPLY TO (A) LOSS OF PROFIT OR BUSINESS INTERRUPTIONS CAUSED BY ACTS OR OMISSIONS CONSTITUTING WILLFUL MISCONDUCT OR NEGLIGENCE OR (B) CLAIMS RELATED TO VIOLATIONS OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIALITY OBLIGATIONS.

9.2 MAXIMUM LIABILITY.

(a) WITH RESPECT WITH ANY PARTICULAR R&D PROJECT, THE MAXIMUM LIABILITY OF EITHER PARTY FOR LOSS OF PROFIT OR BUSINESS INTERRUPTION IN ANY ACTION (ON THE BASIS OF BREACH OF CONTRACT, BREACH OF WARRANTY OR TORT, INCLUDING NEGLIGENCE AND STRICT OR ABSOLUTE LIABILITY, BREACH OF STATUTORY DUTY, OR OTHERWISE) INITIATED BY OR AGAINST THE OTHER OR ANY OF ITS AFFILIATES SHALL BE CAPPED (THE "CAP"); PROVIDED HOWEVER, THAT THE CAP SHALL NOT APPLY TO CLAIMS RELATED TO VIOLATIONS OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIALITY OBLIGATIONS. THE CAP SHALL BE AGREED UPON BY THE R&D STRATEGIC COMMITTEE ON A R&D PROJECT-BY-R&D PROJECT BASIS. THE CAP WILL BE CALCULATED ON A RANGE BASIS FROM ONE TO FIVE

TIMES THE AMOUNT OF THE TOTAL APPROVED BUDGET FOR THE RELEVANT R&D PROJECT.

(b) WITH RESPECT WITH ANY PARTICULAR R&D PROJECT, IN ABSENCE OF WILLFUL MISCONDUCT OR NEGLIGENCE, IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF SUCH R&D PROJECT EXCEED THE TOTAL APPROVED BUDGET FOR SUCH R&D PROJECT; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO CLAIMS RELATED TO VIOLATIONS OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIALITY OBLIGATIONS.

ARTICLE X
MISCELLANEOUS

10.1 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without reference to conflict-of-laws principles.

10.2 Waiver of Jury Trial. The Parties hereto expressly waive any right they may have to a jury trial hereunder and agree that any proceeding under this Agreement shall be tried by a judge without a jury.

10.3 Dispute Resolution.

(a) In the event of any disputes or disagreements between the Parties concerning any aspect of this Agreement, including any obligation of the Parties (each a "Dispute"), the R&D Strategic Committee shall meet (as quickly and as often as reasonably practicable having regard to the nature, complexity, and impact of the Dispute) to attempt to resolve the Dispute or to negotiate for an adjustment to any provision of this Agreement. A Dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect. Each Party acknowledges that it is in their mutual interest to have the R&D Strategic Committee resolve all Disputes by mutual agreement and each Party agrees to act expeditiously, reasonably and in good faith to permit and encourage the R&D Strategic Committee to resolve all Disputes. If the R&D Strategic Committee is not able to resolve any Dispute referred to it within thirty (30) days after such Dispute is referred to it, the Dispute shall be referred to a senior executive of each respective Party (each of whom shall be accurately, completely and expeditiously briefed on the matter, and each of whom shall have the authority to negotiate on behalf of, and bind, his/her respective Party). If such senior executives are not able to resolve any Dispute referred to them within sixty (60) days after such referral to them, then, subject to Sections 10.3(b) through 10.3(e), any Party may pursue litigation (or any other available procedure) to resolve the Dispute.

(b) All Disputes not resolved in accordance with the previous paragraph, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by arbitrators appointed in accordance with the said Rules of Arbitration. The following shall apply to any such arbitration:

i Arbitration shall also be held in Montreal, Canada, in the English language, the number of arbitrators shall be three, and the president of the arbitral tribunal shall be a lawyer;

ii Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof; and

iii The Parties undertake to keep strictly confidential the contents of the arbitral proceedings.

(c) Each Party shall continue to perform its obligations under this Agreement pending final resolution of any Dispute; provided, however, that a Party may suspend performance of its obligations during any period in which the other Party fails or refuses to perform its material obligations.

(d) Notwithstanding anything in this Agreement to the contrary, either Party may seek a preliminary injunction or other provisional equitable relief if, in its reasonable judgment, such action is necessary to avoid irreparable harm to itself or to preserve its rights.

(e) The Parties agree that all applicable statutes of limitation and time-based defenses (such as estoppel and laches) shall be tolled while the procedures set forth in this section are pending. The Parties shall take any actions necessary to effectuate this.

10.4 Assignment. Except as provided in this Agreement, neither Party may assign, or otherwise transfer, its rights or delegate its obligations under this Agreement without prior written consent of the other Party, except that either Party may assign this Agreement without prior written consent of the other Party (i) to any of its Affiliates or (ii) in connection with a sale of all or substantially all of the business or assets of the assigning Party to which this Agreement pertains (whether by merger, sale of assets, reorganization, consolidation or the like, after which the transferor shall retain no direct rights or obligations pursuant to any this Agreement), provided the transferee is reasonably capable of performing the assigning Party's obligations under this Agreement. Any attempt by either Party to assign its rights or delegate its responsibilities under this Agreement in derogation of this Section 10.4 is void.

10.5 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by first class mail (registered or certified), postage prepaid, or otherwise delivered by hand, by messenger or by telecommunication (with receipt confirmed), addressed to, in the case of SunPower: Executive Vice-President, Research and Development (or any other person or address so designated by SunPower in writing), and in the case of Total G&P: Managing Director, Research and Development (or any other person or address so designated by Total G&P in writing). Such notices shall be deemed to have been served when delivered or, if delivery is not accomplished by reason of some fault of the addressee, when tendered.

10.6 Export Controls. Each Party agrees to comply with all applicable export control laws and regulations.

10.7 Partial Invalidity. If any paragraph, provision, or clause thereof in this Agreement shall be found or be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, the remainder of this Agreement shall be valid and enforceable and the Parties shall negotiate, in good faith, a substitute, valid and enforceable provision which most nearly effects the Parties' intent in entering into this Agreement.

