



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): August 12, 2008

SUNPOWER CORPORATION  
(Exact Name of Registrant as Specified in Charter)

Delaware (State or Other Jurisdiction of Incorporation)	000-51593 (Commission File No.)	94-3008969 (I.R.S. Employer Identification No.)
3939 North First Street, San Jose, California 95134 (Address of Principal Executive Offices) (Zip Code)		
Registrant's telephone number, including area code: (408) 240-5500		
N/A (Former Name or Former Address, if Changed Since Last Report)		

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:

- ☐ 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))

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EXPLANATORY NOTE

From time to time, Cypress Semiconductor Corporation (“Cypress”), the holder of a majority of the voting power of the issued and outstanding voting securities of SunPower Corporation (“we,” “us,” “our” or the “Company”), has discussed with representatives of the Company possible transactions that would effect a separation of Cypress’s business from the Company. To consider such possible transactions, we formed a special committee consisting of Mr. Pat Wood III and Ms. Betsy Atkins, who are independent of Cypress.

In early February 2008, Cypress advised representatives of the Company that it had submitted a request to the IRS for a private ruling with respect to certain tax issues arising under Section 355 of the Internal Revenue Code of 1986, as amended (the “Code”) in connection with a potential spin-off to its stockholders of the shares of our Class B common stock held by Cypress. During February and March 2008, the special committee held a number of meetings with its advisors and our management and in executive session without management present to discuss the nature of Cypress’s private ruling request, the potential timing of any spin-off and its implications for the Company and the holders of its Class A common stock. Among the considerations was the resulting capitalization of the Company, and whether there would be one or two classes of stock outstanding following the spin-off.

On April 17, 2008, Cypress announced that it received a favorable ruling from the IRS. That ruling provides that, based on the facts and representations submitted by Cypress, no gain or loss would be recognized by Cypress or its stockholders upon the distribution by Cypress, and receipt by its stockholders, of all of Cypress’s shares of our Class B common stock. On July 17, 2008, Cypress announced that its board of directors had authorized its management to proceed with the proposed spin-off by Cypress to its stockholders of the shares of the Company’s Class B common stock held by Cypress (the “spin-off”) with the objective of having the transaction completed by the end of 2008, or sooner if possible.

In order to effectuate the spin-off, Cypress required that we, among other things,

- make certain amendments to our certificate of incorporation (the “Certificate”) as described below, and
- enter into an amendment to the tax sharing agreement, dated as of October 6, 2005, by and between us and Cypress (the “Tax Sharing Agreement”), as described below.

In connection with these actions, our board of directors, acting on the recommendation of the special committee, also determined to take certain additional actions and enter into certain additional agreements as are described below. We have also filed with the Securities and Exchange Commission (the “SEC”) a Schedule 14C and related information statement (as the same may be amended and supplemented, the “Information Statement”) pertaining to the approval by Cypress, as the holder of a majority of the voting power of our issued and outstanding securities, of the amendments to our Certificate.

**Item 1.01. Entry into a Material Definitive Agreement.**

*Amended Tax Sharing Agreement*

On August 12, 2008, we and Cypress entered into an Amendment No. 1 to Tax Sharing Agreement (the “Amended Tax Sharing Agreement”) to address certain transactions that may affect the tax treatment of the spin-off and certain other matters. The following summary of the Amended Tax Sharing Agreement is qualified in its entirety by reference to the full text of the Amended Tax Sharing Agreement, a copy of which is being filed as [Exhibit 10.1](#) hereto, and is incorporated herein by reference.

Under the Amended Tax Sharing Agreement, we are required to provide notice to Cypress of certain transactions that could give rise to our indemnification obligation relating to taxes resulting from the application of Section 355(e) of the Code or similar provision of other applicable law to the spin-off as a result of one or more acquisitions (within the meaning of Section 355(e)) of our stock after the spin-off. An acquisition for these purposes includes any such acquisition attributable to a conversion of any or all of our Class B common stock to Class A common stock or any similar recapitalization transaction or series of related transactions (a “Recapitalization”). We are not required to indemnify Cypress for any taxes which would result solely from (A) issuances and dispositions of our stock prior to the spin-off and (B) any acquisition of our stock by Cypress after the spin-off.

Under the Amended Tax Sharing Agreement, we also agreed that, for a period of 25 months following the spin-off, we will not (i) effect a Recapitalization or (ii) enter into or facilitate any other transaction resulting in an acquisition (within the meaning of Section 355(e) of the Code) of our stock without first obtaining the written consent of Cypress; provided, we are not required to obtain Cypress’s consent unless such transaction (either alone or when taken together with one or more other transactions entered into or facilitated by us consummated after August 4, 2008 and during the 25-month period following the spin-off) would involve the acquisition for purposes of Section 355(e) of the Code after August 4, 2008 of more than 25% of our outstanding shares of common stock. In addition, the requirement to obtain Cypress’s consent does not apply to (A) any acquisition of our stock that will qualify under Treasury Regulation Section 1.355-7(d)(8) in connection with the performance of services, (B) any acquisition of our stock for which we furnish to Cypress prior to such acquisition an opinion of counsel and supporting documentation, in form and substance reasonably satisfactory to Cypress (a “Tax Opinion”), that such acquisition will qualify under Treasury Regulation Section 1.355-7(d)(9), (C) an acquisition of our stock (other than involving a public offering) for which we furnish to Cypress prior to such acquisition a Tax Opinion to the effect that such acquisition will qualify under the so-called “super safe harbor” contained in Treasury Regulation Section 1.355-7(b)(2) or (D) the adoption by us of a standard stockholder rights plan. We further agreed that we will not (i) effect a

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Recapitalization during the 36 month period following the spin-off without first obtaining a Tax Opinion to the effect that such Recapitalization (either alone or when taken together with any other transaction or transactions) will not cause the spin-off to become taxable under Section 355(e), or (ii) seek any private ruling, including any supplemental private ruling, from the IRS with regard to the spin-off, or any transaction having any bearing on the tax treatment of the spin-off, without the prior written consent of Cypress.

### *Rights Plan*

Also on August 12, 2008, we entered into a rights agreement (the “Rights Agreement”) with Computershare Trust Company, N.A., as rights agents (the “Rights Agent”). The Rights Agreement will become effective immediately upon the spin-off. The Rights Agreement contains specific features designed to the address the potential for an acquiror or significant investor to take advantage of our capital structure and unfairly discriminate between classes of our common stock. Specifically, the Rights Agreement is designed to address the inequities that could result if an investor, by acquiring 20% or more of the outstanding shares of Class B common stock, were able to gain significant voting influence over our company without making a correspondingly significant economic investment. The following summary of the Rights Agreement is qualified in its entirety by reference to the full text of the Rights Agreement, a copy of which is being filed as [Exhibit 4.1](#) hereto, and which is incorporated herein by reference.

*Dividend Declaration; Subsequent Issuances of Rights.* Effective immediately upon the proposed spin-off, and conditioned upon the completion of the spin-off, a committee formed by the board of directors will authorize and declare a dividend distribution of one right (each, a “Right”) for each share of either class of our common stock then outstanding. Each share of either class of common stock issued thereafter would also be accompanied by a Right.

*Initial Characteristics of the Rights.* Until the distribution date (described below), the Rights would be attached to our common shares, would be represented by the certificates representing the common shares, would not trade separately and would not be exercisable. In effect, the Rights would be completely dormant.

*Distribution Date; Exercisability.* The “Distribution Date” would be the earlier to occur of:

(i) the tenth calendar day following the date of our public announcement (the “Share Acquisition Date”) that a person or group of persons has acquired beneficial ownership of (a) 20% or more of the aggregate outstanding Class A and Class B common stock, or (b) 20% or more of the outstanding Class B common stock (which, as of the date hereof, would represent approximately 18% of the voting power of our aggregate outstanding common stock) (an “Acquiring Person”); and

(ii) the tenth business day (or such later date as may be specified by the board) following the commencement by any person or group of persons of a tender offer or exchange offer, the consummation of which would result in beneficial ownership by such person or group of (a) 20% or more of the aggregate outstanding Class A and Class B common stock, or (b) 20% or more of the outstanding Class B common stock (which, as of the date hereof, would represent approximately 18% of the voting power of our aggregate outstanding common stock).

Upon the occurrence of a Distribution Date, the Rights would separate from our common stock, would be represented by separate rights certificates and would become nominally exercisable to purchase, prior to the occurrence of a “flip-in” event or a “flip-over” event, one one-hundredth of a share of a new series of preferred stock of the Company (the “Preferred Shares”). Each Preferred Share issued in respect of Rights attached to a share of Class A common stock would have economic and voting rights generally equal to 100 shares of Class A common stock, and each Right issued in respect of a share of Class B common stock would have economic and voting rights generally equal to 100 shares of Class B common stock. The exercise price payable for one one-hundredth of a Preferred Share upon any exercise of a Right is \$450.00 (representing an approximate 595% premium over the closing price of one share of our Class A common stock on Nasdaq on August 11, 2008, the trading day before the rights plan was adopted). Accordingly, we do not intend that it would be economical for a holder to exercise the Rights prior to the occurrence of a “flip-in” event or a “flip-over” event as described below.

*Flip-In Event.* The Rights are intended to provide protection against, among other things, potential abuses associated with partial tender offers or creeping accumulations of common stock. If (i) any person or group were to become an Acquiring Person, (ii) an Acquiring Person were to engage in a self-dealing transaction involving us, or (iii) during such time as there is an Acquiring Person, there were any reclassification of our securities, any recapitalization or any other transaction resulting in a disproportionate increase in the Acquiring Person’s ownership of our equity securities, then, and in each such case, from and after the later of the Share Acquisition Date and the Distribution Date, each Right, other than Rights that are or were owned beneficially by an Acquiring Person (which would be void) would become exercisable upon payment of the then-current exercise price of the Right to purchase a number of shares of common stock of the corresponding class having a market value at the time of such flip-in event of two times the exercise price of the Right. The Rights therefore provide protection against, among other things, potential abuses associated with partial tender offers or creeping accumulations of common stock.

If there were an insufficient number of authorized shares of common stock to permit the full exercise of the Rights upon the occurrence of a flip-in event, we would be required to seek to authorize additional common stock for issuance upon exercise of the Rights. If we were unable to authorize additional common stock, we would be required to deliver the applicable class of common stock (to the extent available) and then cash having an aggregate value equal to the excess of the value of the common stock issuable upon the exercise of the Rights over the exercise price without requiring payment of the exercise price. To the extent that any legal or contractual restrictions would prevent us from paying the full amount of cash payable, we would be required to pay all amounts which were not then restricted on a pro rata basis and to continue to make payments on a pro rata basis as funds became available until the full amount due to each holder of Rights had been paid.

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*Flip-Over Event.* The Rights are also intended to provide protection against, among other things, potential abuses associated with squeeze-out mergers and similar transactions occurring subsequent to a partial acquisition of the common stock by an Acquiring Person. If, at any time after the Share Acquisition Date:

- (i) we were to merge with and into any other person and we were not the surviving corporation;
- (ii) any person were to merge with or into us and we were the surviving corporation, but the common stock were changed or exchanged; or
- (iii) 50% or more of our assets or earning power were sold or transferred to any other person;

then, and in each such case, from and after the later of the Share Acquisition Date and the Distribution Date, each Right, other than Rights owned beneficially by an Acquiring Person (which would be void), would become exercisable upon payment of the then-current exercise price of the Right to purchase a number of common shares of such surviving corporation or other person having a market value at the time of such flip-over event of two times the exercise price of the Right.

*Exchange.* Our board of directors is entitled to order the exchange of the Rights, in whole or in part, at an exchange ratio of one share of Class A common stock or Class B common stock, as the case may be, per Right (subject to adjustment) at any time after the later of the Distribution Date and the Share Acquisition Date, but prior to the acquisition by any person or group of 50% or more of the then-outstanding common stock. Rights held by any Acquiring Person would be void, and thus would not be exchanged. This exchange provision would simplify the mechanics of the exercise of Rights and would provide additional flexibility to the board following a Share Acquisition Date.

*Redemption.* Our board of directors is entitled to redeem the Rights in whole, but not in part, at the nominal price of \$0.001 per Right at any time prior to the later of the Share Acquisition Date and the Distribution Date. This redemption provision is designed to provide flexibility to the board in determining whether and when to redeem the Rights, and would permit the board to redeem the Rights in connection with an acquisition that has been approved by the board. Immediately upon the effectiveness of the action of the board electing to redeem the Rights, the Rights would cease to be exercisable and the only right of the holders of Rights would be to receive the redemption price.

*Expiration.* The Rights would expire ten years after the record date for distribution of the Rights distributed, unless earlier exchanged or redeemed by our board of directors as described above.

The Rights Agent currently serves as the Company's transfer agent with respect to the Class A Common Stock and has been appointed to serve as transfer agent with respect to the Company's Class B common stock from and after the spin-off. The Rights Agent has also been appointed to serve as the transfer agent with respect to the Preferred Shares, if any, that may be issued under the Rights Agreement.

### **Item 3.03. Material Modification to Rights of Security Holders.**

The information under the caption "Rights Plan" in "Item 1.01. Entry into a Material Definitive Agreement" above is incorporated herein by reference.

### **Item 8.01. Other Events.**

On August 12, 2008, our board of directors approved, subject to stockholder approval, an amendment and restatement of our Certificate (as so amended and restated, the "Restated Certificate"). Cypress has informed us that it intends to act by written consent to approve the Restated Certificate. Cypress' written consent, if given and not revoked or terminated, would become effective after the passage of 20 calendar days from the date the Information Statement is first sent or given to our stockholders. The Restated Certificate will not be effective until filed with the Secretary of State of the State of Delaware. We expect to file the Restated Certificate with the Delaware Secretary of State at least five days prior to the distribution date for the proposed spin-off. Our board of directors may abandon the Restated Certificate at any time prior to its filing, without any further action by our stockholders, however, we have agreed with Cypress that, if Cypress fixes a record and distribution date for the spin-off, we will file the Restated Certificate no later than five days prior to the distribution date. We expect the Restated Certificate to be abandoned if the spin-off does not occur. Cypress is not obligated to effect the spin-off and there can be no assurance that it will occur. The following summary of the amendments to our Certificate to be effected by the Restated Certificate is qualified in its entirety by reference to the full text of the Form of Restated Certificate, a copy of which is being filed as Exhibit 99.1 hereto, and is incorporated herein by reference.

The amendments to our Certificate to be effected by the Restated Certificate are principally to:

(i) clarify that, following the spin-off, the shares of our Class B common stock will remain outstanding as a separate class from our Class A shares and will be transferable by holders of Class B common stock as a separate class;

(ii) eliminate the ability of holders of shares of Class B common stock to voluntarily convert Class B shares into shares of our Class A common stock following the spin-off;

(iii) restrict the voting power of a holder of more than 15% of our outstanding shares of Class B common stock with respect to the election or removal of directors to 15% of the outstanding shares of Class B common stock. However, if such holder also owns in excess of 15% of our outstanding shares of Class A common stock, then the holder may exercise the voting power of our Class B common stock in excess of 15% to the extent that such holder has an equivalent percentage of outstanding Class A common stock. For example, a holder of 20% of our

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outstanding Class B common stock, and none of our Class A common stock, would be limited to 15% of the voting power of our outstanding Class B common stock in the election or removal of directors. On the other hand, if this person owned both 20% of our outstanding Class B common stock and 17% of our outstanding Class A common stock, then the person would be able to exercise 17% of the voting power of our outstanding Class B common stock in the election or removal of directors. Any shares of Class B common stock as to which voting power is restricted as described above would automatically be voted in proportion to the shares of Class B common stock held by holders of less than 15% of such stock; and

(iv) facilitate adoption of a stockholder rights plan by allowing for dividends payable in rights to holders of Class B common stock that, under certain circumstances, entitle such holders to purchase shares of our Class B common stock or rights relating to the Class B common stock and permitting the issuance of shares of Class B common stock upon exercise of such rights. Our Certificate already allows for the issuance of Class A common stock upon the exercise of similar rights relating to our Class A common stock.

Because the restriction on the voting power of a holder of more than 15% of our Class B shares was not contemplated by the ruling Cypress received from the IRS regarding the spin-off, the effectiveness of this provision is subject to receipt by Cypress of a supplemental ruling from the IRS that the effectiveness of the restriction will not prevent the favorable rulings received by Cypress with respect to certain tax issues arising under Section 355 of the Code in connection with the spin-off from having full force and effect. Cypress has informed us that it intends to submit the supplemental ruling request to the IRS, but there can be no assurance that it will do so or that a favorable ruling will be received.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

Exhibit Number	Description
4.1	Rights Agreement, dated as of August 12, 2008, by and between SunPower Corporation 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
10.1	Amendment No. 1 to Tax Sharing Agreement, dated as of August 12, 2008, by and between Cypress Semiconductor Corporation and SunPower Corporation
99.1	Form of Restated Certificate of Incorporation

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.

Date: August 12, 2008

SunPower Corporation

By: /s/ Thomas Werner  
Name: Thomas Werner  
Title: Chief Executive Officer

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EXHIBITS

Exhibit Number	Description
4.1	Rights Agreement, dated as of August 12, 2008, by and between SunPower Corporation 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
10.1	Amendment No. 1 to Tax Sharing Agreement, dated as of August 12, 2008, by and between Cypress Semiconductor Corporation and SunPower Corporation
99.1	Form of Restated Certificate of Incorporation

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RIGHTS AGREEMENT

DATED AS OF AUGUST 12, 2008,

BY AND BETWEEN

SUNPOWER CORPORATION

AND

COMPUTERSHARE TRUST COMPANY, N.A.,

AS RIGHTS AGENT

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## RIGHTS AGREEMENT

This Rights Agreement, dated as of August 12, 2008 (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 (the “**Rights Agent**”).

### RECITALS

WHEREAS, on August 12, 2008, the Board of Directors authorized a Rights Committee of the Board of Directors (the “**Rights Committee**”) 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 “**Rights**”) for each share of Class B common stock, par value \$0.001 per share, of the Company (a “**Class B Common Share**,” and, together with the Class A Common Shares, the “**Common Shares**”) outstanding as of the Close of Business (as hereinafter defined) on a record date to be determined by the Rights Committee (the “**Record Date**”), each 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.

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 or any Related Person) who or which, together with all Affiliates and Associates of such Person, is or becomes the Beneficial Owner of (i) 20% or more of the then-outstanding Common Shares or (ii) 20% or more of the then-outstanding Class B Common Shares; provided, however, 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

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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.

(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) 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.

(d) "**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.

(e) "**Class A Common Share**" has the meaning set forth in the Recitals to this Agreement.

(f) "**Class B Common Share**" has the meaning set forth in the Recitals to this Agreement.

(g) "**Class A Right**" has the meaning set forth in the Recitals to this Agreement.

(h) "**Class B Right**" has the meaning set forth in the Recitals to this Agreement.

(i) "**Class A Right Certificates**" means the certificates evidencing the Class A Rights, substantially in the form attached as Exhibit C.

(j) "**Class B Right Certificates**" means the certificates evidencing the Class B Rights, substantially in the form attached as Exhibit C.