10.8 No Third Party Beneficiaries. This Agreement is made solely for the benefit of SunPower and Total G&P and their Affiliates, and their respective permitted successors and assigns. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any other person or entity. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third person or entity to any Party to this Agreement.

10.9 Counterparts. This Agreement may be executed in two (2) or more counterparts, all of which, taken together, shall be regarded as one and the same instrument. Facsimile signatures shall be deemed original signatures of the individuals so signing this Agreement.

10.10 Relationship of Parties. The Parties hereto are independent contractors. Nothing contained herein or done in pursuance of this Agreement shall constitute either Party the agent of the other Party for any purpose or in any sense whatsoever, or constitute the Parties as partners or joint venturers.

10.11 Modification. No alteration, amendment, waiver, cancellation or any other change in any term or condition of this Agreement shall be valid or binding on either Party unless the same shall have been mutually assented to in writing by both Parties.

10.12 Waiver. The failure of either Party to enforce at any time the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of either Party to enforce each and every such provision thereafter. The express waiver by either Party of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

10.13 Ambiguities. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement.

10.14 Entire Agreement. The terms and conditions herein contained constitute the entire agreement between the Parties and supersede all previous term sheets, agreements and understandings, whether oral or written, between the Parties hereto with respect to the subject matter hereof.

10.15 Further Assurances. The Parties hereto shall with reasonable diligence hold all meetings, perform all acts, execute and deliver all documents and instruments, do all such things and provide all such reasonable assurances as may be reasonably necessary or desirable to give effect to the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their authorized representatives.

SUNPOWER CORPORATION

By: /s/ Thomas H. Werner
Print Name: Thomas H. Werner
Title: Chief Executive Officer
Date: 4/28/11

TOTAL GAS & POWER USA, SAS

By: /s/ Vincent Schachter
Print Name: Vincent Schachter
Title: Managing Director
Date: 4/28/11

Exhibit 10.6

EXECUTION VERSION

REGISTRATION RIGHTS AGREEMENT

April 28, 2011

TABLE OF CONTENTS

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "**Agreement**") is dated as of April 28, 2011, by and between SunPower Corporation, a Delaware corporation (the "**Company**"), on the one hand, and Total Gas & Power USA, SAS ("**Total G&P**"), a *société par actions simplifiée* organized under the laws of the Republic of France, on the other hand.

RECITALS

WHEREAS, Total G&P intends to launch a tender offer (the "**Tender Offer**") to acquire approximately 60% of the Class A common stock, $0.001 par value per share (the "**Class A Shares**"), and approximately 60% of the Class B common stock, $0.001 par value per share (the "**Class B Shares**," and collectively with the Class A shares and any successor shares issued by the Company following a combination of the Class A Shares and the Class B Shares, the "**Common Stock**"), of the Company; and

WHEREAS, the Company and Total G&P are parties to that certain Affiliation Agreement, dated as of April 28, 2011, by and between Total G&P and the Company (the "**Affiliation Agreement**").

NOW, THEREFORE, in consideration of the covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1.

DEFINITIONS

1.1 Certain Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

(a) "**Adverse Disclosure**" means public disclosure of material non-public information that, in the reasonable good faith judgment of the Disinterested Directors serving on the Company Board, after consultation with independent outside counsel to the Company, (i) would be required to be made in any registration statement filed with the Commission by the Company so that such registration statement would not be materially misleading; (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such registration statement; and (iii) would have a material adverse effect on (A) the Company or its business or (B) the Company's ability to effect a proposed acquisition, disposition, financing, reorganization, recapitalization or other transaction involving the Company.

(b) "**Affiliation Agreement**" shall have the meaning set forth in the Recitals.

(c) "**Agreement**" shall have the meaning set forth in the Preamble.

(d) "**automatic shelf registration statement**" shall have the meaning set forth in Section 2.6(b).

(e) "**Business Day**" means each day other than a Saturday, Sunday or any other day when commercial banks in San Francisco, California or New York, New York are authorized or required by law to close.

(f) "**Class A Shares**" shall have the meaning set forth in the Recitals.

(g) "**Class B Shares**" shall have the meaning set forth in the Recitals.

(h) "**Commission**" means the U.S. Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

(i) "**Common Stock**" shall have the meaning set forth in the Recitals.

(j) "**Company**" shall have the meaning set forth in the Preamble.

(k) "**Disinterested Director**" shall have the meaning set forth in the Affiliation Agreement.

(l) "**Electronic Delivery**" shall have the meaning set forth in Section 3.9.

(m) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

(n) "**Inapplicable Registration**" shall have the meaning set forth in Section 2.4(a).

(o) "**Indemnified Party**" shall have the meaning set forth in Section 2.8(c).

(p) "**Indemnifying Party**" shall have the meaning set forth in Section 2.8(c).

(q) "**Prospectus**" means the prospectus included in any registration statement, all amendments and supplements to such prospectus, including pre- and post-effective amendments to such registration statement, and all other material incorporated by reference in such prospectus.

(r) "**Registrable Securities**" means (i) any shares of Common Stock currently held or hereafter acquired by Total G&P, and (ii) any securities that may be issued or distributed in respect of any such Common Stock by way of conversion, dividend, stock split or other distribution, merger, consolidation, exchange, recapitalization, reclassification or similar transaction; *provided*, *however*, that Registrable Securities shall not include any shares of Common Stock or other securities described in clause (i) or (ii) above that (A) have previously been sold to the public either pursuant to an effective registration statement or Rule 144, (B) are able to be sold without restriction (including any volume limitation) pursuant to Rule 144 or (C) have been sold in a private transaction in which the transferor's rights pursuant to this Agreement are not validly transferred or assigned in accordance with this Agreement.

(s) The terms "**register**," "**registered**" and "**registration**" shall refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

(t) "**Registration Expenses**" means all expenses incurred in effecting any registration pursuant to this Agreement, including all registration, qualification and filing fees; printing, duplication, messenger and delivery expenses; escrow fees; fees and disbursements of counsel for the Company and one independent counsel for Total G&P (not to exceed $50,000, or $100,000 in the case of an underwritten offering); all fees, expenses and disbursements of independent certified public accountants of the Company (including the expenses of any special audit and "cold comfort" letters required by or incident to such performance); all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange or quotation of the Registrable Securities on any inter-dealer quotation system; blue sky fees and expenses; all fees and expenses of any special experts or other persons retained by the Company in connection with any registration; and all of the Company's internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties), but shall not include Selling Expenses.