(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 Class A Common Shares and the Class B Common Shares, collectively; 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**” means SunPower Corporation, a Delaware corporation.

(n) “**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 the Beneficial Owner of (A) 20% or more of the then-outstanding Common Shares or (B) 20% or more of the then-outstanding Class B Common Shares.

(o) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

(p) “**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.

(q) “**Flip-in Event**” means any event described in clauses (A), (B) or (C) of Section 11(a)(ii).

(r) “**Flip-over Event**” means any event described in clauses (i), (ii) or (iii) of Section 13(a).

(s) “**Issuer**” has the meaning set forth in Section 13(b).

(t) “**Nasdaq**” means The Nasdaq Stock Market.

(u) “**Person**” means any individual, firm, corporation, limited liability company or other legal entity, and includes any successor (by merger or otherwise) of such entity.

(v) “**Preferred Shares**,” with respect to shares issued upon exercise of Class A Rights, 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 form of Certificate of Designation of Series A Junior Participating Preferred Stock attached as Exhibit A (the “**Series A Preferred Shares**”), and, with respect to shares issued upon exercise of Class B Rights, means shares of Series B Junior Participating Preferred Stock, par value \$0.001 per share, of the Company having substantially the rights and preferences set forth in the form of Certificate of Designation of Series B Junior Participating Preferred Stock attached as Exhibit B (the “**Series B Preferred Shares**”).

(w) “**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.

(x) “**Record Date**” has the meaning set forth in the Recitals to this Agreement.



(y) “**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.

(z) “**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.

(aa) “**Right**” has the meaning set forth in the Recitals to this Agreement.

(bb) “**Right Certificates**” means the Class A Right Certificates and the Class B Right Certificates, collectively.

(cc) “**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.

(dd) “**Securities Act**” means the Securities Act of 1933, as amended.

(ee) “**Series A Preferred Shares**” has the meaning set forth in Section 1(v).

(ff) “**Series B Preferred Shares**” has the meaning set forth in Section 1(v).

(gg) “**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.

(hh) “**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.

(ii) “**Successor in Interest**” has the meaning set forth in the Company’s Restated Certificate of Incorporation, as it may be amended from time to time.

(jj) “**Trading Day**” means any day on which the principal national securities exchange or quotation system on which the Class A Common Shares or Class B Common Shares are listed or admitted to trading is open for the transaction of business or, if the Class A Common Shares or Class B Common Shares are not listed or admitted to trading on any national securities exchange or quotation system, a Business Day.

(kk) “**Triggering Event**” means any Flip-in Event or Flip-over Event.

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 Class A Rights will be evidenced by the certificates representing Class A Common Shares registered in the names of the record holders thereof, which certificates representing Class A Common Shares will also be deemed to be Class A Right Certificates (or, if the Class A Common Shares are uncertificated, by the registration of the associated Class A Common Shares on the stock transfer books of the Company), (ii) the Class B Rights will be evidenced by the certificates representing Class B Common Shares registered in the names of the record holders thereof, which certificates representing Class B Common Shares will also be deemed to be Class B Right Certificates (or, if the Class B Common Shares are uncertificated, by the registration of the associated Class B Common Shares on the stock transfer books of the Company), (iii) the Rights will be transferable only in connection with the transfer of the underlying Common Shares, and (iv) 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 D 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 a Rights Agreement between SunPower Corporation and Computershare Trust Company, N.A., dated as of August 12, 2008 (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, (i) to each record holder of Class A 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 Class A Right Certificate evidencing one Class A Right for each Class A Common Share so held, subject to adjustment as provided herein and (ii) to each record holder of Class B 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 Class B Right Certificate evidencing one Class B Right for each Class B 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 C 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 (A) each holder of a Class 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 Class A 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 Class 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 Class 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 Class A 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 Class 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 Class 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 Class A Common Shares (determined pursuant to Section 11(d)) on the date of the occurrence of such Flip-in Event and (B) each holder of a Class B 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 Class B 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 Class B 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 Class B 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 Class B 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 Class B 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 Class B 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 Class B 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 Class A Common Shares and the Class B Common Shares, as the case may be (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) Class A Common Shares or Class B Common Shares, as the case may be, 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 Class A Common Shares or Class B Common Shares, as the case may be, 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 Class A Common Shares or Class B Common Shares, as the case may be, 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 Class A Common Shares or Class B Common Shares, as the case may be, 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, Class A Common Shares or Class B Common Shares, as the case may be (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) (A) For the purpose of any computation hereunder, the “**current per share market price**” of Class A Common Shares on any date will be deemed to be the average of the daily closing prices per share of such Class A 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 Class A Common Shares is determined during a period following the announcement by the Company of (1) a dividend or distribution on such Class A Common Shares payable in such Class A Common Shares or securities convertible into such Class A Common Shares (other than the Rights) or (2) any subdivision, combination or reclassification of such Class A 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 Class A 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 Class A 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 Class A Common Shares are listed or admitted to trading or, if the Class A 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 Class A 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 Class A Common Shares selected by the Board of Directors of the Company. If the Class A 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.

(B) For the purpose of any computation hereunder, the “**current per share market price**” of Class B Common Shares on any date will be deemed to be the average of the daily closing prices per share of such Class B 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 Class B Common Shares is determined during a period following the announcement by the Company of (1) a dividend or distribution on such Class B Common Shares payable in such Class B Common Shares or securities convertible into such Class B Common Shares (other than the Rights) or (2) any subdivision, combination or reclassification of such Class B 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

Class B 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 Class B 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 Class B Common Shares are listed or admitted to trading or, if the Class B 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 Class B 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 Class B Common Shares selected by the Board of Directors of the Company. If the Class B 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.

(C) For the purpose of any computation hereunder, the “**current per share market price**” of Common Shares (other than Class A Common Shares or Class B 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 Common Shares is determined during a period following the announcement by the Company of (1) 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 (2) 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) (A) For the purpose of any computation hereunder, the “**current per share market price**” of the Series A Preferred Shares will be determined in the same manner as set forth above for Class A Common Shares in Section 11(d)(i), other than the last sentence thereof. If the current per share market price of the Series A Preferred Shares cannot be determined in the manner provided above, the “current per share market price” of the Series A Preferred Shares will be conclusively deemed to be an amount equal to the current per share market price of the Class A 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 Class A Common Shares occurring after the date of this Agreement). If neither the Class A Common Shares nor the Series A 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 Series A 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 Series A Preferred Share will be equal to the current per share market price of one Series A Preferred Share divided by one hundred.

(B) For the purpose of any computation hereunder, the “**current per share market price**” of the Series B Preferred Shares will be determined in the same manner as set forth above for Class B Common Shares in Section 11(d)(i), other than the last sentence thereof. If the current per share market price of the Series B Preferred Shares cannot be determined in the manner provided above, the “current per share market price” of the Series B Preferred Shares will be conclusively deemed to be an amount equal to the current per share market price of the Class B 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 Class B Common Shares occurring after the date of this Agreement). If neither the Class B Common Shares nor the Series B 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 Series B 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 Series B Preferred Share will be equal to the current per share market price of one Series B 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 its Board of Directors 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) 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 Class A Common Share per Class A Right, or Class B Common Share per Class B Right and one Common Share per Right, in each case 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). 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 Class A Common Share or Common Share, as the case may be (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 to amend this Agreement set forth in this Section 27 shall not affect the power or ability of the Board of Directors 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 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. Effective Time. Notwithstanding anything in this Agreement to the contrary, this Agreement will not be effective until, and shall become effective concurrently with, the effective time of the spin-off of the Company from Cypress Semiconductor Corporation, a Delaware corporation ("Cypress"), by virtue of the payment of Cypress's dividend of all of the Class B Common Shares held by it to its stockholders.

35. Counterparts. This Agreement may be executed in any number of counterparts 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.

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

SUNPOWER CORPORATION

By: /s/ Thomas Werner

Name: Thomas Werner

Title: Chief Executive Officer

COMPUTERSHARE TRUST COMPANY, N.A.

By: /s/ Dennis Moccia

Name: Dennis Moccia

Title: Managing Director

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:



CERTIFICATE OF DESIGNATION  
of  
SERIES B 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:

XI. Designation and Amount

The shares of such series will be designated as Series B Junior Participating Preferred Stock (the “**Series B Preferred**”) and the number of shares constituting the Series B Preferred is 1,575,000. 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 B 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 B Preferred.

XII. 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 B Preferred with respect to dividends, the holders of shares of Series B 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 B 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 B 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 B Preferred are then issued or outstanding, the amount to which holders of shares of Series B 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 B 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 B 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 B 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 B 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 B 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 B 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 B 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.

### XIII. Voting Rights

The holders of shares of Series B Preferred will have the following voting rights:

(a) Subject to the provision for adjustment hereinafter set forth, each share of Series B Preferred will entitle the holder thereof to eight 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 B Preferred are then issued or outstanding, the number of votes per share to which holders of shares of Series B 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 B 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 B Preferred will have no voting rights.

### XIV. Certain Restrictions

(a) Whenever dividends or other dividends or distributions payable on the Series B Preferred are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series B 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 B 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 B Preferred, except dividends paid ratably on the shares of Series B 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 B 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 B Preferred; or

(iv) Redeem, purchase or otherwise acquire for consideration any shares of Series B Preferred, or any shares of stock ranking on a parity with the shares of Series B 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.

#### XV. Reacquired Shares

Any shares of Series B 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.

#### XVI. 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 B Preferred unless, prior thereto, the holders of shares of Series B 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 B 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 B Preferred, except distributions made ratably on the shares of Series B 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 B Preferred are then issued or outstanding, the aggregate amount to which each holder of shares of Series B 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.

XVII. 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 B 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 B 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 B 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.