(u) "**Requested Registration**" shall have the meaning set forth in Section 2.2(a)(i).

(v) "**Requested Registration Statement**" shall have the meaning set forth in Section 2.2(a)(ii).

(w) "**Rule 144**" means Rule 144 as promulgated by the Commission pursuant to the Securities Act.

(x) "**Rule 145**" means Rule 145 as promulgated by the Commission pursuant to the Securities Act.

(y) "**Rule 415**" means Rule 415 as promulgated by the Commission pursuant to the Securities Act.

(z) "**Securities Act**" means the Securities Act of 1933, as amended.

(aa) "**Selling Expenses**" means all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities.

(bb) "**Shelf Registration Statement**" means a registration statement of the Company filed with the Commission on Form S-3 (or any successor form or other appropriate form promulgated under the Securities Act) for an offering to be made on a continuous basis pursuant to Rule 415 covering the Registrable Securities, as applicable.

(cc) "**Shelf Period**" shall have the meaning set forth in Section 2.1(b).

(dd) "**Shelf Request**" shall have the meaning set forth in Section 2.1(a).

(ee) "**Suspension**" shall have the meaning set forth in Section 2.3(a).

(ff) "**Tender Offer**" has the meaning set forth in the Recitals.

(gg) "**Total G&P**" has the meaning set forth in the Preamble.

(hh) "**Withdrawn Registration**" means a forfeited Requested Registration in accordance with the terms and conditions of Section 2.2(c).

(ii) "**WKSI**" shall have the meaning set forth in Section 2.6(b).

SECTION 2.

REGISTRATION RIGHTS

2.1 Shelf Registration.

(a) *Filing and Initial Effectiveness*. As promptly as practicable following the receipt of a written request from Total G&P (a "**Shelf Request**"), the Company shall file with the Commission a Shelf Registration Statement relating to the offer and sale of the Registrable Securities by Total G&P from time to time in accordance with the methods of distribution elected by Total G&P and set forth in the Shelf Registration Statement and thereafter shall use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective pursuant to the Securities Act within 90 days of the initial filing of such Shelf Registration Statement with the Commission, *provided* that no Registrable Securities that are then subject to an effective Registration Statement shall be required to be included therein.

(b) *Continued Effectiveness*. The Company shall use its reasonable best efforts to keep such Shelf Registration Statement continuously effective pursuant to the Securities Act (including filing post-effective amendments, appropriate qualifications pursuant to applicable blue sky or other state securities laws, and appropriate compliance with the Securities Act) in order to permit the Prospectus forming a part thereof to be usable by Total G&P until the earliest of (i) the date that all Registrable Securities have been resold, (ii) the date on which Total G&P no longer holds Registrable Securities or (iii) the expiration of such Shelf Registration Statement in accordance with Rule 415(a)(5) promulgated under the Securities Act (such period of effectiveness, the "**Shelf Period**"). Notwithstanding clause (iii) of this Section 2.1(b), if a Shelf Registration Statement expires in accordance with Rule 415(a)(5), and subject to the limitations set forth in Section 2.1(d), Total G&P may make a new Shelf Request relating to a Shelf Registration Statement to replace such expired Shelf Registration Statement.

(c) *Shelf Notice*. In the event that Total G&P notifies the Company in writing that it wishes to sell Registrable Securities pursuant to the Shelf Registration Statement, the Company shall use its reasonable best efforts to permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such notice as soon as practicable.

(d) *Limitations on Shelf Registration*. The Company shall not be obligated to effect, or to take any action to effect, any sale of Registrable Securities pursuant to this Section 2.1:

(i) If the aggregate number of Registrable Securities proposed to be sold by Total G&P at any one time pursuant to the Shelf Registration Statement will not exceed 5% of the then-outstanding Common Stock;

(ii) If Form S-3 is not available for the distribution contemplated by Total G&P; or

(iii) In any jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification or compliance, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act, or in which it would become subject to any material tax.

2.2 Requested Registration.

(a) *Request for Registration*.

(i) If, commencing 90 days following a Shelf Request, there is no currently effective Shelf Registration Statement on file with the Commission, Total G&P may make a written request to the Company for registration of Registrable Securities (a "**Requested Registration**"). Each such request shall specify the aggregate amount of Registrable Securities to be registered and the intended methods of disposition thereof.

(ii) The Company shall as soon as practicable file a registration statement relating to such Requested Registration (a "**Requested Registration Statement**") and use its reasonable best efforts to effect such registration to permit or facilitate the sale and distribution as soon as practicable of all or such portion of the Registrable Securities as are specified in such Requested Registration.

(b) *Limitations on Requested Registration*. The Company shall not be obligated to effect, or to take any action to effect, any sale of Registrable Securities pursuant to this Section 2.2:

(i) If the aggregate number of Registrable Securities proposed to be sold by Total G&P at any one time pursuant to the Requested Registration Statement will not exceed 5% of the then-outstanding Common Stock;

(ii) In any jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification or compliance, unless the Company is already subject to service in such jurisdiction or to become subject to any material tax, and except as may be required by the Securities Act;

(iii) After the Company has initiated two Requested Registrations pursuant to this Section 2.2 in any 12-month period (counting for these purposes only (x) registrations that have been declared or ordered effective and pursuant to which securities have been sold, and (y) Withdrawn Registrations); or

(iv) Within 90 days after the effective date of a Company-initiated registration (or, if earlier, ending on the subsequent date on which all market stand-off agreements applicable to such offering have terminated).

(c) *Withdrawal*. Total G&P may withdraw a Requested Registration at any time prior to the effectiveness of the applicable Requested Registration Statement. Upon receipt

of a written notice to such effect, the Company shall cease all efforts to secure effectiveness of the applicable Requested Registration Statement but such registration shall nonetheless be deemed to be a Requested Registration for purposes of Section 2.2(a) unless (i) Total G&P shall have paid or reimbursed the Company for all of the reasonable and documented Registration Expenses incurred by the Company in connection with such withdrawn Requested Registration or (ii) the withdrawal is made following written notice from the Company, acting through the Disinterested Directors, that the registration would require the Company to make an Adverse Disclosure.

2.3 Additional Provisions Applicable to Sales Pursuant to Shelf Registration Statement and Requested Registration Statement.

(a) *Suspension of Registration*. Notwithstanding the provisions of Section 2.1 and Section 2.2, if at any time the filing, initial effectiveness or continued use of a Shelf Registration Statement or a Requested Registration Statement would require the Company to make an Adverse Disclosure, the Company acting through the Disinterested Directors, may, upon giving written notice thereof to Total G&P, delay the filing or initial effectiveness of, or suspend the use of, such registration statement (a "**Suspension**"), *provided* that the Company shall not be permitted to exercise a Suspension for a period exceeding an aggregate of 90 days in any 12-month period. In the case of a Suspension, Total G&P agrees to suspend use of the applicable Prospectus in connection with any sale or purchase of, or offer to sell or purchase, Registrable Securities promptly upon receipt of the notice referred to above until it is advised in writing by the Company that the Prospectus may be used. Upon termination of any Suspension, the Company shall promptly (A) notify Total G&P, (B) amend or supplement the Prospectus, if necessary, so that it does not contain any untrue statement of a material fact contained or incorporated by reference therein or any omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and (C) furnish to Total G&P such number of copies of the Prospectus as so amended or supplemented as Total G&P may reasonably request.

(b) *Other Shares*. A Shelf Registration Statement or a Requested Registration Statement may include securities of the Company being sold for the account of the Company.

(c) *Underwriting*.

(i) If Total G&P intends to sell Registrable Securities pursuant to a Shelf Registration Statement or a Requested Registration Statement by means of an underwriting, it shall so advise the Company as a part of its request made pursuant to Section 2.1(c) or Section 2.2(a). Subject to Section 2.6(o), Total G&P and the Company shall enter into an underwriting agreement in customary form with the representative of the underwriter selected for such underwriting by Total G&P after consultation with the Company, which underwriter shall be reasonably acceptable to the Company.

(ii) The price, underwriting discount and other financial terms for any underwritten offering of Registrable Securities pursuant to Section 2.1 or Section 2.2 shall be determined by Total G&P.

(iii) The provisions of Section 2.3(a) shall be applicable to any underwritten offering pursuant to this Section 2.3(c).

(d) *Priority of Securities Sold*. Notwithstanding any other provision of this Section 2.3, if the managing underwriter advises Total G&P in writing that marketing factors require a limitation on the number of shares to be underwritten, the managing underwriter may (subject to the limitations set forth below) limit the number of securities to be included in the registration and underwriting. The amount of securities (including Registrable Securities) that are entitled to be included in the registration and underwriting shall be allocated as follows: (i) first, to Total G&P and (ii) second, to the Company (it being understood that the Company may allocate, at its discretion, for its own account or for the account of other holders or employees of the Company).

2.4 Company Registration.

(a) *Company Registration*. If the Company shall determine, in its sole discretion, to register any of its securities either for its own account or the account of a security holder other than Total G&P (other than a registration (A) pursuant to Section 2.1 or Section 2.2, (B) relating solely to employee benefit plans, (C) relating to the offer and sale of debt securities and/or equity securities issuable upon conversion thereof or in exchange therefor, (D) relating to a corporate reorganization or other Rule 145 transaction, or (E) on any registration form that does not permit secondary sales) (any such registration, an "**Inapplicable Registration**"), the Company will:

(i) promptly give written notice of the proposed registration to Total G&P; and

(ii) except as set forth in Section 2.4(b), use its reasonable best efforts to include in such registration (and any related qualification pursuant to blue sky laws or other compliance) all or a portion of any Registrable Securities as are specified in a written request by Total G&P received by the Company within ten Business Days after such written notice from the Company is received by Total G&P.

(b) *Underwriting*.

(i) If the registration for which the Company gives notice is for a registered public offering involving an underwriting, the Company shall so advise Total G&P as a part of the written notice given pursuant to Section 2.4(a)(i). In such event, Total G&P's right to registration pursuant to this Section 2.4 shall be conditioned upon Total G&P's participation in such underwriting and the inclusion of Total G&P's securities in the underwriting to the extent provided herein. Subject to Section 2.6(o), if Total G&P proposes to distribute any securities (including Registrable Securities) through such underwriting, it shall (together with the Company and any other holders of securities of the Company participating in such underwriting) enter into an underwriting agreement in customary form with the representative of the underwriter selected by the Company.

(ii) If a person (including Total G&P) who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such

person shall be excluded therefrom by written notice from the Company or the underwriter, and any securities so excluded shall not be withdrawn from registration. If securities are so excluded and if the amount of securities to be included in such registration was previously reduced as a result of marketing factors pursuant to Section 2.4(c), the Company shall then offer to all persons who have retained the right to include securities in the registration the right to include additional securities in the registration in an aggregate amount equal to the number of shares so excluded, with such shares to be allocated among the persons requesting additional inclusion in the manner set forth in Section 2.4(c).

(c) *Priority of Securities Sold*. Notwithstanding any other provision of this Section 2.4, if the managing underwriter advises the Company in writing that marketing factors require a limitation on the number of shares to be underwritten, the managing underwriter may (subject to the limitations set forth below) limit the number of securities to be included in the registration and underwriting. The Company shall so advise all holders of securities requesting registration and the amount of securities that are entitled to be included in the registration and underwriting shall be allocated as follows: (i) first, to the Company for securities being sold for its own account and (ii) second, to Total G&P and any other holder of securities requesting to include such securities on such registration statement *pro rata* on the basis of the relative number of Registrable Securities Total G&P has requested to be included in such registration and the number of shares of Common Stock requested to be included in such registration by such third parties.

(d) *Right to Terminate Registration*. The Company shall have the right to terminate or withdraw any registration initiated by it pursuant to this Section 2.4 prior to the effectiveness of such registration whether or not Total G&P has elected to include securities in such registration.