XVIII. Redemption

The shares of Series B Preferred are not redeemable.

XIX. Rank

The Series B Preferred rank, with respect to the payment of dividends and the distribution of assets, pari passu with the Series A Junior Participating Preferred Stock and junior to all other series of the Company's Preferred Stock.

XX. 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 B Preferred so as to affect them adversely without the affirmative vote of the holders of at least 80% of the outstanding shares of Series B 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:

FORM OF CLASS [A] [B]<sup>1</sup> 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.

Class [A] [B] Right Certificate

SUNPOWER CORPORATION

This certifies that \_\_\_\_\_, or registered assigns, is the registered owner of the number of Class [A] [B] Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions, and conditions of the Rights Agreement, dated as of August 12, 2008 (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] [Series B] 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 Class [A] [B] Right Certificate with the Form of Election to Purchase and related Certificate duly executed. If this Class [A] [B] Right Certificate is exercised in part, the holder will be entitled to receive upon surrender hereof another Class [A] [B] Right Certificate(s) for the number of whole Class [A] [B] Rights not exercised. The number of Class [A] [B] Rights evidenced by this Class [A] [B] 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.

<sup>1</sup> Whenever the designation [A] [B] is used, an “A” should be inserted in the Class A Right Certificates and a “B” should be inserted in the Class B Right Certificates.

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 Class **[A] [B]** Right Certificate are subject to adjustment upon the occurrence of certain events.

This Class **[A] [B]** 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 Class **[A] [B]** 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 Class **[A] [B]** 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 Class **[A]** **[B]** 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 Class **[A]** **[B]** Right Certificate have been exercised or exchanged in accordance with the provisions of the Rights Agreement.

This Class **[A]** **[B]** 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 Class **[A]** **[B]** Right Certificate

FORM OF ASSIGNMENT

(To be executed by the registered holder if such  
holder desires to transfer the Class **[A]** **[B]** Right Certificate)

FOR VALUE RECEIVED, \_\_\_\_\_ hereby sells, assigns and transfers unto

---

(Please print name and address of transferee)

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this Class **[A]** **[B]** Right Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney, to transfer the within Class **[A]** **[B]** 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 Class **[A]** **[B]** Rights evidenced by this Class **[A]** **[B]** 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 Class **[A]** **[B]** Rights evidenced by this Class **[A]** **[B]** 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 \_\_\_\_\_ Class **[A]** **[B]** Rights represented by this Class **[A]** **[B]** Right Certificate to purchase the one one-hundredths of a Preferred Share or other securities issuable upon the exercise of such Class **[A]** **[B]** 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)

If such number of Class **[A]** **[B]** Rights is not all the Class **[A]** **[B]** Rights evidenced by this Class **[A]** **[B]** Right Certificate, a new Class **[A]** **[B]** Right Certificate for the balance remaining of such Class **[A]** **[B]** Rights will be registered in the name of and delivered to:

Please insert social security or other identifying number: \_\_\_\_\_

\_\_\_\_\_  
(Please print name and address)

Dated: \_\_\_\_\_, \_\_\_\_

\_\_\_\_\_  
Signature

Signature Guaranteed: \_\_\_\_\_

\_\_\_\_\_

CERTIFICATE

The undersigned hereby certifies by checking the appropriate boxes that:

(1) the Rights evidenced by this Class **[A]** **[B]** 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 Class **[A]** **[B]** 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 Class [A] [B] 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.**

## SUMMARY OF RIGHTS TO PURCHASE PREFERRED STOCK

On August 12, 2008, the Board of Directors of SunPower Corporation adopted a rights plan and authorized a Rights Committee of the Board to declare a dividend of one Class A right for each share of Class A common stock, par value \$0.001 per share, and one right for each share of common stock, par value \$0.001 per share. The dividend is payable on a record date determined by the Rights Committee to our stockholders of record on that date. The terms of the rights and the rights plan are set forth in a Rights Agreement, dated as of August 12, 2008, 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 that acquires (1) 20% or more of our outstanding common stock or (2) 20% or more of our outstanding Class B common stock, in each case without the prior approval of our Board. A person or group that acquires a percentage of our common stock or common stock in excess of those thresholds 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 our 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.** Our Board of Directors authorized the issuance of one right per each outstanding share of our common stock on the record date. 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 share of preferred stock would give the stockholder approximately the same dividend, voting and liquidation rights as does one share of our Class A common stock. 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 stock certificates will also evidence the rights and will contain a notation to that effect. Any transfer of shares of common stock prior to the distribution date will

constitute a transfer of the associated rights. After the distribution date, the rights will separate from the common stock 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 of Class A rights and rights, except the acquiring person, may exercise their rights upon payment of the purchase price to purchase shares of our Class A common stock or common stock, as the case may be (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 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 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 shares of Class A common stock, common stock or other securities as described above.

**Expiration.** The rights will expire on the tenth anniversary of the record date for the distribution of the rights unless earlier redeemed or exchanged.

**Redemption.** Our Board may redeem all (but not less than all) of the 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 stock.

**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 stock, our Board may exchange each right (other than rights that have become void) for one share of Class A common stock or common stock, as the case may be, 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 stock. 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.

**Effectiveness.** The rights plan will become effective concurrently with the effective time of the spin-off of the Company from Cypress Semiconductor Corporation by virtue of the payment of Cypress's dividend of all of the Class B common stock held by it to its stockholders.

\* \* \*



**AMENDMENT NO. 1 to  
TAX SHARING AGREEMENT**

This Amendment No. 1 (this “***Amendment***”) to that certain Tax Sharing Agreement effective for federal taxable years beginning on or after the 9th day of November 2004 and/or all state taxable years beginning on or after the 30th day of December 2002 (the “***Tax Sharing Agreement***”) by and between Cypress Semiconductor Corporation, a Delaware corporation (“***Parent***”), and SunPower Corporation, a California corporation (“***Subsidiary***”) is entered into as of August 12, 2008. Capitalized terms used but not defined herein shall have the meanings given to them in the Tax Sharing Agreement.

**RECITALS**

WHEREAS, Parent and Subsidiary are parties to the Tax Sharing Agreement;

WHEREAS, Parent is in the process of undertaking a Distribution of the stock of Subsidiary held by it and has received a private letter ruling from the Internal Revenue Service (the “***IRS***”) regarding the qualification of the Distribution under Section 355 of the Code (the “***Ruling***”); and

WHEREAS, Parent and Subsidiary would like to modify the Agreement to reflect the understanding of the Parties to the Agreement with regard to certain transactions that may affect the tax treatment of the Distribution and certain other matters.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. Section 1(m) is hereby added to the Agreement, as follows:

(m) “Governmental Entity” means any national, state, municipal, local or foreign government or regulatory body, any instrumentality, subdivision, court, tribunal, administrative agency or commission, including the IRS or other governmental authority, board, legislature or department, or instrumentality.

2. Section 6(a)(iv) of the Agreement is hereby amended in its entirety to read as follows:

- iv. any Taxes resulting from the application of Section 355(e) of the Code or similar provision of other applicable law to the Distribution as a result of one or more acquisitions (within the meaning of Section 355(e)) of Subsidiary stock after the Distribution, which for the avoidance of doubt, shall include (x) any such acquisition or acquisitions whether or not consented to by Cypress (or exempt from consent) pursuant to Section 6(e) added below, and (y) any such acquisition or acquisitions attributable to a conversion of any or all of the Class B Common Stock of Subsidiary to Class A Common Stock of

Subsidiary or any similar recapitalization transaction or series of related transactions (any of the foregoing referenced in this clause (y), a “**Recapitalization**”), except for any Taxes which would result solely from (A) issuances and dispositions of Subsidiary stock prior to the Distribution and (B) any acquisition of Subsidiary stock by Parent after the Distribution.

- v. Parent and Subsidiary agree to treat any indemnification payments (other than payments of interest) pursuant to Section 6(a) as a distribution between Parent and Subsidiary occurring immediately prior to the Distribution, and to challenge in good faith any other characterization of such payments by any Governmental Entity. Subsidiary shall be responsible for any cost or expenses associated with such challenge or efforts to treat such payments as a distribution between Parent and Subsidiary occurring immediately prior to the Distribution. If, notwithstanding such good faith efforts, the receipt or accrual of any such payment (other than payments of interest) results in taxable income to the indemnified party (including taxable income or gain arising as a result of the payment being treated as a distribution) or results in the reduction in any tax attribute of the indemnified party resulting from the receipt or accrual of any such payment, such payment shall be increased so that, after the payment of any Taxes with respect to the payment (and treating as Taxes paid the reduction of any tax attribute), the indemnified party shall have realized the same net amount it would have realized had the payment not resulted in taxable income.