(e) *No Effect on Shelf Registration or Requested Registration*. No registration of Registrable Securities effected pursuant to a request pursuant to this Section 2.4 shall be deemed to have been effected pursuant to Sections 2.1 and 2.2 or shall relieve the Company of its obligations pursuant to Sections 2.1 or 2.2.

2.5 Expenses of Registration. Except as specifically provided in this Agreement, all Registration Expenses incurred in connection with any registration effected pursuant to this Section 2 shall be borne by the Company; *provided*, *however*, that the Company shall not be required to pay for expenses of any Requested Registration that has been subsequently withdrawn by Total G&P (and Total G&P shall reimburse the Company for such Registration Expenses), unless Total G&P agrees to forfeit its right to one Requested Registration in such 12-month period pursuant to Section 2.2 (it being understood that if two Requested Registrations have already occurred in such 12-month period, Total G&P shall agree to forfeit its right to one Requested Registration in the next 12-month period). In addition, if and to the extent applicable in connection with any Requested Registration, Total G&P refuses to enter into an underwriting agreement with any underwriter in form reasonably necessary to effect the offer and sale of Registrable Securities and such form, at the time of such refusal, provides that (i) the indemnification and contribution obligations of Total G&P are joint and not several, or (ii) the aggregate amount of Total G&P's liability may exceed its net proceeds from such underwritten offering, and as a result such Requested Registration is withdrawn by Total G&P, then the

Company shall not be required to pay any Registration Expenses incurred in connection with such Requested Registration (and Total G&P shall reimburse the Company for such Registration Expenses) unless such withdrawal is the result of an adverse event occurring at the Company not known to Total G&P at the time of such Requested Registration. All Selling Expenses incurred in connection with any registration effected pursuant to Section 2.1 or Section 2.2 or with respect to any Registrable Securities of Total G&P included in a registration statement pursuant to Section 2.4 shall be borne by Total G&P.

2.6 Registration Procedures. In the case of each registration effected by the Company pursuant to this Section 2, the Company will use its reasonable best efforts to effect such registration to permit the sale of securities in accordance with the intended method or methods of distribution thereof as expeditiously as reasonably practicable and will keep Total G&P advised on a reasonably current basis as to the initiation of each registration and as to the completion thereof. At its expense, the Company will use its reasonable best efforts to:

(a) Prepare the required registration statement, including all exhibits and financial statements required pursuant to the Securities Act to be filed therewith, and before filing a registration statement, or any amendments or supplements thereto, or Prospectus, (i) furnish to the underwriter, if any, and Total G&P copies of all documents prepared to be filed, which documents shall be subject to the review of such underwriter, Total G&P and their respective counsel, and (ii) except in the case of a registration pursuant to Section 2.4, not file any registration statement, or amendments or supplements thereto, or Prospectus to which the underwriter, if any, or Total G&P shall reasonably object;

(b) To the extent that the Company is a well-known seasoned issuer (as defined in Rule 405 promulgated under the Securities Act) (a "**WKSI**") at the time that any request for registration is submitted to the Company in accordance with Section 2.1 or Section 2.2, (i) file a new automatic shelf registration statement (as defined in Rule 405 promulgated under the Securities Act) (an "**automatic shelf registration statement**");

(c) Prepare and file with the Commission such amendments and supplements to such registration statement and the Prospectus used in connection with such registration statement as may be (i) reasonably requested by Total G&P (except in the case of a registration pursuant to Section 2.4) or (ii) necessary to comply with the provisions of the Securities Act;

(d) Furnish to Total G&P and each underwriter, if any, without charge, as many conformed copies as Total G&P or any underwriter may reasonably request of the applicable registration statement and any amendment or post-effective amendment thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits (including those incorporated by reference);

(e) Furnish, without charge, such number of Prospectuses, including any preliminary prospectuses, and other documents incident thereto, including any amendment of or supplement to the Prospectus, as Total G&P may from time to time reasonably request;

(f) On or prior to the date on which the applicable registration statement is declared effective, to the extent required by applicable Law, register and qualify the securities

covered by such registration statement pursuant to the securities or blue sky laws of each jurisdiction as shall be reasonably requested by Total G&P; *provided*, *however*, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions where it is not then so subject;

(g) Except in the case of a registration pursuant to Section 2.4, notify Total G&P and the managing underwriter, if any, and (if requested) confirm such advice in writing and provide copies of the relevant documents, as soon as reasonably practicable after notice thereof is received by the Company, (i) when the applicable registration statement, or any amendment or supplement thereto, has been filed or becomes effective and when the applicable Prospectus has been filed; and (ii) of any written comments by the Commission or any request by the Commission or any other federal or state governmental authority or regulatory authority for amendments or supplements to such registration statement or such Prospectus or for additional information;

(h) Promptly notify Total G&P (i) of the issuance by the Commission of any stop order suspending the effectiveness of such registration statement or any order by the Commission or any other federal or state governmental authority or regulatory authority preventing or suspending the use of any preliminary or final Prospectus or the initiation, or written threatened initiation, of any proceedings for such purposes; (ii) of the receipt by the Company of any notification with respect to the suspension of the qualification of the securities so registered for offering or sale in any jurisdiction or the initiation, or written threatened initiation, of any proceeding for such purpose; and (iii) at any time when a Prospectus relating to such registration statement is required to be delivered pursuant to the Securities Act of the occurrence of any event as a result of which the Prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein in light of the circumstances under which they were made, not misleading, and following such notification promptly prepare and furnish to Total G&P a reasonable number of copies of a supplement to, or an amendment of, such Prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such Prospectus shall not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein in light of the circumstances under which they were made not misleading;

(i) Prevent or obtain the withdrawal of any stop order or other order suspending the use of any preliminary or final Prospectus;

(j) Promptly incorporate in a Prospectus supplement or post-effective amendment such information as the managing underwriter and Total G&P agree should be included therein relating to the plan of distribution with respect to such securities, and make all required filings of such Prospectus supplement or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment;

(k) If at any time when the Company is required to re-evaluate its WKSI status for purposes of an automatic shelf registration statement used to effect a request for

registration in accordance with Section 2.1 or Section 2.2, (i) the Company determines that it is not a WKSI, (ii) the registration statement is required to be kept effective in accordance with this Agreement, and (iii) the registration rights of Total G&P pursuant to this Agreement have not terminated, promptly amend the registration statement onto a form that the Company is then eligible to use or file a new registration statement on such form, and keep such registration statement effective in accordance with the requirements otherwise applicable pursuant to this Agreement;