3. Section 6(e) is hereby added to the Agreement, as follows:

(e) For a period of 25 months following a Distribution, Subsidiary shall not (i) effect a Recapitalization or (ii) enter into or facilitate any other transaction resulting in an acquisition (within the meaning of Section 355(e) of the Code) of Subsidiary stock without first obtaining the written consent of Parent, which consent may be withheld in its reasonable discretion, and which consent may be conditioned upon, among other things, Subsidiary first obtaining, at Subsidiary’s own expense, an opinion from a nationally recognized tax counsel together with any supporting documentation required in connection with such opinion, in each case in form and substance reasonably satisfactory to Parent, that such transaction (either alone or when taken together with any other transaction or transactions) will not cause the Distribution to become taxable under Section 355(e); provided, however, that the foregoing limitation in this clause (ii) shall not apply unless such transaction (either alone or when taken together with one or more other transactions entered into or facilitated by Subsidiary consummated after August 4, 2008 and during the 25-month period following the Distribution) would involve the acquisition for purposes of Section 355(e) of the Code after August 4, 2008 of more than 25% of the outstanding shares of Subsidiary. In order to implement the foregoing, Subsidiary shall provide Parent with notice no later than ten (10) business days after the close of any transaction

involving less than 25% of Subsidiary's outstanding shares (either alone or when taken together with one or more other transactions consummated after August 4, 2008 and during the 25-month period following the Distribution). In the case of a transaction involving greater than 25% (either alone or when taken together with one or more other transactions consummated after August 4, 2008 and during the 25-month period following the Distribution), Subsidiary shall provide at least 30 days advance notice of such proposed transaction, including notice of the aggregate percentage, taking into account the proposed transaction and the total outstanding shares of Subsidiary acquired after August 4, 2008 and during the 25-month period following the Distribution. In addition to the foregoing, the limitation in Section 6(e)(ii) shall not apply to (A) any acquisition of Subsidiary stock that will qualify under Treasury Regulation Section 1.355-7(d)(8) in connection with the performance of services, (B) an acquisition of Subsidiary stock for which Subsidiary furnishes to Parent prior to such acquisition an opinion from a nationally recognized tax counsel together with any supporting documentation required in connection with such opinion, in each case in form and substance reasonably satisfactory to Parent, that such acquisition will qualify under Treasury Regulation Section 1.355-7(d)(9), (C) an acquisition of Subsidiary stock (other than involving a public offering) for which Subsidiary furnishes to Parent prior to such acquisition an opinion from a nationally recognized tax counsel together with any supporting documentation required in connection with such opinion, in each case in form and substance reasonably satisfactory to Parent, that such acquisition will qualify under the so-called "super safe harbor" contained in Treasury Regulation Section 1.355-7(b)(2) or (D) the adoption by Subsidiary of a standard stockholder rights plan sometimes referred to as a "poison pill." In addition, Subsidiary shall not (i) effect a Recapitalization during the 36 month period following a Distribution without first obtaining an opinion from a nationally recognized tax counsel together with any supporting documentation required in connection with such opinion in each case in form and substance reasonably satisfactory to Parent that such Recapitalization (either alone or when taken together with any other transaction or transactions) will not cause the Distribution to become taxable under Section 355(e), or (ii) seek any private ruling, including any supplemental private ruling, from the IRS with regard to the Distribution, or any transaction having any bearing on the tax treatment of the Distribution, without the prior written consent of Parent. Parent shall notify Subsidiary whether the opinions referenced in this Section 6(e) are in form and substance reasonably satisfactory to Parent no later than ten (10) business days following Parent's receipt thereof.

4. Section 6(f) is hereby added to the Agreement, as follows:

(f) Parent shall make reasonable efforts to promptly notify Subsidiary in writing upon receipt by Parent of an initial communication from any Governmental Entity with respect to any pending or threatened audit, claim,

dispute, suit, action, proposed assessment or other proceeding concerning any amount for which Subsidiary may be liable under Section 6(a) (a "Tax Contest"), provided, however, that Parent's failure to deliver such notification shall not limit Subsidiary's indemnification obligations hereunder except to the extent that such failure to promptly notify Subsidiary has materially adversely affected Subsidiary.

5. Section 6(g) is hereby added to the Agreement, as follows:

(g) Parent and Subsidiary shall have joint responsibility and control over the handling of any Tax Contest with respect to which Subsidiary has confirmed to Parent in writing that it owes Parent indemnification and only with respect to those elements of the Tax Contest related to Section 355(e) issues. Such joint control shall be subject to the ability of each party to participate in any such matter at its own expense, and shall include the right to receive copies of communications from, participate in communications with, and attend meetings with, agents of the Governmental Entity involved (including without limitation communications involving information document requests and responses thereto) and to control, resolve, settle or agree to any deficiency, claim or adjustment proposed, asserted or assessed in connection with or as a result of any Tax Contest. In the event that Parent shall take any action in breach of this Section 6(g), Subsidiary shall not be required to indemnify Parent to the extent Subsidiary was prejudiced by such actions.

6. Section 6(h) is hereby added to the Agreement, as follows:

(h) The parties shall reasonably cooperate in connection with the conduct of any Tax Contest (including, where appropriate or necessary for purposes of allowing such party to exercise its rights under the Tax Sharing Agreement, providing a limited power of attorney), and shall make their respective employees and facilities available on a mutually convenient basis to facilitate such cooperation.

7. On July 21, 2008, Parent announced that its board of directors had authorized its management to proceed with the Distribution. In connection with the proposed Distribution, representatives of Subsidiary and Parent have discussed a number of amendments to Subsidiary's certificate of incorporation that Parent believes are necessary in order to effect the potential Distribution on a tax-free basis. The amendments are proposed to be effected through an amendment and restatement of Subsidiary's certificate of incorporation (the "**Restated Certificate**"), which would be approved by written consent of Parent as the holder of a majority of the voting power of the issued and outstanding voting securities of Subsidiary. A copy of the Restated Certificate as agreed to by the parties is attached as Exhibit A. The purpose of this Section 7 of this Amendment is to confirm Subsidiary's agreement that, in the event Parent determines to proceed with the Distribution and announces a record and distribution date for it, Subsidiary will file the Restated Certificate with the Delaware

Secretary of State no later than five days prior to the date fixed by Parent as the distribution date for the Distribution.

8. This Amendment shall be effective for all purposes as of immediately prior to the time of the Distribution. Notwithstanding anything in the immediately preceding sentence to the contrary, the provisions contained in Section 7 of this Amendment shall be effective for all purposes as of the date of this Amendment.
9. Except as set forth herein, the Tax Sharing Agreement is and shall remain in full force and effect without modification, through the term set forth in Section 8 of the Tax Sharing Agreement, but shall terminate upon the expiration of the statute of limitations with regard to Parent's last taxable year for which an adjustment by any Taxing Authority could give rise to an indemnifiable Tax to Parent under this Agreement including by reason of the reduction of any Parent tax attribute.

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment No. 1 as of August 12, 2008.

**Cypress Semiconductor Corporation**

By: /s/  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SunPower Corporation**

By: /s/ Thomas Werner  
Name: Thomas Werner  
Title: Chief Executive Officer

**FORM OF RESTATED  
CERTIFICATE OF INCORPORATION OF  
SUNPOWER CORPORATION**

SunPower Corporation, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

*FIRST:* The original Certificate of Incorporation of the corporation was filed with the Secretary of State of Delaware on May 25, 2004 under the name SPR Acquisition Corporation.

*SECOND:* Pursuant to an action of the Board of Directors and a written consent of stockholders of the Corporation, this Restated Certificate of Incorporation has been duly adopted in accordance with Sections 242, 245 and 228 of the General Corporation Law of the State of Delaware.

*THIRD:* This Restated Certificate of Incorporation restates, integrates and further amends the provisions of the Restated Certificate of Incorporation of the corporation, as heretofore in effect.

*FOURTH:* The Restated Certificate of Incorporation of the corporation shall be amended and restated to read in full as follows:

ARTICLE I

The name of the corporation is SunPower Corporation (the “**Corporation**”)

ARTICLE II

A. The registered agent and the address of the registered office in the State of Delaware are:

Corporation Trust Company  
1209 Orange Street  
Wilmington, Delaware 19801  
County of New Castle

B. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “**DGCL**”).

ARTICLE III

A. The total number of shares that the Corporation shall have authority to issue is 377,542,490, consisting of 367,500,000 shares designated as common stock, par value \$0.001 per share (the “**Common Stock**”), and 10,042,490 shares designated as preferred stock, par value \$0.001 per share (the “**Preferred Stock**”).

B. The Common Stock shall consist of two series designated as “**Class A Common Stock**” and “**Class B Common Stock**”, and sometimes referred to herein as a “**Class**” or “**Classes**” of Common Stock. The authorized number of shares of Class A Common Stock shall be 217,500,000 and the authorized number of shares of Class B Common Stock shall be 150,000,000.

C. The Board of Directors is hereby authorized, subject to limitations prescribed by law and the provisions of this Part C of this Article III, by resolution to provide for the issuance of the remaining authorized shares of Preferred Stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, privileges, preferences, and relative participating, optional or other rights, if any, of the shares of each such series and the qualifications, limitations or restrictions thereof.

Subject to limitations prescribed by law and the provisions of this Part C of this Article III, the authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

1. The number of shares constituting that series (including an increase or decrease in the number of shares of any such series (but not below the number of shares in any such series then outstanding)) and the distinctive designation of that series;
2. The dividend rate on the shares of that series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;
3. Whether that series shall have voting rights (including multiple or fractional votes per share) in addition to the voting rights provided by law, and, if so, the terms of such voting rights;
4. Whether that series shall have conversion privileges, and, if so, the terms and conditions of such privileges, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;
5. Whether or not the shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption rates;
6. Whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and the amount of such sinking funds;
7. The rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series; and
8. Any other relative rights, preferences and limitations of that series.

No holders of shares of the Corporation of any class or series, now or hereafter authorized, shall have any preferential or preemptive rights to subscribe for, purchase or receive any shares of the Corporation of any class, now or hereafter authorized, or any options or warrants for such shares, or any rights to subscribe for, purchase or receive any securities convertible into or exchangeable for such shares, which may at any time be issued, sold or offered for sale by the Corporation, except in the case of any shares of Preferred Stock to which such rights are specifically granted by any resolution or resolutions of the Board of Directors adopted pursuant to Part C of this Article III or in the case of any shares of Common Stock to which such rights are specifically granted by Section 5 of Part D of Article III.

D. The powers, preferences, rights, restrictions and other matters relating to the Common Stock are as follows:

1. *Voting Rights.*

(a) All shares of Common Stock will be identical in all respects and will entitle the holders thereof to the same rights and privileges, except as expressly provided otherwise in this Restated Certificate of Incorporation (this ***“Certificate of Incorporation”***). Except as expressly provided otherwise herein or as otherwise provided by law, all series of Common Stock shall vote together as a single Class on all matters submitted to a vote of the stockholders.