(l) Cooperate with Total G&P and the managing underwriter, if any, to facilitate the timely preparation and delivery of certificates representing securities to be sold that are in a form eligible for deposit with The Depository Trust Company and that do not bear any restrictive legends, and enable such securities to be in such denominations and registered in such names as the managing underwriter may request at least two Business Days prior to any sale of securities to the underwriters;

(m) Provide a transfer agent and registrar for all securities registered pursuant to such registration statement and a CUSIP number for all such securities, in each case not later than the effective date of such registration;

(n) Cause all such securities registered hereunder to be listed on each securities exchange on which the same securities issued by the Company are then listed;

(o) In connection with any underwritten offering, enter into an underwriting agreement in form reasonably necessary to effect the offer and sale of such securities, *provided* that (i) such underwriting agreement contains reasonable and customary provisions, (ii) if participating in such underwriting, Total G&P shall also enter into and perform its respective obligations pursuant to such agreement, (iii) if participating in such underwriting, the indemnification and contribution obligations of Total G&P shall be several and not joint, and (iv) if participating in such underwriting, the aggregate amount of Total G&P's liability shall not exceed its net proceeds from such underwritten offering;

(p) Obtain for delivery to Total G&P and the underwriter, if any, an opinion from counsel for the Company dated the effective date of the registration statement or, in the event of an underwritten offering, the date of the closing pursuant to the underwriting agreement, in customary form, scope and substance, which opinion shall be reasonably satisfactory to Total G&P and to the underwriter, as the case may be, and their respective counsel;

(q) In connection with any underwritten offering pursuant to a registration statement filed pursuant to Section 2.1 or Section 2.2, obtain for delivery to the Company and the managing underwriter, if any, with copies to Total G&P, a "cold comfort" letter from the Company's independent certified public accountants in customary form and covering such matters of the type customarily covered by "cold comfort" letters as the managing underwriter reasonably requests, dated the date of execution of the underwriting agreement and brought down to the closing pursuant to the underwriting agreement;

(r) Cooperate with Total G&P and each underwriter, if any, participating in the disposition of such securities and their respective counsel in connection with any filings required to be made with the Financial Industry Regulatory Authority, Inc.;

(s) Make available to its security holders, as soon as reasonably practicable, an earnings statement satisfying the provisions of Section 11(a) of the Securities Act;

(t) Except in the case of a registration pursuant to Section 2.4, make available upon reasonable notice at reasonable times and for reasonable periods for inspection by a representative appointed by Total G&P, by any underwriter participating in any disposition to be effected pursuant to such registration statement and by any attorney, accountant or other agent retained by Total G&P or any such underwriter, all pertinent financial and other records, corporate documents and properties of the Company, and cause all of the Company's officers, directors and employees and the independent public accountants who have certified the Company's financial statements to make themselves available to discuss the business of the Company and to supply all information reasonably requested by any such person in connection with such registration statement as shall be necessary to enable them to exercise their due diligence responsibility, *provided* that any such person gaining access to information regarding the Company pursuant to this Section 2.6(t) shall agree to hold such information in strict confidence and shall not make any disclosure or use any such information that the Company determines in good faith to be confidential, and of which determination such person is notified, unless (i) the release of such information is required by law; (ii) such information is or becomes publicly known other than through a breach of this or any other agreement; (iii) such information is or becomes available to such person on a non-confidential basis from a source other than the Company, which source had no contractual or other duty of confidentiality to the Company with respect to such information and of which Total G&P is aware; or (iv) such information is independently developed by such person; and

(u) In connection with any underwritten offering pursuant to a registration statement filed pursuant to Section 2.1 or Section 2.2, cause the senior executive officers of the Company to participate in the customary "road show" presentations that may be reasonably requested by the managing underwriter in any such underwritten offering and otherwise to facilitate, cooperate with, and participate in each proposed offering contemplated herein and customary selling efforts related thereto.

2.7 Suspension of Sales. Upon any notification by the Company pursuant to Section 2.6(h), Total G&P shall not offer or sell Registrable Securities unless and until, as applicable (a) the Company has notified Total G&P that it has prepared a supplement or amendment to such Prospectus and delivered copies of such supplement or amendment to Total G&P, or (b) the Company has advised Total G&P in writing that the use of the applicable Prospectus may be resumed. It is acknowledged and agreed that this Section 2.7 shall in no way diminish or otherwise impair the Company's obligations pursuant to Section 2.6(h) or Section 2.6(i).

2.8 Indemnification.

(a) To the fullest extent permitted by law, the Company will indemnify and hold harmless Total G&P, each of its officers, directors and stockholders, each person controlling such persons within the meaning of Section 15 of the Securities Act, and Total G&P's legal counsel and accountants against any and all expenses, claims, losses, damages and liabilities, joint or several, or actions, proceedings or settlements in respect thereof (each, a "**Loss**" and collectively "**Losses**") arising out of or based on (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any final, preliminary or summary Prospectus, any registration statement, any issuer free writing prospectus (as defined in Rule 433 of the Securities Act), or any issuer information (as defined in Rule 433 of the Securities Act) filed or required to be filed by the Company pursuant to Rule 433(d) promulgated under the Securities Act; (ii) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading; or (iii) any violation (or alleged violation) by the Company of the Securities Act, any state securities laws or any rule or regulation thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any offering covered by such registration, qualification or compliance. The Company will reimburse each such indemnified person for any legal and any other expenses reasonably incurred in connection with investigating and defending or settling any such Loss; *provided*, *however*, that the Company will not be liable in any such case to the extent that any such Loss arises out of or is based on any untrue statement or omission based upon written information furnished to the Company by such indemnified person and stated to be specifically for use therein; and *provided*, *further*, *however*, that the obligations of the Company hereunder shall not apply to amounts paid in settlement of any such Losses if such settlement is effected without the consent of the Company unless such settlement (A) includes an unconditional release of the Company from all liability on claims that are the subject matter of such proceeding and (B) does not include a statement as to, or an admission of, fault, culpability or a failure to act, by or on behalf of the Company. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of Total G&P or any other indemnified party and shall survive the transfer of any Registrable Securities.