(b) The Class B Common Stock shall be issuable only to Cypress Semiconductor Corporation or any Successor in Interest (as defined below) thereto (***“Cypress”***), or any Subsidiary (as defined below) of Cypress; provided, however, that nothing herein will prevent (i) the distribution of such shares by Cypress to the stockholders of Cypress in connection with a Tax-Free Spin-Off (as defined below), (ii) the transfer of such shares by holders thereof following a Tax-Free Spin-Off or (iii) the issuance of shares of Class B Common Stock by the Corporation to holders thereof following a Tax-Free Spin-Off if such issuance is in connection with a dividend or distribution pursuant to Section 2 of this Part D of Article III or in connection with an exercise of an option, warrant or right issued pursuant to Section 2(c) of this Part D of Article III.



(c) The holders of shares of Common Stock shall have the following voting rights:

(i) Except as provided in Section 1(c)(iii) of this Part D of Article III, each holder of a share of Class A Common Stock shall be entitled to cast one vote on all matters submitted to a vote of the stockholders of the Corporation for each share of Class A Common Stock held by such holder.

(ii) (1) Until such date, if any, on which both (A) a Tax-Free Spin-Off has been effected and (B) the Internal Revenue Service has issued or granted a supplemental ruling that the effectiveness of the provisions in Section 1(c)(ii)(2) of this Part D of Article III will not affect the rulings contained in the private letter ruling, dated April 16, 2008 (PLR-103725-08) and will not prevent those rulings from having full force and effect (such date, the “**Threshold Ruling Date**”), each holder of a share of Class B Common Stock shall be entitled to cast eight votes on all matters submitted to a vote of the stockholders of the Corporation for each share of Class B Common Stock held by such holder.

(2) Effective as of the Threshold Ruling Date, except as provided in the last sentence of this Section 1(c)(ii)(2) of this Part D of Article III, for so long as any Person or entity or group of Persons or entities acting in concert beneficially owns 15% (the “**Threshold Amount**”) or more of the then outstanding shares of Class B Common Stock, then in any election of directors or other exercise of voting rights with respect to the election or removal of directors, such Person, entity or group shall only be entitled, as to the Class B shares beneficially owned by such Person, entity or group, to vote (or otherwise exercise voting rights with respect to) a number of shares of Class B Common Stock that equals the product of (A) the total number of shares of Class B Common Stock then outstanding multiplied by (B) the greater of (i) the Threshold Amount (expressed as a percentage) and (ii) such Person, entity or group’s Entitled Voting Percentage (as defined below) (such product, the “**Voting Class B Shares**”). For the purposes hereof, a Person, entity or group’s “**Entitled Voting Percentage**” at any time shall mean the lesser of (x) the percentage of the then outstanding shares of Class A Common Stock beneficially owned by such Person, entity or group at such time and (y) the percentage of the then outstanding shares of Class B Common Stock beneficially owned by such Person, entity or group at such time. Any shares of Class B Common Stock beneficially owned by such Person, entity or group in excess of the Voting Class B Shares shall automatically be voted in proportion to the aggregate votes of the shares of Class B Common Stock held by holders of Class B Common Stock who beneficially own less than 15% of the Class B Common Stock (ignoring abstentions and any shares that were not present in Person or represented by proxy at the meeting at which the applicable vote is taken). For purposes of this Section 1(c)(ii)(2) of this Part D of Article III, a “beneficial owner” of Common Stock includes any Person or entity or group of Persons or entities who, directly or indirectly, including through any contract, arrangement, understanding, relationship or otherwise, written or oral, formal or informal, control the voting power (which includes the power to vote or to direct the voting) of such Common Stock within the meaning of Rule 13d-3(a)(1) under the U.S. Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) provided, however, that a Person shall not be deemed the “beneficial owner” of, or to “beneficially own,” any security under this Section 1(c)(ii)(2) of this Part D of Article III as a result of a contract, arrangement, understanding or relationship to vote such security if such contract, arrangement, understanding or relationship: (A) arises solely from a revocable proxy given in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the General Rules and Regulations under the Exchange Act, and (B) is not reportable by such Person on Schedule 13D under the Exchange Act (or any comparable or successor report).

(iii) Notwithstanding any other provision of this Certificate of Incorporation to the contrary, holders of Class A Common Stock shall not be eligible to vote on any alteration or change in the powers, preferences, or special rights of the Class B Common Stock that would not adversely affect the rights of the Class A Common Stock. For the foregoing purposes, the addition of any provision for the voluntary, mandatory or other conversion or exchange of the Class B Common Stock into or for Class A Common Stock on a one-for-one basis shall be deemed not to adversely affect the rights of the Class A Common Stock.

## 2. Dividends and Distributions.

(a) Subject to the preferences applicable to any Preferred Stock outstanding at any time, and except as otherwise provided in this Section 2 of this Part D of Article III, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, property or shares of stock of the Corporation as may be declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor. Subject to the provisions of Sections 2(b), 2(c) and 5(a) of this Part D of Article III, no dividend shall be paid on the Class A Common Stock in any year unless an equal dividend for such year is simultaneously paid on the Class B Common Stock.

(b) In the case of a dividend or other distribution payable in Class A Common Stock or Class B Common Stock (including any distribution pursuant to a stock split or division of Class A Common Stock or Class B Common Stock), only shares of Class A Common Stock shall be distributed with respect to Class A Common Stock and only shares of Class B Common Stock shall be distributed with respect to Class B Common Stock. In the case of any such dividend or other distribution payable in shares of Class A Common Stock or Class B Common Stock, the number of shares of each Class of Common Stock payable per share of such Class of Common Stock shall be equal.

(c) In the case of a dividend or other distribution payable in rights, warrants or options to purchase shares of the capital stock of the Corporation (a "rights dividend") that entitle the holder thereof to purchase shares of Class A Common Stock (or shares of capital stock of the Corporation having voting rights equivalent to those of the Class A Common Stock ("**Equivalent Class A Shares**")) or Class B Common Stock (or shares of capital stock of the Corporation having voting rights equivalent to those of the Class B Common Stock ("**Equivalent Class B Shares**")) (whether initially or upon any adjustment thereunder), then only rights to acquire Class A Common Stock or Equivalent Class A Shares may be paid to holders of Class A Common Stock and only rights to acquire Class B Common Stock or Equivalent Class B Shares may be paid to holders of Class B Common Stock. Equivalent Class A Shares and Equivalent Class B Shares refer to the issuance of (i) rights to acquire preferred stock with equivalent voting rights to Class A Shares or Class B Shares, as the case may be, and (ii) shares of such preferred stock, in each case pursuant to a shareholder rights plan adopted by the Corporation.

## 3. Conversion and Exchange Rights.

(a) Voluntary Conversion of Class B Common Stock into Class A Common Stock Prior to a Tax-Free Spin-Off. Prior to the occurrence of a Tax-Free Spin-Off, the holders of Class B Common Stock shall be entitled to convert, at any time and from time to time, any share of Class B Common Stock into one (1) fully paid and non-assessable share of Class A Common Stock. Such right shall be exercised by the surrender to the Corporation of the certificate or certificates representing the shares of Class B Common Stock to be converted at any time during normal business hours at the principal executive offices of the Corporation or at the office of the Corporation's transfer agent (the "**Transfer Agent**"), accompanied by a written notice from the holder of such shares stating that such holder desires to convert such shares, or a stated number of the shares represented by such certificate or certificates, into an equal number of shares of Class A Common Stock, and (if so required by the Corporation or the Transfer Agent) by instruments of transfer, in form satisfactory to the Corporation and to the Transfer Agent, duly executed by such holder or such holder's duly authorized attorney, and transfer tax stamps or funds therefor if required pursuant to Section 3(c)(v) of this Part D of Article III. Such conversion shall be deemed to have been effected immediately prior to the close of business on the date of the giving of the required written notice and surrender of any certificate or certificates representing shares of Class B Common Stock. Upon the date any such conversion is made or effected, all rights of the holder of such shares of Class B Common Stock as such holder shall cease, and the Person or Persons in whose name or names the certificate or certificates representing the shares of Class A Common Stock are to be issued shall be treated for all purposes as having become the record holder or holders of such shares of Class A Common Stock. The rights of holders of Class B Common Stock to convert shares of Class B Common Stock into Class A Common Stock pursuant to this Section 3(a) of this Part D of Article III shall expire and this Section 3(a) of this Part D of Article III shall be of no further force or effect upon the occurrence of a Tax-Free Spin-Off.

(b) *Mandatory Conversion of Class B Common Stock into Class A Common Stock.*

(i) *Upon Transfer Prior to a Tax-Free Spin-Off.* Upon any transfer prior to the occurrence of a Tax-Free Spin-Off (for purposes of clarity, other than the original issuance or a transfer in the form of a distribution by Cypress to the stockholders of Cypress in connection with a Tax-Free Spin-Off) of any share of Class B Common Stock to any Person other than the original holder thereof, such share shall immediately and automatically (and without any action on the part of the holder or the Corporation or any other Person) convert into one (1) fully paid and non-assessable share of Class A Common Stock; provided, however, that no such conversion shall occur solely as a result of the pledge or hypothecation of, or existence of any other lien or encumbrance on, any share(s) of Class B Common Stock, and no such conversion shall occur solely as a result of a transfer by the original holder thereof or one of its Subsidiaries or its Parent to the original holder thereof or one of its Subsidiaries or its Parent; provided further, that such share of Class B Common Stock shall immediately and automatically (and without any action on the part of the holder or the Corporation or any other Person) convert into one (1) fully paid and non-assessable share of Class A Common Stock if at any time prior to the occurrence of a Tax-Free Spin-Off such holder is no longer the original holder or a Subsidiary or the Parent of the original holder of such share of Class B Common Stock. Any such conversion shall be deemed to have been effected at the close of business on the date of the transfer. Upon the date any such conversion is effected, all rights of the holder of such shares of Class B Common Stock as such holder shall cease as to the shares so converted, and the Person or Persons entitled to receive Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of shares of Class A common stock on such date. Until certificates for such shares of Class B Common Stock that have been converted have been delivered to the Corporation for exchange for certificates representing Class A Common Stock, such certificates shall be deemed to represent the shares of Class A Common Stock into which such Class B Common Stock has been converted. A transfer of a share of Class B Common Stock following a Tax-Free Spin Off or pursuant to a Tax-Free Spin-Off shall not cause an automatic conversion of such share into a share of Class A Common Stock.