(b) To the fullest extent permitted by law, Total G&P will indemnify and hold harmless the Company, each of its directors and officers, and each person who controls the Company within the meaning of Section 15 of the Securities Act against all Losses (or actions in respect thereof) arising out of or based on (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any preliminary or summary Prospectus, registration statement, any free writing prospectus (as defined in Rule 433 of the Securities Act) prepared or used by or on behalf of Total G&P, or any information filed or required to be filed by Total G&P pursuant to Rule 433(d), (ii) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation (or alleged violation) by Total G&P of the Securities Act, any state securities laws or any rule or regulation thereunder applicable to Total G&P and relating to action or inaction required of Total G&P in connection with any offering covered by such registration, qualification or compliance, and will reimburse the Company and such indemnified persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such Loss, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged

omission) is made in reliance upon and in conformity with written information furnished to the Company by Total G&P specifically for use therein; *provided*, *however*, that the obligations of Total G&P hereunder shall not apply to amounts paid in settlement of any such Losses if such settlement is effected without the consent of Total G&P unless such settlement (A) includes an unconditional release of Total G&P from all liability on claims that are the subject matter of such proceeding and (B) does not include a statement as to, or an admission of, fault, culpability or a failure to act, by or on behalf of Total G&P; and *provided*, *further*, *however*, that in no event shall any indemnity pursuant to this Section 2.8(b) exceed the net proceeds from the offering received by Total G&P.

(c) Each party entitled to indemnification pursuant to this Section 2.8 (each, an "**Indemnified Party**") shall give notice to the party required to provide indemnification (the "**Indemnifying Party**") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of such claim or any litigation resulting therefrom, *provided* that counsel for the Indemnifying Party, who shall conduct the defense of such claim or any litigation resulting therefrom, shall be approved by the Indemnified Party (whose approval shall not be unreasonably withheld), and the Indemnified Party may participate in such defense at such party's expense, and *provided further* that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations pursuant to this Section 2.8 except to the extent that the Indemnified Party is materially prejudiced thereby. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof a full and unconditional release of the Indemnified Party from all liability in respect of such claim or litigation. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(d) If the indemnification provided for in this Section 2.8 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any Loss, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Loss in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party, on the one hand, and of the Indemnified Party, on the other hand, in connection with the statements or omissions that resulted in such Loss as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. No person or entity will be required pursuant to this Section 2.8(d) to contribute any amount in excess of the net proceeds from the offering received by such person or entity, except in the case of fraud or willful misconduct by such person or entity. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 2.8(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 2.8(d). No person or entity guilty of fraudulent misrepresentation

(within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person or entity who was not guilty of fraudulent misrepresentation.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with any underwritten public offering are in conflict with the foregoing provisions, the provisions of this Agreement shall control.

(f) Indemnification similar to that specified in the preceding provisions of this Section 2.8 (with appropriate modifications) shall be given by the Company and each seller of securities (including Total G&P) with respect to any required registration or other qualification of securities pursuant to any federal or state law or regulation or governmental authority other than the Securities Act.

2.9 Information by Total G&P. As a condition to the Company's obligations to register securities for the account of Total G&P hereunder, Total G&P shall furnish to the Company such information regarding it and the distribution proposed by it as the Company may reasonably request and as shall be reasonably required in connection with any registration, qualification or compliance referred to in this Section 2.

2.10 Subsequent Registration Rights. The Company is not currently a party to any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder any registration rights the terms of which are on parity with or senior to, or inconsistent with, the registration rights granted to Total G&P pursuant to this Agreement. From and after the date of this Agreement, the Company shall not enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder any registration rights the terms of which are materially more favorable to the registration rights granted to Total G&P pursuant to this Agreement. In no event shall the Company enter into any agreement with any holder or prospective holder of securities of the Company that provides such holder with any "demand" rights of the type contemplated by Section 2.2 (excluding "shelf rights" of the type contemplated by Section 2.1) or providing such holder with any "piggyback" rights on any registrations initiated by Total G&P pursuant to this Agreement.

2.11 Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the Commission that may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its reasonable best efforts to:

(a) Make and keep available in accordance with Rule 144 adequate current public information with respect to the Company at all times; and

(b) File with the Commission in a timely manner all reports and other documents required of the Company pursuant to the Securities Act and the Exchange Act at any time.

2.12 Termination of Registration Rights. Total G&P's rights pursuant to Section 2 (other than Section 2.8) shall terminate on the first date on which (i) all Registrable Securities beneficially owned by Total G&P constitute less than 5% of the then-outstanding Common Stock, (ii) such Registrable Securities may immediately be resold by Total G&P pursuant to

Rule 144 during any 90 day period without any volume limitation or other restrictions on transfer thereunder, or (iii) the Company ceases to be subject to the periodic reporting requirements pursuant to Section 13 or 15(d) of the Exchange Act. From and after the termination of such rights, the Company shall be entitled to withdraw any Registration Statement, and Total G&P shall have no further right to offer or sell any of the Registrable Securities pursuant to any Registration Statement (or any Prospectus relating thereto).

2.13 Transfer or Assignment of Registration Rights. Total G&P's rights pursuant to this Agreement may be transferred or assigned without the consent of the Company to any transferee that is a Total G&P Controlled Corporation (as defined in the Affiliation Agreement). Upon such transfer or assignment, such transferee shall become entitled to all of Total G&P's rights, and subject to all of Total G&P's obligations, pursuant to this Agreement as if originally a party hereto. Subject to the preceding sentence, this Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by any party hereto without the prior written consent of the other parties.

2.14 Restrictions on Public Sale by the Company. The Company agrees (a) not to effect any public sale or distribution of any securities similar to those being registered in accordance with Section 2.1 or Section 2.2, or any securities convertible into or exchangeable or exercisable for such securities, during such period as the managing underwriter may reasonably request (but in any event no more than 90 days) beginning on, the effective date of any registration statement relating to an offering pursuant to Section 2.1 or the pricing of an offering pursuant to Section 2.2 (except as part of such registration statement and except pursuant to an Inapplicable Registration.

SECTION 3.

MISCELLANEOUS

3.1 Amendment. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought, including on behalf of the Company, without the Disinterested Director Approval.

3.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly delivered and received hereunder (i) four Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid, (ii) one Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service, (iii) if sent by facsimile transmission before 5:00 p.m. in the time zone of the receiving party, when transmitted and receipt is confirmed, (iv) if sent by facsimile transmission after 5:00 p.m. in the time zone of the receiving party and receipt is confirmed, on the following Business Day, and (v) if otherwise actually personally delivered by hand, when delivered, in each case to the intended recipient, at the following addresses or fax numbers (or at such other address or fax numbers for a party as shall be specified by similar notice):

(a) if to Total G&P, to:

Total Gas & Power USA, SAS
2, place Jean Millier
La Défense 6
92400 Courbevoie
France
Attn: Arnaud Chaperon

cc: Stephen Douglas
Legal Director, Gas & Power
TOTAL S.A.
2 place Jean Millier, La Défense 6
92078 Paris La Défense Cedex
France
Telephone: +331 4744 6768
Facsimile: +331 4744 3807

with a copy (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, CA 94304
Attn: David J. Segre
Attn: Richard C. Blake
Facsimile: (650) 493-6811

(b) if to the Company, to:

SunPower Corporation
77 Rio Robles
San Jose, CA 95134
Attn: Dennis Arriola
Attn: Bruce Ledesma
Facsimile: (510) 540-0552

with a copy (which shall not constitute notice) to:

Jones Day
1755 Embarcadero Road
Palo Alto, CA 94303
Attn: R. Todd Johnson
Attn: Steve Gillette
Facsimile: (650) 739-3900

and

Jones Day
3161 Michelson Drive, 8th Floor
Irvine, CA 92612
Attn: Jonn R. Beeson
Facsimile: (949) 553-7539

3.3 Applicable Law; Jurisdiction; Etc.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern pursuant to applicable principles of conflicts of law thereof.

(b) Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue in any state court within the State of Delaware (or, if a state court located within the State of Delaware declines to accept jurisdiction over a particular matter, any court of the United States located in the State of Delaware) in connection with any matter based upon or arising out of this Agreement or the transactions contemplated hereby and agrees that process may be served upon such party in any manner authorized by the laws of the State of Delaware or in such other manner as may be lawful, and that service in such manner shall constitute valid and sufficient service of process. Each party hereto waives and covenants not to assert or plead any objection that such party might otherwise have to such jurisdiction, venue and process. Each party hereto hereby agrees not to commence any legal proceedings relating to or arising out of this Agreement or the transactions contemplated hereby in any jurisdiction or courts other than as provided herein.

(c) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF A PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF

3.4 Successors and Assigns. Subject to Section 2.12, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

3.5 Entire Agreement. This Agreement and the exhibits hereto constitute the full and entire understanding and agreement between the parties with regard to the subject matter hereof. No party hereto shall be liable or bound to any other party in any manner with regard to the subject matter hereof by any warranties, representations or covenants except as specifically set forth herein.

3.6 Delays or Omissions. Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party to this Agreement upon any breach or default of any other party pursuant to this Agreement shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter

occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default pursuant to this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either pursuant to this Agreement or by law or otherwise afforded to any party to this Agreement shall be cumulative and not alternative.

3.7 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement and such court will replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Agreement shall be enforceable in accordance with its terms.

3.8 Titles and Subtitles. The table of contents, titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs and exhibits shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits attached hereto.

3.9 Counterparts. This Agreement may be executed in separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same agreement. Any such counterpart, to the extent delivered by means of a fax machine or by .pdf, .tif, .gif, .jpeg or similar attachment to electronic mail (any such delivery, an "**Electronic Delivery**") shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent that such defense relates to lack of authenticity.

3.10 Further Assurances. Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such reasonable other and additional instruments and documents and do all such other reasonable acts and things as may be necessary to more fully effectuate this Agreement.

3.11 Interpretation. This Agreement shall be construed reasonably to carry out its intent without presumption against or in favor of either party. The parties have participated jointly in negotiating and drafting this Agreement.

3.12 Attorneys' Fees. In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party such reasonable fees and expenses of attorneys and accountants, which shall include all fees, costs and expenses of appeals.

3.13 Certain References. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The terms "herein," "hereof" or "hereunder" or similar terms as used in this Agreement refer to this entire Agreement and not to the particular provision in which the term is used. Unless the context otherwise requires, "neither," "nor," "any," "either" and "or" shall not be exclusive. All references herein to "days" in this Agreement (excluding references to Business Days) are references to calendar days. Any reference to any statute or regulation refers to the statute or regulation as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, includes any rules and regulations promulgated pursuant to the statue) and any reference to any section of any statute or regulation includes any successor to the section.

3.14 Specific Performance. The parties hereto acknowledge and agree that the failure of any party to perform its agreements and covenants hereunder, including its failure to take all actions as are necessary on its part to the consummation of the transactions contemplated hereby, will cause irreparable injury to the other parties for which damages, even if available, will not be an adequate remedy. Accordingly, each party hereby consents to the issuance of injunctive relief by any court of competent jurisdiction to compel performance of such party's obligations, to prevent breaches of this Agreement by such party and to the granting by any court of the remedy of specific performance of such party's obligations hereunder, without bond or other security being required, in addition to any other remedy to which any party is entitled at law or in equity. Each party irrevocably waives any defenses based on adequacy of any other remedy, whether at law or in equity, that might be asserted as a bar to the remedy of specific performance of any of the terms or provisions hereof or injunctive relief in any action brought therefor by any party.

3.15 Effectiveness. The terms of this Agreement shall commence and become effective immediately prior to closing of the Tender Offer, and prior to such time this Agreement shall be of no force or effect.

[*Execution page follows*.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SUNPOWER CORPORATION

By: /s/ Thomas H. Werner
Name: Thomas H. Werner
Title: Chief Executive Officer

TOTAL GAS & POWER USA, SAS

By: /s/ Arnaud Chaperon
Name: Arnaud Chaperon
Title: President