(ii) *Upon a Plurality Triggering Event Prior to a Tax-Free Spin-Off.* If at any time prior to the occurrence of a Tax-Free Spin-Off Cypress and its Subsidiaries collectively own less than 40% of the shares of all Classes of the Corporation's Common Stock then outstanding (calculated without regard to the difference in voting rights between the Classes of Common Stock) (a "***Plurality Triggering Event***"), then each outstanding share of Class B Common Stock shall be automatically (and without any action on the part of the holder or the Corporation or any other Person) converted into one (1) fully paid and non-assessable share of Class A Common Stock. Such conversion shall be deemed to have been made at the close of business on the date of the Plurality Triggering Event, and the Person or Persons entitled to receive Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of shares of Class A Common Stock on such date. Until certificates for such shares of Class B Common Stock that have been converted have been delivered to the Corporation for exchange for certificates representing Class A Common Stock, such certificates shall be deemed to represent the shares of Class A Common Stock into which such Class B Common Stock has been converted. For the avoidance of doubt, Cypress and its Subsidiaries' ceasing to own 40% or more of the shares of all Classes of the Corporation's Common Stock then outstanding as a result of a Tax-Free Spin-Off shall not cause a Plurality Triggering Event to occur.

(c) *Certain Provisions Relating to Stock Conversion, Exchange and Transfer.*

(i) The Corporation will provide notice of any conversion pursuant to Section 3(b)(ii) of this Part D of Article III to holders of record of Common Stock as soon as practicable following such conversion; provided, however, that the Corporation may satisfy such notice requirement by providing such notice prior to any such conversion. Such notice shall be provided by mailing notice of such conversion, first class postage prepaid, to each holder of record of the Common Stock, at such holder's address as it appears on the transfer books of the Corporation; provided, however, that neither the failure to give such notice nor any defect therein shall affect the validity of any such conversion. Each notice shall state, as appropriate, the following:

- (1) the effective date of the conversion;
- (2) that all outstanding shares of Class B Common Stock are converted into Class A Common Stock;

(3) the place or places at which certificates for such shares of Class B Common Stock are to be surrendered for certificates for an equivalent number of shares of Class A Common Stock; and

(4) that no dividends will be declared on the shares of Class B Common Stock after such conversion.

(ii) As promptly as practicable following the surrender of a certificate representing shares of Class B Common Stock for voluntary conversion in the manner provided in Section 3(a) of this Part D of Article III or for exchange following any event of mandatory conversion as provided in Section 3(b) of this Part D of Article III, as applicable, and the payment in cash of any amount required by Section 3(c)(v) of this Part D of Article III, the Corporation shall deliver or cause to be delivered at the office of the Transfer Agent, a certificate or certificates representing the number of full shares of Class A Common Stock issuable upon such conversion or exchange, issued in such name or names as such holder may direct.

(iii) In the event of a reclassification or other similar transaction as a result of which the shares of Class A Common Stock are converted into another security, then the holders of any outstanding shares of Class B Common Stock shall be entitled to receive upon a conversion to Class A Common Stock thereof pursuant hereto, the amount of such security that such holder would have received if it had effected such conversion immediately prior to the record date of such reclassification or other similar transaction. Except as set forth in the preceding sentence, no adjustments in respect of dividends or other distributions shall be made upon the conversion of any share of Class B Common Stock to Class A Common Stock; provided, however, that if a share of Class B Common Stock shall be converted into a share of Class A Common Stock after the record date for the payment of a dividend or other distribution on shares of Class B Common Stock, but prior to such payment, then the registered holder of such share at the close of business on such record date shall be entitled to receive the dividend or other distribution payable on such share on such date notwithstanding the conversion thereof.

(iv) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of issuance upon conversion, exchange or transfer of outstanding shares of Class B Common Stock, such number of shares of Class A Common Stock that shall be issuable upon the conversion or exchange of all such outstanding shares of Class B Common Stock. The Corporation covenants and warrants that all shares of Class A Common Stock issued upon conversion of shares of Class B Common Stock will, upon issuance in accordance with the terms of Sections 3(a) and 3(b) of this Part D of Article III, be validly issued, fully paid and non-assessable.

(v) The issuance of certificates for shares of Class A Common Stock upon conversion of shares of Class B Common Stock shall be made without charge to the holders of such shares for any stamp or other similar tax in respect of such issuance; provided, however, that if any such certificate is to be issued in a name other than that of the holder of the share or shares of Class B Common Stock converted, then the Person or Persons requesting the issuance thereof shall pay to the Corporation the amount of any tax that may be payable in respect of any transfer involved in such issuance or shall establish to the satisfaction of the Corporation that such tax has been paid or is not payable.

4. *Stock Splits.* Without the approval of the holders holding at least two-thirds of the outstanding shares of the Class A Common Stock and Class B Common Stock, each voting as a separate series, the Corporation shall not in any manner subdivide (by any stock split, stock dividend, reclassification, recapitalization or otherwise) or combine (by reverse stock split, reclassification, recapitalization or otherwise) the outstanding shares of one Class of Common Stock unless the outstanding shares of all series of Common Stock shall be proportionately subdivided or combined.

#### 5. *Options, Rights or Warrants.*

(a) Subject to the following sentence, if the Corporation issues or makes an offering or distribution to all holders of a Class of Common Stock of shares of any class or series of its capital stock or options, rights or warrants to subscribe for such shares, then the Corporation shall simultaneously issue or make a similar offering or distribution of the same number of shares, options, rights, or warrants per share to all holders of the other outstanding Classes of Common Stock, except that it need not issue or make such offering or distribution to any such Class of Common Stock in the event that the holders of a majority of the shares of such Class of

Common Stock, voting as a separate class, determine that such offering or distribution need not be made to such Class. However, notwithstanding anything in this Section 5(a) of this Part D of Article III to the contrary, in the event that the Corporation issues or makes an offering or distribution to all holders of any Class of Common Stock of shares of that Class of Common Stock or options, rights or warrants to subscribe for such shares, then the similar offering or distribution to be made to any holder of the other Class of Common Stock pursuant to this Section 5(a) of this Part D of Article III, shall be for options, warrants or rights which entitle such holder, upon exercise thereof, to purchase the Class or Classes of Common Stock then held by such holder.

(b) Subject to Section 5(a) of this Part D of Article III, the Corporation shall have the power to create and issue, whether or not in connection with the issuance and sale of any shares of stock or other securities of the Corporation, rights, options or warrants entitling the holders thereof to purchase from the Corporation any shares of its capital stock of any class or series at the time authorized, such rights, options or warrants to have such terms and conditions, and to be evidenced by or in such instrument or instruments, as shall be approved by the Board of Directors.

6. *No Preemptive Rights.* The holders of shares of Common Stock are not entitled to any preemptive right to subscribe for, purchase or receive any part of any new or additional issue of stock of any class or series of the Corporation, whether now or hereafter authorized, or of bonds, debentures or other securities convertible into or exchangeable for stock of the Corporation.

7. *No Reissuance.* No share or shares of Class B Common Stock acquired by the Corporation by reason of redemption, purchase, conversion, exchange or otherwise shall be reissued and all such shares shall be cancelled, retired and eliminated from the shares that the Corporation is authorized to issue.

8. *Certain Definitions.*

(a) “*Affiliate*” means as to any Person, any other Person who controls, is controlled by, or is under common control with such Person.

(b) “*Code*” means the Internal Revenue Code of 1986, as amended.

(c) “*Parent*” means, with respect to any Person, any other Person that owns, directly or indirectly, more than 50% of the capital stock (or other voting interests) the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such first Person or who is a Successor in Interest to such first Person.

(d) “*Person*” means any individual, partnership, joint venture, limited liability company, firm, corporation, trust or other entity, including governmental authorities.

(e) “*Subsidiary*” means, with respect to any Person, any other Person in which such first Person owns, directly or indirectly, more than 50% of the capital stock (or other voting interests) the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such Person.

(f) “*Successor in interest*” means, with respect to any Person, any other Person who, together with its Affiliates, acquires (whether by acquisition of new or existing securities, repurchase or cancellation of existing securities, merger, consolidation, business combination, sale, lease, exchange, transfer, license or acquisition of assets or otherwise) beneficial ownership of 50% or more of the total outstanding voting securities or all or substantially all of the assets of such first Person.

(g) “*Tax-Free Spin-Off*” means a distribution (whether by dividend, exchange or otherwise) of Common Stock (and Preferred Stock, if any) of the Corporation or common stock (and preferred stock, if any) of a Person that is a successor to the Corporation to holders of common stock of Cypress intended to qualify as a tax-free distribution under Section 355 of the Code, or any successor thereto.

#### ARTICLE IV

A. Number of Directors. Subject to Section 4 of Article VII, and except as otherwise provided for or fixed pursuant to the provisions of Article III hereof relating to the rights of the holders of any one or more series of Preferred Stock to elect additional directors, the authorized number of directors of the corporation shall be determined from time to time by resolution adopted by the affirmative vote of the majority of the entire Board of Directors at any regular or special meeting of such Board.

B. Classes of Directors. From and after such date, if any, on which (i) a Tax-Free Spin-Off is effected or (ii) a Plurality Triggering Event has previously occurred and Cypress is no longer consolidating the Corporation for accounting purposes (provided that, if on any such date following the occurrence of a Plurality Triggering Event, Cypress would not be consolidating the Corporation for accounting purposes but for the existence of the provisions of this Restated Certificate of Incorporation which expire upon the occurrence of a Consolidation Triggering Event, then for purposes of this definition, Cypress shall be deemed not to be consolidating the Corporation for accounting purposes on such date) (any such event specified in clause (i) or (ii), an "Consolidation Triggering Event"), the Board of Directors, other than those directors elected by the holders of any one or more series of Preferred Stock as provided for or fixed pursuant to the provisions of Article III hereof, shall be divided into three classes, designated Class I, Class II and Class III, as nearly equal in number as possible. The initial designees for each class of directors shall be determined as set forth in the By-laws as in effect on the date of this Certificate of Incorporation. Additional directorships resulting from an increase in number of directors shall be apportioned among the classes as equally as possible. The initial term of office of directors of Class I shall expire at the next annual meeting of stockholders following a Consolidation Triggering Event, the initial term of office of directors of Class II shall expire at the second annual meeting of stockholders following a Consolidation Triggering Event, and the initial term of office of directors of Class III shall expire at the third annual meeting of stockholders following a Consolidation Triggering Event, 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. Following the occurrence of a Consolidation Triggering Event, 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.

C. Vacancies and Removal. Subject to the provisions hereof, newly created directorships resulting from any increase in the authorized number of directors, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal, or other cause, may be filled only by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class, if any, of directors in which the new directorship was created or in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified or until his or her earlier resignation, removal from office, death or incapacity. Subject to the provisions of this Certificate of Incorporation, no decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. Prior to the occurrence of a Consolidation Triggering Event, any director or the entire Board of Directors of the Corporation may be removed from office at any time, with or without cause, by the holders of a majority of the voting power of the shares then entitled to vote at an election of directors. Following the occurrence of a Consolidation Triggering Event and the classification of the Board of Directors as set forth in Section A of this Article IV, the ability of stockholders to remove directors will be as provided by Section 141(k)(1) of the DGCL (or any successor to such statute).

#### ARTICLE V

A. Power of Stockholders to Act by Written Consent. Until the occurrence of a Consolidation Triggering Event, all actions required to be taken at any annual or special meeting may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and shall be delivered to the Corporation by delivery to its registered office, its principal place of business, or an officer

or agent of the corporation having custody of the book in which proceedings of meetings or stockholders are recorded. Following the occurrence of a Consolidation Triggering Event, 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.

B. Special Meetings of Stockholders. Until the occurrence of a Consolidation Triggering Event, special meetings of the stockholders of the Corporation may be called for any purpose or purposes in accordance with the provisions set forth in the By-laws of the Corporation by Cypress as well as any other Person specified in the By-laws. Following the occurrence of a Consolidation Triggering Event, special meetings of the stockholders of the Corporation may be called for any purpose or purposes in accordance with the provisions set forth in the By-laws of the Corporation.

C. Cumulative Voting. The stockholders of the Corporation shall not have cumulative voting.

#### ARTICLE VI

A. This Article VI anticipates the possibility (1) that Cypress may be a majority or significant stockholder of the Corporation, (2) that certain officers and/or directors of the Corporation may also serve as officers and/or directors of Cypress, (3) that the Corporation and Cypress, either directly or through their subsidiaries, may engage in the same or similar activities or lines of business and have an interest in the same areas of corporate opportunities, and (4) that benefits may be derived by the Corporation through its continued contractual, corporate and business relations with Cypress and its subsidiaries. The provisions of this Article VI shall, to the fullest extent permitted by law, define the conduct of certain affairs of the Corporation and its subsidiaries as they may involve Cypress and its subsidiaries, and its officers and directors, and the powers, rights, duties and liabilities of the Corporation and its officers, directors and stockholders in connection therewith.

B. Except as may be otherwise provided in a written agreement between the Corporation and Cypress, the Corporation shall not be deemed to have an interest or expectancy in any business opportunity, transaction, or other matter in which Cypress or any of its officers, directors, employees or agents engages or seeks to engage other than opportunities that are specifically applicable to the solar energy business and not applicable to or reasonably related to any business conducted by Cypress. Neither Cypress 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 Corporation or its stockholders or to have acted in a manner inconsistent with or opposed to any fiduciary duty to the Corporation or its stockholders by reason of Cypress or any officer, director, employee or agent thereof exercising its right to engage in any activities or lines of business, or to pursue (or fail to offer or communicate to the Corporation) any business opportunity, transaction or other matter other than opportunities that are specifically applicable to the solar energy business and not applicable to or reasonably related to any business conducted by Cypress.

C. For purposes of this Article VI only: (i) The term “**Corporation**” shall mean the Corporation and all corporations, partnerships, joint ventures, associations and other entities in which the Corporation beneficially owns (directly or indirectly) 50% or more of the outstanding voting stock, voting power, partnership interests or similar voting interests, and (ii) the term “**Cypress**” shall mean Cypress and all corporations, partnerships, joint ventures, associations and other entities in which Cypress beneficially owns (directly or indirectly) 50% or more of the outstanding voting stock, voting power, partnership interests or similar voting interests (other than the Corporation, defined in accordance with clause (i) of this Section C of Article VI).

#### ARTICLE VII

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

1. Except as provided Section 4 of this Article VII (which expires upon the occurrence of a Consolidation Triggering Event), the Board of Directors 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 of Directors.

2. Elections of directors need not be by written ballot unless the By-laws of the Corporation shall so provide.

3. The books of the Corporation may be kept at such place within or without the State of Delaware as the By-laws of the Corporation may provide or as may be designated from time to time by the Board of Directors.

4. Until the occurrence of a Consolidation Triggering Event, a vote of at least 75% of the then-authorized number of the members of the Board of Directors shall be required to:

- (a) adopt, amend or repeal the By-laws of the Corporation;
- (b) amend the Certificate of Incorporation of the Corporation (including by way of a Certificate of Designations or otherwise);
- (c) appoint or remove the Chief Executive Officer of the Corporation;
- (d) designate or appoint, or allow the Corporation to nominate or recommend for election by stockholders of the Corporation, an individual to the Board of Directors of the Corporation;
- (e) change the size of the Board of Directors of the Corporation to be other than in the range of five (5) to seven (7) members;
- (f) form a committee of the Board of Directors of the Corporation or establish or change a charter, committee responsibilities or committee membership of any committee of the Board of Directors of the Corporation;
- (g) adopt any stockholder rights plan, "poison pill" or other similar arrangement; or
- (h) approve any transaction or series of related transactions which would involve a merger, consolidation, restructuring, sale of substantially all of the assets of the Corporation or any of its Subsidiaries or otherwise result in any Person or entity obtaining control over the Corporation or any of its Subsidiaries;

*provided, however*, that the requirement to obtain any such supermajority vote of the Board of Directors of the Corporation as set forth in this Section 4 of Article VII may be waived at any time by Cypress in its capacity as a stockholder of the Corporation, in its sole discretion. This Section 4 of Article VII shall expire and be of no further force or effect upon the occurrence of a Consolidation Triggering Event.

#### ARTICLE VIII

A. Limitation of Liability. To the fullest extent permitted by the DGCL, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the Delaware Corporation Law hereafter is amended to further eliminate or limit the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended DGCL. Any repeal or modification of this paragraph by the stockholders of the Corporation shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

B. 1. Right to Indemnification. Each Person who was or is made a party to or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while serving as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, except as may be prohibited by applicable law, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and



amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in paragraph 3 of this Section B of Article VIII with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the board of directors of the Corporation.

2. Right to Advancement of Expenses. The right to indemnification conferred in paragraph 1 of this Section B of Article VIII shall include the right to be paid by the Corporation the expenses incurred in defending any proceeding for which such right to indemnification is applicable in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise.

3. Right of Indemnitee to Bring Suit. The rights to indemnification and to the advancement of expenses conferred in paragraphs 1 and 2 of this Section B of Article VIII shall be contract rights. If a claim under paragraph 1 or 2 of this Section B of Article VIII is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) any suit by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its board of directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its board of directors, independent legal counsel or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section B of Article VIII or otherwise shall be on the Corporation.

4. Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Section B of Article VIII shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, the Corporation's certificate of incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such Person against such expense, liability or loss under the DGCL.

6. Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the board of directors, grant rights to indemnification, and to the advancement of

expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Section B of Article VIII with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

C. Amendment. The duties of the Corporation to indemnify and to advance expenses to any Person as provided in this Article VIII shall be in the nature of a contract between the Corporation and each such Person, and neither any amendment nor repeal of this Article VIII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VIII, shall eliminate or reduce the effect of this Article VIII in respect of any matter occurring, or action or proceeding accruing or arising or that, but for this Article VIII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

#### ARTICLE IX

Except as otherwise provided in this Certificate of Incorporation, the Corporation reserves the right to amend or repeal any provision, rescind or amend in any respect any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon a stockholder herein are granted subject to this reservation.

\* \* \*

IN WITNESS WHEREOF, SunPower Corporation has caused this certificate to be signed on its behalf on this day of \_\_\_\_\_, 2008.

By: \_\_\_\_\_  
Name:  
Title: