
**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): February 8, 2007 (February 2, 2007)

SunPower Corporation

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

000-51593
(Commission File Number)

94-3008969
(I.R.S. Employer
Identification Number)

3939 North First Street, San Jose, California 95134
(Address, Including Zip Code, of Principal Executive Offices)

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

(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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Section 1 – Registrant’s Business and Operations

Item 1.01. Entry into a Material Definitive Agreement.

On February 2, 2007, SunPower Corporation (“SunPower” or the “Company”) entered into an underwriting agreement (the “Debenture Underwriting Agreement”) with Lehman Brothers Inc. and Credit Suisse Securities (USA) LLC, as representatives of Lehman Brothers Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Cowen and Company, LLC, First Albany Capital Inc. and ThinkEquity Partners LLC (the “Debenture Underwriters”) providing for the offer and sale by the Company of \$175.0 million principal amount of 1.25% Senior Convertible Debentures (the “Debentures”), with an option in favor of the Debenture Underwriters for the purchase of up to an additional \$25.0 million principal amount of Debentures in certain circumstances. The Debenture Underwriters have exercised this option and, as a result, the Company has issued and sold an aggregate of \$200.0 million principal amount of Debentures. The Debentures were issued under an indenture, dated February 7, 2007 (the “Base Indenture”), between the Company and Wells Fargo Bank, National Association, as trustee (the “Trustee”), as supplemented by a first supplemental indenture, dated February 7, 2007 (the “Supplemental Indenture” and, together with the Base Indenture, the “Indenture”) between the Company and the Trustee. The Indenture provides, among other things, that the Debentures will be senior unsecured obligations of the Company. The closing of the Debenture transaction occurred on February 7, 2007.

Interest is payable on the Debentures on February 15 and August 15 of each year beginning on August 15, 2007. The Debentures are convertible at certain times and under certain circumstances and, if not earlier converted, mature on February 15, 2027. In the event of certain Events of Default (as defined in the Indenture) under the Indenture, such as our failure to make certain payments or perform or observe certain obligations thereunder, the Trustee or holders of a specified amount of then-outstanding Debentures will have the right to declare all amounts then outstanding due and payable. The terms of the Debentures are further described in the prospectus supplement and accompanying prospectus relating thereto dated February 2, 2007, as filed with the Securities and Exchange Commission pursuant to Rule 424(b)(5) of the Securities Act of 1933 (the “Securities Act”), which description is incorporated herein by this reference.

Also on February 2, 2007, the Company entered into an underwriting agreement (the “Equity Underwriting Agreement” and, together with the Debenture Underwriting Agreement, the “Underwriting Agreements”) with Lehman Brothers Inc. (the “Equity Underwriter” and, together with the Debenture Underwriters, the “Underwriters”) and Lehman Brothers International (Europe) Limited (“LBIE”). Under the terms of the Equity Underwriting Agreement and the related Share Lending Agreement described below, the Company issued and delivered to LBIE 2,947,132 shares of its class A common stock, par value \$0.001 per share (the “Common Stock”) in exchange for payment of a lending fee. The Equity Underwriting Agreement and the Share Lending Agreement contemplate that the Equity Underwriter or its affiliates will use the shares of Common Stock loaned to facilitate hedging transactions undertaken by purchasers of our Debentures. The Company did not receive any proceeds from the sale of our Common Stock, although it did receive a lending fee of \$0.001 for each share that the Company delivered. The closing of the Common Stock transaction occurred on February 7, 2007.

The Underwriting Agreements include representations, warranties and covenants by the Company customary for agreements of this nature. They also provide for customary indemnification by each of the Company and the Underwriters against certain liabilities arising out of or in connection with the sale of the Debentures or the Common Stock, as applicable, and customary contribution provisions in respect of those liabilities.

The foregoing description of the material terms of the Underwriting Agreements is qualified in its entirety by reference to the Debenture Underwriting Agreement, which is attached hereto as Exhibit 1.1 and is incorporated herein by this reference, and the Common Stock Underwriting Agreement, which is attached hereto as Exhibit 1.2 and is incorporated herein by this reference, respectively. The foregoing description of the material terms of the Indenture are qualified in their entirety by reference to the Base Indenture, which is attached hereto as Exhibit 10.2 and is incorporated herein by this reference, and the Supplemental Indenture, which is attached hereto as Exhibit 10.3 and is incorporated herein by this reference.

Also on February 2, 2007, and in connection with the transactions contemplated by the Equity Underwriting Agreement, the Company entered into a share lending agreement (the "Share Lending Agreement") with the Equity Underwriter, as agent and LBIE, as principal.

Share loans under the Share Lending Agreement will terminate and the borrowed shares must be returned to the Company upon the termination of the loan availability period (as defined in the Share Lending Agreement), as well as under the following circumstances:

- LBIE may terminate all or any portion of a loan at any time;
- the Company may terminate any or all of the outstanding loans upon a default by LBIE under the Share Lending Agreement, including a breach by LBIE of any of its representations and warranties, covenants or agreements thereunder, or the bankruptcy of LBIE; or
- if the Company enters into a merger or similar business combination transaction with an unaffiliated third party (as defined in the Share Lending Agreement).

Except in certain limited circumstances, any borrowed shares returned to the Company cannot be reborrowed.

Shares loaned to LBIE are issued and outstanding for corporate law purposes and, accordingly, the holders of the borrowed shares have all of the rights of a holder of the Company's outstanding Common Stock, including the right to vote the shares on all matters submitted to a vote of the Company's stockholders and the right to receive any dividends or other distributions that the Company may pay or make on its outstanding shares of Common Stock. However, under the Share Lending Agreement, LBIE has agreed:

- to pay to the Company an amount equal to any cash dividends that the Company pays on the borrowed shares, and

- to pay or deliver to the Company any other distribution, in liquidation or otherwise, that the Company makes on the borrowed shares.

In view of the contractual undertakings of LBIE in the Share Lending Agreement, which have the effect of substantially eliminating the economic dilution that otherwise would result from the issuance of the borrowed shares, the Company believes that under U.S. GAAP, the borrowed shares will not be considered outstanding for the purpose of computing and reporting its earnings per share.

The foregoing description of the material terms of the Share Lending Agreement is qualified in its entirety by reference to the Share Lending Agreement which is attached hereto as Exhibit 10.1 and is incorporated herein by this reference.

The offering of the Debentures was registered under the Securities Act and is being made pursuant to the Company's effective shelf registration statement on Form S-3 Registration No. 333-140272 (the "Registration Statement") and the prospectus dated January 29, 2007 included therein, the preliminary prospectus supplement relating thereto dated January 29, 2007 and the final prospectus supplement relating thereto dated February 2, 2007. The offering of the Common Stock was registered under the Securities Act and is being made pursuant to the Registration Statement and the prospectus dated January 29, 2007 included therein, the preliminary prospectus supplement relating thereto dated January 29, 2007 and the final prospectus supplement relating thereto dated February 2, 2007.

Affiliates of Lehman Brothers Inc. and Credit Suisse Securities (USA) LLC are parties to the Credit Agreement (defined below) in favor of the Company and for which the Company has paid, and expects to pay, customary fees.

On February 6, 2007, the Company, Credit Suisse, Cayman Islands Branch ("Credit Suisse") and Lehman Commercial Paper Inc. ("Lehman") entered into a Amendment and Waiver (the "Amendment and Waiver") with respect to that certain Credit Agreement, dated December 2, 2005, by and among the Company, the several lenders from time to time parties thereto and Credit Suisse (the "Credit Agreement"). Pursuant to the Amendment and Waiver, the lenders agreed to waive compliance with and/or amend certain restrictive covenants under the Credit Agreement which would have been implicated by the Company's previously announced acquisition of PowerLight Corporation and the Company's recently completed offering of Debentures. The Amendment and Waiver is effective as of January 10, 2007.

Section 2 – Financial Information

Item 2.03 Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant

The first two paragraphs in Item 1.01 above are incorporated by reference into this Item 2.03.

Section 8 – Other Events

Item 8.01 Other Events

This Current Report on Form 8-K is being filed to incorporate by reference exhibits into the Registration Statement in connection with our issuance of Debentures pursuant to the Debenture Underwriting Agreement and our issuance of Common Stock pursuant to the Share Lending Agreement and the Equity Underwriting Agreement, all as described above under Item 1.01.

Section 9 – Financial Statements and Exhibits

Section 9.01 Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
1.1	Underwriting Agreement, dated February 2, 2007, by and among SunPower Corporation and Lehman Brothers Inc. and Credit Suisse Securities (USA) LLC, as representatives for Lehman Brothers Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Cowen and Company, LLC, First Albany Capital Inc. and ThinkEquity Partners LLC.
1.2	Underwriting Agreement, dated February 2, 2007, by and between SunPower Corporation, Lehman Brothers Inc. and Lehman Brothers International (Europe) Limited.
5.1	Opinion of Jones Day regarding the validity of the Debentures.
5.2	Opinion of Jones Day regarding the validity of the Common Stock.
10.1	Share Lending Agreement, dated February 2, 2007, by and among SunPower Corporation, Lehman Brothers Inc., as agent, and Lehman Brothers International (Europe) Limited, as principal.
10.2	Indenture, dated February 7, 2007, between SunPower Corporation and Wells Fargo Bank, National Association.
10.3	First Supplemental Indenture, dated February 7, 2007, between SunPower Corporation and Wells Fargo Bank, National Association.

<u>Exhibit Number</u>	<u>Description</u>
10.4	Amendment and Waiver, dated as of January 10, 2007, to and under the Credit Agreement, dated as of December 2, 2005, among SunPower Corporation, the several lenders from time to time parties thereto, and Credit Suisse, Cayman Islands Branch, as Administrative Agent.
23.1	Consent of Jones Day (contained in Exhibit 5.1).
23.2	Consent of Jones Day (contained in Exhibit 5.2).

SIGNATURES

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

SUNPOWER CORPORATION

By: /s/ Emmanuel T. Hernandez

Name: Emmanuel T. Hernandez

Title: Chief Financial Officer

Date: February 8, 2007

EXHIBITS

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\$175,000,000

SUNPOWER CORPORATION

1.25% Senior Convertible Debentures Due 2027

UNDERWRITING AGREEMENT

February 2, 2007

LEHMAN BROTHERS INC.
CREDIT SUISSE SECURITIES (USA) LLC
DEUTSCHE BANK SECURITIES INC.
COWEN AND COMPANY, LLC
FIRST ALBANY CAPITAL INC.
THINKEQUITY PARTNERS LLC

As Representatives of the Several Underwriters,

c/o Lehman Brothers Inc.
745 Seventh Avenue
New York, NY 10019-6801

and

c/o Credit Suisse Securities (USA) LLC
Eleven Madison Avenue
New York, NY 10010-3629

Dear Sirs:

1. *Introductory.* SunPower Corporation, a Delaware corporation ("**Company**"), proposes to issue and sell \$175,000,000 aggregate principal amount of 1.25% Senior Convertible Debentures due 2027 ("**Firm Securities**"). The Company also proposes to sell to the Underwriters, at the option of the Underwriters, up to an additional \$25,000,000 aggregate principal amount of 1.25% Senior Convertible Debentures due 2027 ("**Optional Securities**"). The Firm Securities and the Optional Securities are herein collectively called the "**Offered Securities**". The Offered Securities will be issued pursuant to the Indenture, to be dated as of February 7, 2007, as supplemented by the First Supplemental Indenture, to be dated as of February 7, 2007 (as amended and supplemented, the "**Indenture**"), between the Company and Wells Fargo Bank, National Association, as Trustee. The Offered Securities will be convertible into shares of Class A Common Stock of the Company, par value \$0.001 per share (the "**Common Stock**") in accordance with the terms of the Offered Securities and the Indenture. The Common Stock into which the Offered Securities are convertible is hereinafter referred to as the "**Underlying Securities**". The Company is currently a subsidiary (as defined in Rule 405 of the Act (as defined herein)) of Cypress Semiconductor Corporation, a Delaware corporation ("**Parent**"). The Company hereby agrees with the several Underwriters named in Schedule A hereto ("**Underwriters**") as follows:

2. *Representations and Warranties of the Company.* The Company represents and warrants to, and agrees with, the several Underwriters that:

(a) The Company has filed with the Commission a registration statement on Form S-3 (No. 333-140272), including a related prospectus or prospectuses, covering the registration of the Offered Securities under the Act, which has become effective. "**Registration Statement**" at

any particular time means such registration statement in the form then filed with the Commission, including any amendment thereto, any document incorporated by reference therein and all 430B Information and all 430C Information with respect to such registration statement, that in any case has not been superseded or modified. “**Registration Statement**” without reference to a time means the Registration Statement as of the Effective Time.

For purposes of this Agreement:

“**430B Information**” means information included in a prospectus and deemed to be a part of the Registration Statement pursuant to, and at the time specified in, Rule 430B(e) or Rule 430B(f), respectively.

“**430C Information**” means information included in a prospectus then deemed to be a part of the Registration Statement pursuant to Rule 430C.

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

“**Applicable Time**” means 8:30 a.m. (New York City time) on February 2, 2007;

“**Closing Date**” has the meaning defined in Section 3 hereof.

“**Commission**” means the Securities and Exchange Commission.

“**Effective Time**” of the Registration Statement relating to the Offered Securities means the time of the first contract of sale for the Offered Securities.

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

“**Final Prospectus**” means the Statutory Prospectus that discloses the public offering price, other 430B Information and other final terms of the Offered Securities and otherwise satisfies Section 10(a) of the Act.

“**General Use Issuer Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being so specified in Schedule B to this Agreement.

“**Issuer Free Writing Prospectus**” means any “issuer free writing prospectus,” as defined in Rule 433, relating to the Offered Securities in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“**Limited Use Issuer Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is not a General Use Issuer Free Writing Prospectus.

“**Rules and Regulations**” means the rules and regulations of the Commission.

“**Securities Laws**” means, collectively, the Sarbanes-Oxley Act of 2002 (“**Sarbanes-Oxley**”), the Act, the Exchange Act, the Trust Indenture Act, the Rules and Regulations, the auditing principles, rules, standards and practices applicable to auditors of “issuers” (as defined in Sarbanes-Oxley) promulgated or approved by the Public Company Accounting Oversight Board and, as applicable to the Company at a specific time, the rules of the New York Stock Exchange and the NASDAQ Stock Market (“**Exchange Rules**”).

“**Statutory Prospectus**” with reference to any particular time means the prospectus relating to the Offered Securities that is included in the Registration Statement immediately prior to that time, including all 430B Information and all 430C Information with respect to the Registration Statement and all information incorporated by reference into such prospectus. For purposes of the foregoing definition, 430B Information shall be considered to be included in the Statutory Prospectus only as of the actual time that form of prospectus (including a prospectus supplement) is filed with the Commission pursuant to Rule 424(b) and not retroactively.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended.

Unless otherwise specified, a reference to a “rule” is to the indicated rule under the Act.

(b) (A) At the time the Registration Statement initially became effective, (B) at the time of each amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether by post-effective amendment, incorporated report or form of prospectus), (C) at the Effective Time relating to the Offered Securities and (D) on the Closing Date, the Registration Statement conformed and will conform in all respects to the requirements of the Act, the Trust Indenture Act and the Rules and Regulations and did not and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and (ii) (A) on its date, (B) at the time of filing the Final Prospectus pursuant to Rule 424(b) and (C) on the Closing Date, the Final Prospectus will conform in all respects to the requirements of the Act, the Trust Indenture Act and the Rules and Regulations, and will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any such document based upon written information furnished to the Company by any Underwriter through the Representatives, if any, specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 8(b) hereof.

(c) (i) (x) At the time of initial filing of the Registration Statement, (y) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), and (z) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Offered Securities in reliance on the exemption of Rule 163, the Company was a “well known seasoned issuer” as defined in Rule 405, and was not an “ineligible issuer” as defined in Rule 405.

(ii) The Registration Statement is an “automatic shelf registration statement,” as defined in Rule 405, that initially became effective within three years of the Closing Date (as defined in Section 3) If immediately prior to the Renewal Deadline (as hereinafter defined), any of the Offered Securities remain unsold by the Underwriters, the Company will prior to the Renewal Deadline file, if it has not already done so and is eligible to do so, a new automatic shelf registration statement relating to the Offered Securities, in a form satisfactory to Lehman Brothers Inc. (“**Lehman Brothers**”) and Credit Suisse Securities (USA) LLC (“**CS**”). If the Company is no longer eligible to file an automatic shelf registration statement, the Company will prior to the Renewal Deadline, if it has not already done so, file a new shelf registration statement relating to the Offered Securities, in a form satisfactory to Lehman Brothers and CS, and will use its reasonable best efforts to cause such registration statement to be declared effective within 180 days after the Renewal Deadline. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Offered Securities to continue as contemplated in the expired registration statement relating to the Offered Securities. References herein to the Registration Statement shall include such new automatic shelf registration statement or such new shelf registration statement, as the case may be. “**Renewal Deadline**” means the third anniversary of the initial effective time of the Registration Statement.

(d) The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) objecting to use of the automatic shelf registration statement form. If at any time when Offered Securities remain unsold by the Underwriters the Company receives from the Commission a notice pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (i) promptly notify Lehman Brothers and CS, (ii) promptly file a new registration statement or post-effective amendment on the proper form relating to the Offered Securities, in a form satisfactory to Lehman Brothers and CS, (iii) use its reasonable best efforts to cause such registration statement or post-effective amendment to be declared effective as soon as practicable, and (iv) promptly notify Lehman Brothers and CS of such effectiveness. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Offered Securities to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(e) The Company has paid or shall pay the required Commission filing fees relating to the Offered Securities within the time required by Rule 456(b)(1) without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r).

(f) As of the Applicable Time and of the Closing Date (as defined below), neither (A) the General Use Issuer Free Writing Prospectus(es) issued at or prior to the Applicable Time, the last Statutory Prospectus filed before the Applicable Time and the information set forth in Schedule B to this Agreement, all considered together (collectively, the “**General Disclosure Package**”), nor (B) any individual Limited Use Issuer Free Writing Prospectus, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any prospectus included in the Registration Statement or any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 8(b) hereof.

(g) Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Offered Securities or until any earlier date that the Company notified or notifies Lehman Brothers and CS as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information then contained in the Registration Statement. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information then contained in the Registration Statement or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, (i) the Company has promptly notified or will promptly notify Lehman Brothers and CS and (ii) the Company has promptly amended or supplemented or will promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission. The foregoing two sentences do not apply to statements in or omissions from any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 8(b) hereof.

(h) The documents incorporated by reference in any Statutory Prospectus or the Final Prospectus did not, and any further documents filed and incorporated by reference therein will not, when filed with the Commission, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(i) The Company is duly incorporated and is an existing corporation in good standing under the laws of the State of Delaware, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except for any jurisdiction where the failure to be so qualified would not, individually or in the aggregate, have a material adverse effect on the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as a whole (“**Material Adverse Effect**”).

(j) Each subsidiary of the Company has been duly incorporated and is an existing corporation in good standing under the laws of the jurisdiction of its incorporation, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; and each subsidiary of the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification; except for any such jurisdiction where the failure to be so qualified would not have a Material Adverse Effect; all of the issued and outstanding capital stock of each subsidiary of the Company has been duly authorized and validly issued and is fully paid and non-assessable; and the capital stock of each subsidiary owned by the Company, directly or through subsidiaries, is owned free from liens, encumbrances and defects.

(k) The Indenture has been duly authorized by the Company and, assuming due authorization, execution and delivery of the Indenture by the Trustee, constitutes a valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors’ rights and to general equity principles; the Indenture has been duly qualified under the Trust Indenture Act and complies as to form with the requirements of the Trust Indenture Act; the Offered Securities have been duly authorized by the Company; and when the Offered Securities are delivered and paid for pursuant to this Agreement on the Closing Date, the Indenture will have been duly executed and delivered by the Company, such Offered Securities will have been duly executed, authenticated, issued and delivered, will conform to the information in the General Disclosure Package and to the description of such Offered Securities contained in the Final Prospectus and the Indenture and such Offered Securities will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors’ rights and to general equity principles.

(l) When the Offered Securities are delivered and paid for pursuant to this Agreement on the Closing Date, such Offered Securities will be convertible into Common Stock of the Company in accordance with the terms of the Indenture; the shares of Underlying Securities initially issuable upon conversion of such Offered Securities have been duly authorized and reserved for issuance upon such conversion and, when issued upon such conversion, will be validly issued, fully paid and non-assessable; the issuance of such Underlying Securities will not be subject to preemptive or similar rights of any stockholder of the Company arising by law, under

the charter or by-laws of the Company or under any agreement to which the Company or any of its subsidiaries is a party. The shares of Common Stock outstanding as of the date hereof have been duly authorized and validly issued, are fully paid and non-assessable, conform to the information in the General Disclosure Package and to the description of the Common Stock contained in the Final Prospectus; the stockholders of the Company have no preemptive rights with respect to the Common Stock; none of the outstanding shares of capital stock of the Company are or will have been issued in violation of any preemptive or similar rights of any security holder; and the authorized equity capitalization of the Company is as set forth in the General Disclosure Package. No holder of the Underlying Securities will be subject to liabilities of the Company solely by reason of being such holder.

(m) Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder's fee or other like payment in connection with this offering.

(n) Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to a Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Act.

(o) The Company is subject to and in compliance in all material respects with the reporting requirements of Section 13 of the Exchange Act. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed on The Nasdaq Global Market, and the Company has taken no action designed to, or reasonably likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from The Nasdaq Global Market, nor has the Company received any notification that the Commission or the National Association of Securities Dealers, Inc. is contemplating terminating such registration or listing. No consent, approval, authorization or order of, or filing, notification or registration with, The Nasdaq Global Market is required for the listing and trading of the Common Stock on The Nasdaq Global Market.

(p) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required to be obtained or made by the Company for the consummation of the transactions contemplated by this Agreement or the Indenture in connection with the issuance and sale of the Offered Securities by the Company, except such as have been obtained and made under the Act, the Trust Indenture Act and such as may be required under state securities laws.

(q) The execution, delivery and performance of this Agreement, and the issuance and sale of the Offered Securities will not result in a breach or violation of any of the terms and provisions of, or constitute a default under (a) any statute, any rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any subsidiary of the Company or any of their properties, (b) any agreement or instrument to which the Company or any such subsidiary is a party or by which the Company or any such subsidiary is bound or to which any of the properties of the Company or any such subsidiary is subject, or (c) the charter or by-laws of the Company or any such subsidiary, except, in the cases of clauses (a) and (b) above, as would not have a Material Adverse Effect, and the Company has full power and authority to authorize, issue and sell the Offered Securities as contemplated by this Agreement.

(r) This Agreement has been duly authorized, executed and delivered by the Company.

(s) Except as disclosed in the General Disclosure Package, the Company and its subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them and material to the Company's business, in each case free from liens, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or to be made thereof by them; and except as disclosed in the General Disclosure Package, the Company and its subsidiaries hold any leased real or personal property material to the Company's business under valid and enforceable leases with no exceptions that would materially interfere with the use made or to be made thereof by them.

(t) The Company and its subsidiaries possess adequate certificates, authorities or permits issued by appropriate governmental agencies or bodies necessary to conduct the business now operated by them and have not received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect, except as the General Disclosure Package discloses may occur.

(u) No labor dispute with the employees of the Company or any subsidiary exists or, to the knowledge of the Company, is imminent that is reasonably likely to have a Material Adverse Effect.

(v) Except as disclosed in the General Disclosure Package, the Company and its subsidiaries own, possess or can acquire on reasonable terms, adequate trademarks, trade names and other rights to inventions, know-how, patents, copyrights, confidential information and other intellectual property (collectively, "**intellectual property rights**") necessary to conduct the business now operated by them, or presently employed by them, and have not received any notice of infringement of or conflict with asserted rights of others with respect to any intellectual property rights that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

(w) Except as disclosed in the General Disclosure Package, neither the Company nor any of its subsidiaries is in violation of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "**Environmental Laws**"), owns or operates any real property contaminated with any substance that is subject to any environmental laws, is liable for any off-site disposal or contamination pursuant to any environmental laws, or is subject to any claim or threatened action relating to any environmental laws, which violation, contamination, liability or claim would individually or in the aggregate have a Material Adverse Effect or otherwise require disclosure in the General Disclosure Package; and the Company is not aware of any pending or threatened investigation which might lead to such a claim. In the ordinary course of business, the Company (1) conducts a periodic review of the effect of Environmental Laws on its business, operations and properties, and the Company has identified and evaluated associated costs and liabilities, and any capital or operating expenditures, required for cleanup or closure of properties under, or compliance with, Environmental Laws or any permit, license or approval, any related constraints on operating activities, and any potential liabilities to third parties; and (2) has conducted environmental investigations of, and has reviewed information regarding, its business, properties and operations, and those of other properties within the vicinity of its businesses, properties and operations; on the basis of such review and investigations, the Company has reasonably concluded that, except as disclosed in the General Disclosure Package, any costs and liabilities associated with such matters would not have a Material Adverse Effect or otherwise require disclosure in the General Disclosure Package.

(x) Except as disclosed in the General Disclosure Package, there are no pending actions, suits, charges (by any governmental entity), investigations, requests for information (by any governmental entity) or proceedings against or affecting the Company, any of its subsidiaries or any of their respective properties that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect or otherwise require disclosure in the General Disclosure Package or the Final Prospectus, or would materially and adversely affect the ability of the Company to perform its obligations under this Agreement, or which are otherwise material in the context of the sale of the Offered Securities; and no such actions, suits or proceedings are threatened or, to the Company's knowledge, contemplated.

(y) The financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Final Prospectus present fairly the financial position of the Company and its consolidated subsidiaries as of the dates shown and their results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with the generally accepted accounting principles in the United States ("U.S. GAAP") applied on a consistent basis and the assumptions used in preparing the pro forma and as adjusted financial information included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Final Prospectus provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein, the related pro forma adjustments give appropriate effect to those assumptions, and the pro forma columns therein reflect the proper application of those adjustments to the corresponding historical financial statement amounts. The pro forma financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Final Prospectus comply as to form in all material respects with the applicable requirements of Regulation S-X under the Act.

(z) Except as disclosed in the General Disclosure Package, since the date of the Company's latest audited financial statements included or incorporated by reference in the General Disclosure Package there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as a whole, and, except as disclosed in or contemplated by the General Disclosure Package, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(aa) All material Tax returns required to be filed by the Company or any of its subsidiaries have been filed in all jurisdictions where such returns are required to be filed, which returns are true, complete, and correct in all material respects and all Taxes shown on such returns have been paid. All material Taxes due or claimed to be due from the Company and each of its subsidiaries have been paid, other than those (1) currently payable without penalty or interest or (2) being contested in good faith and by appropriate proceedings and for which, in the case of both clauses (1) and (2), adequate reserves have been established on the books and records of the Company and its subsidiaries in accordance with U.S. GAAP. No material deficiency or adjustment for any Taxes has been threatened, proposed, asserted or assessed against the Company or any of its subsidiaries. To the knowledge of the Company, the reserves on the books and records of the Company and its subsidiaries in respect of any Tax liability for any taxable period not finally determined are adequate to meet any assessments of Tax for any such period. For purposes of this Agreement, the term "Tax" and "Taxes" shall mean all Federal, state, local and foreign taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax, or penalties applicable thereto.

(bb) The Company is not and, after giving effect to the offering and sale of the Offered Securities and the application of the proceeds thereof as described in the General Disclosure Package, will not be an "investment company" as defined in the Investment Company Act of 1940.

(cc) Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “**FCPA**”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company, its subsidiaries and, to the knowledge of the Company, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith and neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries or has otherwise made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(dd) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “**Money Laundering Laws**”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(ee) As of the date of this Agreement, there is and has been no failure on the part of the Company and any of the Company’s directors or officers, in their capacities as such, to comply with the provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the “**Sarbanes-Oxley Act**”) applicable to the Company.

(ff) Subject to the facts and risks disclosed in the General Disclosure Package with respect to clauses (B) and (D) of this paragraph, the Company and its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management’s general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (C) access to assets is permitted only in accordance with management’s general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The general accounting records of the Company and of each of its subsidiaries provide the basis for the preparation of the Company’s consolidated financial statements under U.S. GAAP and have been maintained in compliance with applicable laws. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-14 under the Exchange Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it will file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the Commission, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it will file or submit under the Exchange Act is accumulated and communicated to the Company’s management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate to allow timely decisions regarding required disclosure.

(gg) The section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies” included or incorporated by reference in the General Disclosure Package and the Final Prospectus accurately and fully describes in all material respects (1) the accounting policies that the Company believes are the most important in the portrayal of the Company’s financial condition and results of operations and that require management’s most difficult, subjective or complex judgments (“**Critical Accounting Policies**”); (2) the judgments and uncertainties affecting the application of Critical Accounting Policies; and (3) the likelihood that materially different amounts would be reported under different conditions or using different assumptions and an explanation thereof.

(hh) Except as disclosed in the General Disclosure Package, no material indebtedness (actual or contingent) and no material contract or arrangement is outstanding between the Company or any of its subsidiaries and any director or executive officer of the Company or any of its subsidiaries or any person connected with such director or executive officer (including his/her spouse, children, and any company or undertaking in which he/she holds a controlling interest). There are no relationships or transactions between the Company or any of its subsidiaries, on the one hand, and its affiliates, officers and directors or their stockholders, customers or suppliers, on the other, which, although required to be disclosed, are not disclosed in the General Disclosure Package.

(ii) There are no material contracts or documents that are required to be described in the Registration Statement, the General Disclosure Package or the Final Prospectus or to be filed as exhibits thereto that have not been so described and filed as required.

(jj) PricewaterhouseCoopers LLP, who have certified certain financial statements of the Company and its subsidiaries, are independent public accountants as required by the Act and the rules and regulations of the Commission thereunder.

(kk) Ernst & Young LLP, whose report appears in the General Disclosure Package or is incorporated by reference therein and who have delivered the letter referred to in Section 7(l) hereof, were independent public accountants with respect to PowerLight Corporation and its subsidiaries, as required by the Act and the rules and regulations of the Commission thereunder.

(ll) The statements set forth or incorporated by reference in the General Disclosure Package and the Final Prospectus under the caption “Description of the Debentures,” insofar as they purport to constitute a summary of the material terms of the Offered Securities, under the caption “Description of Class A Common Stock,” insofar as they purport to constitute a summary of the material terms of the Underlying Securities, fairly summarize in all material respects the matters referred to therein.

(mm) All of the Company’s options, warrants and other rights to purchase or exchange any securities for shares of the Company’s capital stock have been duly authorized and validly issued, conform to the description thereof contained or incorporated by reference in the General Disclosure Package and were issued in compliance with federal and state securities laws. The exercise price of each option issued under the Company’s stock option or other employee benefit plans has been no less than the fair market value of a share of Common Stock as determined on the date of grant of such option, except for option in connection with which appropriate expenses were recorded in accordance with U.S. GAAP. All grants of options were validly issued and properly approved by the board of directors of the Company (or a duly authorized committee or subcommittee thereof) in material compliance with all applicable laws and regulations and recorded in the Company’s financial statements in accordance with U.S. GAAP and no such grants involved “back dating,” “forward dating” or similar practice with respect to the effective date of grant.

(nn) The Company meets the requirements related to incorporation by reference set forth in the General Instructions to Form S-3 under the heading "Eligibility to Use Incorporation by Reference."

(oo) The Company has not sold or issued any securities that would be integrated with the offering of the Offered Securities contemplated by this Agreement pursuant to the Act, the Rules and Regulations or the interpretations thereof by the Commission.

(pp) Neither the Company nor any of its officers, directors or affiliates has taken or will take, directly or indirectly, any action that is designed to or which has constituted or which could reasonably be expected to cause or result in, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Securities; it being understood and agreed that the concurrent offering of the Common Stock as described in the General Disclosure Package under the caption "Description of Share Lending Agreement" shall not result in a breach of this Section 2(pp).

3. *Purchase, Sale and Delivery of Offered Securities.* On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to sell to the Underwriters, and the Underwriters agree, severally and not jointly, to purchase from the Company, at a purchase price of 97.5% of the principal amount thereof plus accrued interest from February 7, 2007 to the First Closing Date (as hereinafter defined), the respective principal amounts of Firm Securities set forth opposite the names of the Underwriters in Schedule A hereto.

The Company will deliver the Firm Securities to the Representatives for the accounts of the Underwriters against payment of the purchase price in Federal (same day) funds by official bank check or checks or wire transfer to an account at a bank acceptable to Lehman Brothers and CS drawn to the order of the Company, at the office of Jones Day, 1755 Embarcadero Road, Palo Alto, CA 94304, at 9:00 A.M., New York time, on February 7, 2007, or at such other time not later than seven full business days thereafter as Lehman Brothers and CS and the Company determine, such time being herein referred to as the "**First Closing Date**". For purposes of Rule 15c6-1 under the Exchange Act, the First Closing Date (if later than the otherwise applicable settlement date) shall be the settlement date for payment of funds and delivery of securities for all the Offered Securities sold pursuant to the offering. The Firm Securities so to be delivered will be in the form of one or more permanent global Securities in definitive form, in such denominations and registered in such names as Lehman Brothers and CS request and will be made available for checking and packaging at the above office of Jones Day at least 24 hours prior to the First Closing Date. The Company shall deliver the Firm Securities through the facilities of the Depository Trust Company ("**DTC**") unless CS or Lehman Brothers shall otherwise instruct.

In addition, upon written notice from Lehman Brothers and CS given to the Company from time to time not more than 30 days subsequent to the date of the Final Prospectus, the Underwriters may purchase all or less than all of the Optional Securities at the purchase price per principal amount of the Firm Securities (including any accrued interest thereon to the related Optional Closing Date). The Company agrees to sell to the Underwriters the principal amount of Optional Securities specified in such notice and the Underwriters agree, severally and not jointly, to purchase such Optional Securities. Such Optional Securities shall be purchased for the account of each Underwriter in the same proportion as the principal amount of Firm Securities set forth opposite such Underwriter's name bears to the total principal amount of Firm Securities (subject to adjustment by Lehman Brothers and CS to eliminate fractions) and may be purchased by the Underwriters only for the purpose of covering over-allotments made in connection with the sale of the Firm Securities. No Optional Securities shall be sold or delivered unless the Firm Securities previously have been, or simultaneously are, sold and delivered. The right to purchase the Optional Securities or any portion thereof may be exercised from time to time and to the extent not previously exercised may be surrendered and terminated at any time upon notice by Lehman Brothers and CS to the Company.

Each time for the delivery of and payment for the Optional Securities, being herein referred to as an “**Optional Closing Date**”, which may be the First Closing Date (the First Closing Date and each Optional Closing Date, if any, being sometimes referred to as a “**Closing Date**”), shall be determined by Lehman Brothers and CS but shall be not later than five full business days after written notice of election to purchase Optional Securities is given. The Company will deliver the Optional Securities being purchased on each Optional Closing Date to the Representatives for the accounts of the several Underwriters, against payment of the purchase price therefor in Federal (same day) funds by official bank check or checks or wire transfer to an account at a bank acceptable to Lehman Brothers and CS drawn to the order of the Company, at the above office of Jones Day. The Optional Securities being purchased on each Optional Closing Date will be in the form of one or more permanent global Securities in definitive form, in such denominations and registered in such names as Lehman Brothers and CS request upon reasonable notice prior to such Optional Closing Date and will be made available for checking and packaging at the above office of Jones Day at a reasonable time in advance of such Optional Closing Date. The Company shall deliver the Optional Securities through the facilities of DTC unless Lehman Brothers and CS shall otherwise instruct.

4. *Offering by Underwriters.* It is understood that the several Underwriters propose to offer the Offered Securities for sale to the public as set forth in the Final Prospectus.

5. *Certain Agreements of the Company.* The Company agrees, with the several Underwriters that:

(a) The Company has filed or will file each Statutory Prospectus (including the Final Prospectus) pursuant to and in accordance with Rule 424(b)(2) (or, if applicable and consented to by Lehman Brothers and CS, subparagraph (5)) not later than the second business day following the earlier of the date it is first used or the date of this Agreement. The Company has complied and will comply with Rule 433.

(b) Prior to 90 days after the last Closing Date, the Company will promptly advise Lehman Brothers and CS of any proposal to amend or supplement the Registration Statement or any Statutory Prospectus (including any document incorporated by reference therein) at any time and will afford Lehman Brothers and CS a reasonable opportunity to comment on any such proposed amendment or supplement and will not effect such amendment or supplementation without the consent of Lehman Brothers and CS (which consent will not be unreasonably withheld) and the Company will also advise Lehman Brothers and CS promptly of (1) the filing of any such amendment or supplement, (2) any request by the Commission or its staff for any amendment to any Registration Statement, for any supplement to any Statutory Prospectus (including any document incorporated by reference therein) or for any additional information, (3) the institution by the Commission of any stop order proceedings in respect of a Registration Statement or the threatening of any proceeding for that purpose, and (4) the receipt by the Company of any notification with respect to the suspension of the qualification of the Offered Securities in any jurisdiction or the institution or threatening of any proceedings for such purpose. The Company will use its reasonable best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and obtain as soon as possible its lifting, if issued.

(c) If, at any time when a prospectus relating to the Offered Securities is (or for the exemption in Rule 172 under the Act would be) required to be delivered under the Act in connection with sales by any Underwriter or dealer, any event occurs as a result of which the Final Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Registration Statement or supplement the Final Prospectus to comply with the Act, the Company will promptly notify Lehman Brothers and CS of such event and will promptly prepare and file with the Commission and furnish, at its own expense, to the Underwriters and dealers and any other dealers upon request of Lehman Brothers and CS an amendment or supplement which

will correct such statement or omission or an amendment which will effect such compliance. Neither Lehman Brothers and CS' consent to, nor the Underwriters' delivery of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 8.

(d) As soon as practicable, but not later than 16 months, after the date of this Agreement, the Company will make generally available to its securityholders an earnings statement covering a period of at least 12 months beginning after the date of this Agreement and satisfying the provisions of Section 11(a) of the Act and Rule 158.

(e) The Company will furnish to the Representatives copies of the Registration Statement (of which two will be signed), including all exhibits, any Statutory Prospectus relating to the Offered Securities, the Final Prospectus and all amendments and supplements to such documents, in each case in such quantities as Lehman Brothers and CS reasonably requests. The Final Prospectus shall be so furnished on or prior to 3:00 P.M., New York time, on the second business day following the execution and delivery of this Agreement. All other such documents shall be so furnished as soon as available. The Company will pay the expenses of printing and distributing to the Underwriters all such documents.

(f) The Company will arrange for the qualification of the Offered Securities for sale and the determination of their eligibility for investment under the laws of such jurisdictions as Lehman Brothers and CS designates and will continue such qualifications in effect so long as required for the distribution.

(g) During the period of five years after the date of this Agreement, the Company will furnish to the Representatives and, upon request, to each of the other Underwriters, if any, as soon as practicable after the end of each fiscal year, a copy of its annual report to stockholders for such year; and the Company will furnish to the Representatives (1) as soon as available, a copy of each report and any definitive proxy statement of the Company filed with the Commission under the Exchange Act or mailed to stockholders, and (2) from time to time, such other information concerning the Company as Lehman Brothers and CS may reasonably request. However, so long as the Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act and is timely filing reports with the Commission on its Electronic Data Gathering, Analysis and Retrieval system ("**EDGAR**"), it is not required to furnish such reports or statements to the Underwriters.

(h) For the period specified below (the "**Lock-Up Period**"), the Company will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, or file with the Commission a registration statement under the Act relating to, any additional shares of its common stock regardless of class (the "**Securities**") or securities convertible into or exchangeable or exercisable for any shares of its Securities, or publicly disclose the intention to make any such offer, sale, pledge, disposition or filing, without the prior written consent of Lehman Brothers and CS, except (i) the sale by the Company of the Offered Securities hereunder, (ii) grants of equity awards pursuant to the terms of a plan in effect on the date hereof or disclosed in the General Disclosure Package, (iii) issuances of Securities pursuant to the exercise of such awards or the exercise of any other equity awards outstanding on the date hereof, (iv) the filing of any amendment or supplements to the Company's registration statements on Form S-3 (Registration No. 333-140198) and Form S-8 (Registration No. 333-140197), (v) the filing of any registration statement on Form S-8 to register shares of its Securities reserved for issuance under the Company's employee stock plans, (vi) up to an aggregate maximum of 3,000,000 shares of its Securities or other rights to acquire its Securities which the Company may issue in connection with transactions with others (a "**Third Party**"), including in acquisitions; provided, however, that, each Third Party must enter into an agreement that provides that, for the Lock-Up Period, each Third Party will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any shares of Securities or securities convertible into or exchangeable or exercisable for

any shares of Securities, or publicly disclose the intention to make any such offer, sale, pledge or disposition without the prior written consent of Lehman Brothers and CS, and the filing of a registration statement relating to such shares, provided, however, that such registration statement shall make clear that such Third Parties are subject to the Lock-Up Period, and (vii) the issuance of Common Stock in connection with the Share Lending Agreement dated February 2, 2007 among the Company, Lehman Brothers, as agent, and Lehman Brothers International (Europe) Limited, as principal. The initial Lock-Up Period for the Company, the shareholders listed in Schedule C and the Third Parties commenced on January 26, 2007 and will continue and include the date 90 days after the public offering date set forth on the Final Prospectus used to sell the Offered Securities.

(i) Except in accordance with the provisions of the lock-up letters substantially in the forms attached as Annex A-1 and A-2, for the period specified in such letter, the Company shall not allow the employees listed in Schedule C to sell or otherwise transfer, without the prior written consent of Lehman Brothers and CS, any Securities or securities convertible into or exchangeable or exercisable for any shares of Securities. The Company shall instruct the transfer agent to impose stop transfer instructions with respect to Securities or securities convertible into or exchangeable for any shares of Securities as contemplated by the lock-up letters substantially in the forms attached as Annex A-1 and A-2.

(j) The Company agrees with the several Underwriters that the Company will pay all expenses incident to the performance of the obligations of the Company under this Agreement, for any filing fees and other expenses (including fees and disbursements of counsel to the Company and of counsel to the Underwriters) incurred in connection with qualification of the Offered Securities for sale and determination of their eligibility for investment under the laws of such jurisdictions as Lehman Brothers and CS designate and the preparation and printing of memoranda relating thereto, for any fees charged by investment rating agencies for the rating of Offered Securities, for any costs and expenses related to the review by the National Association of Securities Dealers, Inc. of the Offered Securities (including filing fees and the fees and expenses of counsel for the Underwriters relating to such review), for expenses incurred in distributing any Statutory Prospectuses and the Final Prospectus (including any amendments and supplements thereto) to the Underwriters and for expenses incurred for preparing, printing and distributing any Issuer Free Writing Prospectus to investors or prospective investors, any applicable listing or other fees, all fees and expenses of the Trustee or any agent thereof, and for any travel expenses of the Company's officers and employees and any other expenses of the Company in connection with attending or hosting meetings with prospective purchasers of the Offered Securities, including the cost of any aircraft chartered in connection with attending or hosting such meetings (such travel and other expenses in connection with such meetings, collectively, the "**Road Show Expenses**"); provided, however, that the Underwriters shall pay the first \$10,000 of the Road Show Expenses, and the Company shall pay any Road Show Expenses in excess of \$10,000.

(k) The Company shall use its best efforts to effect and maintain the listing of any shares of Common Stock issuable upon conversion of the Offered Securities on the NASDAQ Global Market or another U.S. national securities exchange or established automated over-the-counter trading market in the United States of America.

(l) The Company shall apply the net proceeds from the sale of the Offered Securities being sold by the Company as set forth in the General Disclosure Package, and, except as disclosed in the General Disclosure Package, the Company does not intend to use any of the proceeds from the sale of the Offered Securities hereunder to repay any outstanding debt owed to any affiliate of any Underwriter.

(m) The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to result in stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Offered Securities;

it being understood and agreed that the concurrent offering of the Common Stock as described in the General Disclosure Package under the caption "Description of Share Lending Agreement" shall not result in a breach of this Section 5(m).

6. *Free Writing Prospectuses.* (a) The Company represents and agrees that, unless it obtains the prior consent of Lehman Brothers and CS, and each Underwriter represents and agrees that, unless it obtains the prior consent of the Company, Lehman Brothers and CS, it has not made and will not make any offer relating to the Offered Securities that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a "free writing prospectus," as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Company, Lehman Brothers and CS is hereinafter referred to as a "**Permitted Free Writing Prospectus**." The Company represents that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus," as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping.

(b) The Company will prepare a final term sheet relating to the Offered Securities, containing only the information that describes the final terms of the Offered Securities and otherwise in a form consented to by Lehman Brothers and CS, and will file such final term sheet within the period required by Rule 433(d)(5)(ii) following the date such final terms have been established for all classes of the offering of the Offered Securities. Any such final term sheet is an Issuer Free Writing Prospectus and a Permitted Free Writing Prospectus for purposes of this Agreement. The Company also consents to the use by any Underwriter of a free writing prospectus that contains only (i)(x) information describing the preliminary terms of the Offered Securities or their offering or (y) information that describes the final terms of the Offered Securities or their offering and that is included in the final term sheet of the Company contemplated in the first sentence of this subsection or (ii) other information that is not "issuer information," as defined in Rule 433, it being understood that any such free writing prospectus referred to in clauses (i) or (ii) above shall not be an Issuer Free Writing Prospectus for purposes of this Agreement.

7. *Conditions of the Obligations of the Underwriters.* The obligations of the several Underwriters to purchase and pay for the Firm Securities on the First Closing Date and the Optional Securities to be purchased on each Optional Closing Date will be subject to the accuracy of the representations and warranties on the part of the Company herein (as though made on such Closing Date), to the accuracy of the statements of Company officers made pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions precedent:

(a) The Representatives shall have received a letter, addressed to the Underwriters, dated the date hereof, of PricewaterhouseCoopers LLP confirming that they are an independent registered public accounting firm within the meaning of the Act and the applicable published Rules and Regulations thereunder and stating to the effect that:

(i) in their opinion the selected financial information examined by them and included or incorporated by reference in the Registration Statement and the General Disclosure Package comply as to form in all material respects with the applicable accounting requirements of the Act and the related published Rules and Regulations;

(ii) they have performed the procedures specified by the Public Company Accounting Oversight Board (United States) for a review of interim financial information as described in Statement of Auditing Standards No. 100, Interim Financial Information, on the unaudited financial statements included or incorporated by reference in the Registration Statement and the General Disclosure Package;

(iii) on the basis of the review referred to in clause (B) above, a reading of the latest available interim financial statements of the Company, inquiries of officials of the Company and the Parent who have responsibility for financial and accounting matters and other specified procedures, nothing came to their attention that caused them to believe that:

(A) the unaudited financial statements included in the Registration Statement or the General Disclosure Package do not comply as to form in all material respects with the applicable accounting requirements of the Act and the related published Rules and Regulations or any material modifications should be made to such unaudited financial statements for them to be in conformity with U.S. GAAP;

(B) the unaudited consolidated net sales, net operating income, net income and net income per share amounts for the three-month periods ended March 31, 2005 and March 31, 2006, the three- and six-month periods ended June 30, 2005 and June 30, 2006 and the three- and nine-month periods ended September 30, 2005 and 2006 included or incorporated by reference in the Registration Statement do not agree with the amounts set forth in the unaudited consolidated financial statements for those same periods or were not determined on a basis substantially consistent with that of the corresponding amounts in the audited statements of income;

(C) at the date of the latest available balance sheet read by such accountants, or at a subsequent specified date not more than three business days prior to the date of this Agreement, there was any change in the capital stock or any increase in long-term debt of the Company and its consolidated subsidiaries; or

(D) for the period from the closing date of the latest income statement included in the Registration Statement or General Disclosure Package to the closing date of the latest available income statement read by such accountants there were any decreases, as compared with the corresponding period of the previous year and with the period of corresponding length ended the date of the latest income statement included in the Registration Statement or General Disclosure Package, in consolidated net sales;

except in all cases set forth in clauses (C) and (D) above for changes, increases or decreases which the Registration Statement or General Disclosure Package discloses have occurred or may occur or which are described in such letter;

(iv) they have compared specified dollar amounts (or percentages derived from such dollar amounts) and other financial information contained or incorporated by reference in the Registration Statement and the General Disclosure Package (in each case to the extent that such dollar amounts, percentages and other financial information are derived from the general accounting records of the Company and its subsidiaries subject to the internal controls of the Company's accounting system or are derived directly from such records by analysis or computation) with the results obtained from inquiries, a reading of such general accounting records and other procedures specified in such letter and have found such dollar amounts, percentages and other financial information to be in agreement with such results, except as otherwise specified in such letter;

(v) on the basis of a reading of the unaudited pro forma financial statements included or incorporated by reference in the Registration Statement and the General

Disclosure Package, inquiries of the officials of the Company, the Parent and of PowerLight Corporation who have responsibility for financial and accounting matters and other specified procedures, nothing came to their attention that caused them to believe that such unaudited pro forma financial statements do not comply as to form in all material respects with the applicable accounting requirements of Rule 11-02 of Regulation S-X and that the pro forma adjustments have not been properly applied to the historical amounts in the compilation of those statements; and

(vi) they have proved the mathematical accuracy of the application of the pro forma adjustments to the historical amounts in the unaudited pro forma financial statements.

(b) The Representatives shall have received a certificate, dated the date hereof of the Company's Chief Financial Officer with respect to certain financial information included in the General Disclosure Package.

(c) The Final Prospectus shall have been filed with the Commission in accordance with the Rules and Regulations and Section 5(a) of this Agreement.

(d) Prior to the Closing Date, no stop order suspending the effectiveness of a Registration Statement or any part thereof shall have been issued and no proceedings for that purpose shall have been instituted or, to the knowledge of the Company or the Representatives, shall be contemplated by the Commission.

(e) Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as one enterprise which, in the judgment of a majority in interest of the Underwriters including the Representatives, is material and adverse and makes it impractical or inadvisable to proceed with completion of the public offering or the sale of and payment for the Offered Securities; (ii) any downgrading in the rating of any debt securities of the Company by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating) or any announcement that the Company has been placed on negative outlook; (iii) any change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls as would, in the judgment of a majority in interest of the Underwriters including the Representatives, be likely to prejudice materially the success of the proposed issue, sale or distribution of the Offered Securities, whether in the primary market or in respect of dealings in the secondary market; (iv) any material suspension or material limitation of trading in securities generally on the New York Stock Exchange, or any setting of minimum or maximum prices for trading on such exchange; (v) or any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (vi) any banking moratorium declared by U.S. Federal or New York authorities; (vii) any major disruption of settlements of securities or clearance services in the United States or (viii) any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States or the Philippines, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of a majority in interest of the Underwriters including the Representatives, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency makes it impractical or inadvisable to proceed with completion of the public offering or the sale of and payment for the Offered Securities.

(f) The Representatives shall have received an opinion, dated such Closing Date, of Jones Day, counsel for the Company, as to the matters described in Annex B.

(g) The Representatives shall have received (i) an opinion of Quin & Hampson, Cayman Islands counsel for the Company, substantially in the form attached as Annex C, (ii) an opinion of Quin & Hampson, Cayman Islands counsel for the Company, substantially in the form attached as Annex D, (iii) an opinion of Stahl Pequignot Lorenz Calame, Swiss counsel for the Company, substantially in the form attached as Annex E, and (iv) an opinion of Deloitte SA, Swiss counsel for the Company, as to the matters described in Annex F.

(h) The Representatives shall have received from Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Underwriters, such opinion or opinions, dated such Closing Date, with respect to the incorporation of the Company, the validity of the Offered Securities delivered on such Closing Date, the Registration Statement, the Final Prospectus and other related matters as the Representatives may require, and the Company shall have furnished to such counsel such documents as they may reasonably request for the purpose of enabling them to pass upon such matters.

(i) The Representatives shall have received a certificate, dated such Closing Date, of the President or any Vice President and a principal financial or accounting officer of the Company in which such officers, to the best of their knowledge after reasonable investigation, shall state that: the representations and warranties of the Company in this Agreement are true and correct; the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date; no stop order suspending the effectiveness of the Registration Statement or any part thereof has been issued and no proceedings for that purpose have been instituted or are contemplated by the Commission; and, subsequent to the date of the most recent financial statements in the General Disclosure Package, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as a whole except as set forth in the General Disclosure Package or as described in such certificate.

(j) The Representatives shall have received a letter, dated such Closing Date, of PricewaterhouseCoopers LLP which meets the requirements of subsection (a) of this Section, except that the specified date referred to in such subsection will be a date not more than three days prior to such Closing Date for the purposes of this subsection.

(k) On or prior to the date of this Agreement, the Representatives shall have received lock-up letters substantially in the form attached as Annex A-1 from the Parent and substantially in the form attached as Annex A-2 from the persons listed in Schedule C, except as agreed upon by the Company and the Representatives prior to the date of this Agreement.

(l) The Representatives shall have received (A) a letter, dated the date hereof, of Ernst & Young LLP, in form and substance satisfactory to the Representatives, addressed to the Underwriters (i) confirming that they are an independent registered public accounting firm within the meaning of the Act and the applicable published Rules and Regulations thereunder with respect to PowerLight Corporation and its subsidiaries during the periods covered by the financial statements on which they reported and (ii) stating the conclusions and findings of such firm with respect to financial information relating to PowerLight Corporation and its subsidiaries incorporated by reference into the Registration Statement and the General Disclosure Package and other matters ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings and (B) a letter, dated the Closing Date, of Ernst & Young LLP, in form and substance satisfactory to the Representatives, addressed to the Underwriters (i) confirming that they are an independent registered public accounting firm within the meaning of the Act and the applicable published Rules and Regulations thereunder with respect to PowerLight

Corporation and its subsidiaries during the periods covered by the financial statements on which they reported, (ii) stating as of the Closing Date (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Final Prospectus, as of a date not more than three days prior to the Closing Date), the conclusions and findings of such firm with respect to the financial information and other matters covered by the letter referred to in Section 7(l)(A) and (iii) confirming in all material respects the conclusions and findings set forth in the letter referred to in Section 7(l)(A).

The Company will furnish the Representatives with such conformed copies of such opinions, certificates, letters and documents as the Representatives reasonably request. Lehman Brothers and CS may in their sole discretion waive on behalf of the Underwriters compliance with any conditions to the obligations of the Underwriters hereunder, whether in respect of an Optional Closing Date or otherwise.

8. *Indemnification and Contribution.* (a) The Company will indemnify and hold harmless each Underwriter, its partners, members, directors, officers, employees, agents, affiliates and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each, an “**Indemnified Party**”), against any losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of the Registration Statement, any Statutory Prospectus, the Final Prospectus or any Issuer Free Writing Prospectus, or, in each case, arise out of or are based upon the omission or alleged omission, of a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending against any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives, if any, specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in subsection (b) below.

(b) Each Underwriter will severally and not jointly indemnify and hold harmless the Company, each of its directors and each of its officers and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each an “**Underwriter Indemnified Party**”), against any losses, claims, damages or liabilities to which such Underwriter Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of any Registration Statement, any Statutory Prospectus, the Final Prospectus or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or the alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Underwriter through the Representatives, if any, specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by such Underwriter Indemnified Party in connection with investigating or defending against any such loss, claim, damage, liability or action, as such expenses are incurred, it being understood and agreed that the only such information furnished by any Underwriter consists of the following information in the Final Prospectus furnished on behalf of each Underwriter: the concession figures appearing in the fourth paragraph under the caption “Underwriting” and the information contained in the tenth, eleventh and twelfth paragraphs, the third sentence of the fourteenth paragraph, the fifteenth and sixteenth paragraphs and the first sentence of the eighteenth paragraph under the caption “Underwriting”.

(c) Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a) or (b) above, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party.

(d) If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a), (b) or (c) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a), (b) or (c) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Offered Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company, or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Offered Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of

fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) The obligations of the Company under this Section shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Underwriter within the meaning of the Act; and the obligations of the Underwriters under this Section shall be in addition to any liability which the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each director of the Company, to each officer of the Company who has signed a Registration Statement and to each person, if any, who controls the Company within the meaning of the Act.

9. *Default of Underwriters.* If any Underwriter or Underwriters default in their obligations to purchase Offered Securities hereunder on either the First Closing Date or any Optional Closing Date and the aggregate principal amount of Offered Securities that such defaulting Underwriter or Underwriters agreed but failed to purchase does not exceed 10% of the total principal amount of Offered Securities that the Underwriters are obligated to purchase on such Closing Date, Lehman Brothers and CS may make arrangements satisfactory to the Company for the purchase of such Offered Securities by other persons, including any of the Underwriters, but if no such arrangements are made by such Closing Date, the non-defaulting Underwriters shall be obligated severally, in proportion to their respective commitments hereunder, to purchase the Offered Securities that such defaulting Underwriters agreed but failed to purchase on such Closing Date. If any Underwriter or Underwriters so default and the aggregate principal amount of Offered Securities with respect to which such default or defaults occur exceeds 10% of the total principal amount of Offered Securities that the Underwriters are obligated to purchase on such Closing Date and arrangements satisfactory to Lehman Brothers and CS and the Company for the purchase of such Offered Securities by other persons are not made within 36 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter or the Company, except as provided in Section 10 (provided that if such default occurs with respect to Optional Securities after the First Closing Date, this Agreement will not terminate as to the Firm Securities or any Optional Securities purchased prior to such termination). As used in this Agreement, the term "Underwriter" includes any person substituted for an Underwriter under this Section. Nothing herein will relieve a defaulting Underwriter from liability for its default.

10. *Survival of Certain Representations and Obligations.* The respective indemnities, agreements, representations, warranties and other statements of the Company or its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter, the Company or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Offered Securities. If this Agreement is terminated pursuant to Section 9 or if for any reason the purchase of the Offered Securities by the Underwriters is not consummated, the Company shall remain responsible for the expenses to be paid or reimbursed by them pursuant to Section 5 and the respective obligations of the Company and the Underwriters pursuant to Section 8 shall remain in effect, and if any Offered Securities have been purchased hereunder the representations and warranties in Section 2 and all obligations under Section 5 shall also remain in effect. If the purchase of the Offered Securities by the Underwriters is not consummated for any reason other than solely because of the termination of this Agreement pursuant to Section 9 or the occurrence of any event specified in clause (iii), (iv), (vi), (vii) or (viii) of Section 7(e), the Company will reimburse the Underwriters for all out-of-pocket expenses (including fees and disbursements of counsel) reasonably incurred by them in connection with the offering of the Offered Securities.

11. *Notices.* All communications hereunder will be in writing and, if sent to the Underwriters, will be mailed, delivered or telegraphed and confirmed to the Representatives c/o Lehman Brothers Inc.,

745 Seventh Avenue, New York, NY 10019-6801, Attention: Syndicate Registration (Fax: 646-497-4815) with a copy, in the case of any notice pursuant to Section 8, to the Director of Litigation, Office of the General Counsel, Lehman Brothers Inc., 399 Park Avenue, 10th Floor, New York, New York 10022 (Fax: 212-520-0421) and c/o Credit Suisse Securities (USA) LLC, Eleven Madison Avenue, New York, NY 10010-3629, Attention: Transactions Advisory Group, or, if sent to the Company, will be mailed, delivered or telegraphed and confirmed to it at 3939 North First Street, San Jose, California 95134 (Fax: 408-240-5400), Attention: Chief Financial Officer; provided, however, that any notice to an Underwriter pursuant to Section 8 will be mailed, delivered or telegraphed and confirmed to such Underwriter.

12. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and controlling persons referred to in Section 8, and no other person will have any right or obligation hereunder.

13. *Representation of Underwriters.* The Representatives will act for the several Underwriters in connection with this financing, and any action under this Agreement taken by the Representatives will be binding upon all the Underwriters.

14. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

15. *Absence of Fiduciary Relationship.* The Company acknowledges and agrees that:

(a) the Representatives have been retained solely to act as underwriters in connection with the sale of the Offered Securities and no fiduciary, advisory or agency relationship between the Company and the Representatives has been created in respect of any of the transactions contemplated by this Agreement or the Final Prospectus, irrespective of whether the Representatives have advised or are advising the Company on other matters;

(b) the price of the Offered Securities set forth in this Agreement was established by the Company following discussions and arms-length negotiations with the Representatives and the Company is capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) it has been advised that the Representatives and their affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and the Representatives have no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and

(d) it waives, to the fullest extent permitted by law, any claims it may have against the Representatives for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that the Representatives shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

16. *Research Independence.* In addition, the Company acknowledges that the Underwriters' research analysts and research departments are required to be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and that such Underwriters' research analysts may hold and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the offering that differ from the views of its investment bankers. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Underwriters with respect to any conflict of interest that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the Company by such

Underwriters' investment banking divisions. The Company acknowledges that each of the Underwriters is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the Company.

17. *Applicable Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflicts of laws.

The Company hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

If the foregoing is in accordance with the Representatives understanding of our agreement, kindly sign and return to the Company one of the counterparts hereof, whereupon it will become a binding agreement among the Company and the several Underwriters in accordance with its terms.

Very truly yours,

SUNPOWER CORPORATION

By /Emmanuel T. Hernandez/
Name: Emmanuel T. Hernandez
Title: Chief Financial Officer

The foregoing Underwriting Agreement is hereby confirmed and accepted as of the date first above written.

LEHMAN BROTHERS INC.
CREDIT SUISSE SECURITIES (USA) LLC

Acting on behalf of themselves and as the
Representatives of the several Underwriters

By LEHMAN BROTHERS INC.

By /S/ [Illegible]
Name:
Title:

and

By CREDIT SUISSE SECURITIES (USA) LLC

By /S/ [Illegible]
Name:
Title:

SCHEDULE A

<u>Underwriter</u>	<u>Principal Amount of Firm Securities</u>
Lehman Brothers Inc.	\$ 61,250,000
Credit Suisse Securities (USA) LLC	43,750,000
Deutsche Bank Securities Inc.	35,000,000
Cowen and Company, LLC	17,500,000
First Albany Capital Inc.	8,750,000
ThinkEquity Partners LLC	8,750,000
	<hr/>
Total	\$ 175,000,000

2,947,132 Shares

SUNPOWER CORPORATION

Class A Common Stock

UNDERWRITING AGREEMENT

February 2, 2007

LEHMAN BROTHERS INC.
745 Seventh Avenue
New York, NY 10019-6801

Dear Sirs:

1. *Introductory.* SunPower Corporation, a Delaware corporation ("**Company**"), subject to the terms and conditions stated herein and pursuant to the Share Lending Agreement (the "**Share Lending Agreement**") dated February 2, 2007, between the Company and Lehman Brothers International (Europe) Limited ("**LBIE**") through Lehman Brothers Inc., as agent (in such capacity, the "**Agent**"), an affiliate of the underwriter named in Schedule A hereto (the "**Underwriter**"), proposes to issue and loan to LBIE as a share loan (the "**Loan**") pursuant to and upon the terms set forth in the Share Lending Agreement, up to 2,947,132 shares of class A common stock, \$0.001 par value (the "**Common Stock**") of the Company (and shares to be issued and loaned by the Company being hereinafter called the "**Offered Securities**").

Concurrently with the issuance of the Offered Securities, the Company is offering in an offering registered under the Securities Act by means of a prospectus supplement \$175,000,000 aggregate principal amount of the Company's Convertible Senior Debentures due 2027 (the "**Debentures**"). Lehman Brothers Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Cowen and Company, LLC, First Albany Capital Inc. and ThinkEquity Partners LLC are acting as the underwriters (collectively the "**Debenture Underwriters**") in the concurrent offering of Debentures. The Company has granted the Debenture Underwriters an option to purchase up to an additional \$25,000,000 aggregate principal amount of Debentures. The Company and the Debenture Underwriters will be entering into an underwriting agreement with respect to such offering. The Company is currently a subsidiary (as defined in Rule 405 of the Act (as defined herein)) of Cypress Semiconductor Corporation, a Delaware corporation ("**Parent**"). The Company hereby agrees with the Underwriter as follows:

2. *Representations and Warranties of the Company.* The Company represents and warrants to, and agrees with, the Underwriter that:

(a) The Company has filed with the Commission a registration statement on Form S-3 (No. 333-140272), including a related prospectus or prospectuses, covering the registration of the Offered Securities under the Act, which has become effective. "**Registration Statement**" at any particular time means such registration statement in the form then filed with the Commission, including any amendment thereto, any document incorporated by reference therein and all 430B Information and all 430C Information with respect to such registration statement, that in any case has not been superseded or modified. "**Registration Statement**" without reference to a time means the Registration Statement as of the Effective Time.

For purposes of this Agreement:

"**430B Information**" means information included in a prospectus and deemed to be a part of the Registration Statement pursuant to , and at the time specified in, Rule 430B(e) or Rule 430B(f), respectively.

“**430C Information**” means information included in a prospectus then deemed to be a part of the Registration Statement pursuant to Rule 430C.

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

“**Applicable Time**” means 8:30 a.m. (New York City time) on February 2, 2007;

“**Closing Date**” has the meaning defined in Section 3 hereof.

“**Commission**” means the Securities and Exchange Commission.

“**Effective Time**” of the Registration Statement relating to the Offered Securities means the time of the first contract of sale for the Offered Securities.

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

“**Final Prospectus**” means the Statutory Prospectus that discloses the public offering price, other 430B Information and other final terms of the Offered Securities and otherwise satisfies Section 10(a) of the Act.

“**General Use Issuer Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being so specified in Schedule B to this Agreement.

“**Issuer Free Writing Prospectus**” means any “issuer free writing prospectus,” as defined in Rule 433, relating to the Offered Securities in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“**Limited Use Issuer Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is not a General Use Issuer Free Writing Prospectus.

“**Rules and Regulations**” means the rules and regulations of the Commission.

“**Securities Laws**” means, collectively, the Sarbanes-Oxley Act of 2002 (“**Sarbanes-Oxley**”), the Act, the Exchange Act, the Rules and Regulations, the auditing principles, rules, standards and practices applicable to auditors of “issuers” (as defined in Sarbanes-Oxley) promulgated or approved by the Public Company Accounting Oversight Board and, as applicable to the Company at a specific time, the rules of the New York Stock Exchange and the NASDAQ Stock Market (“**Exchange Rules**”).

“**Statutory Prospectus**” with reference to any particular time means the prospectus relating to the Offered Securities that is included in the Registration Statement immediately prior to that time, including all 430B Information and all 430C Information with respect to the Registration Statement and all information incorporated by reference into such prospectus. For purposes of the foregoing definition, 430B Information shall be considered to be included in the Statutory Prospectus only as of the actual time that form of prospectus (including a prospectus supplement) is filed with the Commission pursuant to Rule 424(b) and not retroactively.

Unless otherwise specified, a reference to a “rule” is to the indicated rule under the Act.

(b) (A) At the time the Registration Statement initially became effective, (B) at the time of each amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether by post-effective amendment, incorporated report or form of prospectus), (C) at the Effective Time relating to the Offered Securities and (D) on the Closing Date, the Registration

Statement conformed and will conform in all respects to the requirements of the Act and the Rules and Regulations and did not and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and (ii) (A) on its date, (B) at the time of filing the Final Prospectus pursuant to Rule 424(b) and (C) on the Closing Date, the Final Prospectus will conform in all respects to the requirements of the Act and the Rules and Regulations, and will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any such document based upon written information furnished to the Company by the Underwriter, if any, specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 8(b) hereof.

(c) (i) (x) At the time of initial filing of the Registration Statement, (y) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), and (z) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Offered Securities in reliance on the exemption of Rule 163, the Company was a “well known seasoned issuer” as defined in Rule 405, and was not an “ineligible issuer” as defined in Rule 405.

(ii) The Registration Statement is an “automatic shelf registration statement,” as defined in Rule 405, that initially became effective within three years of the Closing Date (as defined in Section 3) If immediately prior to the Renewal Deadline (as hereinafter defined), any of the Offered Securities remain unsold by the Underwriter, the Company will prior to the Renewal Deadline file, if it has not already done so and is eligible to do so, a new automatic shelf registration statement relating to the Offered Securities, in a form satisfactory to the Underwriter. If the Company is no longer eligible to file an automatic shelf registration statement, the Company will prior to the Renewal Deadline, if it has not already done so, file a new shelf registration statement relating to the Offered Securities, in a form satisfactory to the Underwriter, and will use its reasonable best efforts to cause such registration statement to be declared effective within 180 days after the Renewal Deadline. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Offered Securities to continue as contemplated in the expired registration statement relating to the Offered Securities. References herein to the Registration Statement shall include such new automatic shelf registration statement or such new shelf registration statement, as the case may be. “**Renewal Deadline**” means the third anniversary of the initial effective time of the Registration Statement.

(d) The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) objecting to use of the automatic shelf registration statement form. If at any time when Offered Securities remain unsold by the Underwriter the Company receives from the Commission a notice pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (i) promptly notify the Underwriter, (ii) promptly file a new registration statement or post-effective amendment on the proper form relating to the Offered Securities, in a form satisfactory to the Underwriter, (iii) use its reasonable best efforts to cause such registration statement or post-effective amendment to be declared effective as soon as practicable, and (iv) promptly notify the Underwriter of such effectiveness. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Offered Securities to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(e) The Company has paid or shall pay the required Commission filing fees relating to the Offered Securities within the time required by Rule 456(b)(1) without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r).

(f) As of the Applicable Time and of the Closing Date (as defined below), neither (A) the General Use Issuer Free Writing Prospectus(es) issued at or prior to the Applicable Time, the last Statutory Prospectus filed before the Applicable Time and the information set forth in Schedule B to this Agreement, all considered together (collectively, the “**General Disclosure Package**”), nor (B) any individual Limited Use Issuer Free Writing Prospectus, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any prospectus included in the Registration Statement or any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by the Underwriter specifically for use therein, it being understood and agreed that the only such information furnished by the Underwriter consists of the information described as such in Section 8(b) hereof.

(g) Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Offered Securities or until any earlier date that the Company notified or notifies the Underwriter as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information then contained in the Registration Statement. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information then contained in the Registration Statement or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, (i) the Company has promptly notified or will promptly notify the Underwriter and (ii) the Company has promptly amended or supplemented or will promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission. The foregoing two sentences do not apply to statements in or omissions from any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by the Underwriter specifically for use therein, it being understood and agreed that the only such information furnished by the Underwriter consists of the information described as such in Section 8(b) hereof.

(h) The documents incorporated by reference in any Statutory Prospectus or the Final Prospectus did not, and any further documents filed and incorporated by reference therein will not, when filed with the Commission, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(i) The Company is duly incorporated and is an existing corporation in good standing under the laws of the State of Delaware, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except for any jurisdiction where the failure to be so qualified would not, individually or in the aggregate, have a material adverse effect on the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as a whole (“**Material Adverse Effect**”).

(j) Each subsidiary of the Company has been duly incorporated and is an existing corporation in good standing under the laws of the jurisdiction of its incorporation, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; and each subsidiary of the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership

or lease of property or the conduct of its business requires such qualification; except for any such jurisdiction where the failure to be so qualified would not have a Material Adverse Effect; all of the issued and outstanding capital stock of each subsidiary of the Company has been duly authorized and validly issued and is fully paid and non-assessable; and the capital stock of each subsidiary owned by the Company, directly or through subsidiaries, is owned free from liens, encumbrances and defects.

(k) The Offered Securities and all other outstanding shares of capital stock of the Company have been duly authorized and; all outstanding shares of capital stock of the Company are, and, when the Offered Securities have been delivered and paid for in accordance with this Agreement on each Closing Date (as defined below), such Offered Securities will have been, validly issued, fully paid and nonassessable and will conform in all material respects to the description thereof contained in the Prospectus; and the securityholders of the Company have no preemptive rights with respect to the Securities; and except as disclosed in the General Disclosure Package, there are no outstanding options, warrants or other rights to subscribe for or to purchase, any securities or obligations convertible into, or any contracts or commitments to issue or sell, shares of the Company's capital stock or any such options, warrants, rights, convertible securities or obligations.

(l) The Share Lending Agreement has been duly authorized by the Company and constitutes a valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(m) Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or the Underwriter for a brokerage commission, finder's fee or other like payment in connection with this offering.

(n) Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to a Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Act.

(o) The Company is subject to and in compliance in all material respects with the reporting requirements of Section 13 of the Exchange Act. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed on The Nasdaq Global Market, and the Company has taken no action designed to, or reasonably likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from The Nasdaq Global Market, nor has the Company received any notification that the Commission or the National Association of Securities Dealers, Inc. is contemplating terminating such registration or listing. No consent, approval, authorization or order of, or filing, notification or registration with, The Nasdaq Global Market is required for the listing and trading of the Offered Securities on The Nasdaq Global Market.

(p) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required to be obtained or made by the Company for the consummation of the transactions contemplated by this Agreement or the Share Lending Agreement in connection with the issuance and sale of the Offered Securities by the Company, except such as have been obtained and made under the Act and such as may be required under state securities laws.

(q) The execution, delivery and performance of this Agreement and the Share Lending Agreement, and the issuance and sale of the Offered Securities will not result in a breach or violation of any of the terms and provisions of, or constitute a default under (a) any statute, any rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any subsidiary of the Company or any of their properties, (b) any agreement or instrument to which the Company or any such subsidiary is a party or by which the Company or any such subsidiary is bound or to which any of the properties of the Company or any such subsidiary is subject, or (c) the charter or by-laws of the Company or any such subsidiary, except, in the cases of clauses (a) and (b) above, as would not have a Material Adverse Effect, and the Company has full power and authority to authorize, issue and sell the Offered Securities as contemplated by this Agreement.

(r) This Agreement has been duly authorized, executed and delivered by the Company.

(s) Except as disclosed in the General Disclosure Package, the Company and its subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them and material to the Company's business, in each case free from liens, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or to be made thereof by them; and except as disclosed in the General Disclosure Package, the Company and its subsidiaries hold any leased real or personal property material to the Company's business under valid and enforceable leases with no exceptions that would materially interfere with the use made or to be made thereof by them.

(t) The Company and its subsidiaries possess adequate certificates, authorities or permits issued by appropriate governmental agencies or bodies necessary to conduct the business now operated by them and have not received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect, except as the General Disclosure Package discloses may occur.

(u) No labor dispute with the employees of the Company or any subsidiary exists or, to the knowledge of the Company, is imminent that is reasonably likely to have a Material Adverse Effect.

(v) Except as disclosed in the General Disclosure Package, the Company and its subsidiaries own, possess or can acquire on reasonable terms, adequate trademarks, trade names and other rights to inventions, know-how, patents, copyrights, confidential information and other intellectual property (collectively, "**intellectual property rights**") necessary to conduct the business now operated by them, or presently employed by them, and have not received any notice of infringement of or conflict with asserted rights of others with respect to any intellectual property rights that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

(w) Except as disclosed in the General Disclosure Package, neither the Company nor any of its subsidiaries is in violation of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "**Environmental Laws**"), owns or operates any real property contaminated with any substance that is subject to any environmental laws, is liable for any off-site disposal or contamination pursuant to any environmental laws, or is subject to any claim or threatened action relating to any environmental laws, which violation, contamination, liability or claim would individually or in the aggregate have a Material Adverse Effect or otherwise require disclosure in the General Disclosure Package; and the Company is not aware of any pending or threatened investigation which might lead to

such a claim. In the ordinary course of business, the Company (1) conducts a periodic review of the effect of Environmental Laws on its business, operations and properties, and the Company has identified and evaluated associated costs and liabilities, and any capital or operating expenditures, required for cleanup or closure of properties under, or compliance with, Environmental Laws or any permit, license or approval, any related constraints on operating activities, and any potential liabilities to third parties; and (2) has conducted environmental investigations of, and has reviewed information regarding, its business, properties and operations, and those of other properties within the vicinity of its businesses, properties and operations; on the basis of such review and investigations, the Company has reasonably concluded that, except as disclosed in the General Disclosure Package, any costs and liabilities associated with such matters would not have a Material Adverse Effect or otherwise require disclosure in the General Disclosure Package.

(x) Except as disclosed in the General Disclosure Package, there are no pending actions, suits, charges (by any governmental entity), investigations, requests for information (by any governmental entity) or proceedings against or affecting the Company, any of its subsidiaries or any of their respective properties that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect or otherwise require disclosure in the General Disclosure Package or the Final Prospectus, or would materially and adversely affect the ability of the Company to perform its obligations under this Agreement, or which are otherwise material in the context of the sale of the Offered Securities; and no such actions, suits or proceedings are threatened or, to the Company's knowledge, contemplated.

(y) The financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Final Prospectus present fairly the financial position of the Company and its consolidated subsidiaries as of the dates shown and their results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with the generally accepted accounting principles in the United States ("U.S. GAAP") applied on a consistent basis and the assumptions used in preparing the pro forma and as adjusted financial information included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Final Prospectus provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein, the related pro forma adjustments give appropriate effect to those assumptions, and the pro forma columns therein reflect the proper application of those adjustments to the corresponding historical financial statement amounts. The pro forma financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Final Prospectus comply as to form in all material respects with the applicable requirements of Regulation S-X under the Act.

(z) Except as disclosed in the General Disclosure Package, since the date of the Company's latest audited financial statements included or incorporated by reference in the General Disclosure Package there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as a whole, and, except as disclosed in or contemplated by the General Disclosure Package, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(aa) All material Tax returns required to be filed by the Company or any of its subsidiaries have been filed in all jurisdictions where such returns are required to be filed, which returns are true, complete, and correct in all material respects and all Taxes shown on such returns have been paid. All material Taxes due or claimed to be due from the Company and each of its subsidiaries have been paid, other than those (1) currently payable without penalty or interest or (2) being contested in good faith and by appropriate proceedings and for which, in the case of both clauses (1) and (2), adequate reserves have been established on the books and records of the Company and its subsidiaries in accordance with U.S. GAAP. No material deficiency or adjustment for any Taxes has been threatened, proposed, asserted or assessed against the Company

or any of its subsidiaries. To the knowledge of the Company, the reserves on the books and records of the Company and its subsidiaries in respect of any Tax liability for any taxable period not finally determined are adequate to meet any assessments of Tax for any such period. For purposes of this Agreement, the term “**Tax**” and “**Taxes**” shall mean all Federal, state, local and foreign taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax, or penalties applicable thereto.

(bb) The Company is not and, after giving effect to the offering and sale of the Offered Securities and the application of the proceeds of the Loan as described in the Share Lending Agreement and the General Disclosure Package, will not be an “investment company” as defined in the Investment Company Act of 1940.

(cc) Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “**FCPA**”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company, its subsidiaries and, to the knowledge of the Company, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith and neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries or has otherwise made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(dd) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “**Money Laundering Laws**”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(ee) As of the date of this Agreement, there is and has been no failure on the part of the Company and any of the Company’s directors or officers, in their capacities as such, to comply with the provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the “**Sarbanes-Oxley Act**”) applicable to the Company.

(ff) Subject to the facts and risks in the General Disclosure Package with respect to clauses (B) and (D) of this paragraph, the Company and its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management’s general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (C) access to assets is permitted only in accordance with management’s general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The general accounting records of the Company and of each of its subsidiaries provide the basis for the preparation of the Company’s consolidated financial statements under U.S. GAAP and have been maintained in compliance with applicable laws. The Company maintains disclosure controls and procedures (as such term is

defined in Rule 13a-14 under the Exchange Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it will file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the Commission, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it will file or submit under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate to allow timely decisions regarding required disclosure.

(gg) The section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies" included or incorporated by reference in the General Disclosure Package and the Final Prospectus accurately and fully describes in all material respects (1) the accounting policies that the Company believes are the most important in the portrayal of the Company's financial condition and results of operations and that require management's most difficult, subjective or complex judgments ("**Critical Accounting Policies**"); (2) the judgments and uncertainties affecting the application of Critical Accounting Policies; and (3) the likelihood that materially different amounts would be reported under different conditions or using different assumptions and an explanation thereof.

(hh) Except as disclosed in the General Disclosure Package, no material indebtedness (actual or contingent) and no material contract or arrangement is outstanding between the Company or any of its subsidiaries and any director or executive officer of the Company or any of its subsidiaries or any person connected with such director or executive officer (including his/her spouse, children, and any company or undertaking in which he/she holds a controlling interest). There are no relationships or transactions between the Company or any of its subsidiaries, on the one hand, and its affiliates, officers and directors or their stockholders, customers or suppliers, on the other, which, although required to be disclosed, are not disclosed in the General Disclosure Package.

(ii) There are no material contracts or documents that are required to be described in the Registration Statement, the General Disclosure Package or the Final Prospectus or to be filed as exhibits thereto that have not been so described and filed as required.

(jj) PricewaterhouseCoopers LLP, who have certified certain financial statements of the Company and its subsidiaries, are independent public accountants as required by the Act and the rules and regulations of the Commission thereunder.

(kk) Ernst & Young LLP, whose report appears in the General Disclosure Package or is incorporated by reference therein and who have delivered the letter referred to in Section 7(l) hereof, were independent public accountants with respect to PowerLight Corporation and its subsidiaries, as required by the Act and the rules and regulations of the Commission thereunder.

(ll) The statements set forth or incorporated by reference in the General Disclosure Package and the Final Prospectus under the caption "Description of Class A Common Stock," insofar as they purport to constitute a summary of the material terms of the Offered Securities, and the statements under the caption "Description of Share Lending Agreement; Concurrent Offering of Senior Convertible Debentures" insofar as they purport to describe the provisions of the documents referred to therein, fairly summarize in all material respects the matters referred to therein.

(mm) All of the Company's options, warrants and other rights to purchase or exchange any securities for shares of the Company's capital stock have been duly authorized and validly issued, conform to the description thereof contained or incorporated by reference in the General Disclosure Package and were issued in compliance with federal and state securities laws. The exercise price of each option issued under the Company's stock option or other employee benefit

plans has been no less than the fair market value of a share of Common Stock as determined on the date of grant of such option, except for options in connection with which appropriate expenses were recorded in accordance with U.S. GAAP. All grants of options were validly issued and properly approved by the board of directors of the Company (or a duly authorized committee or subcommittee thereof) in material compliance with all applicable laws and regulations and recorded in the Company's financial statements in accordance with U.S. GAAP and no such grants involved "back dating," "forward dating" or similar practice with respect to the effective date of grant.

(nn) The Company meets the requirements related to incorporation by reference set forth in the General Instructions to Form S-3 under the heading "Eligibility to Use Incorporation by Reference."

(oo) The Company has not sold or issued any securities that would be integrated with the offering of the Offered Securities contemplated by this Agreement pursuant to the Act, the Rules and Regulations or the interpretations thereof by the Commission.

(pp) Neither the Company nor any of its officers, directors or affiliates has taken or will take, directly or indirectly, any action that is designed to or which has constituted or which could reasonably be expected to cause or result in, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Securities.

3. *Issuance, Loan and Delivery of Offered Securities.* On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions set forth herein and in the Share Lending Agreement, the Company agrees to issue to LBIE in exchange for payment of the Loan Fee (as defined in the Share Lending Agreement) and LBIE agrees to borrow from the Company, the Offered Securities, and the Underwriter, upon such issuance to LBIE agrees to purchase such Offered Securities from LBIE. This Agreement constitutes a "Borrowing Notice" pursuant to Section 2(b) of the Share Lending Agreement.

In accordance with the terms of the Share Lending Agreement, delivery of the Offered Securities shall be made at 10:00 a.m., New York City time, on February 7, 2007, which time and date may be postponed by agreement between the Agent and the Company (such time and date of delivery and payment for the Offered Securities being herein called the "**Closing Date**").

4. *Offering by Underwriter.* It is understood that the Underwriter proposes to offer the Offered Securities for sale to the public as set forth in the Final Prospectus.

5. *Certain Agreements of the Company.* The Company agrees, with the Underwriter that:

(a) The Company has filed or will file each Statutory Prospectus (including the Final Prospectus) pursuant to and in accordance with Rule 424(b)(2) (or, if applicable and consented to by the Underwriter, subparagraph (5)) not later than the second business day following the earlier of the date it is first used or the date of this Agreement. The Company has complied and will comply with Rule 433.

(b) Prior to 90 days after the Closing Date, the Company will promptly advise the Underwriter of any proposal to amend or supplement the Registration Statement or any Statutory Prospectus (including any document incorporated by reference therein) at any time and will afford the Underwriter a reasonable opportunity to comment on any such proposed amendment or supplement and will not effect such amendment or supplementation without the consent of the Underwriter (which consent will not be unreasonably withheld) and the Company will also advise the Underwriter promptly of (1) the filing of any such amendment or supplement, (2) any request by the Commission or its staff for any amendment to any Registration Statement, for any supplement to any Statutory Prospectus (including any document incorporated by reference

therein) or for any additional information, (3) the institution by the Commission of any stop order proceedings in respect of a Registration Statement or the threatening of any proceeding for that purpose, and (4) the receipt by the Company of any notification with respect to the suspension of the qualification of the Offered Securities in any jurisdiction or the institution or threatening of any proceedings for such purpose. The Company will use its reasonable best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and obtain as soon as possible its lifting, if issued.

(c) If, at any time when a prospectus relating to the Offered Securities is (or for the exemption in Rule 172 under the Act would be) required to be delivered under the Act in connection with sales by the Underwriter, the Borrower, their affiliates or dealer, any event occurs as a result of which the Final Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Registration Statement or supplement the Final Prospectus to comply with the Act, the Company will promptly notify the Underwriter of such event and will promptly prepare and file with the Commission and furnish, at its own expense, to the Underwriter and dealers and any other dealers upon request of the Underwriter an amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance. Neither the Underwriter's consent to, nor the Underwriter's delivery of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 8. In addition, if, at any time prior to February 15, 2007, when a prospectus relating to the Offered Securities is (or for the exemption in Rule 172 under the Act would be) required to be delivered under the Act in connection with sales by the Underwriter, the Borrower, their affiliates or dealer, any event occurs as a result of which the representations and warranties of the Company made in Section 1 hereof, are no longer true and correct, the Company will promptly notify the Underwriter of such event.

(d) As soon as practicable, but not later than 16 months, after the date of this Agreement, the Company will make generally available to its securityholders an earnings statement covering a period of at least 12 months beginning after the date of this Agreement and satisfying the provisions of Section 11(a) of the Act and Rule 158.

(e) The Company will furnish to the Representatives copies of the Registration Statement (of which two will be signed), including all exhibits, any Statutory Prospectus relating to the Offered Securities, the Final Prospectus and all amendments and supplements to such documents, in each case in such quantities as the Underwriter reasonably requests. The Final Prospectus shall be so furnished on or prior to 3:00 P.M., New York time, on the second business day following the execution and delivery of this Agreement. All other such documents shall be so furnished as soon as available. The Company will pay the expenses of printing and distributing to the Underwriter all such documents.

(f) The Company will arrange for the qualification of the Offered Securities for sale under the laws of such jurisdictions as the Underwriter designates and will continue such qualifications in effect so long as required for the distribution.

(g) During the period of five years after the date of this Agreement, the Company will furnish to the Underwriter, if any, as soon as practicable after the end of each fiscal year, a copy of its annual report to stockholders for such year; and the Company will furnish to the Representatives (1) as soon as available, a copy of each report and any definitive proxy statement of the Company filed with the Commission under the Exchange Act or mailed to stockholders, and (2) from time to time, such other information concerning the Company as the Underwriter may reasonably request. However, so long as the Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act and is timely filing reports with the Commission on its Electronic Data Gathering, Analysis and Retrieval system ("EDGAR"), it is not required to furnish such reports or statements to the Underwriter.

(h) The Company agrees with the Underwriter that the Company will pay all expenses incident to the performance of the obligations of the Company under this Agreement, for any filing fees and other expenses (including fees and disbursements of counsel to the Company and counsel to the Underwriter) incurred in connection with qualification of the Offered Securities for sale under the laws of such jurisdictions as the Underwriter designates and the preparation and printing of memoranda relating thereto, for any costs and expenses related to the review by the National Association of Securities Dealers, Inc. of the Offered Securities (including filing fees and the fees and expenses of counsel for the Underwriter relating to such review), for expenses incurred in distributing any Statutory Prospectuses and the Final Prospectus (including any amendments and supplements thereto) to the Underwriter and for expenses incurred for preparing, printing and distributing any Issuer Free Writing Prospectus to investors or prospective investors, any applicable listing or other fees and for any travel expenses of the Company's officers and employees and any other expenses of the Company in connection with attending or hosting meetings with prospective purchasers of the Offered Securities, including the cost of any aircraft chartered in connection with attending or hosting such meetings, it being understood that the Debenture Underwriters have separately agreed to pay the first \$10,000 of the Debentures' road show expenses.

(i) The Company shall use its best efforts to effect and maintain the listing of any shares of the Offered Securities on the NASDAQ Global Market or another U.S. national securities exchange or established automated over-the-counter trading market in the United States of America.

(j) The Company shall apply the net proceeds from the sale of the Offered Securities being sold by the Company as set forth in the General Disclosure Package, and, except as disclosed in the General Disclosure Package, the Company does not intend to use any of the proceeds from the sale of the Offered Securities hereunder to repay any outstanding debt owed to any affiliate of the Underwriter.

(k) The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to result in stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Offered Securities.

6. *Free Writing Prospectuses.* The Company represents and agrees that, unless it obtains the prior consent of the Underwriter, and the Underwriter represents and agrees that, unless it obtains the prior consent of the Company, it has not made and will not make any offer relating to the Loan or the Offered Securities that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a "free writing prospectus," as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Company and the Underwriter is hereinafter referred to as a "**Permitted Free Writing Prospectus**." The Company represents that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus," as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping.

7. *Conditions of the Obligations of the Underwriter.* The obligations of the Underwriter to purchase and pay for the Offered Securities on the Closing Date will be subject to the accuracy of the representations and warranties on the part of the Company herein (as though made on such Closing Date), to the accuracy of the statements of Company officers made pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions precedent:

(a) The Underwriter shall have received a letter, addressed to the Underwriter, dated the date hereof, of PricewaterhouseCoopers LLP confirming that they are an independent registered public accounting firm within the meaning of the Act and the applicable published Rules and Regulations thereunder and stating to the effect that:

(i) in their opinion the selected financial information examined by them and included or incorporated by reference in the Registration Statement and the General Disclosure Package comply as to form in all material respects with the applicable accounting requirements of the Act and the related published Rules and Regulations;

(ii) they have performed the procedures specified by the Public Company Accounting Oversight Board (United States) for a review of interim financial information as described in Statement of Auditing Standards No. 100, Interim Financial Information, on the unaudited financial statements included or incorporated by reference in the Registration Statement and the General Disclosure Package;

(iii) on the basis of the review referred to in clause (B) above, a reading of the latest available interim financial statements of the Company, inquiries of officials of the Company and the Parent who have responsibility for financial and accounting matters and other specified procedures, nothing came to their attention that caused them to believe that:

(A) the unaudited financial statements included in the Registration Statement or the General Disclosure Package do not comply as to form in all material respects with the applicable accounting requirements of the Act and the related published Rules and Regulations or any material modifications should be made to such unaudited financial statements for them to be in conformity with U.S. GAAP;

(B) the unaudited consolidated net sales, net operating income, net income and net income per share amounts for the three-month periods ended March 31, 2005 and March 31, 2006, the three- and six-month periods ended June 30, 2005 and June 30, 2006 and the three- and nine-month periods ended September 30, 2005 and 2006 included or incorporated by reference in the Registration Statement do not agree with the amounts set forth in the unaudited consolidated financial statements for those same periods or were not determined on a basis substantially consistent with that of the corresponding amounts in the audited statements of income;

(C) at the date of the latest available balance sheet read by such accountants, or at a subsequent specified date not more than three business days prior to the date of this Agreement, there was any change in the capital stock or any increase in long-term debt of the Company and its consolidated subsidiaries; or

(D) for the period from the closing date of the latest income statement included in the Registration Statement or General Disclosure Package to the closing date of the latest available income statement read by such accountants there were any decreases, as compared with the corresponding period of the previous year and with the period of corresponding length ended the date of the latest income statement included in the Registration Statement or General Disclosure Package, in consolidated net sales;

except in all cases set forth in clauses (C) and (D) above for changes, increases or decreases which the Registration Statement or General Disclosure Package discloses have occurred or may occur or which are described in such letter;

(iv) they have compared specified dollar amounts (or percentages derived from such dollar amounts) and other financial information contained or incorporated by reference in the Registration Statement and the General Disclosure Package (in each case

to the extent that such dollar amounts, percentages and other financial information are derived from the general accounting records of the Company and its subsidiaries subject to the internal controls of the Company's accounting system or are derived directly from such records by analysis or computation) with the results obtained from inquiries, a reading of such general accounting records and other procedures specified in such letter and have found such dollar amounts, percentages and other financial information to be in agreement with such results, except as otherwise specified in such letter;

(v) on the basis of a reading of the unaudited pro forma financial statements included or incorporated by reference in the Registration Statement and the General Disclosure Package, inquiries of the officials of the Company, the Parent and of PowerLight Corporation who have responsibility for financial and accounting matters and other specified procedures, nothing came to their attention that caused them to believe that such unaudited pro forma financial statements do not comply as to form in all material respects with the applicable accounting requirements of Rule 11-02 of Regulation S-X and that the pro forma adjustments have not been properly applied to the historical amounts in the compilation of those statements; and

(vi) they have proved the mathematical accuracy of the application of the pro forma adjustments to the historical amounts in the unaudited pro forma financial statements.

(b) The Underwriter shall have received a certificate, dated the date hereof of the Company's Chief Financial Officer with respect to certain financial information included in the General Disclosure Package.

(c) The Final Prospectus shall have been filed with the Commission in accordance with the Rules and Regulations and Section 5(a) of this Agreement.

(d) Prior to the Closing Date, no stop order suspending the effectiveness of a Registration Statement or any part thereof shall have been issued and no proceedings for that purpose shall have been instituted or, to the knowledge of the Company or the Underwriter, shall be contemplated by the Commission.

(e) Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as one enterprise which, in the judgment of the Underwriter is material and adverse and makes it impractical or inadvisable to proceed with completion of the public offering or the sale of and payment for the Offered Securities; (ii) any downgrading in the rating of any debt securities of the Company by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating) or any announcement that the Company has been placed on negative outlook; (iii) any change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls as would, in the judgment of the Underwriter, be likely to prejudice materially the success of the proposed issue, sale or distribution of the Offered Securities, whether in the primary market or in respect of dealings in the secondary market; (iv) any material suspension or material limitation of trading in securities generally on the New York Stock Exchange, or any setting of minimum or maximum prices for trading on such exchange; (v) or any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (vi) any banking moratorium declared by U.S. Federal or New York authorities; (vii) any major disruption of settlements of securities or clearance services in the United States or (viii) any attack on, outbreak or escalation of hostilities

or act of terrorism involving the United States or the Philippines, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of the Underwriter, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency makes it impractical or inadvisable to proceed with completion of the public offering or the sale of and payment for the Offered Securities.

(f) The Underwriter shall have received an opinion, dated such Closing Date, of Jones Day, counsel for the Company, as to the matters described in Annex A.

(g) The Underwriter shall have received (i) an opinion of Quin & Hampson, Cayman Islands counsel for the Company, substantially in the form attached as Annex B, (ii) an opinion of Quin & Hampson, Cayman Islands counsel for the Company, substantially in the form attached as Annex C, (iii) an opinion of Stahl Pequignot Lorenz Calame, Swiss counsel for the Company, substantially in the form attached as Annex D., and (iv) an opinion of Deloitte SA, Swiss counsel for the Company, substantially in the form attached as Annex E.

(h) The Underwriter shall have received from Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Underwriter, such opinion or opinions, dated such Closing Date, with respect to the incorporation of the Company, the validity of the Offered Securities delivered on such Closing Date, the Registration Statement, the Final Prospectus and other related matters as the Underwriter may require, and the Company shall have furnished to such counsel such documents as they may reasonably request for the purpose of enabling them to pass upon such matters.

(i) The Underwriter shall have received a certificate, dated such Closing Date, of the President or any Vice President and a principal financial or accounting officer of the Company in which such officers, to the best of their knowledge after reasonable investigation, shall state that: the representations and warranties of the Company in this Agreement are true and correct; the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date; no stop order suspending the effectiveness of the Registration Statement or any part thereof has been issued and no proceedings for that purpose have been instituted or are contemplated by the Commission; and, subsequent to the date of the most recent financial statements in the General Disclosure Package, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as a whole except as set forth in the General Disclosure Package or as described in such certificate.

(j) The Underwriter shall have received a letter, dated such Closing Date, of PricewaterhouseCoopers LLP which meets the requirements of subsection (a) of this Section, except that the specified date referred to in such subsection will be a date not more than three days prior to such Closing Date for the purposes of this subsection.

(k) The Underwriter shall have received (A) a letter, dated the date hereof, of Ernst & Young LLP, in form and substance satisfactory to the Underwriter, addressed to the Underwriter (i) confirming that they are an independent registered public accounting firm within the meaning of the Act and the applicable published Rules and Regulations thereunder with respect to PowerLight Corporation and its subsidiaries during the periods covered by the financial statements on which they reported and (ii) stating the conclusions and findings of such firm with respect to financial information relating to PowerLight Corporation and its subsidiaries incorporated by reference into the Registration Statement and the General Disclosure Package and other matters ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings and (B) a letter, dated the Closing Date, of Ernst & Young LLP, in form and substance satisfactory to the Underwriter, addressed to the Underwriter (i) confirming that they are an independent registered public accounting firm within the meaning of the Act and the applicable

published Rules and Regulations thereunder with respect to PowerLight Corporation and its subsidiaries during the periods covered by the financial statements on which they reported, (ii) stating as of the Closing Date (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Final Prospectus, as of a date not more than three days prior to the Closing Date), the conclusions and findings of such firm with respect to the financial information and other matters covered by the letter referred to in Section 7(k)(A) and (iii) confirming in all material respects the conclusions and findings set forth in the letter referred to in Section 7(k)(A).

(l) The concurrent offering of Debentures substantially on the terms described in the Final Prospectus shall have been consummated on the Closing Date.

The Company will furnish the Underwriter with such conformed copies of such opinions, certificates, letters and documents as the Underwriter reasonably request.

8. *Indemnification and Contribution.* (a) The Company will indemnify and hold harmless (i) the Agent, (ii) the Underwriter (iii) LBIE, each of their partners, members, directors, officers, employees, agents, affiliates and each person, if any, who controls such Agent, Underwriter or LBIE within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each, an “**Indemnified Party**”), against any losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of the Registration Statement, any Statutory Prospectus, the Final Prospectus or any Issuer Free Writing Prospectus, or, in each case, arise out of or are based upon the omission or alleged omission, of a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending against any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by the Underwriter, if any, specifically for use therein, it being understood and agreed that the only such information furnished by the Underwriter consists of the information described as such in subsection (b) below.

(b) The Underwriter and the Agent will severally and not jointly indemnify and hold harmless the Company, each of its directors and each of its officers and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each an “**Underwriter Indemnified Party**”), against any losses, claims, damages or liabilities to which such Underwriter Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, including without limitation any of the foregoing incurred pursuant to indemnification or other provisions of other agreements, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of any Registration Statement, any Statutory Prospectus, the Final Prospectus or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or the alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Underwriter through the Representatives, if any, specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by such Underwriter Indemnified Party in connection with investigating or defending against any such loss, claim, damage, liability or action, as such expenses are incurred, it being understood and agreed that the only such information furnished by the Underwriter consists of the following information in the Final Prospectus furnished on behalf of each Underwriter: the tenth paragraph under the heading “Description of Share Lending Agreement;

Concurrent Offering of Convertible Senior Debentures” and the information contained in the second paragraph, the first, third, fourth, fifth, sixth and seventh sentences of the third paragraph, the first, second and third sentences of the fourth paragraph, the fifth paragraph, the tenth paragraph, the first sentence in the twelfth paragraph and the first sentence in the thirteenth paragraph under the caption “Underwriting.”

(c) Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a) or (b) above, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party.

(d) If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a), (b) or (c) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a), (b) or (c) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriter on the other from the offering of the Offered Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriter on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriter on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriter. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company, or the Underwriter and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Offered Securities underwritten by it and distributed to the public were offered to the public exceeds the

amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriter's obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) The obligations of the Company under this Section shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls the Underwriter within the meaning of the Act; and the obligations of the Underwriter under this Section shall be in addition to any liability which the Underwriter, the Agent and LBIE may otherwise have and shall extend, upon the same terms and conditions, to each director of the Company, to each officer of the Company who has signed a Registration Statement and to each person, if any, who controls the Company within the meaning of the Act.

9. *Survival of Certain Representations and Obligations.* The respective indemnities, agreements, representations, warranties and other statements of the Company or its officers and of the Underwriter set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of the Underwriter, the Company or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Offered Securities. If for any reason the purchase of the Offered Securities by the Underwriter is not consummated, the Company shall remain responsible for the expenses to be paid or reimbursed by them pursuant to Section 5 and the respective obligations of the Company and the Underwriter pursuant to Section 8 shall remain in effect, and if any Offered Securities have been purchased hereunder the representations and warranties in Section 2 and all obligations under Section 5 shall also remain in effect. If the purchase of the Offered Securities by the Underwriter is not consummated for any reason other than solely because of (x) the occurrence of any event specified in clause (iii), (iv), (vi), (vii) or (viii) of Section 7(e) or (y) the condition set forth in Section 7(l) above is not satisfied as a result of the Debenture Underwriters not fulfilling their obligations under the Underwriting Agreement for the Debentures, the Company will reimburse the Underwriter for all out-of-pocket expenses (including fees and disbursements of counsel) reasonably incurred by them in connection with the offering of the Offered Securities.

10. *Notices.* All communications hereunder will be in writing and, if sent to the Underwriter, will be mailed, delivered or telegraphed and confirmed to the Underwriter c/o Lehman Brothers Inc., 745 Seventh Avenue, New York, NY 10019-6801, Attention: Syndicate Registration (Fax: 646-497-4815), with a copy, in the case of any notice pursuant to Section 8, to the Director of Litigation, Office of the General Counsel, Lehman Brothers Inc., 399 Park Avenue, 10th Floor, New York, New York 10022 (Fax: 212-520-0421) or, if sent to the Company, will be mailed, delivered or telegraphed and confirmed to it at 3939 North First Street, San Jose, California 95134 (Fax: 408-240-5400), Attention: Chief Financial Officer; provided, however, that any notice to the Underwriter pursuant to Section 8 will be mailed, delivered or telegraphed and confirmed to such Underwriter.

11. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and controlling persons referred to in Section 8, and no other person will have any right or obligation hereunder.

12. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

13. *Absence of Fiduciary Relationship.* The Company acknowledges and agrees that:

(a) the Underwriter has been retained solely to act as underwriter in connection with

the sale of the Offered Securities and no fiduciary, advisory or agency relationship between the Company and the Underwriter has been created in respect of any of the transactions contemplated by this Agreement or the Final Prospectus, irrespective of whether the Underwriter has advised or is advising the Company on other matters;

(b) the price of the Offered Securities set forth in this Agreement was established by the Company following discussions and arms-length negotiations with the Underwriter and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) it has been advised that the Underwriter and their affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and the Underwriter has no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and

(d) it waives, to the fullest extent permitted by law, any claims it may have against the Underwriter for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that the Underwriter shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

14. *Research Independence.* In addition, the Company acknowledges that the Underwriter's research analysts and research departments are required to be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and that the Underwriter's research analysts may hold and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the offering that differ from the views of its investment bankers. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Underwriter with respect to any conflict of interest that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the Company by s the Underwriter's investment banking divisions. The Company acknowledges that the Underwriter is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the Company.

15. *Applicable Law.* **This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflicts of laws.**

The Company hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

If the foregoing is in accordance with LBIE's and the Underwriter's understanding of our agreement, kindly sign and return to the Company one of the counterparts hereof, whereupon it will become a binding agreement among the Company, LBIE and the Underwriter in accordance with its terms.

Very truly yours,

SUNPOWER CORPORATION

By /Emmanuel T. Hernandez/
Name: Emmanuel T. Hernandez
Title: Chief Financial Officer

The foregoing Underwriting Agreement is hereby confirmed and accepted as of the date first above written.

LEHMAN BROTHERS INC.

By LEHMAN BROTHERS INC.

By /S/ [Illegible]

Name:

Title:

LEHMAN BROTHERS INTERNATIONAL (EUROPE)
LIMITED

By LEHMAN BROTHERS INTERNATIONAL
(EUROPE) LIMITED

By /S/ [Illegible]

Name:

Title:

SCHEDULE A

<u>Underwriter</u>	<u>Total Number of Common Stock</u>
Lehman Brothers Inc.	2,947,132
Total	2,947,132

[JONES DAY LETTERHEAD]

February 7, 2006

SunPower Corporation
3939 North First Street
San Jose, CA 95134

Re: Issuance of \$200,000,000 aggregate principal amount of 1.25% Senior
Convertible Debentures due 2027 of SunPower Corporation

Ladies and Gentlemen:

We have acted as counsel for SunPower Corporation, a Delaware corporation (the "**Company**"), in connection with the purchase from the Company by the several underwriters named in Schedule A to the Underwriting Agreement (as defined below) (collectively, the "**Underwriters**"), pursuant to the Underwriting Agreement dated February 2, 2007 (the "**Underwriting Agreement**"), by and among the Company and Lehman Brothers, Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Cowen and Company, LLC, First Albany Capital Inc. and ThinkEquity Partners LLC, acting as representatives of the several Underwriters of \$200,000,000 aggregate principal amount of 1.25% Senior Convertible Debentures due 2027 (the "**Securities**") of the Company issued under the Indenture, dated as of February 7, 2007, as supplemented by the First Supplemental Indenture, dated as of February 7, 2007 (as amended and supplemented, the "**Indenture**"), by and between the Company and Wells Fargo Bank, National Association, as Trustee (the "**Trustee**").

In connection with the opinion expressed herein, we have examined such documents, records and matters of law as we have deemed relevant or necessary for purposes of this opinion. In our examination of the foregoing documents, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as copies, the authenticity of the originals of such latter documents and the legal competence of all signatories to such documents. We assume that the appropriate action has been taken to register and qualify the Securities under all applicable state securities or "blue sky" laws.

Based on the foregoing, and subject to the further limitations, qualifications and assumptions set forth herein, we are of the opinion that, when the Securities are authenticated by the Trustee in accordance with the terms of the Indenture and delivered against payment therefor in accordance with the terms of Underwriting Agreement, the Securities will constitute valid and binding obligations of the Company.

We have assumed that (i) the Indenture will be a valid and binding obligation of the Trustee and (ii) the Indenture will be duly executed and delivered by the Company and the Trustee.

The opinion expressed herein is subject to (i) bankruptcy, insolvency, reorganization, fraudulent transfer and fraudulent conveyance, voidable preference, moratorium and other similar laws relating to or affecting creditors' rights and remedies generally and (ii) general equitable principles.

The opinion expressed herein is limited to laws of the State of New York, and we express no opinion as to the effect of the laws of any other jurisdiction.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Current Report on Form 8-K to be dated February 8, 2007 relating to the Registration Statement (Registration No. 333-140272) of the Company (the "**Registration Statement**") and to the reference to Jones Day under the caption "Certain Legal Matters" in the prospectus relating to the Securities and constituting a part of the Registration Statement. In giving such consent, we do not hereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act of 1933 or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Very truly yours,

/s/ Jones Day

[Jones Day Letterhead]

February 7, 2007

SunPower Corporation
3939 North First Street
San Jose, CA 95134

Re: 2,947,132 shares of Class A Common Stock of SunPower Corporation

Ladies and Gentlemen:

We have acted as counsel for SunPower Corporation, a Delaware corporation (the "**Company**"), in connection with the issuance and delivery by the Company to Lehman Brothers International (Europe) Limited ("**LBIE**"), an affiliate of Lehman Brothers Inc. (the "**Underwriter**"), of 2,947,132 shares of Class A Common Stock, par value \$0.001 per share, of the Company (the "**Securities**"), pursuant to the Underwriting Agreement dated February 2, 2007 (the "**Underwriting Agreement**") by and among the Company, LBIE and the Underwriter and the Share Lending Agreement dated February 2, 2007 (the "**Share Lending Agreement**") by and among the Company, LBIE and the Underwriter.

In connection with the opinion expressed herein, we have examined such documents, records and matters of law as we have deemed relevant or necessary for purposes of this opinion.

Based upon the foregoing and subject to the qualifications and limitations stated herein, we are of the opinion that the Securities have been authorized by all the necessary corporate action of the Company and, when issued and delivered to LBIE pursuant to the Share Lending Agreement against payment of the consideration therefor as provided therein, will be validly issued, fully paid and nonassessable.

Our examination of matters of law in connection with the opinion expressed herein has been limited to, and accordingly our opinion herein is limited to, the General Corporation Law of the State of Delaware, including the applicable provisions of the Delaware Constitution and the reported judicial decisions interpreting such law. We express no opinion with respect to any other law of the State of Delaware or the laws of any other jurisdiction.

We hereby consent to the filing of this opinion as Exhibit 5.2 to the Current Report on Form 8-K to be dated February 8, 2007 relating to the Registration Statement (Registration No. 333-140272) of the Company (the "**Registration Statement**") and to the reference to Jones Day under the caption "Certain Legal Matters" in the prospectus relating to the Securities and constituting a part of the Registration Statement. In giving such consent, we do not hereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act of 1933 or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Very truly yours,

/s/ Jones Day

SHARE LENDING AGREEMENT

Dated as of February 2, 2007

Among

SUNPOWER CORPORATION ("Lender"),

and

LEHMAN BROTHERS INTERNATIONAL (EUROPE) LIMITED ("Borrower"), through
LEHMAN BROTHERS INC., as agent for Borrower ("Borrowing Agent"),

and

LEHMAN BROTHERS INC., in its capacity as Collateral Agent (as hereinafter defined). This Agreement sets forth the terms and conditions under which Borrower may borrow from Lender shares of Common Stock.

The parties hereto agree as follows:

Section 1. Certain Definitions. The following capitalized terms shall have the following meanings:

"Business Day" means, with respect to any Loan hereunder, a day on which regular trading occurs in the principal trading market for the Common Stock.

"Cash" means any coin or currency of the United States as at the time shall be legal tender for payment of public and private debts.

"Clearing Organization" means The Depository Trust Company, or, if agreed to by Borrower and Lender, such other Securities Intermediary at which Borrower (or Borrowing Agent) and Lender maintain accounts.

"Closing Price" on any day means, with respect to the Common Stock (i) if the Common Stock is listed or admitted to trading on a U.S. securities exchange registered under the Exchange Act or is included in the OTC Bulletin Board Service (operated by the National Association of Securities Dealers, Inc.), the last reported sale price, regular way, in the principal trading session on such day on such market on which the Common Stock is then listed or is admitted to trading (or, if the day of determination is not a Business Day, the last preceding Business Day) and (ii) if the Common Stock is not so listed or admitted to trading or if the last reported sale price is not obtainable (even if the Common Stock is listed or admitted to trading on such market), the average of the bid prices for the Common Stock obtained from as many dealers in the Common Stock (which may include Borrower or its affiliates), but not exceeding three, as shall furnish bid prices available to the Lender.

“Collateral” means any Cash or Non-Cash Collateral. Each of the parties to this Agreement hereby agree that Cash and each item within the definition of Non-Cash Collateral shall be treated as a “financial asset” as defined by Section 8-102(a)(9) of the UCC.

“Collateral Account” means the securities account of the Collateral Agent maintained on the books of Lehman Brothers Inc., as securities intermediary, and designated “Lehman Brothers Inc., as Collateral Agent of SunPower Corporation, as pledgee of Lehman Brothers International (Europe) Limited, as Borrower of Loaned Shares.” Any Collateral deposited in the Collateral Account shall be segregated from all other assets and property of the Collateral Agent, which such segregation may be accomplished by appropriate identification on the books and records of Collateral Agent, as a “securities intermediary” within the meaning of the UCC. The Securities Intermediary acknowledges that the Collateral Account is maintained for the Collateral Agent and undertakes to treat the Collateral Agent as entitled to exercise the rights that comprise the Collateral credited to the Collateral Account. For purposes of UCC Section 9301(2), the Collateral Account and the Collateral will reside in New York, New York.

“Collateral Agent” means Lehman Brothers Inc., in its capacity as collateral agent for Lender hereunder, or any successor thereto under Section 20.

“Collateral Percentage” means 100%.

“Common Stock” means shares of Class A Common Stock, par value \$0.001 per share, of Lender, or any other security into which the Class A Common Stock shall be exchanged or converted as the result of any merger, consolidation, other business combination, reorganization, reclassification, recapitalization or other corporate action (including, without limitation, a reorganization in bankruptcy), in each case not involving an Unaffiliated Third Party.

“Convertible Notes” means the \$175,000,000 aggregate principal amount of 1.25% Senior Convertible Debentures due 2027 issued by Lender, or up to \$200,000,000 aggregate principal amount to the extent the option to purchase additional Convertible Notes is exercised in full as set forth in the purchase agreement relating to the initial purchase of the Convertible Notes.

“Credit Downgrade” occurs when the Guarantor receives a rating for its long term, unsecured and unsubordinated indebtedness that is below A- by Standard and Poor’s Ratings Group, or its successor (“S&P”), or below A3 by Moody’s Investors Service, Inc., or its successor (“Moody’s”), or, if either S&P or Moody’s ceases to rate such debt, an equivalent or lower rating by a substitute rating agency mutually agreed upon by the Lender and the Borrower.

“Credit Upgrade” occurs when the Guarantor receives a rating for its long term, unsecured and unsubordinated indebtedness that is A- or better by S&P or A3 or better by Moody’s, or, if either S&P or Moody’s ceases to rate such debt, an equivalent or higher rating by a substitute rating agency mutually agreed upon by the Lender and the Borrower.

“Cutoff Time” shall mean 10:00 a.m. in the jurisdiction of the Clearing Organization, or such other time on a Business Day by which a transfer of Loaned Shares must be made by Borrower or Lender to the other, as shall be determined in accordance with market practice.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Indenture” means the indenture, dated as of February 7, 2007, between the Lender and Wells Fargo Bank, National Association, as supplemented by the first supplemental indenture, dated as of February 7, 2007, between the Lender and Wells Fargo Bank, National Association, pursuant to which the Convertible Notes were issued.

“Loan Availability Period” means the period beginning with the date of issuance of the Convertible Notes and ending on the earlier of (i) February 15, 2027, (ii) the date as of which the Lender has notified the Borrower in writing of its intention to terminate this Agreement at any time after the entire principal amount of Convertible Notes ceases to be outstanding, whether as a result of conversion, redemption, repurchase, cancellation or otherwise and (iii) the date on which this Agreement shall terminate in accordance with the terms of this Agreement.

“Loaned Shares” means shares of Common Stock initially transferred to the Borrower in a Loan hereunder until such Loan or portion thereof is terminated and a corresponding number of Loaned Shares is transferred to Lender pursuant to this Agreement; provided that in respect of any such share of Common Stock initially transferred to the Borrower by Lender and subsequently transferred by the Borrower to another transferee, “Loaned Share” means an equivalent number of shares of identical Common Stock. If, as the result of a stock dividend, stock split or reverse stock split, the number of outstanding shares of Common Stock is increased or decreased, then the number of outstanding Loaned Shares shall be proportionately increased or decreased, as the case may be. If any new or different security (or two or more securities) shall be exchanged for the outstanding shares of Common Stock as the result of any reorganization, merger, consolidation, reclassification, recapitalization or other corporate action (including, without limitation, a reorganization in bankruptcy) not involving an Unaffiliated Third Party, such new or different security (or such two or more securities collectively) shall, effective upon such exchange, be deemed to become a Loaned Share in substitution for the former Loaned Share for which such exchange is made.

“Market Value” on any day means (i) with respect to Common Stock, the most recent Closing Price of the Common Stock prior to such day and (ii) with respect to any Collateral that is (a) Cash, the face amount thereof, (b) a letter of credit, the undrawn amount thereof and (c) any other security or property, the market value thereof, as determined by the Collateral Agent, in accordance with market practice for such securities or property, based on the price for such security or property as of the most recent close of trading obtained from a generally recognized source or the closing bid quotation at the most recent close of trading obtained from such source, plus accrued interest to the extent not included therein, unless market practice with respect to the valuation of such securities or property in connection is to the contrary.

“Maximum Number of Shares” means 2,947,132 shares of Common Stock, subject to the following adjustments:

(a) If, as the result of a stock dividend, stock split or reverse stock split, the number of outstanding shares of Common Stock is increased or decreased, the Maximum Number of Shares shall, effective as of the payment or delivery date of any such event, be proportionally increased or decreased, as the case may be.

(b) If, pursuant to a merger, consolidation, other business combination, reorganization, reclassification, recapitalization or other corporate action (including, without limitation, a reorganization in bankruptcy), in each case involving an Unaffiliated Third Party, the Common Stock is exchanged for or converted into cash, securities or other property, the Maximum Number of Shares shall be reduced to zero on the effective date of such event.

(c) Upon the termination of any Loan pursuant to Section 6(a) the Maximum Number of Shares shall be reduced by the number of Loaned Shares surrendered by Borrower to Lender.

(d) Notwithstanding the foregoing, in no event shall the Maximum Number of Shares at any time exceed the product of (i) the aggregate principal amount of Notes outstanding at such time, divided by \$1,000 and (ii) the Conversion Rate (as defined in the Indenture).

“Non-Cash Collateral” means (i) any evidence of indebtedness issued, or directly and fully guaranteed or insured, by the United States of America or any agency or instrumentality thereof; (ii) any deposits, certificates of deposit or acceptances of any institution which is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than \$500 million at the time of deposit (and which may include the Collateral Agent or any affiliate of the Collateral Agent so long as the Collateral Agent is other than Borrower or an affiliate of Borrower); (iii) any investments of any Person that is fully and unconditionally guaranteed by a bank referred to in clause (ii); (iv) any repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any agency thereof and backed as to timely payment by the full faith and credit of the United States of America; (v) commercial paper of any corporation incorporated under the laws of the United States or any State thereof that is rated “investment grade” A-1 by Standard & Poor’s Rating Group, a division of McGraw Hill Inc., or any successor thereto, or P-1 by Moody’s Investors Services, Inc., or any successor thereto; (vi) any money market funds (including, but not limited to, money market funds managed by the Collateral Agent or an affiliate of the Collateral Agent) registered under the Investment Company Act of 1940, as amended; (vii) any letter of credit issued by a bank referred to in clause (ii); and (viii) all proceeds of the foregoing; provided that in no event shall Non-Cash Collateral include “margin stock” as defined by Regulation U of the Board of Governors of the Federal Reserve System.

“Pledge Date” has the meaning set forth in Section 3(a).

“Pledge Period” means any period beginning on a Pledge Date and to the extent such Pledge Date occurred as a result of a Credit Downgrade ending on the earlier of (i) the Business Day immediately following the day on which Borrower notifies Lender and Collateral Agent that a Credit Upgrade has occurred and (ii) the date on which this Agreement shall terminate in accordance with the terms of this Agreement.

“Securities Intermediary” means a “securities intermediary” as defined by Section 8-102(a)(14) of the UCC.

“UCC” means the Uniform Commercial Code as in effect in the State of New York on the date hereof and as it may be amended from time to time.

“Unaffiliated Third Party” shall mean, with respect to any transaction by the Lender, any person that the Lender does not “control” (as that term is defined by Rule 12b-2 under the Exchange Act) immediately prior to the transaction.

Section 2. Loans of Shares; Transfers of Loaned Shares.

(a) Subject to the terms and conditions of this Agreement, Lender hereby agrees to make available for borrowing by Borrower during the Loan Availability Period, shares of Common Stock up to, in the aggregate, the Maximum Number of Shares.

(b) Subject to the terms and conditions of this Agreement, Borrower may by written notice to Lender on or prior to February 2, 2007 (a “Borrowing Notice”), seek to initiate a transaction in which Lender will lend Loaned Shares to Borrower through the issuance by Lender of such Loaned Shares to Borrower upon the terms, and subject to the conditions, set forth in this Agreement (each such issuance and loan, a “Loan”). Borrower shall not deliver more than one Borrowing Notice. Such Loan shall be confirmed by a schedule and receipt listing the Loaned Shares provided by Lender to Borrower (the “Confirmation”). Such Confirmation shall constitute conclusive evidence with respect to the Loan, including the number of shares of Common Stock that are the subject of the Loan, to which the Confirmation relates, unless a written objection to the Confirmation specifying the reasons for the objection is received by Lender within five Business Days after the delivery of the Confirmation to Borrower; provided that in no event shall the delivery of the Confirmation or any such objection thereto delay the transfer of Loaned Shares to which a Borrowing Notice relates pursuant to clause (d) below.

(c) Notwithstanding anything to the contrary in this Agreement, Borrower shall not be permitted to borrow, and may not initiate a Loan hereunder with respect to, any shares of Common Stock at any time to the extent that Borrower determines that any Loan of such shares of Common Stock shall cause Borrower to become, directly or indirectly, a “beneficial owner” (within the meaning of Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, a “Beneficial Owner”) of more than 9.9% of the shares of Common Stock outstanding at such time. Under no circumstances shall Lender be liable to Borrower for any Loan in contravention of this Section 2(c).

(d) Lender shall transfer Loaned Shares to Borrower on or before the Cutoff Time on February 7, 2007. Delivery of the Loaned Shares to Borrower shall be made in the manner set forth under Section 13 below.

(e) As a condition to its entry into this Agreement, Borrower will deliver to Lender, at the time of entry into this Agreement, a guarantee of Lehman Brothers Holdings, Inc. (“Guarantor”), in the form of Exhibit A hereto.

Section 3. Collateral.

(a) Unless otherwise agreed by Borrower and Lender, Borrower shall, no later than 10:00 a.m. New York time on the second Business Day immediately following any day on which a Credit Downgrade has occurred, transfer to Collateral Agent, for deposit to the Collateral Account, Collateral with a Market Value at least equal to the Collateral Percentage of the Market Value of the Loaned Shares as of the close of business on the Business Day immediately preceding such transfer (any such date, a “Pledge Date”).

(b) During any Pledge Period, any Collateral transferred by Borrower to Collateral Agent shall be security for Borrower’s obligations in respect of the Loaned Shares and for any other obligations of Borrower to Lender hereunder. Borrower on the Pledge Date pledges with, assigns to, and grants Collateral Agent for the benefit of Lender a continuing first priority security interest in, and a lien upon, the Collateral, which shall attach upon the transfer of the Loaned Shares by Lender to Borrower and which shall cease upon the transfer of the Loaned Shares by Borrower to Lender, a Credit Upgrade or upon the transfer of any such Collateral to Borrower in accordance with the terms of this Agreement. In addition to the rights and remedies given to Lender hereunder, Lender shall have all the rights and remedies of a secured party under the UCC. To provide for the effectiveness, validity, perfection and priority of Lender’s rights as a secured party, Borrower acknowledges that Collateral Agent has obtained control of any financial assets included in the Collateral (or shall have obtained control upon posting of such Collateral pursuant to the terms contained herein) within the meaning of Sections 8-106 and 9-106 of the UCC. Collateral Agent acknowledges that it has control of the Collateral (or shall have control upon posting of such collateral pursuant to the terms contained herein) on behalf of Lender within the meaning of Section 8-106(d)(1) of the UCC. Notwithstanding anything to the contrary herein, Lender may not use or invest the Collateral and Collateral Agent shall take no instruction from Lender regarding the use or investment of Collateral. Promptly upon the termination of any Pledge Period, the Collateral Agent shall release to the Borrower all of the Collateral.

(c) Borrower shall, promptly at the request of the Collateral Agent, execute all documents and do all things reasonably required by the Collateral Agent to enable the Collateral Agent to register, within 21 days of the Pledge Date, the security interest created by this Agreement in accordance with the provisions of the Companies Act 1985 (United Kingdom). The Borrower further agrees that if so requested by the Collateral Agent at any time, to promptly execute all documents (including any security agreements and transfers) and do all things (including the delivery, transfer, assignment or payment of all or part of the Collateral to the

Collateral Agent or its nominee(s)) that the Collateral Agent may reasonably specify for the purpose of (a) exercising the rights to the Collateral or (b) securing and perfecting its security over or title to all or any part of the Collateral (including transferring the Collateral into the name of the Collateral Agent or its nominee(s)).

(d) Except as otherwise provided herein, upon the transfer to Lender of Loaned Shares pursuant to Section 6, Collateral Agent shall release to Borrower Collateral with a Market Value equal to the Collateral Percentage of the Market Value of the Loaned Shares so transferred but only to the extent that immediately following such transfer of Collateral, no Collateral Deficit would exist. Such transfer of Collateral shall be made no later than the Cutoff Time on the day the Loaned Shares are transferred, or if such day is not a day on which a transfer of such Collateral may be effected under Section 13, or if the transfer of Loaned Shares by Lender to Borrower occurs after the Cutoff Time on such day, then in each case the next day on which such a transfer may be effected.

(e) If Borrower transfers Collateral to Collateral Agent, as provided in this Section 3, and Lender does not transfer the Loaned Shares to Borrower, Borrower shall have the absolute right to the return of the Collateral; and if Lender transfers Loaned Shares to Borrower and Borrower does not transfer Collateral to Collateral Agent as provided in this Section 3, Lender shall have the absolute right to the return of the Loaned Shares.

(f) Borrower may, upon notice to Lender and Collateral Agent, substitute Collateral for Collateral securing any Loan or Loans; provided that such substituted Collateral shall have a Market Value such that the aggregate Market Value of such substituted Collateral, together with all other Collateral, shall equal or exceed the Collateral Percentage of the Market Value of the Loaned Shares as of the date of such substitution.

Section 4. Mark to Market.

(a) During any Pledge Period, if at the close of trading on any Business Day during the Loan Availability Period the aggregate Market Value of all Collateral shall be less than the Collateral Percentage of the Market Value of all the outstanding Loaned Shares (a "Collateral Deficit"), Lender may, by notice to Borrower and Collateral Agent, demand that Borrower transfer to Collateral Agent, for deposit to the Collateral Account, no later than the following Business Day, additional Collateral so that the Market Value of such additional Collateral, when added to the Market Value of all other Collateral, shall equal or exceed the Collateral Percentage of the Market Value of the Loaned Shares on such Business Day of determination.

(b) During any Pledge Period, if at the close of trading on any Business Day during the Loan Availability Period the aggregate Market Value of all Collateral shall be greater than the Collateral Percentage of the Market Value of all the outstanding Loaned Shares (a "Collateral Excess"), Borrower may, by notice to Lender and Collateral Agent, demand that Collateral Agent transfer to Borrower such amount of the Collateral selected by Borrower so that the Market Value of the Collateral, after deduction of such amounts, shall thereupon be at least equal to the Collateral Percentage of the Market Value of the Loaned Shares on such Business Day of

determination; provided however that with respect to clauses (a) and (b), the Collateral Agent will promptly give Lender a statement setting forth the Market Value of all Collateral upon Lender's request and Lender shall have the right to audit the Market Value of all Collateral.

(c) Notwithstanding the foregoing, with respect to any outstanding Loans secured by Collateral, the respective rights of Lender and Borrower under Section 4(a) and Section 4(b) may be exercised only where a Collateral Excess or Collateral Deficit exceeds 5% of the Market Value of the Loaned Shares.

Section 5. Loan Fee. Borrower agrees to pay Lender a single loan fee per Loan (a "Loan Fee") equal to \$0.001 per Loaned Share. The Loan Fee shall be paid by Borrower on or before the time of transfer of the Loaned Shares pursuant to Section 2(d) on a delivery-versus-payment basis through the facilities of the Clearing Organization.

Section 6. Loan Terminations.

(a) Borrower may terminate all or any portion of a Loan on any Business Day by giving written notice thereof to Lender and transferring the corresponding number of Loaned Shares to Lender, without any consideration being payable in respect thereof by Lender to Borrower.

(b) All outstanding Loans, if any, on the last day of the Loan Availability Period shall terminate on the first Business Day following the last day of the Loan Availability Period (the "Facility Termination Date") and all outstanding Loaned Shares shall be delivered by Borrower to Lender, without any consideration being payable in respect thereof by Lender to Borrower, no later than the fifth Business Day following the Facility Termination Date.

(c) If on any date, the number of Loaned Shares exceeds the Maximum Number of Shares, the number of Loaned Shares in excess of the Maximum Number of Shares shall be delivered by Borrower to Lender, without any consideration being payable in respect thereof by Lender to Borrower, no later than the third Business Day following such date (the "Delivery Due Date"). If as a result of complying with such Section 6(c), as promptly as reasonably practicable (but subject to applicable law, regulation or policy), Borrower would become a Beneficial Owner of more than 9.9% of the shares of Common Stock outstanding at such time, then Borrower shall be permitted to extend the Delivery Due Date for all or a portion of the corresponding delivery obligation and in no event no longer than such time to allow Borrower to return such Loaned Shares, through one transaction or a series of transactions, without causing Borrower to become, directly or indirectly a Beneficial Owner of more than 9.9% of the shares of Common Stock outstanding at such time. If a Loan is terminated upon the occurrence of a Default as set forth in Section 11, the Loaned Shares shall be delivered by Borrower to Lender, without any consideration being payable in respect thereof by Lender to Borrower, no later than the third Business Day following the termination date of such Loan as provided in Section 11.

Section 7. Distributions.

(a) If at any time when there are Loaned Shares outstanding under this Agreement, Lender pays a cash dividend or makes a cash distribution in respect of its outstanding Common

Stock to the then holder or holders of such Loaned Shares, Borrower shall pay to Lender (whether or not Borrower is a holder of any or all of the outstanding Loan Shares), within one Business Day after the payment of such dividend or distribution, an amount in cash equal to the product of (i) the amount per share of such dividend or distribution and (ii) the number of Loaned Shares on which the dividend or distribution was paid.

(b) If at any time when there are Loaned Shares outstanding under this Agreement, Lender makes a distribution in respect of its outstanding Common Stock in property or securities, including any options, warrants, rights or privileges in respect of securities (other than a distribution of Common Stock, but including any options, warrants, rights or privileges exercisable for, convertible into or exchangeable for Common Stock) to the then holder or holders of such Loaned Shares (a "Non-Cash Distribution"), Borrower shall deliver to Lender (whether or not Borrower is a holder of any or all of the outstanding Loan Shares) in kind, within one Business Day after the date of such Non-Cash Distribution, the property or securities distributed in an amount equal to the product of (i) the amount per share of Common Stock of such Non-Cash Distribution and (ii) the number of Loaned Shares on which such Non-Cash Distribution was made.

(c) Any interest, cash distribution or cash dividend made on or in respect of any Collateral for any Loan hereunder, shall, subject to (e) below, be delivered by the Collateral Agent to Borrower, on the date such interest, cash distribution or cash dividend is received by the Collateral Agent.

(d) Any non-cash distributions or dividend made on or in respect of any Collateral for any Loan hereunder shall, subject to (e) below, be delivered by the Collateral Agent to Borrower on the date such non-cash distribution or dividend is received by the Collateral Agent.

(e) If the cash or other property received by the Collateral Agent under the provisions of paragraph (c) or (d) of this Section 7 qualifies as Collateral, to the extent that a transfer of such cash or other property to Borrower by the Collateral Agent would give rise to a Collateral Deficit, the Collateral Agent shall (only to the extent of any such Collateral Deficit) not make such transfer of cash or other property in accordance with this Section 7, but shall in lieu of such transfer immediately credit the amounts that would have been transferable under this Section 7 to the Collateral Account.

Section 8. Rights in Respect of Loaned Shares. Subject to the terms of this Agreement, and except as otherwise agreed by Borrower and Lender, Borrower, insofar as it is the record owner of Loaned Shares, shall have all of the incidents of ownership in respect of any such Loaned Shares until such Loaned Shares are required to be delivered to Lender in accordance with the terms of this Agreement, including the right to transfer the Loaned Shares to others. Borrower agrees that it or any of its affiliates that are the record owner of any Loaned Shares will not vote such Loaned Shares on any matter submitted to a vote of Lender's shareholders.

Section 9. Representations and Warranties.

(a) Each of Borrower and Lender represent and warrant to the other that:

- (i) it has full power to execute and deliver this Agreement, to enter into the Loans contemplated hereby and to perform its obligations hereunder;
- (ii) it has taken all necessary action to authorize such execution, delivery and performance;
- (iii) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms; and
- (iv) the execution, delivery and performance of this Agreement does not and will not violate, contravene, or constitute a default under, (A) its certificate of incorporation, bylaws or other governing documents, (B) any laws, rules or regulations of any governmental authority to which it is subject, (C) any contracts, agreements or instrument to which it is a party or (D) any judgment, injunction, order or decree by which it is bound.

(b) Lender represents and warrants to Borrower, as of the date hereof, and as of the date any Loaned Shares are transferred to Borrower in respect of any Loan hereunder, that the Loaned Shares and all other outstanding shares of Common Stock of the Lender have been duly authorized and, upon the issuance and delivery of the Loaned Shares to Borrower in accordance with the terms and conditions hereof, and subject to the contemporaneous or prior receipt of the applicable Loan Fee by Lender, will be duly authorized, validly issued, fully paid nonassessible shares of Common Stock; and the stockholders of Lender have no preemptive rights with respect to the Loaned Shares.

(c) Lender represents and warrants to Borrower, as of the date hereof, and as of the date any Loaned Shares are transferred to Borrower in respect of any Loan hereunder, that the outstanding shares of Common Stock are listed on NASDAQ Global Market ("NASDAQ") and the Loaned Shares have been approved for listing on NASDAQ, subject to official notice of issuance.

(d) Borrower represents to Lender that it has, or at the time of transfer to the Collateral Agent shall have, the right to grant to Lender, and that Lender shall acquire, a continuing first priority security interest in the Collateral, if any.

(e) The representations and warranties of Borrower and Lender under this Section 9 shall remain in full force and effect at all times during the term of this Agreement and shall survive the termination for any reason of this Agreement.

Section 10. Covenants.

(a) Borrower covenants and agrees with Lender that it will not transfer or dispose of any Loaned Shares initially transferred to Borrower by Lender as a Loan hereunder of which it is the record owner except pursuant to a registration statement that is effective under the Securities

Act; provided that Borrower may transfer any such Loaned Shares to any of its affiliates without a registration statement so long as such affiliate transferee does not transfer or dispose of such Loaned Shares to any non-affiliated transferee except pursuant to a registration statement that is effective under the Securities Act.

(b) The parties hereto acknowledge that Borrower has informed Lender that Borrower is a “financial institution” within the meaning of Section 101(22) of Title 11 of the United States Code (the “Bankruptcy Code”). The parties hereto further acknowledge and agree that (i) each Loan hereunder is intended to be a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code; (ii) each and every transfer of funds, securities and other property under this Agreement is intended to be a “settlement payment” or a “margin payment,” as such terms are used in Sections 362(b)(6) and 546(e) of the Bankruptcy Code; and (iii) the rights given to Lender hereunder upon a Default by Borrower are intended to constitute the rights to cause the liquidation of a securities contract and to set off mutual debts and claims in connection with a securities contract, as such terms are used in Sections 555 and 362(b)(6) of the Bankruptcy Code.

(c) Borrower covenants and agrees with Lender that in so far as it is the record owner of any Loaned Shares, such Loaned Shares will be used for the purpose of directly or indirectly facilitating the sale of the Convertible Notes and the hedging of the Convertible Notes by the holders thereof.

Section 11. Events of Default.

(a) All Loans, and any further obligation to make Loans under this Agreement, may, at the option of Lender by a written notice to Borrower (which option shall be deemed exercised, even if no notice is given, immediately on the occurrence of an event specified in Section 11(a)(iv) below), be terminated (i) immediately on the occurrence of any of the events set forth in Section 11(a)(iv) below and (ii) two Business Days following such notice on the occurrence of any of the other events set forth below, (each, a “Default”):

- (i) Borrower fails to deliver Loaned Shares to Lender as required by Section 6;
- (ii) Borrower fails to deliver or pay to Lender when due any cash, securities or other property as required by Section 7;
- (iii) Borrower fails to transfer Collateral when due as required by Section 3 and Section 4;
- (iv) the occurrence of any of the following:
 - (A) the Borrower is unable or admits its inability to pay its debts as they fall due, suspends making payments (whether principal or interest) on any of its debts or announces an intention to do so or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its

creditors with a view to rescheduling any of its indebtedness or is otherwise deemed unable to pay its debts within the meaning of section 123(a), (b), or (2) of the Insolvency Act 1986 (United Kingdom); and/or

(B) any corporate action, legal proceedings or other procedure or step is taken in relation to:

(a) the suspension of its payments, a moratorium of any of its indebtedness, its winding-up, its dissolution, its administration or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganization with another entity with which it forms a group or an order is made or a resolution passed for its winding up;

(b) a composition, compromise, assignment or arrangement with any of its creditors;

(c) the appointment of a liquidator, receiver, administrative receiver administrator, compulsory manager or other similar officer in respect of it or of its assets; or

(d) enforcement of any security interests created over any of its assets;

or any analogous procedure or step is taken in respect of it in any jurisdiction;

(v) Borrower fails to provide any indemnity as required by Section 14;

(vi) Borrower notifies Lender of its inability to or intention not to perform Borrower's obligations hereunder or otherwise disaffirms, rejects or repudiates any of its obligations hereunder; or

(vii) Any representation made by Borrower under this Agreement in connection with any Loan or Loans hereunder shall be incorrect or untrue in any material respect during the term of any Loan hereunder or Borrower fails to comply in any material respect with any of its covenants under this Agreement.

Section 12. Lender's Remedies.

(a) Upon the termination of any Loan by Lender under Section 11, Borrower may, with the prior written consent of Lender (which consent may be withheld at Lender's sole discretion; provided however that, Lender shall not withhold such request if Borrower as a result would unavoidably become, directly or indirectly, a Beneficial Owner of more than 9.9% of the shares of Common Stock outstanding at such time), in lieu of the delivery of Loaned Shares to Lender in accordance with Section 6(d), pay to Lender, no later than one Business Day following notice of such Default to Borrower, an amount in immediately available funds (the "Replacement Cash") equal to the product of the Closing Price as of the date of such notice of Default and the number of Loaned Shares otherwise required to be delivered; provided that if Lender consents to the delivery of Replacement Cash, Borrower may direct the Collateral Agent to deliver to Lender any Collateral held by the Collateral Agent in respect of the Loan so terminated and, to the extent the Market Value of any such Collateral delivered to Lender is less than the required amount of Replacement Cash, pay to Lender such difference in immediately available funds. Any Collateral in respect of the Loan so terminated that is not so delivered to Lender pursuant to this clause shall, upon payment in full of the Replacement Cash to Lender, be immediately delivered by Collateral Agent to Borrower.

(b) Notwithstanding anything to the contrary herein, if, upon the termination of any Loan by Lender under Section 11 and, at the time of such termination, the purchase of Common Stock in an amount equal to the Loaned Shares to be delivered to Lender in accordance with Section 6(d) shall (i) be prohibited by any law, rules or regulation of any governmental authority to which it is or would be subject, (ii) violate, or would upon such purchase likely violate, any order or prohibition of any court, tribunal or other governmental authority or (iii) require the prior consent of any court, tribunal or governmental authority prior to any such repurchase (each of (i), (ii) and (iii), a ("Legal Obstacle"), then, in each case, Borrower shall immediately notify Lender of the Legal Obstacle and the basis therefor, whereupon Borrower's obligations under Section 6(d) shall be suspended until such time as no Legal Obstacle with respect to such obligations shall exist (a "Repayment Suspension"). Borrower and Borrowing Agent shall use their respective commercially reasonable best efforts to remove any such Legal Obstacle as promptly as practicable. Upon notification of a Repayment Suspension and for so long as the Repayment Suspension shall continue during any Pledge Period, Lender shall have the right, exercisable in its sole discretion, to direct the Collateral Agent to, and the Collateral Agent upon receipt of the written request of Lender (with a copy to Borrower) shall, release to Lender an amount of Collateral with a Market Value equal to the Market Value of all (or such fewer number as Lender may specify) of the Loaned Shares that are the subject of the Repayment Suspension, whereupon the Borrower's obligation to return the specified number of Loaned Shares to the Lender shall be automatically extinguished.

(c) If Borrower shall fail to deliver Loaned Shares to Lender pursuant to Section 6(d) when due or shall fail to pay the Replacement Cash to Lender when due in accordance with Section 12(a) or (b) above (to the extent Borrower is permitted and elects to pay Replacement Cash), then, in either case, in addition to any other remedies available to Lender under this Agreement or under applicable law, Lender shall have the right (without further notice

to Borrower) to (i) purchase a like amount of Loaned Shares (“Replacement Shares”) in the principal market for such securities in a commercially reasonable manner, (ii) sell any Collateral in the principal market for such Collateral in a commercially reasonable manner and (iii) apply and set off the Collateral, if any, and any proceeds thereof (including any amounts drawn under a letter of credit supporting any Loan) against the payment of the purchase price for such Replacement Shares and any amounts due to Lender under this Agreement. To the extent Lender shall exercise such right, Borrower’s obligation to return a like amount of Loaned Shares or to pay the Replacement Cash, as applicable, shall terminate and Borrower shall be liable to Lender for the purchase price of Replacement Shares (plus all other amounts, if any, due to Lender hereunder). In the event that (i) the purchase price of Replacement Shares (plus all other amounts, if any, due to Lender hereunder) exceeds (ii) the amount of the Collateral, if any, Borrower shall be liable to Lender for the amount of such excess. The purchase price of Replacement Shares purchased under this Section 12 shall include, and the proceeds of any sale of Collateral shall be determined after deduction of, broker’s fees and commissions and all other reasonable costs, fees and expenses related to such purchase and sale. In the event Lender exercises its rights under this Section 12, Lender may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement Shares or selling all or a portion of the Collateral, if any, to be deemed to have made, respectively, such purchase of Replacement Shares or sale of Collateral for an amount equal to the Closing Price of the Common Stock on the date Lender elects to exercise this remedy. Upon the satisfaction of all Borrower’s obligations hereunder, any remaining Collateral shall be returned to Borrower.

Section 13. Transfers.

(a) All transfers of Loaned Shares to Borrower or to Lender hereunder shall be made by the crediting by a Clearing Organization of such financial assets to the transferee’s “securities account” (within the meaning of Section 8-501 of the UCC) maintained with such Clearing Organization. All transfers of Collateral to Collateral Agent by Borrower shall be made by crediting the Collateral Account. All transfers of Collateral to Lender by Collateral Agent shall be made in the manner directed by Lender. In every transfer of “financial assets” (within the meaning of Section 8-102 of the UCC) hereunder, the transferor shall take all steps necessary (a) to effect a delivery to the transferee under Section 8-301 of the UCC, or to cause the creation of a security entitlement in favor of the transferee under Section 8-501 of the UCC, (b) to enable the transferee to obtain “control” (within the meaning of Section 8-106 of the UCC), and (c) to provide the transferee with comparable rights under any applicable foreign law or regulation.

(b) All transfers of cash hereunder to Borrower or Lender shall be by wire transfer in immediately available, freely transferable funds.

(c) A transfer of securities or cash may be effected under this Section 13 on any day except (i) a day on which the transferee is closed for business at its address set forth in Section 17 or (ii) a day on which a Clearing Organization or wire transfer system is closed, if the facilities of such Clearing Organization or wire transfer system are required to effect such transfer.

Section 14. Indemnities.

(a) Lender hereby agrees to indemnify and hold harmless Borrower and its affiliates and its former, present and future directors, officers, employees and other agents and representatives from and against any and all liabilities, judgments, claims, settlements, losses, damages, fees, liens, taxes, penalties, obligations and expenses incurred or suffered by any such person or entity directly or indirectly arising from, by reason of, or in connection with, (i) any breach by Lender of any of its representations or warranties contained in Section 9 or (ii) any breach by Lender of any of its covenants or agreements in this Agreement.

(b) Borrower hereby agrees to indemnify and hold harmless Lender and its affiliates and its former, present and future directors, officers, employees and other agents and representatives from and against any and all liabilities, judgments, claims, settlements, losses, damages, fees, liens, taxes, penalties, obligations and expenses, including without limitation any of the foregoing incurred pursuant to indemnification or other provisions of other agreements, incurred or suffered by any such person or entity directly or indirectly arising from, by reason of, or in connection with (i) any breach by Borrower of any of its representations or warranties contained in Section 9 or (ii) any breach by Borrower of any of its covenants or agreements in this Agreement.

(c) In case any claim or litigation which might give rise to any obligation of a party under this Section 14 (each an "Indemnifying Party") shall come to the attention of the party seeking indemnification hereunder (the "Indemnified Party"), the Indemnified Party shall promptly notify the Indemnifying Party in writing of the existence and amount thereof; provided that the failure of the Indemnified Party to give such notice shall not adversely affect the right of the Indemnified Party to indemnification under this Agreement, except to the extent the Indemnifying Party is materially prejudiced thereby. The Indemnifying Party shall promptly notify the Indemnified Party in writing if it accepts such claim or litigation as being within its indemnification obligations under this Section 14. Such response shall be delivered no later than 30 days after the initial notification from the Indemnified Party; provided that, if the Indemnifying Party reasonably cannot respond to such notice within 30 days, the Indemnifying Party shall respond to the Indemnified Party as soon thereafter as reasonably possible.

(d) An Indemnifying Party shall be entitled to participate in and, if (i) in the judgment of the Indemnified Party such claim can properly be resolved by money damages alone and the Indemnifying Party has the financial resources to pay such damages and (ii) the Indemnifying Party admits that this indemnity fully covers the claim or litigation, the Indemnifying Party shall be entitled to direct the defense of any claim at its expense, but such defense shall be conducted by legal counsel reasonably satisfactory to the Indemnified Party. An Indemnified Party shall not make any settlement of any claim or litigation under this Section 14 without the written consent of the Indemnifying Party.

Section 15. Termination of Agreement.

(a) This Agreement may be terminated (i) at any time by the written agreement of Lender and Borrower, (ii) by Lender upon the occurrence of a Default or (iii) upon the earlier of (A) February 15, 2027 and (B) the date on which the Lender has notified the Borrower in writing of its intention to terminate this Agreement at any time after the entire principal amount of Convertible Notes ceases to be outstanding, whether as a result of conversion, redemption, repurchase, cancellation or otherwise.

(b) Unless otherwise agreed by Borrower and Lender, the provisions of Section 14 shall survive the termination of this Agreement.

Section 16. Registration Provisions. If, following the initial Loan hereunder and registration of the initial Loaned Shares in respect of such Loan, any subsequent Loan and public sale of the Loaned Shares in respect of such subsequent Loan, in the reasonable opinion of counsel to Borrower, would require registration under the Securities Act of 1933, as amended, Lender shall register such sale in a form and manner reasonably satisfactory to Borrower, and shall enter into an underwriting agreement substantially in the form of the Underwriting Agreement dated as of February 2, 2007 relating to the issuance and sale of such initial Loaned Shares and shall afford Borrower and its representatives and agents an opportunity to conduct an appropriate “due diligence” investigation to Borrower’s reasonable satisfaction, all at the expense of Lender. In no event shall this Section 16 require Lender to register shares of Common Stock in excess of the Maximum Number of Shares.

Section 17. Notices.

(a) All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when received.

(b) All such notices and other communications shall be directed to the following address:

(i) If to Borrower or Borrowing Agent to:

Lehman Brothers Inc.
745 7th Avenue
New York, NY 10019

(ii) If to Collateral Agent to:

Lehman Brothers Inc., as Collateral Agent for
745 7th Avenue
New York, NY 10019

(iii) If to Securities Intermediary to:

Lehman Brothers Inc.
745 7th Avenue
New York, NY 10019

(iv) If to Lender to:

SunPower Corporation
3939 North First Street
San Jose, CA 95134
Facsimile: (408) 739-7713
Attention: Chief Financial Officer

With a copy to:

Jones Day
1755 Embarcadero Road
Palo Alto, CA 94303
Facsimile: (650) 739-3900
Attention: Todd Johnson and Steve Gillette

(c) In the case of any party, at such other address as may be designated by written notice to the other parties.

Section 18. Governing Law; Submission To Jurisdiction; Severability.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, but excluding any choice of law provisions that would require the application of the laws of a jurisdiction other than New York.

(b) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK CITY, AND ANY APPELLATE COURT FROM ANY SUCH COURT, SOLELY FOR THE PURPOSE OF ANY SUIT, ACTION OR PROCEEDING BROUGHT TO ENFORCE ITS OBLIGATIONS HEREUNDER OR RELATING IN ANY WAY TO THIS AGREEMENT OR ANY LOAN HEREUNDER AND (B) WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, ANY DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND ANY RIGHT OF JURISDICTION ON ACCOUNT OF ITS PLACE OF RESIDENCE OR DOMICILE.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT THAT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(d) To the extent permitted by law, the unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

Section 19. Counterparts. This Agreement may be executed in any number of counterparts, and all such counterparts taken together shall be deemed to constitute one and the same agreement.

Section 20. Designation of Replacement Collateral Agent. If at any time while this Agreement is in effect (i) Lehman Brothers Inc. ceases to be a Securities Intermediary or (ii) Lender shall determine, in its sole discretion, that any of the relationships by or among the parties hereto are reasonably likely to prevent Lender from acquiring, or jeopardize the continuation and enforceability of, Lender's continuing first priority security interest in the Collateral as contemplated under Section 3(b), Lender shall be entitled to designate a bank or trust company reasonably satisfactory to Borrower as a successor Collateral Agent. In the event of a designation of a successor Collateral Agent, each of the parties to this Agreement agrees to take all such actions as are reasonably necessary to effect the transfer of rights and obligations of Lehman Brothers Inc. as Collateral Agent hereunder to such successor Collateral Agent, including the execution and delivery of amendments to this Agreement as shall be necessary to effect such designation and transfer.

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

SUNPOWER CORPORATION

as Lender

By:

/Emmanuel T. Hernandez/

Name: Emmanuel T. Hernandez
Title: Chief Financial Officer

LEHMAN BROTHERS INTERNATIONAL (EUROPE)
LIMITED

as Borrower

By:

/S/ [Illegible]

Name:
Title:

LEHMAN BROTHERS INC. as Collateral
Agent

By:

/S/ [Illegible]

Name:
Title:

LEHMAN BROTHERS INC.
as Borrowing Agent

By:

/S/ [Illegible]

Name:
Title:

SunPower Corporation

INDENTURE

Dated as of February 7, 2007

Wells Fargo Bank, National Association,

as

Trustee

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SUNPOWER CORPORATION

Reconciliation and tie between Trust Indenture Act of 1939 and Indenture, dated as of February 7, 2007.

§ 310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(a)(5)	7.10
(b)	7.10
§ 311(a)	7.11
(b)	7.11
(c)	Not Applicable
§ 312(a)	2.6
(b)	12.3
(c)	12.3
§ 313(a)	7.6
(b)(1)	7.6
(b)(2)	7.6
(c)(1)	7.6
(d)	7.6
§ 314(a)	4.2, 12.5
(b)	Not Applicable
(c)(1)	12.4
(c)(2)	12.4
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	12.5
(f)	Not Applicable
§ 315(a)	7.1
(b)	7.5
(c)	7.1
(d)	7.1
(e)	6.14
§ 316(a)	2.10
(a)(1)(A)	6.12
(a)(1)(B)	6.13
(b)	6.8
§ 317(a)(1)	6.3
(a)(2)	6.4
(b)	2.5
§ 318(a)	12.1

Note: This reconciliation and tie shall not, for any purpose, be deemed to be part of the Indenture.

Indenture dated as of February 7, 2007, between SunPower Corporation, a Delaware corporation (the “Company”), and Wells Fargo Bank, National Association (the “Trustee”).

Each party agrees as follows for the benefit of the other party and for the equal and

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1 Definitions.

“Additional Amounts” means any additional amounts which are required hereby or by any Security, under circumstances specified herein or therein, to be paid by the Company in respect of certain taxes imposed on Holders specified therein and which are owing to such Holders.

“Affiliate” of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Agent” means any Registrar, Paying Agent, co-agent, co-registrar or Service Agent.

“Authorized Newspaper” means a newspaper in an official language of the country of publication customarily published at least once a day for at least five days in each calendar week and of general circulation in the place in connection with which the term is used. If it shall be impractical in the opinion of the Trustee to make any publication of any notice required hereby in an Authorized Newspaper, any publication or other notice in lieu thereof that is made or given by the Trustee shall constitute a sufficient publication of such notice.

“Board of Directors” means the Board of Directors of the Company or any committee thereof duly authorized to act in respect of matters relating to this Indenture.

“Board Resolution” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors or pursuant to authorization by the Board of Directors and to be in full force and effect on the date of such certification and delivered to the Trustee.

“Business Day” means, unless otherwise provided by Board Resolution, Officers’ Certificate or supplemental indenture hereto for a particular Series, each day which is not a Legal Holiday.

“Capital Stock” of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

“Company” means the party named as such above until a successor replaces it and thereafter means the successor.

“Company Order” means a written order delivered to the Trustee and signed in the name of the Company by two Officers, one of whom must be the Company’s principal executive officer, principal financial officer or principal accounting officer.

“Company Request” means a written request signed in the name of the Company by its Chairman of the Board, a President or a Vice President, and by its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

“Corporate Trust Office” means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered.

“Debt” of any Person as of any date means, without duplication, all indebtedness of such Person in respect of borrowed money, including all interest, fees and expenses owed in respect thereto (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof), or evidenced by bonds, notes, debentures or similar instruments.

“Default” means any event which is, or after notice or passage of time would be, an Event of Default.

“Depository” means, with respect to the Securities of any Series issuable or issued in whole or in part in the form of one or more Global Securities, the Person designated as Depository for such Series by the Company, which Depository shall be a clearing agency registered under the Exchange Act; and if at any time there is more than one such Person, “Depository” as used with respect to the Securities of any Series shall mean the Depository with respect to the Securities of such Series.

“Discount Security” means any Security that provides for an amount less than the stated principal amount thereof to be due and payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.2.

“Dollars” means the currency of the United States of America.

“ECU” means the European Currency Unit as determined by the Commission of the European Union.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Foreign Currency” means any currency or currency unit issued by a government other than the government of the United States of America.

“Foreign Government Obligations” means with respect to Securities of any Series that are denominated in a Foreign Currency, (i) direct obligations of the government that issued or caused to be issued such currency for the payment of which obligations its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by or acting as an agency or instrumentality of such government the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by such government, which, in either case under clauses (i) or (ii), are not callable or redeemable at the option of the issuer thereof.

“Global Security” or “Global Securities” means a Security or Securities, as the case may be, in the form established pursuant to Section 2.2 evidencing all or part of a Series of Securities, issued to the Depositary for such Series or its nominee, and registered in the name of such Depositary or nominee.

“Holder” or “Securityholder” means a Person in whose name a Security is registered in the Register or the holder of a Bearer Security.

“Indenture” means this Indenture as originally executed and delivered and as amended from time to time and shall include the form and terms of particular Series of Securities established as contemplated hereunder.

“interest” with respect to any Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

“Maturity,” when used with respect to any Security or installment of principal thereof, means the date on which the principal of such Security or such installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, notice of option to elect repayment or otherwise.

“Officer” means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the President, any Vice-President, the Treasurer, the Secretary, any Assistant Treasurer or any Assistant Secretary of the Company or any other duly authorized officer, agent, or attorney-in-fact of the Company named in an Officer’s Certificate.

“Officers’ Certificate” means a certificate signed by two Officers, one of whom must be the Company’s principal executive officer, principal financial officer or principal accounting officer.

“Opinion of Counsel” means a written opinion of legal counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee.

“Person” means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Preferred Stock”, as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) that is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

“principal” of a Security means the principal of the Security plus, when appropriate, the premium, if any, on, and any Additional Amounts in respect of, the Security.

“SEC” means the Securities and Exchange Commission.

“Securities” means the debentures, notes or other debt instruments of the Company of any Series authenticated and delivered under this Indenture.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

“Senior Debt” means the principal of, premium, if any, unpaid interest and all fees and other amounts payable in connection with the following, whether outstanding on the date hereof or thereafter created, incurred, assumed or guaranteed, on (x) the Debt of the Company, for money borrowed other than (a) any Debt of the Company which when incurred and without respect to any election under Section 1111(b) of the Federal Bankruptcy Code, was without recourse to the Company, (b) any Debt of the Company to any of its Subsidiaries, (c) Debt to any employee of the Company, (d) any liability for taxes and (e) Trade Payables, unless the instrument creating or evidencing the same or pursuant to which the same is outstanding provides that such Debt is not senior or prior in right of payment to the Securities, (y) all obligations of the Company under interest rate, currency and commodity swaps, caps, floors, collars, hedge arrangements, forward contracts or similar agreements or arrangements and (z) renewals, extensions, modifications and refundings of any such Debt. This definition may be modified or superseded by a supplemental indenture.

“Series” or “Series of Securities” means each series of debentures, notes or other debt instruments of the Company created pursuant to Sections 2.1 and 2.2 hereof.

“Significant Subsidiary” means any direct or indirect Subsidiary of the Company that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date hereof.

“Stated Maturity” when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable (without regard for any provisions for acceleration, redemption prepayment or otherwise).

“Subsidiary” of any Person means any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person, (ii) such Person and one or more Subsidiaries of such Person, or (iii) one or more Subsidiaries of such Person.

“TIA” means the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbbb) as in effect on the date of this Indenture; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, “TIA” means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

“Trade Payables” means accounts payable or any other Debt or monetary obligations to trade creditors created or assumed by the Company or any Subsidiary of the Company in the ordinary course of business in connection with the receipt of materials or services.

“Trust Officer” means any officer within the Corporate Trust Office of the Trustee with direct responsibility for the administration of this Indenture.

“Trustee” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any Series shall mean the Trustee with respect to Securities of that Series.

“U.S. Government Obligations” means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer’s option.

Section 1.2 Other Definitions.

<u>TERM</u>	<u>DEFINED IN SECTION</u>
“Bankruptcy Law”	6.1
“Custodian”	6.1
“Event of Default”	6.1
“Journal”	12.15
“Judgment Currency”	12.16
“Legal Holiday”	12.7
“mandatory sinking fund payment”	13.1
“Market Exchange Rate”	12.15
“New York Banking Day”	12.16
“optional sinking fund payment”	13.1
“Paying Agent”	2.4
“Register”	2.4
“Registrar”	2.4
“Required Currency”	12.16
“Service Agent”	2.4
“successor person”	5.1

Section 1.3 Incorporation by Reference of Trust Indenture Act. Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“Commission” means the SEC.

“indenture securities” means the Securities.

“indenture security holder” means a Securityholder.

“indenture to be qualified” means this Indenture.

“indenture trustee” or “institutional trustee” means the Trustee.

“obligor” on the indenture securities means the Company and any successor obligor upon the Securities.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA and not otherwise defined herein are used herein as so defined.

Section 1.4 Rules of Construction. Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles;

(c) references to “generally accepted accounting principles” shall mean generally accepted accounting principles in effect as of the time when and for the period as to which such accounting principles are to be applied;

(d) “or” is not exclusive; and

(e) words in the singular include the plural, and in the plural include the singular.

ARTICLE 2 **THE SECURITIES**

Section 2.1 Issuable in Series. The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more Series. All Securities of a Series shall be identical except as may be set forth in a Board Resolution, a supplemental indenture or an Officers’ Certificate detailing the adoption of the terms thereof pursuant to the authority granted under a Board Resolution. In the case of Securities of a Series to be issued from time to time, the Board Resolution, Officers’ Certificate or supplemental indenture may provide for the method by which specified terms (such as interest rate, maturity date, record date or date from which interest shall accrue) are to be determined. Securities may differ between Series in respect of any matters, provided that all Securities in a particular Series shall be equally and ratably entitled to the benefits of the Indenture.

Section 2.2 Establishment of Terms of Series of Securities. At or prior to the issuance of any Securities within a Series, the following shall be established (as to the Series

generally, in the case of Subsection 2.2(a) and either as to such Securities within the Series or as to the Series generally in the case of Subsections 2.2(b) through 2.2(v)) by a Board Resolution, a supplemental indenture or an Officers' Certificate pursuant to authority granted under a Board Resolution:

- (a) the title of the Series (which shall distinguish the Securities of that particular Series from the Securities of any other Series);
- (b) the price or prices (expressed as a percentage of the principal amount thereof) at which the Securities of the Series will be issued;
- (c) any limit upon the aggregate principal amount of the Securities of the Series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the Series pursuant to Section 2.7, 2.8, 2.11, 3.6 or 9.6);
- (d) the date or dates on which the principal of the Securities of the Series is payable and the right, if any, to extend the Maturity of the Securities of the Series and the duration of such extension;
- (e) the rate or rates (which may be fixed or variable) per annum or, if applicable, the method used to determine such rate or rates (including, but not limited to, any commodity, commodity index, stock exchange index or financial index) at which the Securities of the Series shall bear interest, if any, and the right if any, to extend the interest payment periods and the duration of such extension; the date or dates from which such interest, if any, shall accrue; the date or dates on which such interest, if any, shall commence and be payable and any regular record date for the interest payable on any interest payment date;
- (f) the place or places where the principal of and interest, if any, on the Securities of the Series shall be payable, or the method of such payment, if by wire transfer, mail or other means and the place or places at which registration, transfer or exchange of the Securities of the Series may be affected;
- (g) if applicable, the period or periods within which, or the date or dates on which, the price or prices at which and the terms and conditions upon which the Securities of the Series may be redeemed, in whole or in part, at the option of the Company;
- (h) the obligation, if any, of the Company to redeem or purchase the Securities of the Series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, or the date or dates on which, the price or prices at which and the terms and conditions upon which Securities of the Series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
- (i) the dates, if any, on which and the price or prices at which the Securities of the Series will be repurchased by the Company at the option of the Holders thereof and other detailed terms and provisions of such repurchase obligations;
- (j) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which the Securities of the Series shall be issuable;

(k) the forms of the Securities of the Series (and whether the Securities will be issuable as Global Securities);

(l) if other than the principal amount thereof, the portion of the principal amount of the Securities of the Series that shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.2;

(m) the currency of denomination of the Securities of the Series, which may be Dollars or any Foreign Currency, including, but not limited to, the ECU, and if such currency of denomination is a composite currency other than the ECU, the agency or organization, if any, responsible for overseeing such composite currency;

(n) the designation of the currency, currencies or currency units in which payment of the principal of and interest, if any, on the Securities of the Series will be made;

(o) if payments of principal of or interest, if any, on the Securities of the Series are to be made in one or more currencies or currency units other than that or those in which such Securities are denominated, the manner in which the exchange rate with respect to such payments will be determined;

(p) the manner in which the amounts of payment of principal of or interest, if any, on the Securities of the Series will be determined, if such amounts may be determined by reference to an index based on a currency or currencies or by reference to a commodity, commodity index, stock exchange index or financial index;

(q) the provisions, if any, relating to any security provided for the Securities of the Series;

(r) any addition to or change in the Events of Default which applies to any Securities of the Series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 6.2;

(s) any addition to or change in the covenants set forth in Articles IV or V which applies to Securities of the Series;

(t) the terms, if any, pursuant to which if the Securities of the Series are to be convertible into or exchangeable for the class A common stock of the Company, par value \$0.001 per share, or Preferred Stock of the Company or other securities, including, without limitation, securities of another Person held by the Company or its Affiliates;

(u) whether the Securities of such Series are subject to subordination and the terms of such subordination;

(v) any other terms of the Securities of the Series (which may modify or delete any provision of this Indenture insofar as it applies to such Series); and

(w) any depositories, interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such Series if other than those appointed herein.

All Securities of any one Series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution, supplemental indenture or Officers' Certificate referred to above, and the authorized principal amount of any Series may not be increased to provide for issuances of additional Securities of such Series, unless otherwise provided in such Board Resolution, supplemental indenture or Officers' Certificate.

Section 2.3 Execution and Authentication. One or more Officers shall sign the Securities for the Company by manual or facsimile signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall be valid so long as such individual was an Officer at the time of execution of the Security.

A Security shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee shall at any time, and from time to time, authenticate Securities for original issue in the principal amount provided in the Board Resolution, supplemental indenture hereto or Officers' Certificate, upon receipt by the Trustee of a Company Order. Such Company Order may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent or agents, which oral instructions shall be promptly confirmed electronically or in writing. Each Security shall be dated the date of its authentication unless otherwise provided by a Board Resolution, a supplemental indenture hereto or an Officers' Certificate.

The aggregate principal amount of Securities of any Series outstanding at any time may not exceed any limit upon the maximum principal amount for such Series set forth in the Board Resolution, supplemental indenture hereto or Officers' Certificate delivered pursuant to Section 2.2, except as provided in Section 2.8.

Prior to the issuance of Securities of any Series, the Trustee shall have received and (subject to Section 7.2) shall be fully protected in relying on: (a) the Board Resolution, supplemental indenture hereto or Officers' Certificate establishing the form of the Securities of that Series or of Securities within that Series and the terms of the Securities of that Series or of Securities within that Series, (b) an Officers' Certificate complying with Section 12.4, and (c) an Opinion of Counsel complying with Section 12.4.

The Trustee shall have the right to decline to authenticate and deliver any Securities of such Series: (a) if the Trustee, being advised by counsel, determines that such action may not lawfully be taken; or (b) if the Trustee in good faith shall determine that such action would expose the Trustee to personal liability to Holders of any then outstanding Series of Securities.

The Trustee may appoint an authenticating agent reasonably acceptable to the Company to authenticate the Securities. Any such appointment shall be evidenced by an instrument signed by a Trust Officer, a copy of which shall be furnished to the Company. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate.

Section 2.4 Registrar and Paying Agent. The Company shall maintain, with respect to each Series of Securities, at the place or places specified with respect to such Series pursuant to Section 2.2, an office or agency where Securities of such Series may be presented or surrendered for payment (“Paying Agent”), where Securities of such Series may be surrendered for registration of transfer or exchange (“Registrar”) and where notices and demands to or upon the Company in respect of the Securities of such Series and this Indenture may be served (“Service Agent”). The Registrar shall keep a register with respect to each Series of Securities (the “Register”) and to their transfer and exchange. The Company will give prompt written notice to the Trustee of the name and address, and any change in the name or address, of each Registrar, Paying Agent or Service Agent. If at any time the Company shall fail to maintain any such required Registrar, Paying Agent or Service Agent or shall fail to furnish the Trustee with the name and address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more co-registrars, additional paying agents or additional service agents and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligations to maintain a Registrar, Paying Agent and Service Agent in each place so specified pursuant to Section 2.2 for Securities of any Series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the name or address of any such co-registrar, additional paying agent or additional service agent. The term “Registrar” includes any co-registrar; the term “Paying Agent” includes any additional paying agent; and the term “Service Agent” includes any additional service agent.

The Company hereby appoints the Trustee the initial Registrar, Paying Agent and Service Agent for each Series unless another Registrar, Paying Agent or Service Agent, as the case may be, is appointed prior to the time Securities of that Series are first issued. The Company or any of its domestically organized Subsidiaries may act as Paying Agent, Registrar or Service Agent.

The rights, privileges, protections, immunities and benefits given to the Trustee under this Indenture including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each Agent acting hereunder.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent or Service Agent not a party to this Indenture, which shall incorporate the terms of the TIA. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee of the name and address of any such agent.

The Company may remove any Registrar, Paying Agent or Service Agent for any Series of Securities upon written notice to such Registrar, Paying Agent or Service Agent and to the Trustee; provided, however, that no such removal shall become effective until (a) acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the Company and such successor Registrar, Paying Agent or Service Agent, as the case may be, and delivered to the Trustee or (b) notification to the Trustee that the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (a) above. The Registrar, Paying Agent or Service Agent may resign at any time upon written notice; provided, however, that the Trustee may resign as Paying Agent, Registrar or Service Agent only if the Trustee also resigns as Trustee in accordance with Section 7.8.

Section 2.5 Paying Agent to Hold Money in Trust. Prior to each due date of the principal and interest on any Series of Securities, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary is acting as Paying Agent, segregate and hold in trust for the benefit of the Persons entitled thereto) a sum sufficient to pay such principal and interest when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent will hold in trust, for the benefit of Securityholders of any Series of Securities, or the Trustee, all money held by the Paying Agent for the payment of principal of or interest on the Series of Securities, and shall notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary) shall have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of Securityholders of any Series of Securities all money held by it as Paying Agent.

Section 2.6 Securityholder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders of each Series of Securities and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Company shall furnish, or cause the Registrar to furnish, to the Trustee at least five Business Day before each interest payment date and at such other times as the Trustee may request in writing a list, in such form and as of such date as the Trustee may reasonably require, of the names and addresses of Securityholders of each Series of Securities.

Section 2.7 Exchange and Registration of Transfer. The Company shall cause to be kept at the Corporate Trust Office the Register in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities of a Series and of transfers of Securities of such Series. The Register shall be in written form or in any form capable of being converted into written form within a reasonably prompt period of time.

Upon surrender for registration of transfer of any Security of a Series to the Registrar or any co-registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.8, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the

designated transferee or transferees, one or more new Security of the same Series of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Securities of a Series may be exchanged for other Securities of the same Series of any authorized denominations and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.2. Whenever any Securities of a Series are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities of the same Series that the Holder making the exchange is entitled to receive bearing registration numbers not contemporaneously outstanding.

All Securities of a Series issued upon any registration of transfer or exchange of Securities of the same Series shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities of the same Series surrendered upon such registration of transfer or exchange.

All Securities of a Series presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company, and the Securities of such Series shall be duly executed by the holder thereof or his attorney duly authorized in writing.

No service charge shall be made to any holder for any registration of, transfer or exchange of Securities, but the Company or the Trustee may require payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration of transfer or exchange of such Securities (other than any such transfer tax or similar governmental charge payable upon exchanges pursuant to Sections 2.11, 3.6 or 9.6).

Neither the Company nor the Trustee nor any Registrar shall be required to exchange, issue or register a transfer of (a) Securities of any Series for a period of fifteen calendar days next preceding date of mailing of a notice of redemption of Securities of that Series selected for redemption, or (b) Securities of any Series or portions thereof called for redemption, except for the unredeemed portion of any Securities of that Series being redeemed in part.

Section 2.8 Mutilated, Destroyed, Lost and Stolen Securities. If a mutilated Security is surrendered to the Registrar or if the Securityholder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall authenticate a replacement Security of the same Series if the requirements of Section 8-405 of the Uniform Commercial Code are met, such that the Securityholder (i) satisfies the Company or the Trustee within a reasonable time after he has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (ii) makes such request to the Company or the Trustee prior to the Security being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code (a "protected purchaser") and (iii) satisfies any other reasonable requirements of the Trustee. If required by the Trustee or the Company, such Securityholder shall furnish an indemnity bond sufficient in the

judgment of the Trustee to protect the Company, the Trustee, the Paying Agent and the Registrar from any loss that any of them may suffer if a Security is replaced. The Company and the Trustee may charge the Securityholder for their expenses in replacing a Security. In case any Security which has matured or is about to mature or has been called for redemption, shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Security, pay or authorize the payment of (without surrender thereof except in the case of a mutilated Security), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or in connection with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, the Trustee and, if applicable, any Paying Agent evidence to their satisfaction of the destruction, loss or theft of such Securities and of the ownership thereof.

Every replacement Security of any Series issued pursuant to this Section is an additional obligation of the Company.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 2.9 Outstanding Securities. The Securities outstanding at any time are all the Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest on a Global Security effected by the Trustee in accordance with the provisions hereof and those described in this Section as not outstanding. A Security does not cease to be outstanding because the Company or an Affiliate holds the Security.

If a Security is replaced pursuant to Section 2.8, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a protected purchaser.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds on the Maturity of Securities of a Series money sufficient to pay such Securities (or portions thereof) payable on that date, and the Paying Agent is not prohibited from paying such money to the Securityholders of such Series on that date pursuant to the terms of the Indenture, then on and after that date such Securities of the Series (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

In determining whether the Holders of the requisite principal amount of outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of a Discount Security that shall be deemed to be outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof pursuant to Section 6.2.

Section 2.10 Treasury Securities. In determining whether the Holders of the required principal amount of Securities of a Series have concurred in any direction, waiver or consent, Securities of a Series owned by the Company or an Affiliate shall be disregarded and deemed not to be outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent only Securities of a Series that the Trustee knows are so owned shall be so disregarded.

Section 2.11 Temporary Securities. Pending the preparation of Securities in certificated form, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon the Company Order, authenticate and deliver temporary Securities (printed, lithographed, typewritten, photocopied or otherwise produced). Temporary Securities shall be issuable in any authorized denomination, and substantially in the form of the Securities in certificated form, but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company. Every such temporary Security shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Securities in certificated form. Without unreasonable delay, the Company will execute and deliver to the Trustee or such authenticating agent Securities of the same Series in certificated form and thereupon any or all temporary Securities may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.7 and the Trustee or such authenticating agent shall authenticate and make available for delivery in exchange for such temporary Securities an equal aggregate principal amount of Securities of the same Series in certificated form. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Securities of the same Series in certificated form authenticated and delivered hereunder.

Section 2.12 Cancellation. The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Securities surrendered for registration of transfer, exchange, payment, replacement or cancellation and dispose of such canceled Securities in accordance with its customary procedure. The Company may not issue new Securities to replace Securities that it has paid or delivered to the Trustee for cancellation. The Trustee shall not authenticate Securities in place of canceled Securities other than pursuant to the terms of this Indenture.

Section 2.13 Defaulted Interest. If the Company defaults in a payment of interest on a Series of Securities, it shall pay the defaulted interest, plus, to the extent permitted by law, any interest payable on the defaulted interest, to the Persons who are Securityholders of the Series on a subsequent special record date. The Company shall fix or cause to be fixed any such special record date and payment date to the reasonable satisfaction of the Trustee and shall promptly mail or cause to be mailed to each Securityholder of the Series a notice that states the special record date, the payment date and the amount of defaulted interest to be paid. The Company may pay defaulted interest in any lawful manner.

Section 2.14 Global Securities.

(a) **Terms of Securities.** A Board Resolution, a supplemental indenture hereto or an Officers' Certificate shall establish whether the Securities of a Series shall be issued in whole or in part in the form of one or more Global Securities and the Depositary for such Global Security or Securities.

(b) **Transfer and Exchange.** Notwithstanding any provisions to the contrary contained in Section 2.7 of the Indenture and in addition thereto, any Global Security shall be exchangeable pursuant to Section 2.7 of the Indenture for Securities registered in the names of Holders other than the Depositary for such Security or its nominee only if (i) such Depositary notifies the Company that it is unwilling or unable to continue as Depositary for such Global Security or if at any time such Depositary ceases to be a clearing agency registered under the Exchange Act, and, in either case, the Company fails to appoint a successor Depositary within 90 days of such event, (ii) the Company executes and delivers to the Trustee an Officers' Certificate to the effect that such Global Security shall be so exchangeable or (iii) an Event of Default with respect to the Securities represented by such Global Security shall have happened and be continuing. Any Global Security that is exchangeable pursuant to the preceding sentence shall be exchangeable for Securities registered in such names as the Depositary shall direct in writing in an aggregate principal amount equal to the principal amount of the Global Security with like tenor and terms.

Except as provided in this Section 2.14.2, a Global Security may not be transferred except as a whole by the Depositary with respect to such Global Security to a nominee of such Depositary, by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such a successor Depositary.

(c) **Legend.** Any Global Security issued hereunder shall bear a legend in substantially the following form:

“This Security is a Global Security within the meaning of the Indenture hereinafter referred to and is registered in the name of the Depositary or a nominee of the Depositary. This Security is exchangeable for Securities registered in the name of a Person other than the Depositary or its nominee only in the limited circumstances described in the Indenture, and may not be transferred except as a whole by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such a successor Depositary.”

(d) **Acts of Holders.** The Depositary, as a Holder, may appoint agents and otherwise authorize participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under the Indenture.

(e) **Payments.** Notwithstanding the other provisions of this Indenture, unless otherwise specified as contemplated by Section 2.2, payment of the principal of and interest, if any, on any Global Security shall be made to the Holder thereof.

(f) **Consents, Declaration and Directions.** Except as provided in Section 2.14.5, the Company, the Trustee and any Agent shall treat a Person as the Holder of such principal amount of outstanding Securities of such Series represented by a Global Security as shall be specified in a written statement of the Depository with respect to such Global Security, for purposes of obtaining any consents, declarations, waivers or directions required to be given by the Holders pursuant to this Indenture.

Section 2.15 **CUSIP and ISIN Numbers.** The Company in issuing the Securities may use “CUSIP” and “ISIN” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” and “ISIN” numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other elements of identification printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee in writing of any changes to the CUSIP and ISIN numbers.

ARTICLE 3 REDEMPTION

Section 3.1 **1 Notice to Trustee.** The Company may, with respect to any Series of Securities, reserve the right to redeem and pay the Series of Securities or may covenant to redeem and pay the Series of Securities or any part thereof prior to the Stated Maturity thereof at such time and on such terms as provided for in such Securities. If a Series of Securities is redeemable and the Company wants or is obligated to redeem prior to the Stated Maturity thereof all or part of the Series of Securities pursuant to the terms of such Securities, it shall notify the Trustee in writing of the redemption date and the principal amount of Series of Securities to be redeemed. The Company shall give the notice at least 35 calendar days before the redemption date (or such shorter notice as may be acceptable to the Trustee).

Section 3.2 **Selection of Securities to be Redeemed.** Unless otherwise indicated for a particular Series by a Board Resolution, a supplemental indenture or an Officers' Certificate, if less than all the Securities of a Series are to be redeemed, the Trustee shall select the Securities of the Series to be redeemed in any manner that the Trustee deems fair and appropriate. The Trustee shall make the selection from Securities of the Series outstanding not previously called for redemption. The Trustee may select for redemption portions of the principal of Securities of the Series that have denominations larger than \$1,000. Securities of the Series and portions of them it selects shall be in amounts of \$1,000 or whole multiples of \$1,000 or, with respect to Securities of any Series issuable in other denominations pursuant to Section 2.2.10, the minimum principal denomination for each Series and integral multiples thereof. Provisions of this Indenture that apply to Securities of a Series called for redemption also apply to portions of Securities of that Series called for redemption.

Section 3.3 Notice of Redemption. Unless otherwise indicated for a particular Series by Board Resolution, a supplemental indenture hereto or an Officers' Certificate, at least 30 days but not more than 60 days before a redemption date, the Company shall give notice of redemption, in the manner provided in Section 12.2.

The notice shall identify the Securities of the Series to be redeemed and shall state:

- (a) the redemption date;
 - (b) the redemption price;
 - (c) the name and address of the Paying Agent;
 - (d) if less than all Securities of any Series are to be redeemed, the identification of the particular Securities to be redeemed and the portion of the principal amount of any Security to be redeemed in part;
 - (e) that Securities of the Series called for redemption must be surrendered to the Paying Agent to collect the redemption price;
 - (f) that interest on Securities of the Series called for redemption ceases to accrue on and after the redemption date;
- and
- (g) any other information as may be required by the terms of the particular Series or the Securities of a Series being redeemed.

At the Company's written request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense and provided that the form and content of such notice shall be prepared by the Company.

Section 3.4 Effect of Notice of Redemption. Once notice of redemption is delivered as provided in Section 3.3, Securities of a Series called for redemption become due and payable on the redemption date and at the redemption price. A notice of redemption may not be conditional. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price plus accrued interest to the redemption date.

Section 3.5 Deposit of Redemption Price. On or before the redemption date, the Company shall deposit with the Paying Agent money sufficient to pay the redemption price of and accrued interest, if any, on all Securities to be redeemed on that date.

Section 3.6 Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Trustee shall authenticate for the Holder a new Security of the same Series and the same maturity equal in principal amount to the unredeemed portion of the Security surrendered.

ARTICLE 4 COVENANTS

Section 4.1 Payment of Principal and Interest. The Company shall duly and punctually pay the principal of and interest, if any, on the Securities of that Series in accordance with the terms of such Securities and this Indenture.

Section 4.2 SEC Reports. The Company shall deliver (which delivery may be via electronic mail) to the Trustee within 15 days after filing by the Company with the SEC copies of the annual reports and of the information, documents, and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company files with the SEC pursuant to Section 13 or 15(d) of the Exchange Act whether or not the Company is subject to the filing requirements of the Exchange Act. The Company also shall comply with the other provisions of TIA § 314(a).

Section 4.3 Compliance Certificate. The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, an Officers' Certificate stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of such Officer's knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture without regard to any period of grace or requirement of notice provided under this Indenture.

The Company will, so long as any of the Securities are outstanding, deliver to the Trustee, within 15 Business Days of becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.4 Stay, Extension and Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture or the Securities; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.5 Corporate Existence. Subject to Article V, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate, partnership or other existence of each Significant Subsidiary in accordance with the respective organizational documents of each Significant Subsidiary and the rights (charter and statutory), licenses and franchises of the Company and its Significant Subsidiaries; provided, however, that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any Significant

Subsidiary, if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries taken as a whole and that the loss thereof is not adverse in any material respect to the Holders.

Section 4.6 Maintenance of Office or Agency. The Company will maintain an office or agency where the Securities of a Series may be surrendered for registration of transfer or exchange or for presentation for payment and where notices and demands to or upon the Company in respect of the Securities of a Series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office.

The Company may also from time to time designate co-registrars and one or more offices or agencies where the Securities of a Series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 4.7 Money For Securities Payments to be Held in Trust. If the Company shall at any time act as its own Paying Agent with respect to the Securities of any Series, it shall, on or before each due date of the principal of and premium, if any, and interest, if any, on any of such Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and premium or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided. The Company shall promptly notify the Trustee of any failure by the Company (or any other obligor of such Securities) to make any payment of principal of or premium, if any, or interest, if any, on such Securities.

Whenever the Company shall have one or more Paying Agents for the Securities of any Series, it shall, on or before each due date of the principal of and premium, if any, and interest, if any, on such Securities, deposit with such Paying Agents sums sufficient (without duplication) to pay the principal and premium or interest so becoming due, such sums to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company shall promptly notify the Trustee of any failure by it so to act.

The Company shall cause each Paying Agent for the Securities of any Series, other than the Company or the Trustee, to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent shall:

(a) hold all sums held by it for the payment of the principal of and premium, if any, or interest, if any, on such Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(b) give the Trustee notice of any failure by the Company (or any other obligor upon such Securities) to make any payment of principal of or premium, if any, or interest, if any, on such Securities; and

(c) at any time during the continuance of any such failure, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent and furnish to the Trustee such information as it possesses regarding the names and addresses of the Persons entitled to such sums.

The Company may at any time pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent and, if so stated in a Company Order delivered to the Trustee, in accordance with the provisions of Article 8; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of and premium, if any, or interest, if any, on any Security and remaining unclaimed for two years after such principal and premium, if any, or interest, if any, has become due and payable shall be paid to the Company on request of the Company, or, if then held by the Company, shall be discharged from such trust; and, upon such payment or discharge, the Holder of such Security shall, as an unsecured general creditor and not as the Holder of an outstanding Security, look only to the Company for payment of the amount so due and payable and remaining unpaid (subject, however, to the provisions of Article 10), and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such payment to the Company, may at the expense of the Company cause to be mailed, on one occasion only, notice to such Holder that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing, any unclaimed balance of such money then remaining will be paid to the Company.

ARTICLE 5 **SUCCESSORS**

Section 5.1 When Company May Merge, Etc.

The Company shall not consolidate with or merge into, or convey, transfer or lease all or substantially all of its properties and assets to, any Person (a "successor person"), and may not permit any Person to merge into, or convey, transfer or lease its properties and assets substantially as an entirety to, the Company, unless:

(a) the successor person (if any) is a corporation, partnership, trust or other entity organized and validly existing under the laws of any U.S. domestic jurisdiction and expressly assumes the Company's obligations on the Securities and under this Indenture; and

(b) immediately after giving effect to the transaction, no Default or Event of Default, shall have occurred and be continuing.

The Company shall deliver to the Trustee prior to the consummation of the proposed transaction an Officers' Certificate to the foregoing effect and an Opinion of Counsel stating that the proposed transaction and such supplemental indenture comply with this Indenture.

Section 5.2 Successor Corporation Substituted. Upon any consolidation or merger, or any sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company in accordance with Section 5.1, the successor person formed by such consolidation or into or with which the Company is merged or to which such sale, lease, conveyance or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor person has been named as the Company herein. In the case of a sale, lease, conveyance or other disposition in accordance with Section 5.1 and upon satisfaction of all conditions specified in Section 5.1, the predecessor Company shall be released from all obligations and covenants under this Indenture and on and under all Securities then outstanding and the Trustee shall acknowledge in writing that the predecessor Company has been so released and discharged.

ARTICLE 6

DEFAULTS AND REMEDIES

Section 6.1 Events of Default.

"Event of Default," wherever used herein with respect to Securities of any Series, means any one of the following events, unless in the establishing Board Resolution, supplemental indenture or Officers' Certificate, it is provided that such Series shall not have the benefit of said Event of Default:

- (a) default in the payment of any interest on any Security of that Series when it becomes due and payable, and continuance of such default for a period of 60 days (unless the entire amount of such payment is deposited by the Company with the Trustee or with a Paying Agent prior to the expiration of such period of 60 days); or
- (b) default in the payment of the principal of any Security of that Series within three Business Days of its Maturity; or
- (c) default in the deposit of any sinking fund payment, when and as due in respect of any Security of that Series; or
- (d) default in the performance or breach of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty that has been included in this Indenture solely for the benefit of Series of Securities other than that Series), which default continues uncured for a period of 90 days after there has been given, in the manner provided in Section 12.2, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 33% in principal amount of the outstanding Securities of that Series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(e) a default under any Debt of the Company with an aggregate principal amount of U.S. \$100.0 million (including a default with respect to Securities of any Series other than that Series) or any Subsidiary, whether such Debt now exists or shall hereafter be created, if (A) such default results from the failure to pay any such Debt when it becomes due, and (B) such Debt is not discharged or such acceleration is not rescinded or annulled within 30 days after written notice to the Company by the Trustee, or written notice to the Company and the Trustee by the holder or holders of such Debt in the manner provided for in the applicable debt instrument; or

(f) the Company or any of its Significant Subsidiaries pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case,

(ii)) consents to the entry of an order for relief against it in an involuntary case,

(iii) consents to the appointment of a Custodian of it or for all or substantially all of its property,

(iv) makes a general assignment for the benefit of its creditors, or

(v) generally is unable to pay its debts as the same become due; or

(g) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Company or any of its Significant Subsidiaries in an involuntary case,

(ii) appoints a Custodian of the Company or any of its Significant Subsidiaries or for all or substantially all

of its property, or

(iii) orders the liquidation of the Company or any of its Significant Subsidiaries, and the order or decree

remains unstayed and in effect for 60 days; or

(h) any other Event of Default provided with respect to Securities of that Series, which is specified in a Board Resolution, a supplemental indenture hereto or an Officers' Certificate, in accordance with Section 2.2.18.

The term "Bankruptcy Law" means title 11, U.S. Code or any similar Federal or State law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

Section 6.2 Acceleration of Maturity; Rescission and Annulment. If an Event of Default with respect to Securities of any Series at the time outstanding occurs and is continuing (other than an Event of Default referred to in Section 6.1(f) or (g)) then in every such case the Trustee or the Holders of not less than 33% in principal amount of the outstanding Securities of

that Series may declare the principal amount (or, if any Securities of that Series are Discount Securities, such portion of the principal amount as may be specified in the terms of such Securities) of and accrued and unpaid interest, if any, on all of the Securities of that Series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) and accrued and unpaid interest, if any, shall become immediately due and payable. If an Event of Default specified in Section 6.1(f) or (g) shall occur, the principal amount (or specified amount) of and accrued and unpaid interest, if any, on all outstanding Securities shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

(a) At any time after such a declaration of acceleration with respect to any Series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the outstanding Securities of that Series, by written notice to the Company and the Trustee, may rescind an (a) the Company has paid or deposited with the Trustee a sum sufficient to pay

(i) all overdue interest, if any, on all Securities of that Series,

(ii) the principal of any Securities of that Series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Securities,

(iii) to the extent that payment of such interest is lawful, interest upon any overdue principal and overdue interest at the rate or rates prescribed therefor in such Securities, and

(iv) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel;

and

(b) all Events of Default with respect to Securities of that Series, other than the non-payment of the principal of Securities of that Series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 6.13.

No such rescission shall affect any subsequent Default or impair any right consequent thereon.

Section 6.3 Collection of Indebtedness and Suits for Enforcement by Trustee. The Company covenants that if

(a) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 60 days, or

(b) default is made in the payment of principal of any Security within three Business Days of its Maturity thereof,

or

(c) default is made in the deposit of any sinking fund payment when and as due by the terms of a Security, then, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal or any overdue interest, at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or deemed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities, wherever situated.

If an Event of Default with respect to any Securities of any Series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such Series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 6.4 Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.5 Trustee May Enforce Claims Without Possession of Securities. All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

Section 6.6 Application of Money Collected. Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

First: To the payment of all amounts due the Trustee under Section 7.7; and

Second: To the payment of the amounts then due and unpaid for principal of and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and interest, respectively; and

Third: To the Company.

Section 6.7 Limitation on Suits. No Holder of any Security of any Series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that Series;

(b) the Holders of not less than 33% in principal amount of the outstanding Securities of that Series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the outstanding Securities of that Series; it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

Section 6.8 Unconditional Right of Holders to Receive Principal and Interest. Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest, if any, on such Security on the Stated Maturity or Stated Maturities expressed in such Security (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 6.9 Restoration of Rights and Remedies. If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 6.10 Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in Section 2.8, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11 Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 6.12 Control by Holders. The Holders of a majority in principal amount of the outstanding Securities of any Series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such Series, provided that

(a) such direction shall not be in conflict with any rule of law or with this Indenture,

(b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and

(c) subject to the provisions of Section 6.1, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Trust Officer of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability.

Section 6.13 Waiver of Past Defaults. The Holders of not less than a majority in principal amount of the outstanding Securities of any Series may on behalf of the Holders of all the Securities of such Series waive any past Default hereunder with respect to such Series and its consequences, except a Default in the payment of the principal of or interest on any Security of such Series (provided, however, that the Holders of a majority in principal amount of the outstanding Securities of any Series may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration). Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.14 Undertaking for Costs. All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the outstanding Securities of any Series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or interest on any Security on or after the Stated Maturity or Stated Maturities expressed in such Security (or, in the case of redemption, on the redemption date).

ARTICLE 7 **TRUSTEE**

Section 7.1 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the Trustee need perform only those duties that are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; however, the Trustee shall examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take with respect to Securities of any Series in good faith in accordance with the direction of the Holders of a majority in principal amount of the outstanding Securities of such Series.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraph (a), (b) and (c) of this Section.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk is not reasonably assured to it.

(h) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section and to the provisions of the TIA.

Section 7.2 Rights of Trustee.

- (a) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.
- (b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officers' Certificate or Opinion of Counsel.
- (c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.
- (d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.
- (e) The Trustee may consult with counsel, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.
- (f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.
- (g) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Securityholders pursuant to the provisions of this Indenture, unless such Securityholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby.
- (h) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its rights to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.
- (i) The Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.
- (j) The permissive rights of the Trustee enumerated herein shall not be construed as duties.

Section 7.3 Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or an Affiliate with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee is also subject to Sections 7.10 and 7.11.

Section 7.4 Trustee's Disclaimer. The Trustee shall not be responsible and makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities, and it shall not be responsible for any statement in the Securities or in any document issued in connection with the sale of the Securities or in the Securities other than its certificate of authentication.

Section 7.5 Notice of Defaults. If a Default or Event of Default occurs and is continuing with respect to the Securities of any Series and if it is known to a Trust Officer of the Trustee, the Trustee shall mail to each Securityholder of the Securities of that Series and, if any Bearer Securities are outstanding, publish on one occasion in an Authorized Newspaper, notice of a Default or Event of Default within 90 days after it occurs or 30 days after it is known to a Trust Officer or written notice of it is received by the Trustee. Except in the case of a Default or Event of Default in payment of principal, premium (if any) of or interest on any Security of any Series or in payment of any redemption obligation, the Trustee may withhold the notice if and so long as its corporate trust committee or a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of Securityholders of that Series.

Section 7.6 6 Reports by Trustee to Holders. As promptly as practicable after each May 15 beginning with May 15, 2007, and in any event prior to July 15 in each year, the Trustee shall transmit by mail to all Securityholders, as their names and addresses appear on the register kept by the Registrar and, if any Bearer Securities are outstanding, publish in an Authorized Newspaper, a report dated as of May 15 of each year in such manner and to the extent required by TIA § 313(a). The Trustee shall also comply with TIA § 313(b) and TIA § 313(c).

A copy of each report at the time of its mailing to Securityholders of any Series shall be filed with the SEC and each stock exchange (if any) on which the Securities of that Series are listed. The Company shall promptly notify the Trustee when Securities of any Series are listed on any stock exchange and of any delisting thereof.

Section 7.7 Compensation and Indemnity. The Company shall pay to the Trustee from time to time such compensation as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Company shall indemnify the Trustee, and hold it harmless, against any and all loss, liability or expense (including reasonable attorneys' fees) incurred by or in connection with the offer and sale of the Securities or the administration of this trust and the performance of its duties hereunder. The Trustee shall notify the Company of any claim for which it may seek indemnity promptly upon obtaining actual knowledge thereof; provided, however, that any failure so to notify the Company shall not relieve the Company of its

indemnity obligations hereunder. The Company shall defend the claim and the indemnified party shall provide reasonable cooperation at the Company's expense in the defense. Such indemnified parties may have separate counsel and the Company shall pay the fees and expenses of such counsel; provided, however, that the Company shall not be required to pay such fees and expenses if it assumes such indemnified parties' defense and, in such indemnified parties' reasonable judgment, there is no conflict of interest between the Company and such parties in connection with such defense. The Company need not reimburse any expense or indemnify against any loss, liability or expense incurred by an indemnified party through such party's own willful misconduct and negligence.

To secure the Company's payment obligations in this Section, the Trustee shall have a lien prior to the Securities of any Series on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest and any liquidated damages on particular Securities of that Series.

The Company's payment obligations pursuant to this Section shall survive the satisfaction or discharge of this Indenture, any rejection or termination of this Indenture under any bankruptcy law or the resignation or removal of the Trustee.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.1(f) or (g) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

Section 7.8 Replacement of Trustee. The Trustee may resign with respect to the Securities of one or more Series at any time by so notifying the Company. The Holders of a majority in principal amount of the Securities of any Series may remove the Trustee with respect to that Series by so notifying the Trustee and may appoint a successor Trustee. The Company shall remove the Trustee with respect to Securities of one or more Series if:

- (a) the Trustee fails to comply with Section 7.10;
- (b) the Trustee is adjudged bankrupt or insolvent;
- (c) a receiver or other public officer takes charge of the Trustee or its property; or
- (d) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns, is removed by the Company or by the Holders of a majority in principal amount of the Securities of any Series and such Securityholders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Company shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee with respect to each Series of Securities for which it is acting as Trustee under this

Indenture. The successor Trustee shall mail a notice of its succession to each Securityholder of each such Series and, if any Bearer Securities are outstanding, publish such notice on one occasion in an Authorized Newspaper. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.7.

If a successor Trustee with respect to the Securities of any one or more Series does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of 10% in principal amount of the Securities of the applicable Series may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee with respect to the Securities of any one or more Series fails to comply with Section 7.10, any Securityholder of the applicable Series may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section, the Company's obligations under Section 7.7 shall continue for the benefit of the retiring Trustee

Section 7.9 9 Successor Trustee by Merger, etc. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee with respect to the Securities of any one or more Series shall succeed to the trusts created by this Indenture any of the Securities of the applicable Series shall have been authenticated but not delivered, any such successor to such Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities of the applicable Series so authenticated; and in case at that time any of the Securities of such Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities of such Series or in this Indenture provided that the certificate of the Trustee shall have.

Section 7.10 Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of TIA § 310(a). The Trustee shall have a combined capital and surplus of at least \$100,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b); provided, however, that there shall be excluded from the operation of TIA § 310(b)(1) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in TIA § 310(b)(1) are met.

Section 7.11 Preferential Collection of Claims Against Company. The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

ARTICLE 8
SATISFACTION AND DISCHARGE; DEFEASANCE

Section 8.1 Satisfaction and Discharge of Indenture. This Indenture shall upon Company Order cease to be of further effect (except as hereinafter provided in this Section 8.1), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) either

(i) all Securities theretofore authenticated and delivered (other than Securities that have been destroyed, lost or stolen and that have been replaced or paid) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee for cancellation

(1) have become due and payable, or

(2) will become due and payable at their Stated Maturity within one year, or

(3) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, or

(4) are deemed paid and discharged pursuant to Section 8.3, as applicable;

and the Company, in the case of (1), (2) or (3) above, has deposited or caused to be deposited with the Trustee as trust funds in trust an amount sufficient for the purpose of paying and discharging the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of such deposit (in the case of Securities which have become due and payable on or prior to the date of such deposit) or to the Stated Maturity or redemption date, as the case may be;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.7, and, if money shall have been deposited with the Trustee pursuant to clause (a) of this Section, the provisions of Sections 2.4, 2.7, 2.8, 3.3, 4.8, 8.1, 8.2 and 8.5 shall survive.

Section 8.2 Application of Trust Funds; Indemnification.

(a) Subject to the provisions of Section 8.5, all money deposited with the Trustee pursuant to Section 8.1, all money and U.S. Government Obligations or Foreign Government Obligations deposited with the Trustee pursuant to Section 8.3 or 8.4 and all money received by the Trustee in respect of U.S. Government Obligations or Foreign Government Obligations deposited with the Trustee pursuant to Section 8.3 or 8.4, shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and interest for whose payment such money has been deposited with or received by the Trustee or to make mandatory sinking fund payments or analogous payments as contemplated by Sections 8.3 or 8.4.

(b) The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against U.S. Government Obligations or Foreign Government Obligations deposited pursuant to Sections 8.3 or 8.4 or the interest and principal received in respect of such obligations other than any payable by or on behalf of Holders.

(c) The Trustee shall deliver or pay to the Company from time to time upon Company Request any U.S. Government Obligations or Foreign Government Obligations or money held by it as provided in Sections 8.3 or 8.4 which, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Trustee, are then in excess of the amount thereof which then would have been required to be deposited for the purpose for which such U.S. Government Obligations or Foreign Government Obligations or money were deposited or received. This provision shall not authorize the sale by the Trustee of any U.S. Government Obligations or Foreign Government Obligations held under this Indenture.

Section 8.3 Legal Defeasance of Securities of any Series. Unless this Section 8.3 is otherwise specified, pursuant to Section 2.2.22, to be inapplicable to Securities of any Series, the Company shall be deemed to have paid and discharged the entire indebtedness on all the outstanding Securities of such Series on the 91st day after the date of the deposit referred to in subparagraph (d) hereof, and the provisions of this Indenture, as it relates to such outstanding Securities of such Series, shall no longer be in effect (and the Trustee, at the expense of the Company, shall, at Company Request, execute proper instruments acknowledging the same), except as to:

(a) the rights of Holders of Securities of such Series to receive, from the trust funds described in subparagraph (d) hereof, (i) payment of the principal of and each installment of principal of and interest on the outstanding Securities of such Series on the Stated Maturity of such principal or installment of principal or interest and (ii) the benefit of any mandatory sinking fund payments applicable to the Securities of such Series on the day on which such payments are due and payable in accordance with the terms of this Indenture and the Securities of such Series;

(b) the provisions of Sections 2.4, 2.7, 2.8, 8.2, 8.3 and 8.5; and

(c) the rights, powers, trust and immunities of the Trustee hereunder;

provided that, the following conditions shall have been satisfied:

(d) the Company shall have deposited or caused to be deposited irrevocably with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for and dedicated solely to the benefit of the Holders of such Securities (i) in the case of Securities of such Series denominated in Dollars, cash in Dollars (or such other money or currencies as shall then be legal tender in the United States) and/or U.S. Government Obligations, or (ii) in the case of Securities of such Series denominated in a Foreign Currency (other than a composite currency), money and/or Foreign Government Obligations, which through the payment of interest and principal in respect thereof, in accordance with their terms, will provide (and without reinvestment and assuming no tax liability will be imposed on such Trustee), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge each installment of principal (including mandatory sinking fund or analogous payments) of and interest, if any, on all the Securities of such Series on the dates such installments of interest or principal are due;

(e) such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(f) no Default or Event of Default with respect to the Securities of such Series shall have occurred and be continuing on the date of such deposit or during the period ending on the 91st day after such date;

(g) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel to the effect that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of execution of this Indenture, there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the Securities of such Series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to Federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred;

(h) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of the Securities of such Series over any other creditors of the company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company;

(i) such deposit shall not result in the trust arising from such deposit constituting an investment company (as defined in the Investment Company Act of 1940, as amended), or such trust shall be qualified under such Act or exempt from regulation thereunder; and

(j) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the defeasance contemplated by this Section have been complied with.

Section 8.4 Covenant Defeasance. Unless this Section 8.4 is otherwise specified pursuant to Section 2.2.22 to be inapplicable to Securities of any Series, on and after the 91st day after the date of the deposit referred to in subparagraph (a) hereof, the Company may omit to comply with any term, provision or condition set forth under Sections 4.2, 4.3, 4.4, 4.5, 4.6, and 5.1 as well as any additional covenants contained in a supplemental indenture hereto for a particular Series of Securities or a Board Resolution or an Officers' Certificate delivered pursuant to Section 2.2.22 (and the failure to comply with any such covenants shall not constitute a Default or Event of Default under Section 6.1) and the occurrence of any event described in clause (e) of Section 6.1 shall not constitute a Default or Event of Default hereunder, with respect to the Securities of such Series, provided that the following conditions shall have been satisfied:

(a) with reference to this Section 8.4, the Company has deposited or caused to be irrevocably deposited (except as provided in Section 8.2(c)) with the Trustee as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities (i) in the case of Securities of such Series denominated in Dollars, cash in Dollars (or such other money or currencies as shall then be legal tender in the United States) and/or U.S. Government Obligations, or (ii) in the case of Securities of such Series denominated in a Foreign Currency (other than a composite currency), money and/or Foreign Government Obligations, which through the payment of interest and principal in respect thereof, in accordance with their terms, will provide (and without reinvestment and assuming no tax liability will be imposed on such Trustee), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Trustee, to pay principal and interest, if any, on and any mandatory sinking fund in respect of the Securities of such Series on the dates such installments of interest or principal are due;

(b) such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(c) no Default or Event of Default with respect to the Securities of such Series shall have occurred and be continuing on the date of such deposit or during the period ending on the 91st day after such date;

(d) the Company shall have delivered to the Trustee an Opinion of Counsel confirming that Holders of the Securities of such Series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(e) the Company shall have delivered to the Trustee an Officers' Certificate stating the deposit was not made by the Company with the intent of preferring the Holders of the Securities of such Series over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company; and

(f) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the defeasance contemplated by this Section have been complied with.

Section 8.5 Repayment to Company. The Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal and interest that remains unclaimed for two years. After that, Securityholders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person.

ARTICLE 9

AMENDMENTS AND WAIVERS

Section 9.1 Without Consent of Holders. The Company and the Trustee may amend or supplement this Indenture or the Securities of one or more Series without the consent of any Securityholder:

- (a) to cure any ambiguity, defect or inconsistency;
- (b) to comply with Article V;
- (c) to provide for uncertificated Securities in addition to or in place of certificated Securities;
- (d) to make any change that does not adversely affect the rights of any Securityholder;
- (e) to provide for the issuance of and establish the form and terms and conditions of Securities of any Series as permitted by this Indenture;
- (f) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more Series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee; or
- (g) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA.

Section 9.2 With Consent of Holders. The Company and the Trustee may enter into a supplemental indenture with the written consent of the Holders of at least a majority in principal amount of the outstanding Securities of each Series affected by such supplemental indenture (including consents obtained in connection with a tender offer or exchange offer for the Securities of such Series), for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Securityholders of each such Series. Except as

provided in Section 6.13, the Holders of at least a majority in principal amount of the outstanding Securities of each Series affected by such waiver by notice to the Trustee (including consents obtained in connection with a tender offer or exchange offer for the Securities of such Series) may waive compliance by the Company with any provision of this Indenture or the Securities with respect to such Series.

It shall not be necessary for the consent of the Holders of Securities under this Section 9.2 to approve the particular form of any proposed supplemental indenture or waiver, but it shall be sufficient if such consent approves the substance thereof. After a supplemental indenture or waiver under this section becomes effective, the Company shall mail to the Holders of Securities affected thereby and, if any Bearer Securities affected thereby are outstanding, publish on one occasion in an Authorized Newspaper, a notice briefly describing the supplemental indenture or waiver. Any failure by the Company to mail or publish such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

Section 9.3 Limitations. Without the consent of each Securityholder, an amendment or waiver may not:

- (a) change the amount of Securities whose Holders must consent to an amendment, supplement or waiver;
- (b) reduce the rate of or extend the time for payment of interest (including default interest) on any Security;
- (c) reduce the principal or premium on or change the Stated Maturity of any Security or reduce the amount of, or postpone the date fixed for, the payment of any sinking fund or analogous obligation;
- (d) reduce the principal amount of Discount Securities payable upon acceleration of the maturity thereof;
- (e) waive a Default or Event of Default in the payment of the principal of, premium or interest, if any, on any Security (except a rescission of acceleration of the Securities of any Series by the Holders of at least a majority in principal amount of the outstanding Securities of such Series and a waiver of the payment default that resulted from such acceleration);
- (f) make the principal of, premium or interest, if any, on any Security payable in any currency other than that stated in the Security;
- (g) make any change in Sections 6.8, 6.13, 9.3 (this sentence), 12.15 or 12.16; or
- (h) waive a redemption payment with respect to any Security or change any of the provisions with respect to the redemption of any Securities.

Section 9.4 Compliance with Trust Indenture Act. Every amendment to this Indenture or the Securities of one or more Series shall be set forth in a supplemental indenture hereto that complies with the TIA as then in effect.

Section 9.5 Revocation and Effect of Consents. Until an amendment or waiver becomes effective, a consent to it by a Holder of a Security is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to his Security or portion of a Security if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective.

Any amendment or waiver once effective shall bind every Securityholder of each Series affected by such amendment or waiver unless it is of the type described in any of clauses (a) through (g) of Section 9.3. In that case, the amendment or waiver shall bind each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Securityholders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Securityholders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Securityholders after such record date.

Section 9.6 Notation on or Exchange of Securities. The Trustee may place an appropriate notation about an amendment or waiver on any Security of any Series thereafter authenticated. The Company in exchange for Securities of that Series may issue and the Trustee shall authenticate upon written request new Securities of that Series that reflect the amendment or waiver.

Section 9.7 Trustee Protected. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 7.1) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee shall sign all supplemental indentures, except that the Trustee need not sign any supplemental indenture that adversely affects its rights.

ARTICLE 10

SUBORDINATION OF SECURITIES

Section 10.1 Agreement to Subordinate. In the event a Series of Securities is designated as subordinated pursuant to Section 2.2(u), and except as otherwise provided in a Board Resolution, a supplemental indenture or an Officer's Certificate, the Company, for itself, its successors and assigns, covenants and agrees, and each holder of Securities of such Series by

his, her or its acceptance thereof, likewise covenants and agrees, that the payment of the principal of, premium, if any, and interest, if any, on each and all of the Securities of such Series is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all Senior Debt. In the event a Series of Securities is not designated as subordinated pursuant to Section 2.2.21, this Article 10 shall have no effect upon the Securities.

Section 10.2 Distribution on Dissolution, Liquidation and Reorganization; Subrogation of Securities. Subject to Section 10.1, upon any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise (subject to the power of a court of competent jurisdiction to make other equitable provision reflecting the rights conferred in this Indenture upon the Senior Debt and the holders thereof with respect to the Securities and the holders thereof by a lawful plan of reorganization under applicable bankruptcy law):

(a) the holders of all Senior Debt shall be entitled to receive payment in full of the principal thereof, premium, if any, and interest due thereon before the holders of the Securities are entitled to receive any payment upon the principal, premium, if any, or interest, if any, on Debt evidenced by the Securities; and

(b) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the holders of the Securities or the Trustee would be entitled except for the provisions of this Article 10 shall be paid by the liquidation trustee or agent or other person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Debt or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Debt may have been issued, ratably according to the aggregate amounts remaining unpaid on account of the principal of, and premium, if any, and interest on the Senior Debt held or represented by each, to the extent necessary to make payment in full of all Senior Debt remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Debt; and

(c) in the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, shall be received by the Trustee or the holders of the Securities before all Senior Debt is paid in full, such payment or distribution shall be paid over, upon written notice to a Trust Officer of the Trustee, to the holder of such Senior Debt or his, her or its representative or representatives or to the trustee or trustees under any indenture under which any instrument evidencing any of such Senior Debt may have been issued, ratably as aforesaid, for application to payment of all Senior Debt remaining unpaid until all such Senior Debt shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Senior Debt.

Subject to the payment in full of all Senior Debt, the holders of the Securities shall be subrogated to the rights of the holders of Senior Debt (to the extent that distributions otherwise payable to such holder have been applied to the payment of Senior Debt) to receive payments or distributions of cash, property or securities of the Company applicable to Senior Debt until the principal of, premium, if any and interest, if any, on the Securities shall be paid in full and no such payments or distributions to the holders of the Securities of cash, property or securities otherwise distributable to the holders of Senior Debt shall, as between the Company, its creditors other than the holders of Senior Debt, and the holders of the Securities be deemed to be a payment by the Company to or on account of the Securities. It is understood that the provisions of this Article 10 are and are intended solely for the purpose of defining the relative rights of the holders of the Securities, on the one hand, and the holders of the Senior Debt, on the other hand. Nothing contained in this Article 10 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Debt, and the holders of the Securities, the obligation of the Company, which is unconditional and absolute, to pay to the holders of the Securities the principal of , premium, if any, and interest, if any, on the Securities as and when the same shall become due and payable in accordance with their terms, or to affect the relative rights of the holders of the Securities and creditors of the Company other than the holders of Senior Debt, nor shall anything herein or in the Securities prevent the Trustee or the holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 10 of the holders of Senior Debt in respect of cash, property or securities of the Company received upon the exercise of any such remedy. Upon any payment or distribution of assets of the Company referred to in this Article 10, the Trustee, subject to the provisions of Section 10.5, shall be entitled to rely upon a certificate of the liquidating trustee or agent or other person making any distribution to the Trustee for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of Senior Debt and other Debt of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereof and all other facts pertinent thereto or to this Article 10.

With respect to the holders of Senior Debt, the Trustee undertakes to perform or observe only such of its covenants and objectives as are specifically set forth in this Indenture, and no implied covenants or obligations with respect to the holders of Senior Debt shall be read into this Indenture against the Trustee. The Trustee, however, shall not be deemed to owe any fiduciary duty to the holders of Senior Debt. The Trustee shall not be liable to any such holder if it shall pay over or distribute to or on behalf of holders of Securities or the Company, or any other Person, moneys or assets to which any holder of Senior Debt shall be entitled by virtue of this Article 10.

Section 10.3 No Payment on Securities in Event of Default on Senior Debt. Subject to Section 10.1, no payment by the Company on account of principal, premium, if any, sinking funds or interest, if any, on the Securities shall be made at anytime if: (a) a default on Senior Debt exists that permits the holders of such Senior Debt to accelerate its maturity and (b) the default is the subject of judicial proceedings or the Company has received notice of such default. The Company may resume payments on the Securities when full payment of amounts then due for principal , premium, if any, sinking funds and interest on Senior Debt has been made or duly provided for in money or money's worth.

Section 10.4 Payments on Securities Permitted. Subject to Section 10.1, nothing contained in this Indenture or in any of the Securities shall (a) affect the obligation of the

Company to make, or prevent the Company from making, at any time except as provided in Sections 10.2 and 10.3, payments of principal of, premium, if any, or interest, if any, on the Securities or (b) prevent the application by the Trustee of any moneys or assets deposited with it hereunder to the payment of or on account of the principal of, premium, if any or interest, if any, on the Securities, unless a Trust Officer of the Trustee shall have received at its Corporate Trust Office written notice of any fact prohibiting the making of such payment from the Company or from the holder of any Senior Debt or from the trustee for any such holder, together with proof satisfactory to the Trustee of such holding of Senior Debt or of the authority of such trustee more than two Business Days prior to the date fixed for such payment.

Section 10.5 Authorization of Securityholders to Trustee to Effect Subordination. Subject to Section 10.1, each holder of Securities by his acceptance thereof authorizes and directs the Trustee on his, her or its behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article 10 and appoints the Trustee his attorney-in-fact for any and all such purposes.

Section 10.6 Notices to Trustee. Subject to Section 10.1, notwithstanding the provisions of this Article 10 or any other provisions of this Indenture, neither the Trustee nor any Paying Agent (other than the Company or a Subsidiary) shall be charged with knowledge of the existence of any Senior Debt or of any fact which would prohibit the making of any payment of moneys or assets to or by the Trustee or such Paying Agent, unless and until a Trust Officer of the Trustee or such Paying Agent shall have received (in the case of a Trust Officer of the Trustee, at the Corporate Trust Office of the Trustee) written notice thereof from the Company or from the holder of any Senior Debt or from the trustee for any such holder, together with proof satisfactory to the Trustee of such holding of Senior Debt or of the authority of such trustee and, prior to the receipt of any such written notice, the Trustee shall be entitled in all respects conclusively to presume that no such facts exist; provided, however, that if at least two Business Days prior to the date upon which by the terms hereof any such moneys or assets may become payable for any purpose (including, without limitation, the payment of either the principal, premium, if any, or interest, if any, on any Security) a Trust Officer of the Trustee shall not have received with respect to such moneys or assets the notice provided for in this Section 10.6, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such moneys or assets and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it within two Business Days prior to such date. The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Debt (or a trustee on behalf of such holder) to establish that such a notice has been given by a holder of Senior Debt or a trustee on behalf of any such holder. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article 10, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article 10 and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 10.7 Trustee as Holder of Senior Debt. Subject to Section 10.1, the Trustee in its individual capacity shall be entitled to all the rights set forth in this Article 10 in respect of any Senior Debt at any time held by it to the same extent as any other holder of Senior Debt and nothing in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder. Nothing in this Article 10 shall apply to claims of, or payments to, the Trustee under or pursuant to Sections 6.6 or 7.7.

Section 10.8 Modifications of Terms of Senior Debt. Subject to Section 10.1, any renewal or extension of the time of payment of any Senior Debt or the exercise by the holders of Senior Debt of any of their rights under any instrument creating or evidencing Senior Debt, including, without limitation, the waiver of default thereunder, may be made or done all without notice to or assent from the Holders of the Securities or the Trustee. No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of, or of any of the terms, covenants or conditions of any indenture or other instrument under which any Senior Debt is outstanding or of such Senior Debt, whether or not such release is in accordance with the provisions of any applicable document, shall in any way alter or affect any of the provisions of this Article 10 or of the Securities relating to the subordination thereof.

Section 10.9 Reliance on Judicial Order or Certificate of Liquidating Agent. Subject to Section 10.1, upon any payment or distribution of assets of the Company referred to in this Article 10, the Trustee and the holders of the Securities shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, liquidating trustee, custodian, receiver, assignee for the benefit of creditors, agent or other person making such payment or distribution, delivered to the Trustee or to the holders of Securities, for the purpose of ascertaining the persons entitled to participate in such payment or distribution to holders of Senior Debt and other Debt of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 10.

Section 10.10 Satisfaction and Discharge; Defeasance and Covenant Defeasance. Subject to Section 10.1, amounts and U.S. Government Obligations or Foreign Government Obligations deposited in trust with the Trustee pursuant to and in accordance with Article 8 and not, at the time of such deposit, prohibited to be deposited under Sections 10.2 or 10.3 shall not be subject to this Article 10.

Section 10.11 Trustee Has No Fiduciary Duty to Holders of Senior Debt. With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants and objectives as are specifically set forth in this Indenture, and no implied covenants or obligations with respect to the holders of Senior Debt shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Debt, and shall not be liable to any such holders if it shall mistakenly pay over or deliver to the Holders or the Company or any other Person, money or assets to which any holders of Senior Debt of the Company shall be entitled by virtue of this Article or otherwise.

Section 10.12 Paying Agents Other than the Trustee. In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context shall otherwise require) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; provided, however, that Sections 10.6, 10.7 and 10.11 shall not apply to the Company if it acts as Paying Agent.

ARTICLE 11
MEETINGS OF HOLDERS; ACTION WITHOUT MEETING

Section 11.1 Purposes For Which Meetings May Be Called. A meeting of Holders of Securities of one or more, or all, Series may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities of such Series.

Section 11.2 Call, Notice and Place of Meeting.

(a) The Trustee may at any time call a meeting of Holders of Securities of one or more, or all, Series thereof, for any purpose specified in Section 11.1, to be held at such time and (except as provided in subsection (b) of this Section) at such place in the Borough of Manhattan, The City of New York, as the Trustee shall determine, or, with the approval of the Company, at any other place. Notice of every such meeting, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 12.2, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) The Trustee may be asked to call a meeting of the Holders of Securities of one or more, or all, Series, by the Company or by the Holders of 33% in aggregate principal amount of all of such Series, considered as one class, for any purpose specified in Section 11.1, by written request setting forth in reasonable detail the action proposed to be taken at the meeting. If the Trustee shall have been asked by the Company to call such a meeting, the Company shall determine the time and place for such meeting and may call such meeting by giving notice thereof in the manner provided in subsection (a) of this Section, or shall direct the Trustee, in the name and at the expense of the Company, to give such notice. If the Trustee shall have been asked to call such a meeting by Holders in accordance with this subsection (b), and the Trustee shall not have given the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Holders of Securities of such Series, in the principal amount above specified, may determine the time and the place in the Borough of Manhattan, The City of New York, or in such other place as shall be determined or approved by the Company for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a) of this Section.

(c) Any meeting of Holders of Securities of one or more, or all, Series shall be valid without notice if the Holders of all outstanding Securities of such Series are present in person or by proxy and if representatives of the Company and the Trustee are present, or if notice

is waived in writing before or after the meeting by the Holders of all outstanding Securities of such Series, or by such of them as are not present at the meeting in person or by proxy, and by the Company and the Trustee.

Section 11.3 Persons Entitled to Vote at Meetings. To be entitled to vote at any meeting of Holders of Securities of one or more, or all, Series, a Person shall be (a) a Holder of one or more outstanding Securities of such Series, or (b) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more outstanding Securities of such Series by such Holder or Holders. The only Persons who shall be entitled to attend any meeting of Holders of Securities of any Series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 11.4 Quorum; Action. The persons entitled to vote a majority in aggregate principal amount of the outstanding Securities of the Series with respect to which a meeting shall have been called as hereinbefore provided, considered as one class, shall constitute a quorum for a meeting of Holders of Securities of such Series; provided, however, that if any action is to be taken at such meeting which this Indenture expressly provides may be taken by the Holders of a specified percentage, which is less than a majority, in principal Holders of a specified percentage, which is less than a majority, in principal amount of the outstanding Securities of such Series, considered as one class, the Persons entitled to vote such specified percentage in principal amount of the outstanding Securities of such Series, considered as one class, shall constitute a quorum. In the absence of a quorum within one hour of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such Series, be dissolved. In any other case the meeting may be adjourned for such period as may be determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for such period as may be determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Except as provided by Section 11.5(e), notice of the reconvening of any meeting adjourned for more than 30 days shall be given as provided in section 12.2 not less than ten days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the outstanding Securities of such Series which shall constitute a quorum.

Except as limited by Section 11.2, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of a majority in aggregate principal amount of the outstanding Securities of the Series with respect to which such meeting shall have been called, considered as one class; provided, however, that, except as so limited, any resolution with respect to any action which this Indenture expressly provides may be taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the outstanding Securities of such Series, considered as one class, may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the outstanding Securities of such Series, considered as one class.

Any resolution passed or decision taken at any meeting of Holders of Securities duly held in accordance with this Section shall be binding on all the Holders of Securities of the Series with respect to which such meeting shall have been held, whether or not present or represented at the meeting.

Section 11.5 Attendance at Meetings; Determination of Voting Rights; Conduct and Adjournment of Meetings.

(a) Attendance at meetings of Holders of Securities may be in person or by proxy; and, to the extent permitted by law, any such proxy shall remain in effect and be binding upon any future Holder of the Securities with respect to which it was given unless and until specifically revoked by the Holder or future Holder of such Securities before being voted.

(b) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities in regard to proof of the holding of such Securities and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate.

(c) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 11.2(b), in which case the Company or the Holders of Securities of the Series calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in aggregate principal amount of the outstanding Securities of all Series represented at the meeting, considered as one class.

(d) At any meeting each Holder or proxy shall be entitled to one vote for each U.S. \$1,000 principal amount of outstanding Securities held or represented by such Holder; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have not right to vote, except as a Holder of a Security or proxy.

(e) Any meeting duly called pursuant to Section 11.2 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in aggregate principal amount of the outstanding Securities of all Series represented at the meeting, considered as one class; and the meeting may be held as so adjourned without further notice.

Section 11.6 Counting Votes and Recording Action of Meetings. The vote upon any resolution submitted to any meeting of Holders shall be by written ballots on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the principal amounts and serial numbers of the outstanding Securities of the Series with respect to which the meeting shall have been called, held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their

verified written reports of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to such record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that such notice was given as provided in Section 12.2. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE 12
MISCELLANEOUS

Section 12.1 Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies, or conflicts with another provision which is required or deemed to be included in this Indenture by the TIA, such required or deemed provision shall control.

Section 12.2 Notices. Any notice or communication by the Company or the Trustee to the other is duly given if in writing and delivered in person or mailed by first-class mail or overnight delivery:

if to the Company:

SunPower Corporation
3939 N. First Street
San Jose, California 95134
Attention: Chief Financial Officer

if to the Trustee:

Wells Fargo Bank, National Association
Corporate Trust Services
MAC N9303-120
608 2nd Avenue South
Minneapolis, MN 55479
Attention: SunPower Account Manager

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to a Securityholder shall be delivered to his address shown on the register kept by the Registrar. Failure to deliver a notice or communication to a Securityholder of any Series or any defect in it shall not affect its sufficiency with respect to other Securityholders of that or any other Series.

If a notice or communication is delivered in the manner provided above, within the time prescribed, it is duly given, whether or not the Securityholder receives it.

If the Company delivers a notice or communication to Securityholders, it shall deliver a copy to the Trustee and each Agent at the same time.

Section 12.3 Communication by Holders with Other Holders. Securityholders of any Series may communicate pursuant to TIA § 312(b) with other Securityholders of that Series or any other Series with respect to their rights under this Indenture or the Securities of that Series or all Series. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

Section 12.4 Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company to the Trustee to take or refrain from taking any action under this Indenture, the Company shall furnish to the Trustee:

(a) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 12.5 Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(a) a statement that the person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 12.6 Rules by Trustee and Agents. The Trustee may make reasonable rules for action by or a meeting of Securityholders of one or more Series. Any Agent may make reasonable rules and set reasonable requirements for its functions.

Section 12.7 Legal Holidays. Unless otherwise provided by Board Resolution, Officers' Certificate or supplemental indenture for a particular Series, a "Legal Holiday" is a Saturday, Sunday or a day on which banking institutions in the city (or in any of the cities, if more than one) in which amounts are payable, as specified in the form of such Security, are not required by any applicable law or regulation to be open, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

Section 12.8 No Recourse Against Others. A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Securityholder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

Section 12.9 Counterparts. This Indenture may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

Section 12.10 Governing Laws. THIS INDENTURE AND THE SECURITIES SHALL BE DEEMED TO BE A CONTRACT UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF SUCH STATE INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

Section 12.11 No Adverse Interpretation of Other Agreements. This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 12.12 Successors. All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

Section 12.13 Severability. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.14 Table of Contents, Headings, Etc. The Table of Contents, Cross Reference Table, and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 12.15 Securities in a Foreign Currency or in ECU. Unless otherwise specified in a Board Resolution, a supplemental indenture hereto or an Officers' Certificate delivered pursuant to Section 2.2 of this Indenture with respect to a particular Series of Securities, whenever for purposes of this Indenture any action may be taken by the Holders of a specified percentage in aggregate principal amount of Securities of all Series or all Series affected by a particular action at the time outstanding and, at such time, there are outstanding Securities of any Series which are denominated in a coin or currency other than Dollars (including ECUs), then the principal amount of Securities of such Series which shall be deemed to be outstanding for the purpose of taking such action shall be that amount of Dollars that could be obtained for such amount at the Market Exchange Rate at such time. For purposes of this Section 11.15, "Market

Exchange Rate” shall mean the noon Dollar buying rate in New York City for cable transfers of that currency as published by the Federal Reserve Bank of New York; provided, however, in the case of ECUs, Market Exchange Rate shall mean the rate of exchange determined by the Commission of the European Union (or any successor thereto) as published in the Official Journal of the European Union (such publication or any successor publication, the “Journal”). If such Market Exchange Rate is not available for any reason with respect to such currency, the Trustee shall use, in its sole discretion and without liability on its part, such quotation of the Federal Reserve Bank of New York or, in the case of ECUs, the rate of exchange as published in the Journal, as of the most recent available date, or quotations or, in the case of ECUs, rates of exchange from one or more major banks in The City of New York or in the country of issue of the currency in question or, in the case of ECUs, in Luxembourg or such other quotations or, in the case of ECUs, rates of exchange as the Trustee, upon consultation with the Company, shall deem appropriate. The provisions of this paragraph shall apply in determining the equivalent principal amount in respect of Securities of a Series denominated in currency other than Dollars in connection with any action taken by Holders of Securities pursuant to the terms of this Indenture.

All decisions and determinations of the Trustee regarding the Market Exchange Rate or any alternative determination provided for in the preceding paragraph shall be in its sole discretion and shall, in the absence of manifest error, be conclusive to the extent permitted by law for all purposes and irrevocably binding upon the Company and all Holders.

Section 12.16 Judgment Currency. The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of or interest or other amount on the Securities of any Series (the “Required Currency”) into a currency in which a judgment will be rendered (the “Judgment Currency”), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the day on which final unappealable judgment is entered, unless such day is not a New York Banking Day, then, the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the New York Banking Day preceding the day on which final unappealable judgment is entered and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, any recovery pursuant to any judgment (whether or not entered in accordance with subsection (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable, and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture. For purposes of the foregoing, “New York Banking Day” means any day except a Saturday, Sunday or a legal holiday in The City of New York on which banking institutions are authorized or required by law, regulation or executive order to close.

Section 12.17 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, election, waiver or other action provided by this Indenture to be made, given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing or, alternatively, may be embodied in and evidenced by the record of Holders voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders duly called and held in accordance with the provisions of Article 11, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "ACT" of the Holders signing such instrument or instruments and so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section. The record of any meeting of Holders shall be proved in the manner provided in Section 11.6.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof or may be provided in any other manner which the Trustee and the Company deem sufficient. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority.

(c) The ownership, principal amount and serial numbers of Securities held by any Person, and the date of holding the same, shall be proved by the Register.

(d) Any request, demand, authorization, direction, notice, consent, election, waiver or other Act of a Holder shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) Until such time as written instruments shall have been delivered to the Trustee with respect to the requisite percentage of principal amount of Securities for the action contemplated by such instruments, any such instrument executed and delivered by or on behalf of a Holder may be revoked with respect to any or all of such Securities by written notice by such Holder or any subsequent Holder, proven in the manner in which such instrument was proven.

(f) Securities of any Series, authenticated and delivered after any Act of Holders may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any action taken by such Act of Holders. If the Company shall so determine, new

Securities of any Series, so modified as to conform, in the opinion of the Trustee and the Company, to such action may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Securities of such Series.

(g) The Company may, at its option, by Company Order, fix in advance a record date for the determination of Holders entitled to given any request, demand, authorization, direction, notice, consent, waiver or other Act solicited by the Company, but the Company shall have no obligation to do so; provided, however, that the Company may not fix a record date for the giving or making of any notice, declaration, request or direction referred to in the next sentence. In addition, the Trustee may, at its option, fix in advance a record date for the determination of Holders of Securities of any Series entitled to join in the giving or making of any Notice of Default, any declaration of acceleration, any request to institute proceedings or any direction, in each case with respect to Securities of such Series. If any such record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act, or such notice, declaration, request or direction, may be given before or after such record date, but only the Holders of record at the close of business on the record date shall be deemed to be Holders for the purposes of determining (i) whether Holders of the requisite proportion of the outstanding Securities have authorized or agreed or consented to such Action (and for that purpose the outstanding Securities shall be computed as of the record date) and/or (ii) which Holders may revoke any such Act (notwithstanding subsection (e) of this Section); and any such Act, given as aforesaid, shall be effective whether or not the Holders which authorized or agreed or consented to such Act remain Holders after such record date and whether or not the Securities held by such Holders remain outstanding after such record date.

ARTICLE 13 **SINKING FUNDS**

Section 13.1 Applicability of Article. The provisions of this Article shall be applicable to any sinking fund for the retirement of the Securities of a Series, except as otherwise permitted or required by any form of Security of such Series issued pursuant to this Indenture.

The minimum amount of any sinking fund payment provided for by the terms of the Securities of any Series is herein referred to as a “mandatory sinking fund payment” and any other amount provided for by the terms of Securities of such Series is herein referred to as an “optional sinking fund payment.” If provided for by the terms of Securities of any Series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 13.2. Each sinking fund payment shall be applied to the redemption of Securities of any Series as provided for by the terms of the Securities of such Series.

Section 13.2 Satisfaction of Sinking Fund Payments with Securities. The Company may, in satisfaction of all or any part of any sinking fund payment with respect to the Securities of any Series to be made pursuant to the terms of such Securities (a) deliver outstanding Securities of such Series to which such sinking fund payment is applicable (other than any of such Securities previously called for mandatory sinking fund redemption) and (b) apply as credit Securities of such Series to which such sinking fund payment is applicable and which have been redeemed either at the election of the Company pursuant to the terms of such Series of Securities (except pursuant to any mandatory sinking fund) or through the application of permitted optional

sinking fund payments or other optional redemptions pursuant to the terms of such Securities, provided that such Securities have not been previously so credited. Such Securities shall be received by the Trustee, together with an Officers' Certificate with respect thereto, not later than 15 days prior to the date on which the Trustee begins the process of selecting Securities for redemption, and shall be credited for such purpose by the Trustee at the price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. If as a result of the delivery or credit of Securities in lieu of cash payments pursuant to this Section 13.2, the principal amount of Securities of such Series to be redeemed in order to exhaust the aforesaid cash payment shall be less than \$100,000, the Trustee need not call Securities of such Series for redemption, except upon receipt of a Company Order that such action be taken, and such cash payment shall be held by the Trustee or a Paying Agent and applied to the next succeeding sinking fund payment, provided, however, that the Trustee or such Paying Agent shall from time to time upon receipt of a Company Order pay over and deliver to the Company any cash payment so being held by the Trustee or such Paying Agent upon delivery by the Company to the Trustee of Securities of that Series purchased by the Company having an unpaid principal amount equal to the cash payment required to be released to the Company.

Section 13.3 Redemption of Securities for Sinking Fund. Not less than 45 days (unless otherwise indicated in the Board Resolution, supplemental indenture hereto or Officers' Certificate in respect of a particular Series of Securities) prior to each sinking fund payment date for any Series of Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that Series pursuant to the terms of that Series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting of Securities of that Series pursuant to Section 13.2, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and the Company shall thereupon be obligated to pay the amount therein specified. Not less than 30 days (unless otherwise indicated in the Board Resolution, Officers' Certificate or supplemental indenture in respect of a particular Series of Securities) before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 3.2 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.3. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 3.4, 3.5 and 3.6.

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

SUNPOWER CORPORATION

By: /Emmanuel E. Hernandez/
Name: Emmanuel E. Hernandez
Its: Chief Financial Officer

WELLS FARGO, NATIONAL ASSOCIATION
as Trustee

By: /S/ Lynn Steiner _____
Name: Lynn Steiner
Its: Vice President

FIRST SUPPLEMENTAL INDENTURE

Dated as of February 7, 2007

between

SunPower Corporation

and

Wells Fargo Bank, National Association,

as

Trustee

1.25% SENIOR CONVERTIBLE DEBENTURES DUE 2027

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Exhibit A – Form of Note

THIS FIRST SUPPLEMENTAL INDENTURE (this “**First Supplemental Indenture**”), dated as of February 7, 2007, is between SunPower Corporation, a corporation duly organized under the laws of the State of Delaware (the “**Company**”), and Wells Fargo Bank, National Association, as Trustee (the “**Trustee**”).

RECITALS

WHEREAS, the Company and the Trustee have duly executed and delivered an Indenture, dated as of February 7, 2007 (the “**Base Indenture**” and together with this First Supplemental Indenture, the “**Indenture**”), to provide for the issuance by the Company from time to time of debentures, notes or other debt instruments to be issued in one or more series by the Company;

WHEREAS, the issuance and sale of up to \$200,000,000 aggregate principal amount of the Company’s 1.25% Senior Convertible Debentures due 2027 has been authorized by resolutions adopted by the Board of Directors;

WHEREAS, Section 9.1(e) of the Base Indenture expressly permits the Company and the Trustee to enter into one or more supplemental indentures for the purposes of establishing the forms and terms of any Securities to be issued under the Indenture without the consent of the Holders of any Securities then outstanding;

WHEREAS, the Company desires to supplement the provisions of the Base Indenture to provide for the issuance of the Debentures under the terms of the Base Indenture as supplemented hereby; and

WHEREAS, for the purposes hereinabove recited, and pursuant to due corporate action, the Company has duly determined to execute and deliver to the Trustee this First Supplemental Indenture;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Trustee covenant and agree as follows:

Article 1

Definitions and Incorporation by Reference

Section 1.01 Definitions.

All terms contained in this First Supplemental Indenture shall, except as specifically provided for herein or except as the context may otherwise require, have the meanings given to such terms in the Base Indenture. In the event of any inconsistency between the Base Indenture and the First Supplemental Indenture, this First Supplemental Indenture shall govern.

Unless the context otherwise requires, the following terms shall have the following meanings:

“Additional Debentures” has the meaning specified in Section 2.06.

“Additional Shares” has the meaning specified in Section 8.04(b).

“Applicable Consideration” has the meaning specified in Section 8.06.

“Applicable Procedures” means, with respect to any conversion, transfer or exchange of beneficial ownership interests in a Global Debenture, the rules and procedures of the Depository, to the extent applicable to such transfer or exchange.

“Board of Directors” means the Board of Directors of the Company or, other than in the case of the definitions of “Continuing Directors” and “Fundamental Change,” any committee thereof duly authorized to act on behalf of such Board.

“Class A Common Stock” means the class A common stock of the Company, par value \$0.001 per share, as it exists on the date of this First Supplemental Indenture and any shares of any class or classes of Capital Stock of the Company resulting from any reclassification or reclassifications thereof, or, in the event of a merger, consolidation or other similar transaction involving the Company that is otherwise permitted hereunder in which the Company is not the surviving corporation, the common stock, ordinary shares or depositary shares or other common equity interests of such surviving corporation or its direct or indirect parent corporation, which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company, which are not subject to redemption by the Company; *provided, however*, that if at any time there shall be more than one such resulting class distributed to holders of the Class A Common Stock, the shares of each such class then so issuable on conversion of Debentures shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“Class B Common Stock” means the class B common stock of the Company, par value \$0.001 per share, as it exists on the date of the First Supplemental Indenture.

“Closing Sale Price” of any share of Class A Common Stock or any other security on any Trading Day means the closing sale price of such security (or, if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported in composite transactions for the principal U.S. securities exchange (or if not so listed, on the principal regional securities exchange) on which the shares of Class A Common Stock are traded or, if the shares of Class A Common Stock are not listed on a U.S. national or regional securities exchange, as reported by Pink Sheets LLC. In the absence of such a quotation, the Closing Sale Price shall be determined by a nationally recognized securities dealer retained by the Company to make such determination. The Closing Sale Price shall be determined without reference to extended or after hours trading.

“Closing Date” means the date of this First Supplemental Indenture.

“Code” means the Internal Revenue Code of 1986, as amended.

“Continuing Directors” means, as of any date of determination, any member of the Board of Directors who (i) was a member of the Board of Directors on the date of this First Supplemental Indenture; or (ii) was nominated for election or elected to the Board of Directors with the approval of a majority of the Continuing Directors who were members of the Board of Directors at the time of such new director’s nomination or election.

“Conversion Date” has the meaning specified in Section 8.02.

“Conversion Notice” has the meaning specified in Section 8.02.

“Conversion Price” on any date of determination means \$1,000 divided by the Conversion Rate as of such date.

“Conversion Period” means the 20 consecutive Trading Day period: (1) if the Company has called the Debentures delivered for conversion for redemption, beginning on the 23rd scheduled Trading Day immediately preceding the Redemption Date; (2) with respect to Conversion Notices received during the period beginning 25 Trading Days preceding the Maturity Date and ending one Trading Day preceding the Maturity Date, beginning on the 23rd scheduled Trading Day immediately preceding the Maturity Date; (3) with respect to conversions in connection with a Fundamental Change, beginning on the 23rd scheduled Trading Day immediately preceding the Repurchase Date relating to such Fundamental Change; and (4) in all other cases, beginning on the third Trading Day following the Company’s receipt of a Holder’s Conversion Notice delivered in accordance with Section 8.02.

“Conversion Rate” means the number of shares of Class A Common Stock into which each \$1,000 principal amount of Debentures is convertible, which is initially 17.6211 shares, subject to adjustments as set forth herein.

“Conversion Settlement Amount” means the sum of the Daily Settlement Amounts for each of the 20 Trading Days during the Conversion Period.

“Conversion Value” means the sum of the Daily Conversion Value for 20 consecutive Trading Days during the Conversion Period.

“Corporate Trust Office” or other similar term, means the designated office of the Trustee at any particular time its corporate trust business as it relates to the Indenture shall be administered, which office is, at the date as of which this First Supplemental Indenture is dated, located at Wells Fargo Bank, National Association, Corporate Trust Services, MAC N9303-120, 608 Second Avenue South Minneapolis, MN 55479, Attention: SunPower Account Manager or at any other time at such other address as the Trustee may designate from time to time by notice to the Company.

“Current Market Price” has the meaning specified in Section 8.05(g)(1).

“Daily Conversion Value” has the meaning specified in Section 8.12.

“Daily Settlement Amount” has the meaning specified in Section 8.12.

“Debentureholder” or “Holder” means the Person in whose name a Debenture is registered on the Registrar’s books.

“Debentures” means any debentures issued, authenticated and delivered under the Indenture, including any Global Debentures.

“Determination Date” has the meaning specified in Section 8.05(l).

“Distribution Notice” has the meaning specified in Section 8.01(c).

“Fair Market Value” has the meaning specified in Section 8.05(g)(2).

“Fiscal Quarter” means, with respect to the Company, each fiscal quarter publicly disclosed by the Company. The Company shall confirm the ending dates of its fiscal quarters for the current fiscal year to the Trustee upon the Trustee’s request.

“Fundamental Change” means the occurrence of any of the following after the original issuance of the Debentures:

(a) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any “person” other than Parent or its successors or a controlling Person or Persons of Parent, directly or indirectly, including through one or more wholly-owned subsidiaries, becomes the “beneficial owner” (as these terms are defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), of more than 75% of the voting power of the Company’s Capital Stock that is at the time entitled to vote by the holder thereof in the election of the Board of Directors (or comparable body);

(b) the first day on which a majority of the members of the Board of Directors are not Continuing Directors;

(c) the adoption of a plan relating to the liquidation or dissolution of the Company;

(d) the consolidation or merger of the Company with or into any other “person” (as this term is used in Section 13(d)(3) of the Exchange Act), or the sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the Company’s assets and those of its subsidiaries taken as a whole to any “person” (as this term is used in Section 13(d)(3) of the Exchange Act), other than:

(i) any transaction:

(A) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of the Class A Common Stock; and

(B) pursuant to which the holders of 50% or more of the total voting power of all shares of the Company's Capital Stock entitled to vote generally in elections of directors of the Company immediately prior to such transaction have the right to exercise, directly or indirectly, 50% or more of the total voting power of all shares of the Company's Capital Stock entitled to vote generally in elections of directors of the continuing or surviving Person immediately after giving effect to such transaction; or

(ii) any merger primarily for the purpose of changing the Company's jurisdiction of incorporation and resulting in a reclassification, conversion or exchange of outstanding shares of Class A Common Stock solely into shares of common stock of the surviving entity;

(e) the termination of trading of the Class A Common Stock, which will be deemed to have occurred if the Class A Common Stock or other common stock or common equity interests into which the Debentures are then convertible, are neither listed for trading on a United States national securities exchange nor approved for listing on any United States system of automated dissemination of quotations of securities prices, and no American Depositary Shares certificates or similar instruments for such common stock or common equity interests are so listed or approved for listing in the United States; or

(f) Parent repurchases or otherwise directly or indirectly acquires more than 50% of the outstanding Class A Common Stock, excluding from this calculation all shares of Class A Common Stock acquired by Parent through conversion of Parent's Class B Common Stock into Class A Common Stock pursuant to the terms of the Class B Common Stock.

However, a Fundamental Change will be deemed not to have occurred if more than 90% of the consideration in the transaction or transactions (other than cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights) which otherwise would constitute a Fundamental Change under clauses (a), (d) or (f) above consists of shares of common stock, depositary receipts or other common equity interests traded or to be traded immediately following such transaction on a national securities exchange and, as a result of the transaction or transactions, the Debentures become convertible into such common stock, depositary receipts or other common equity interests (and any rights attached thereto) and other applicable consideration.

"Fundamental Change Repurchase Date" has the meaning specified in Section 3.04(a).

"Global Debentures" has the meaning specified in Section 2.02.

"Indenture" means, collectively, the Base Indenture and the First Supplemental Indenture as the same may be amended or supplemented from time to time pursuant to the terms of the First Supplemental Indenture and the Base Indenture, including the provisions of the TIA that are automatically deemed to be a part of this Indenture by operation of the TIA.

"Interest Payment Date" means February 15 and August 15 of each year, commencing August 15, 2007.

"Issue Date" of any Debenture means the date on which the Debenture was originally issued or deemed issued as set forth on the face of the Debenture.

“Market Disruption Event” means the occurrence or existence during the one-half hour period ending on the scheduled close of trading on any Trading Day for the Class A Common Stock of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by applicable U.S. national securities exchange on which the Class A Common Stock is traded or otherwise) in the Class A Common Stock or in any options, contracts or futures contracts relating to the Class A Common Stock.

“Maturity Date” means February 15, 2027.

“Non-Stock Change of Control” means a transaction described under clause (a), (d) or clause (f) in the definition of Fundamental Change pursuant to which 10% or more of the consideration for Class A Common Stock (other than cash payments for fractional shares, if applicable, and cash payments made in respect of dissenters’ appraisal rights) in such transaction consists of cash or securities (or other property) that are not shares of common stock, depositary receipts or other common equity interests traded or scheduled to be traded immediately following such transaction on a U.S. national securities exchange.

“Parent” means Cypress Semiconductor Corporation, or its successors.

“Prospectus Supplement” means the prospectus supplement, dated February 2, 2007, relating to the Debentures, as filed by the Company with the SEC pursuant to Rule 424(b) of the Securities Act.

“Purchased Shares” has the meaning specified in Section 8.05(f).

“Record Date” means, with respect to each Interest Payment Date, the February 1 or August 1, as the case may be, next preceding such Interest Payment Date. The “record date,” with respect to the Conversion Rate adjustment as provided in Section 8.05, has the meaning specified in Section 8.05(g).

“Reference Period” has the meaning specified in Section 8.05(d).

“Register” has the meaning specified in Section 2.05.

“Registrar” has the meaning specified in Section 2.05.

“Repurchase Date” has the meaning specified in Section 3.05(a).

“Repurchase Notice” has the meaning specified in Section 3.04(c).

“Spin-off” has the meaning specified in Section 8.05(d).

“Spin-off Valuation Period” has the meaning specified in Section 8.05(d).

“Stock Price” has the meaning specified in Section 8.04(b).

“Trading Day” means a day during which (i) trading in the Class A Common Stock generally occurs, (ii) there is no Market Disruption Event and (iii) a Closing Sale Price for the Class A Common Stock is provided on the principal U.S. national or regional securities exchange on which the Class A Common Stock is then listed or, if the Class A Common Stock is not listed on a U.S. national or regional securities exchange, on the principal other market on which the Class A Common Stock is then traded.

“Trading Price” means, with respect to a Debenture on any date of determination, the average of the secondary market bid quotations per \$1,000 principal amount of Debentures obtained by the Trustee for \$2,000,000 principal amount of Debentures at approximately 3:30 p.m., New York City time, on such determination date from two independent nationally recognized securities dealers selected by the Company, which may include one or more of the Underwriters; provided that if two such bids cannot reasonably be obtained by the Trustee, but one such bid can be reasonably obtained by the Trustee, then this one bid shall be used; and provided further that, if the Trustee cannot reasonably obtain at least one bid for \$2,000,000 principal amount of Debentures from a

nationally recognized securities dealer, then, for the purpose of determining the convertibility of the Debentures only, the Trading Price per \$1,000 principal amount of Debentures shall be deemed to be less than 98% of the product of (a) the Conversion Rate on such determination date and (b) the Closing Sale Price of a share of Class A Common Stock on such determination date.

“Trigger Event” has the meaning specified in Section 8.05(d).

“Underwriters” means the Lehman Brothers Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Cowen and Company, LLC, First Albany Capital Inc. and ThinkEquity Partners LLC.

Section 1.02 Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
“Agent Members”	2.06(g)
“Bankruptcy Law”	7.01
“Base Indenture”	Recitals
“Conversion Agent”	2.08
“Custodian”	6.01(a)
“First Supplemental Indenture”	Preamble
“Indenture”	Recitals
“Trustee”	Preamble

Article 2
The Series of Debentures

Section 2.01 Designation and Amount of Debentures. There is hereby authorized a series of senior convertible debentures designated as “1.25% Senior Convertible Debentures due 2027”. The Debentures will initially not exceed the aggregate principal amount of \$200,000,000 (except pursuant to Section 2.06 hereof or the Base Indenture).

Section 2.02 Form of the Debentures. The Debentures and the Trustee’s certificate of authentication to be borne by such Debentures shall be substantially in the form set forth in Exhibit A. The terms and provisions contained in the form of Debentures attached as Exhibit A hereto shall constitute, and are hereby expressly made, a part of this First Supplemental Indenture and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this First Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any of the Debentures may have such letters, numbers or other marks of identification and such notations, legends, endorsements or changes as the Officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this First Supplemental Indenture or the Base Indenture, or as may be required by the Trustee, the Depositary, 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 securities exchange or automated quotation system on which the Debentures may be listed, or to conform to usage, or to indicate any special limitations or restrictions to which any particular Debentures are subject.

Subject to Section 2.05 hereof, so long as the Debentures are eligible for book-entry settlement with the Depositary, or unless otherwise required by law, or otherwise contemplated by the Base Indenture, all of the Debentures will be represented by one or more Global Debentures. The transfer and exchange of beneficial interests in any such Global Debenture shall be effected through the Depositary in accordance with this First Supplemental Indenture and the Applicable Procedures.

Each Global Debenture shall represent such aggregate principal amount of outstanding Debentures as shall be specified therein and each shall provide that it shall represent the aggregate principal amount of outstanding Debentures from time to time endorsed thereon and that the aggregate principal amount of outstanding Debentures represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, redemptions, purchases or conversions of such Debentures.

Section 2.03 Maturity Date; Interest. The Debentures shall be issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. Each Debenture shall be dated the date of its authentication and shall bear interest from the date specified on the face of the form of Debentures attached as Exhibit A hereto. Interest on the Debentures shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

On the Maturity Date, each Holder shall be entitled to receive on such date \$1,000 in cash for each \$1,000 principal amount per Debentures, together with accrued and unpaid interest to, but not including, the Maturity Date. With respect to Global Debentures, principal and interest shall be paid to the Depository in immediately available funds. With respect to any certificated Debentures, principal and interest will be payable at the Company's office or agency maintained for such purpose, which initially shall be the Corporate Trust Office of the Trustee.

The Person in whose name any Debenture is registered on the Register at 5:00 p.m., New York City time, on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. Notwithstanding the foregoing: (a) any Debentures or portion thereof surrendered for conversion during the period from 5:00 p.m., New York City time, on the Record Date for any Interest Payment Date to 5:00 p.m., New York City time, on the Business Day preceding the applicable Interest Payment Date shall be accompanied by payment, in immediately available funds or other funds acceptable to the Company, of an amount equal to the interest otherwise payable on such Interest Payment Date on the principal amount being converted; *provided*, that no such payment need be made (1) if a Holder converts its Debentures in connection with a redemption and the Company has specified a redemption date that is after a Record Date and on or prior to the corresponding Interest Payment Date, (2) if a Holder converts its Debentures in connection with a Fundamental Change and the Company has specified a Fundamental Change Repurchase Date that is after a Record Date and on or prior to the corresponding Interest Payment Date or (3) to the extent of any overdue interest, if any, that exists at the time of conversion with respect to such Debentures and (b) the Company shall pay accrued interest to a Person other than the Holder on the Record Date on the Maturity Date, at which date the Company shall pay accrued and unpaid interest to the Person whom the principal amount is paid.

The Company shall pay interest (i) on any Global Debentures by wire transfer of immediately available funds to the account of the Depository or its nominee, (ii) on any Debentures in certificated form having a principal amount of less than \$2,000,000, by check mailed to the address of the Person entitled thereto as it appears in the Register, *provided, however*, that at maturity interest will be payable at the office of the Company maintained by the Company for such purposes, which shall initially be the Corporate Trust Office of the Trustee and (iii) on any Debentures in certificated form having a principal amount of \$2,000,000 or more, by wire transfer in immediately available funds at the election of the Holder of such Debentures duly delivered to the trustee at least five Business Days prior to the relevant Interest Payment Date or by check if no such election is made, *provided, however*, that on the Maturity Date, interest will be payable at the office of the Company maintained by the Company for such purposes, which shall initially be the Corporate Trust Office of the Trustee. If a payment date is not a Business Day, payment shall be made on the next succeeding Business Day, and no additional interest shall accrue thereon.

Any interest on any Debentures which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date shall be subject to Section 2.07.

Section 2.04 Exchange and Registration on Transfer. In addition to Section 2.7 of the Base Indenture, (a) all Debentures presented or surrendered for repurchase or conversion shall (if so required by the Company or the Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company, and the Debentures shall be duly executed by the Holder thereof or his attorney duly authorized in writing and (b) neither the Company nor the Trustee nor any Registrar shall be required to exchange, issue or register transfer of (1) any Debentures or portions thereof surrendered for conversion pursuant to Article 8 of this First Supplemental Indenture, which may not be withdrawn, (2) any Debentures or portions thereof tendered for repurchase (and not withdrawn) pursuant to Section 3.04 of this First Supplemental Indenture or (3) any Debentures or portions thereof tendered for repurchase (and not withdrawn) pursuant to Section 3.05 of this First Supplemental Indenture.

Section 2.05 Global Debentures.

(a) Each Global Debenture authenticated under this First Supplemental Indenture shall be registered in the name of the Depositary or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefore, and each such Global Debenture shall constitute a single Debenture for purposes of this First Supplemental Indenture.

(b) Notwithstanding any other provisions of this First Supplemental Indenture, the Base Indenture or the Debentures, no Global Debentures may be exchanged in whole or in part for Debentures registered, and no transfer of a Global Debenture in whole or in part may be registered, in the name of any Person other than the Depositary or a nominee thereof unless (A) the Depositary (x) has notified the Company that it is unwilling or unable to continue as Depositary for such Global Debenture or (y) has ceased to be a clearing agency registered under the Exchange Act, and a successor depositary has not been appointed by the Company within 90 calendar days, or (B) the Company, in its sole discretion, notifies the Trustee in writing that it no longer wishes to have all the Debentures represented by Global Debentures. Any Global Debentures exchanged pursuant to this Section 2.05(b) shall be so exchanged in whole and not in part.

(c) In addition, certificated Debentures will be issued in exchange for beneficial interests in a Global Debenture upon request by or on behalf of the Depositary in accordance with customary procedures following the request of a beneficial owner seeking to enforce its rights under the Debentures or this Indenture, including its rights following the occurrence of an Event of Default.

(d) Debentures issued in exchange for a Global Debenture or any portion thereof pursuant to clause (b) or (c) above shall be issued in definitive, fully registered form, without interest coupons, shall have a principal amount equal to that of such Global Debenture or portion thereof to be so exchanged, and shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear the legend set forth in Exhibit A hereto. Any Global Debenture to be exchanged in whole shall be surrendered by the Depositary to the Trustee or the Registrar. With regard to any Global Debenture to be exchanged in part, either such Global Debenture shall be so surrendered for exchange or, if the Trustee is acting as custodian for the Depositary or its nominee with respect to such Global Debenture, the principal amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and deliver the Debenture issuable on such exchange to or upon the order of the Depositary or an authorized representative thereof.

(e) Subject to the provisions of Section 2.05(g) below, the registered Holder may grant proxies and otherwise authorize any Person, including Agent Members (as defined below) and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this First Supplemental Indenture or the Debentures.

(f) In the event of the occurrence of any of the events specified in Section 2.05(b) above or upon any request described in Section 2.05(c) above, the Company will promptly make available to the Trustee a reasonable supply of certificated Debentures in definitive, fully registered form, without interest coupons.

(g) Neither any members of, or participants in, the Depositary (collectively, the “**Agent Members**”) nor any other Persons on whose behalf Agent Members may act shall have any rights under this First Supplemental Indenture or the Base Indenture with respect to any Global Debenture registered in the name of the Depositary or any nominee thereof, or under any such Global Debenture, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and Holder of such Global Debenture for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company or the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a Holder of any Debenture.

(h) At such time as all interests in a Global Debenture have been redeemed, repurchased, converted, cancelled or exchanged for Debentures in certificated form, such Global Debenture shall, upon receipt thereof, be cancelled by the Trustee in accordance with standing procedures and instructions existing between the Depositary and the custodian for the Global Debenture, subject to Section 2.12 of the Base Indenture. At any time prior to such cancellation, if any interest in a Global Debenture is redeemed, repurchased, converted, canceled or exchanged for Debentures in certificated form, the principal amount of such Global Debenture shall, in accordance with the standing procedures and instructions existing between the Depositary and the custodian for the Global Debenture, be appropriately reduced, and an endorsement shall be made on such Global Debenture, by the Trustee or the custodian for the Global Debenture, at the direction of the Trustee, to reflect such reduction.

Section 2.06 Additional Debentures. The Company may, from time to time, subject to compliance with any other applicable provisions of this Indenture, without the consent of the Holders, create and issue pursuant to this Indenture additional Debentures (“**Additional Debentures**”), which shall be treated as a single class with the Debentures issued on the Closing Date for all purposes under this Indenture and which shall have terms and conditions set forth in Exhibit A identical to those of the other outstanding Debentures, except that Additional Debentures:

(i) may have a different issue price than other outstanding Debentures;

(ii) may have a different Issue Date from other outstanding Debentures; and

(iii) may have a different amount of interest payable on the first Interest Payment Date after issuance than is payable on other outstanding Debentures;

provided, that no Additional Debentures may be issued if such Additional Debentures would constitute, as determined pursuant to an Opinion of Counsel, a different class of securities than the Debentures issued on the Issue Date for U.S. federal income tax purposes and provided further, that the Additional Debentures have the same CUSIP number as other outstanding Debentures. No Additional Debentures may be issued if any Event of Default has occurred and is continuing.

Section 2.07 Defaulted Interest. Notwithstanding Section 2.13 of the Base Indenture, if the Company defaults in a payment of interest on the Debentures, the Company shall pay the defaulted interest (plus interest on such defaulted interest at the rate of 1% per annum above the then applicable interest rate from the required payment date to the extent lawful) in any lawful manner. The Company may pay the defaulted interest to the Persons who are Debentureholders on a subsequent special record date. The Company shall fix or cause to be fixed any such special record date and payment date to the reasonable satisfaction of the Trustee and shall promptly deliver or cause to be delivered to each Debentureholder a notice that states the special record date, the payment date and the amount of defaulted interest to be paid.

(a) Registrar, Paying Agent, Conversion Agent and Trustee. In addition to Section 2.4 of the Base Indenture, the Company shall maintain an office or agency where Debentures may be presented for conversion (the “**Conversion Agent**”). The Company hereby initially designates the Trustee as the Conversion Agent. The Company further designates the Corporate Trust Office of the Trustee as its office where Debentures may be surrendered for conversion.

The Company may at any time and from time to time vary or terminate the appointment of any such office or appoint any additional offices for any or all purposes; *provided, however*, that until all of the Debentures have been delivered to the Trustee for cancellation, or moneys sufficient to pay the principal of and premium, if any, and interest on the Debentures have been made available for payment and either paid or returned to the Company pursuant to the provisions of Section 9.02 hereof, the Company shall maintain an office or agency where Debentures may be surrendered for conversion. The Company shall give prompt written notice to the Trustee, and notice to the Holders, of the appointment or termination of any such agents and of the location and any change in the location of any such office or agency.

The Company may also from time to time designate on or more Conversion Agents and from time to time rescind such designations. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the name or address of such Conversion Agent.

The rights, privileges, protections, immunities and benefits given to the Trustee under the Base Indenture and this First Supplemental Indenture including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each Conversion Agent or other Agent acting hereunder.

Article 3
Redemption and Repurchase of Debentures

Notwithstanding Article 3 of the Base Indenture, the following Article 3 (and not Article 3 of the Base Indenture) shall apply for purposes of this First Supplemental Indenture and the Debentures.

Section 3.01 Optional Redemption of Debentures. At any time on or after February 15, 2012, the Debentures may be redeemed at the option of the Company, in whole or in part, upon notice as set forth in Section 3.02, in cash at the redemption price equal to 100% of the principal amount thereof. In addition, the Company will pay interest on the Debentures being redeemed, which interest will include such interest accrued and unpaid to, but excluding, the redemption date; *provided*, that if the redemption date is after a Record Date and on or prior to the corresponding Interest Payment Date, the interest will be paid on the redemption date to the Holder of record on the Record Date. The Company may not redeem any Debentures if a Default in the payment of interest on the Debentures has occurred and is continuing.

Section 3.02 Notice of Optional Redemption; Selection of Debentures to Be Redeemed. In case the Company shall desire to exercise the right to redeem all or, as the case may be, any part of the Debentures pursuant to Section 3.01, it shall fix a date for redemption and it or, at its written request received by the Trustee not fewer than five Business Days (or such shorter period of time as may be acceptable to the Trustee) prior to the date the notice of redemption is to be delivered, the Trustee in the name of and at the expense of the Company, shall deliver or cause to be delivered a notice of such redemption not fewer than 30 calendar days nor more than 60 calendar days prior to the redemption date to each Holder of Debentures so to be redeemed in whole or in part at its last address as the same appears on the Register; *provided*, that if the Company makes such request of the Trustee, it shall, together with such request, also give written notice of the redemption date to the Trustee, provided that the text of the notice shall be prepared by the Company. Such delivery shall be by electronic transmission or by first class mail. The notice, if delivered in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such notice or any defect in the notice to the Holder of any Debentures designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Debentures. Concurrently with the delivery of any such notice of redemption, the Company shall issue a press release announcing such redemption, the form and content of which press release shall be determined by the Company in its sole discretion. The failure to issue any such press release or any defect therein shall not affect the validity of the redemption notice or any of the proceedings for the redemption of any Debentures called for redemption.

Each such notice of redemption shall specify: (i) the aggregate principal amount of Debentures to be redeemed, (ii) the CUSIP number or numbers of the Debentures being redeemed, (iii) the date fixed for redemption (which shall be a Business Day), (iv) the redemption price at which Debentures are to be redeemed, (v) the place or places of payment and that payment will be made upon presentation and surrender of such Debentures, (vi) that interest accrued and unpaid to, but excluding, the date fixed for redemption will be paid as specified in said notice, and that on and after said date interest thereon or on the portion thereof to be redeemed will cease to accrue, (vii) that the Holder has a right to convert the Debentures called for redemption, (viii) the Conversion Rate on the date of such notice, (ix) the time and date on which the right to convert such Debentures or portions thereof will expire and (x) that the Company will pay cash for fractional interests in shares of Class A Common Stock issuable upon conversion, if any, as provided in this First Supplemental Indenture. If fewer than all the Debentures are to be redeemed, the notice of redemption shall identify the Debentures to be redeemed (including CUSIP numbers, if any). In case any Debentures are to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that, on and after the redemption date, upon surrender of such Debentures, a new Debenture or Debentures in principal amount equal to the unredeemed portion thereof will be issued.

Whenever any Debentures are to be redeemed, the Company will give the Trustee written notice of the redemption date, together with an Officers' Certificate as to the aggregate principal amount of Debentures to be redeemed not fewer than 35 calendar days (or such shorter period of time as may be acceptable to the Trustee) prior to the redemption date.

On or prior to the redemption date specified in the notice of redemption given as provided in this Section 3.02, the Company will deposit with the Paying Agent (or, if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 2.5 of the Base Indenture) an amount of money in immediately available funds sufficient to redeem on the redemption date all the Debentures (or portions thereof) so called for redemption (other than those theretofore surrendered for conversion into cash and, if applicable, Class A Common Stock) at the appropriate redemption price, together with accrued and unpaid interest to, but excluding, the redemption date; provided that if such payment is made on the redemption date, it must be received by the Paying Agent, by 10:00 a.m., New York City time, on such date. If any Debentures called for redemption are converted pursuant hereto prior to such redemption date, any money deposited with the Paying Agent or so segregated and held in trust for the redemption of such Debentures shall be paid to the Company or, if then held by the Company, shall be discharged from such trust.

If less than all of the outstanding Debentures are to be redeemed, the Trustee shall select the Debentures or portions thereof of the Global Debentures or the Debentures in certificated form to be redeemed (in principal amounts of \$1,000 or multiples thereof) by lot, on a pro rata basis or by another method the Trustee deems fair and appropriate. If any Debentures selected for redemption are submitted for conversion in part after such selection, the portion of such Debentures submitted for conversion shall be deemed (so far as may be possible) to be the portion to be selected for redemption. The Debentures (or portions thereof) so selected for redemption shall be deemed duly selected for redemption for all purposes hereof, notwithstanding that any such Debentures are submitted for conversion in part before the delivery of the notice of redemption.

Upon any redemption of less than all of the outstanding Debentures, the Company and the Trustee may (but need not), solely for purposes of determining the pro rata allocation among such Debentures that are unconverted and outstanding at the time of redemption, treat as outstanding any Debentures surrendered for conversion during the period of fifteen calendar days preceding the delivery of a notice of redemption and may (but need not) treat as outstanding any Debentures authenticated and delivered during such period in exchange for the unconverted portion of any Debentures converted in part during such period.

Section 3.03 Payment of Debentures Called for Redemption. If notice of redemption has been given as provided in Section 3.02, the Debentures or portion of Debentures with respect to which such notice has been given shall, unless converted pursuant to the terms hereof, become due and payable on the date fixed for redemption and at the place or places stated in such notice at the redemption price, plus interest accrued and unpaid to, but excluding, the redemption date (unless the redemption date is after a Record Date and on or prior to the corresponding Interest Payment Date, in which event the interest will be paid on the Interest Payment Date to the Holder of record on the Record Date), and, unless the Company shall default in the payment of such Debentures at the redemption price, plus interest, if any, accrued and unpaid to, but excluding, such date, interest on the Debentures or portion of Debentures so called for redemption, interest shall cease to accrue on and after such date and, after 5:00 p.m., New York City time, on the Business Day immediately preceding the redemption date (unless the Company shall default in the payment of such Debentures at the redemption price, together with interest accrued to such date) and such Debentures shall cease to be convertible and, except as provided in Section 2.5 of the Base Indenture and Section 9.02 hereof, to be entitled to any benefit or security under this Indenture, and the holders thereof shall have no right in respect of such Debentures except the right to receive the redemption price thereof plus accrued and unpaid interest to, but excluding, the redemption date. On presentation and surrender of such Debentures at a place of payment in said notice specified, the said Debentures or the specified portions thereof shall be paid and redeemed by the Company at the redemption price, together with interest accrued and unpaid thereon to, but excluding, the redemption date; provided that if the applicable redemption date is after the applicable Record Date and on or before an Interest Payment Date, the interest payable on such Interest Payment Date shall be paid on such Interest Payment Date to the holders of record of such Debentures on the applicable Record Date instead of the holders surrendering such Debentures for redemption on such date.

Upon presentation of any Debentures redeemed in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to the Holder thereof, at the expense of the Company, a new Debenture or Debentures, of authorized denominations, in principal amount equal to the unredeemed portion of the Debentures so presented.

Notwithstanding the foregoing, the Trustee shall not redeem any Debentures or deliver any notice of redemption during the continuance of a Default in payment of interest on the Debentures. If any Debentures called for redemption shall not be so paid upon surrender thereof for redemption on the redemption date as provided in this Section 3.03, to the extent legally permissible, the redemption price shall, until paid or duly provided for, bear interest from and including the redemption date at a rate equal to 1% per annum above the rate borne by the Debentures and such Debentures shall remain convertible into cash and, if applicable, Class A Common Stock until the redemption price and interest shall have been paid or duly provided for.

Section 3.04 Repurchase at Option of Holders Upon a Fundamental Change

(a) If there shall occur a Fundamental Change at any time prior to the Maturity Date of the Debentures, then each Holder shall have the right, at such Holder's option, to require the Company to repurchase all of such Holder's Debentures, or any portion thereof that is a multiple of \$1,000 principal amount, on a date (the "**Fundamental Change Repurchase Date**") specified by the Company, that is not less than 20 calendar days nor more than 35 calendar days after the date of the Company Repurchase Notice related to such Fundamental Change at a cash repurchase price equal to 100% of the principal amount of the Debentures being repurchased, plus accrued and unpaid interest to, but excluding, the Fundamental Change Repurchase Date, subject to the satisfaction by the Holder of the requirements set forth in Section 3.04(c); *provided*, that if such Fundamental Change Repurchase Date falls after a Record Date and on or prior to the corresponding Interest Payment Date, then the interest payable on such Interest Payment Date shall be paid on such Interest Payment Date to the holders of record of the Debentures on the applicable Record Date instead of the holders surrendering the Debentures for repurchase on such date.

(b) On or before the fifth calendar day after the occurrence of a Fundamental Change, the Company shall deliver or cause to be delivered to all holders of record of the Debentures on the date of the Fundamental Change at their addresses shown in the Register a Company Repurchase Notice as set forth in Section 3.06 with respect to such Fundamental Change. The Company shall also deliver a copy of the Company Repurchase Notice to the Trustee and the Paying Agent at such time as it is delivered to holders of Debentures. Concurrently with the delivery of such Company Repurchase Notice, the Company shall issue a press release announcing such Fundamental Change referred to in the Company Repurchase Notice, the form and content of which press release shall be determined by the Company in its sole discretion.

No failure of the Company to give the foregoing notices and press release and no defect therein shall limit the repurchase rights of holders of Debentures or affect the validity of the proceedings for the repurchase of the Debentures pursuant to this Section 3.04.

(c) For Debentures to be repurchased at the option of the Holder, the Holder must deliver to the Paying Agent, prior to 5:00 p.m., New York City time, on the Fundamental Change Repurchase Date, (i) a written notice of repurchase (the "**Repurchase Notice**") in the form set forth on the reverse of the Debentures duly completed (if the Debentures are certificated) or stating the following (if the Debentures are represented by a Global Debenture): (A) the certificate number of the Debentures which the Holder will deliver to be repurchased or compliance with the appropriate Depository procedures, (B) the portion of the principal amount of the Debentures which the Holder will deliver to be repurchased, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000 and (C) that such Debentures shall be repurchased by the Company pursuant to the terms and conditions specified in the Debentures and in this Indenture, together with (ii) such Debentures duly endorsed for transfer (if the Debentures are certificated) or book-entry transfer of such Debentures (if such Debentures are represented by a Global Debenture). The delivery of such Debentures to the Paying Agent with, or at any time after delivery of, the Repurchase Notice (together with all necessary endorsements) at the office of the Paying Agent shall be a condition to the receipt by the Holder of the repurchase price therefor; *provided, however*, that such repurchase price shall be so paid pursuant to this Section 3.04 only if the Debentures so delivered to the Paying Agent shall conform in all respects to the description thereof in the Repurchase Notice. All questions as to the validity, eligibility (including time of receipt) and acceptance of any Debentures for repurchase shall be determined by the Company, whose determination shall be final and binding absent manifest error.

(d) The Company shall repurchase from the Holder thereof, pursuant to this Section 3.04, a portion of a Debenture, if the principal amount of such portion is \$1,000 or a whole multiple of \$1,000. Provisions of this Indenture that apply to the repurchase of all of a Debenture also apply to the repurchase of such portion of such Debenture.

(e) The Paying Agent shall promptly notify the Company of the receipt by it of any Repurchase Notice or written notice of withdrawal thereof.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 3.04 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Fundamental Change Repurchase Date and the time of the book-entry transfer or delivery of the Debentures.

Section 3.05 Repurchase of Debentures by the Company at the Option of Holders.

(a) Each Holder shall have the right, at such Holder's option, to require the Company to repurchase all of such Holder's Debentures, or any portion thereof that is a multiple of \$1,000 principal amount, on February 15, 2012, February 15, 2017 and February 15, 2022 (each, a "**Repurchase Date**"), at a repurchase price of 100% of the principal amount of the Debentures being repurchased, plus accrued and unpaid interest to, but excluding, the Repurchase Date, provided that if such Repurchase Date falls after a Record Date and on or prior to the corresponding Interest Payment Date, then the interest payable on such Interest Payment Date shall be paid on such Interest Payment Date to the holders of record of the Debentures on the applicable Record Date instead of the holders surrendering the Debentures for repurchase on such date.

(b) On or before the twentieth Business Day prior to each Repurchase Date, the Company shall deliver or cause to be delivered to all holders of record on such date at their addresses shown in the Register a Company Repurchase Notice as set forth in Section 3.06. The Company shall also deliver a copy of the Company Repurchase Notice to the Trustee and the Paying Agent at such time as it is delivered to holders of Debentures.

No failure of the Company to give the foregoing notices and no defect therein shall limit the repurchase rights of holders of Debentures or affect the validity of the proceedings for the repurchase of the Debentures pursuant to this Section 3.05.

(c) For Debentures to be so repurchased at the option of the Holder, the Holder must deliver to the Paying Agent, at any time during the period beginning at 9:00 a.m., New York City time, on the date that is 20 Business Days prior to the applicable Repurchase Date and ending at 5:00 p.m., New York City time, on the applicable Repurchase Date, (i) a Repurchase Notice in the form set forth on the reverse of the Debentures duly completed (if the Debentures are certificated) or stating the following (if the Debentures are represented by a Global Debenture): (A) the certificate number of the Debentures which the Holder will deliver to be repurchased or compliance with the appropriate Depository procedures, (B) the portion of the principal amount of the Debentures which the Holder will deliver to be repurchased, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000, and (C) that such Debentures shall be repurchased by the Company pursuant to the terms and conditions specified in the Debentures and in this Indenture, together with (ii) such Debentures duly endorsed for transfer (if the Debentures are certificated) or book-entry transfer of such Debentures (if such Debentures are represented by a Global Debenture). The delivery of such Debentures to the Paying Agent with, or at any time after delivery of, the Repurchase Notice (together with all necessary endorsements) at the office of the Paying Agent shall be a condition to the receipt by the Holder of the repurchase price therefor; provided, however, that such repurchase price shall be so paid pursuant to this Section 3.05 only if the Debentures so delivered to the Paying Agent shall conform in all respects to the description thereof in the Repurchase Notice. All questions as to the validity, eligibility (including time of receipt) and acceptance of any Debentures for repurchase shall be determined by the Company, whose determination shall be final and binding absent manifest error.

(d) The Company shall repurchase from the Holder thereof, pursuant to this Section 3.05, a portion of a Debenture, if the principal amount of such portion is \$1,000 or a whole multiple of \$1,000. Provisions of this First Supplemental Indenture that apply to the repurchase of all of a Debenture also apply to the repurchase of such portion of such Debentures.

(e) The Paying Agent shall promptly notify the Company of the receipt by it of any Repurchase Notice or written notice of withdrawal thereof.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 3.05 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Repurchase Date and the time of the book-entry transfer or delivery of the Debentures.

Section 3.06 Company Repurchase Notice. In connection with any repurchase of Debentures, the Company shall, in the case of a Fundamental Change, on or before the fifth calendar day after the occurrence of such Fundamental Change, or no less than 20 Business Days prior to each Repurchase Date, give notice to holders (with a copy to the Trustee) setting forth information specified in this Section 3.06 (in either case, the “**Company Repurchase Notice**”).

Each Company Repurchase Notice shall:

- (1) state the repurchase price and the Fundamental Change Repurchase Date or the Repurchase Date to which the Company Repurchase Notice relates;
- (2) state, if applicable, the circumstances constituting the Fundamental Change;
- (3) state that the repurchase price will be paid in cash;
- (4) state that holders must exercise their right to elect repurchase prior to 5:00 p.m., New York City time, on the Fundamental Change Repurchase Date or Repurchase Date, as the case may be;
- (5) include a form of Repurchase Notice;
- (6) state the name and address of the Paying Agent;
- (7) state that Debentures must be surrendered to the Paying Agent to collect the repurchase price;
- (8) state that a Holder may withdraw its Repurchase Notice at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date or on the Repurchase Date, as the case may be, by delivering a valid written notice of withdrawal in accordance with Section 3.07;
- (9) state whether the Debentures are then convertible, the then applicable Conversion Rate, including, in the case of the occurrence of a Fundamental Change, expected changes in the Conversion Rate resulting from such Fundamental Change transaction and expected changes in the cash, shares or other property deliverable upon conversion of the Debentures as a result of the occurrence of the Fundamental Change;
- (10) that Debentures as to which a Repurchase Notice has been given may be converted only if the Repurchase Notice is withdrawn in accordance with the terms of this First Supplemental Indenture;

(11) state the amount of interest accrued and unpaid per \$1,000 principal amount of Debentures to, but excluding, the Fundamental Change Repurchase Date or the Repurchase Date, as the case may be; and

(12) state the CUSIP number of the Debentures.

A Company Repurchase Notice may be given by the Company or, at the Company's request, the Trustee shall give such Company Repurchase Notice in the Company's name and at the Company's expense; *provided*, that the text of the Company Repurchase Notice shall be prepared by the Company.

The Company will, to the extent applicable, comply with the provisions of Rule 13e-4 and Rule 14e-1 (or any successor provision) under the Exchange Act that may be applicable at the time of the repurchase of the Debentures, file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act and comply with all other federal and state securities laws in connection with the repurchase of the Debentures.

Section 3.07 Effect of Repurchase Notice; Withdrawal. Upon receipt by the Paying Agent of the Repurchase Notice specified in Section 3.04 or Section 3.05, the Holder of the Debentures in respect of which such Repurchase Notice was given shall (unless such Repurchase Notice is validly withdrawn in accordance with the following paragraph) thereafter be entitled to receive solely the repurchase price with respect to such Debentures. Such repurchase price shall be paid to such Holder, subject to receipt of funds and/or the Debentures by the Paying Agent, promptly following the later of (x) the Fundamental Change Repurchase Date or the Repurchase Date with respect to such Debentures (provided the Holder has satisfied the conditions in Section 3.04 or Section 3.05) and (y) the time of book-entry transfer or delivery of such Debentures to the Paying Agent by the Holder thereof in the manner required by Section 3.04 or Section 3.05. The Debentures in respect of which a Repurchase Notice has been given by the Holder thereof may not be converted pursuant to Article 8 hereof on or after the date of the delivery of such Repurchase Notice unless such Repurchase Notice has first been validly withdrawn.

A Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Repurchase Notice at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date or on the Repurchase Date, as the case may be, specifying:

(a) the certificate number, if any, of the Debentures in respect of which such notice of withdrawal is being submitted, or the appropriate Depository information, in accordance with appropriate Depository procedures, if the Debentures in respect of which such notice of withdrawal is being submitted is represented by a Global Debenture,

(b) the principal amount of the Debentures with respect to which such notice of withdrawal is being submitted, and

(c) the principal amount, if any, of such Debentures which remains subject to the original Repurchase Notice and which has been or will be delivered for repurchase by the Company.

If a Repurchase Notice is properly withdrawn, the Company shall not be obligated to repurchase the Debentures listed in such Repurchase Notice.

Section 3.08 Deposit of Repurchase Price. Prior to 10:00 a.m., New York City Time, on the Business Day immediately following the Fundamental Change Repurchase Date or the Repurchase Date, the Company shall deposit with the Paying Agent or, if the Company is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.5 of the Base Indenture, an amount of cash (in immediately available funds if deposited on the Fundamental Change Repurchase Date or the Repurchase Date, as the case may be), sufficient to pay the aggregate repurchase price of all the Debentures or portions thereof that are to be repurchased as of the Fundamental Change Repurchase Date or the Repurchase Date, as the case may be.

If on the Business Day immediately following the Fundamental Change Repurchase Date or the Repurchase Date the Paying Agent holds cash sufficient to pay the repurchase price of the Debentures that holders have elected to require the Company to repurchase in accordance with Section 3.04 or 3.05, as the case may be, then, on the Fundamental Change Repurchase Date or the Repurchase Date, as the case may be, such Debentures will cease to be outstanding, interest will cease to accrue and all other rights of the holders of such Debentures will terminate, other than the right to receive the repurchase price upon delivery or book-entry transfer of the Debentures. This will be the case whether or not book-entry transfer of the Debentures has been made or the Debentures has been delivered to the Paying Agent.

Section 3.09 Debentures Repurchased in Part. Upon presentation of any Debentures repurchased only in part, the Company shall execute and the Trustee shall authenticate and make available for delivery to the Holder thereof, at the expense of the Company, a new Debentures or Debentures, of any authorized denomination, in aggregate principal amount equal to the unreurchased portion of the Debentures presented.

Section 3.10 Purchase of Debentures in the Open Market. The Company may purchase Debentures in the open market, by tender at any price or pursuant to private agreements.

Section 3.11 Cancellation of Debentures Redeemed or Repurchased. The Company may, at its option, surrender any Debenture redeemed or repurchased pursuant to this Article 3 to the Trustee for cancellation; *provided, however*, such Debentures may not be reissued or resold by the Company. Any Debentures surrendered to the Trustee for cancellation may not be reissued or resold by the Company and will be canceled promptly in accordance with Section 2.12 of the Base Indenture.

Section 3.12 Sinking Funds. No sinking fund is provided for the Debentures.

Article 4 **Covenants**

In addition to the covenants set forth in Article 4 of the Base Indenture (except for the covenants set forth in Sections 4.1, 4.3 and 4.6 of the Base Indenture, which will not apply with respect to the Debentures authorized and designated under this First Supplemental Indenture), the following covenants shall apply with respect to the Debentures authorized and designated under this First Supplemental Indenture.

Section 4.01 Payment of Debentures. The Company shall promptly pay the principal of and interest on the Debentures on the dates and in the manner provided in the Debentures and in this First Supplemental Indenture. Principal and interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent holds in accordance with this First Supplemental Indenture money sufficient to pay all principal and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Debentureholders on that date pursuant to the terms of this First Supplemental Indenture.

The Company shall pay interest on overdue principal at the rate specified therefor in the Debentures, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

Section 4.02 Maintenance of Office or Agency. The Company shall maintain an office or agency, where the Debentures may be surrendered for registration of transfer or exchange or for presentation for payment or for conversion, redemption or repurchase. As of the date of this First Supplemental Indenture, such office is located at the office of the Trustee located at Wells Fargo Bank, National Association, Corporate Trust Services, MAC N9303-121, 608 Second Avenue South, Minneapolis, MN 55479, Attention: Corporate Trust Operations and, at any other time, at such other address as the Trustee may designate from time to time by notice to the Company. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations and surrenders may be made at the Corporate Trust Office.

The Company may also from time to time designate co-registrars and one or more offices or agencies where the Debentures may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

In addition, the Company shall maintain an office or agency in the Borough of Manhattan, The City of New York, where notices and demands to or upon the Company in respect of the Debentures and the Indenture may be served. As of the date of this First Supplemental Indenture, such office is located at the agency for service of process of the Trustee located at Wells Fargo Bank, N.A., Corporate Trust Services, MAC N2666-140, 45 Broadway, 14th Floor, New York, New York 10006 and, at any other time, at such other address as the Trustee may designate from time to time by notice to the Company. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee.

Section 4.03 Compliance Certificate. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company an Officers' Certificate stating that a review of the Company's activities during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under the Indenture and further stating, as to each such Officer signing such certificate, whether to the best of such Officer's knowledge the Company during such preceding fiscal year has kept, observed, performed and fulfilled each and every such covenant contained in the Indenture and that in the course of the performance by the signers of their duties as Officers of the Company they would normally have knowledge of any Default and whether or not the signers know of any Default that occurred during such period. If they do know of any Default, the certificate shall describe the Default, its status and what action the Company is taking or proposes to take with respect thereto. The Company also shall comply with Section 314(a)(4) of the TIA.

Section 4.04 Payment of Taxes and Other Claims. The Company shall pay or discharge, or cause to be paid or discharged, before the same may become delinquent, (i) all taxes, assessments and governmental charges levied or imposed upon the Company or any Significant Subsidiary or upon the income, profits or property of the Company or any Significant Subsidiary, (ii) all claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon the property of the Company or any Significant Subsidiary and (iii) all stamp taxes and other duties, if any, which may be imposed by the United States or any political subdivision thereof or therein in connection with the issuance, transfer, exchange, conversion, redemption or repurchase of any Debentures or with respect to this Indenture; *provided*, that, in the case of clauses (i) and (ii), the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim (A) if the failure to do so will not, in the aggregate, have a material adverse impact on the Company, or (B) if the amount, applicability or validity is being contested in good faith by appropriate proceedings.

Section 4.05 Further Instruments and Acts. The Company shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of the Indenture.

Article 5 **Successors**

Notwithstanding Article 5 of the Base Indenture, the following Article 5 (and not Article 5 of the Base Indenture) shall apply for purposes of this First Supplemental Indenture and the Debentures.

Section 5.01 When Company May Merge, Etc.. The Company shall not, in a single transaction or a series of related transactions, consolidate with or merge into any other person or sell, convey, transfer or lease its property and assets substantially as an entirety to another Person unless:

(a) either (i) the Company is the continuing corporation, or (ii) the directly resulting, surviving or transferee person (if other than the Company) is a corporation or limited liability company organized and existing under the laws of the United States of America, any state thereof or the District of Columbia and such person assumes, by a supplemental indenture in a form reasonably satisfactory to the Trustee, all of the Company's obligations under the Debentures and the Indenture;

(b) immediately after giving effect to the transaction described above, no Default or Event of Default, has occurred and is continuing;

(c) if as a result of such transaction the Debentures become convertible into common stock or other securities issued by a third party, such third party fully and unconditionally assumes or guarantees all obligations of the Company or such surviving Person under the Debentures and the Indenture; and

(d) the Company has, at or prior to the effective date of such consolidation, merger or transfer, delivered to the Trustee the Officers' Certificate and Opinion of Counsel pursuant to Section 5.03.

Section 5.02 Successor Substituted. In case of any such consolidation, merger, sale, conveyance, transfer or lease in which the Company is not the continuing corporation and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and reasonably satisfactory in form and substance to the Trustee, of the due and punctual payment of the principal of, and premium, if any, and interest on all of the Debentures, and the due and punctual performance and observance of all of the covenants and conditions of the Indenture to be performed or satisfied by the Company, such successor Person shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of this first part, and SunPower Corporation shall be discharged from its obligations under the Debentures and the Indenture. Such successor Person thereupon may cause to be signed, and may issue either in its own name or in the name of SunPower Corporation any or all of the Debentures, issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in the Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Debentures that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Debentures that such successor Person thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Debentures so issued shall in all respects have the same legal rank and benefit under the Indenture as the Debentures theretofore or thereafter issued in accordance with the terms of the Indenture as though all of such Debentures had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance, transfer or lease, upon compliance with this Article 5 the Person named as the "Company" in the first paragraph of the Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 5 may be dissolved, wound up and liquidated at any time thereafter and such Person shall be discharged from its liabilities as obligor and maker of the Debentures and from its obligations under the Indenture.

Section 5.03 Opinion of Counsel to be Given Trustee. Prior to execution of any supplemental indenture pursuant to this Article 5, the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption complies with the provisions of this Article 5.

Article 6 **Default and Remedies**

Section 6.01 Events of Default.

Notwithstanding Section 6.1 of the Base Indenture, the following Section 6.01 (and Section 6.1 of the Base Indenture shall not apply) shall apply for purposes of this First Supplemental Indenture and the Debentures.

An "**Event of Default**" shall occur when any of the following occurs (whatever the reason for such Event of Default and whether it shall be occasioned by the provisions of Article 5 hereof or be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) the Company shall fail to pay any interest on the Debentures when due and such failure continues for a period of 30 calendar days; or
- (b) the Company shall fail to pay the principal of the Debentures when due at maturity, or the Company shall fail to pay the redemption price, Repurchase Price or Fundamental Change Repurchase Price, or any make-whole premium payable, in respect of any Debentures when due; or
- (c) the Company shall fail deliver cash and, if applicable, shares of Class A Common Stock (including any Additional Shares payable as a result of a make-whole premium), upon the conversion of any Debentures and such failure continues for five calendar days following the scheduled settlement date for such conversion; or
- (d) the Company shall fail to provide the notice required in Section 3.04(b) of an anticipated effective date or actual effective date of a Fundamental Change for a period of five Business Days after such notice was required to be delivered; or
- (e) the Company fails to perform or observe any other term, covenant or agreement contained in the Debentures, this First Supplemental Indenture or the Base Indenture and the failure continues for a period of 60 calendar days after written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the then-outstanding Debentures; or
- (f) the Company fails to pay when due (whether at stated maturity or otherwise) or a default that results in the acceleration of maturity, of any Debt for borrowed money in excess of \$25,000,000 of the Company or any Significant Subsidiary of the Company, unless such Debt is discharged or such acceleration is rescinded, stayed or annulled, within a period of 30 calendar days after written notice of such failure or default to the Company by the Trustee or to the Company and the Trustee by Holders of at least 25% in aggregate principal amount of the then-outstanding Debentures; or
- (g) the Company or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:
 - (1) commences a voluntary case;
 - (2) consents to the entry of an order for relief against it in an involuntary case;
 - (3) consents to the appointment of a Custodian of it or for any substantial part of its property;
 - (4) makes a general assignment for the benefit of its creditors; or
 - (5) takes any comparable action under any foreign laws relating to insolvency; or
- (h) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
 - (1) is for relief against the Company or any Significant Subsidiary in an involuntary case;
 - (2) appoints a Custodian of the Company or any Significant Subsidiary or for any substantial part of its property; or
 - (3) orders the winding up or liquidation of the Company or any Significant Subsidiary;

or any similar relief is granted under any foreign laws and, in each case, the order or decree remains unstayed and in effect for 60 days.

The term “**Bankruptcy Law**” means Title 11 of the United States Code (or any successor thereto) or any similar federal or state law for the relief of debtors. The term “**Custodian**” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

Section 6.02 Acceleration of Maturity; Rescission and Annulment. Notwithstanding Section 6.2 of the Base Indenture, this Section 6.02 (and not Section 6.2 of the Base Indenture) shall apply for purposes of this First Supplemental Indenture and the Debentures.

If an Event of Default with respect to outstanding Debentures (other than an Event of Default specified in Section 6.01(g) or 6.01(h) hereof) occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the then-outstanding Debentures, by written notice to the Company and the Trustee, may declare due and payable 100% of the principal amount of all outstanding Debentures plus any accrued and unpaid interest to the date of payment. Upon a declaration of acceleration, such principal and accrued and unpaid interest to the date of payment shall be immediately due and payable.

If an Event of Default specified in Section 6.01(g) or 6.01(h) hereof occurs, all unpaid principal of and accrued and unpaid interest on the outstanding Debentures shall become and be immediately due and payable, without any declaration or other act on the part of the Trustee or any Holder.

The Holders of a majority in aggregate principal amount of the outstanding Debentures by written notice to the Trustee may rescind and annul an acceleration and its consequences if:

(1) the Company has paid (or deposited with the Trustee a sum sufficient to pay) (i) all overdue interest on all Debentures; (ii) the principal amount of any Debentures that has become due otherwise than by such declaration of acceleration; (iii) to the extent that payment of such interest is lawful, interest upon overdue interest; and (iv) all sums paid or advanced by the Trustee under the Indenture and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default, other than the nonpayment of principal of or interest on the Debentures which has become due solely because of the acceleration, have been remedied, cured or waived,

provided, however, that in the event such declaration of acceleration has been made based on the existence of an Event of Default under Section 6.01(f) hereof and such Event of Default has been remedied, cured or waived in accordance with Section 6.01(f) hereof, then, without any further action by the Holders, such declaration of acceleration shall be rescinded automatically and the consequences of such declaration shall be annulled. No such rescission or annulment shall affect any subsequent Default or impair any right consequent thereon.

Section 6.03 Waiver of Past Defaults. Notwithstanding Section 6.13 of the Base Indenture, this Section 6.03 (and not 6.13 of the Base Indenture) shall apply for purposes of this First Supplemental Indenture and the Debentures. The Holders, either (a) through the written consent of not less than a majority in aggregate principal amount of the outstanding Debentures or (b) by the adoption of a resolution, at a meeting of Holders of the outstanding Debentures at which a quorum is present, by the Holders of at least a majority in aggregate principal amount of the outstanding Debentures, may, on behalf of the Holders of all of the Debentures, waive an existing Default or Event of Default, except a Default or Event of Default:

(1) in the payment of the principal of or interest on any Debenture;

(2) in respect of the right to convert any Debenture in accordance with Article 8;

(3) in the payment of the redemption price on the redemption date, or the Repurchase Price on the Repurchase Date or the Fundamental Change Repurchase Price on the Fundamental Repurchase Date in connection with the repurchase rights under Sections 3.04 and 3.05 hereof; or

(4) in respect of a covenant or provision hereof which, under Section 7.02 hereof, cannot be modified or amended without the consent of the Holder of each outstanding Debenture affected.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of the Indenture; *provided, however*, that no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.04 Limitation on Suits. Notwithstanding Section 6.7 of the Base Indenture, this Section 6.04 (and not Section 6.7 of the Base Indenture) shall apply for purposes of this First Supplemental Indenture and the Debentures.

Except to enforce the right to receive payment of principal or interest when due, no Holder may pursue any remedy with respect to the Indenture or the Debentures unless:

- (a) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;
- (b) the Holders of at least 25% in principal amount of the Debentures make a written request to the Trustee to pursue the remedy;
- (c) such Holder or Holders offer to the Trustee reasonable security or indemnity against any loss, liability or expense;
- (d) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and
- (e) the Holders of a majority in principal amount of the Debentures do not give the Trustee a direction inconsistent with the request during such 60-day period.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

Section 6.05 Unconditional Rights of Holders to Receive Payment and to Convert. In addition to the other rights and remedies set forth in this Article 6 and in Article 6 of the Base Indenture (to the extent applicable to the Debentures), notwithstanding any other provision in this First Supplemental Indenture, the Holder of any Debenture shall have the right, which is absolute and unconditional and shall not be impaired or affected without the consent of such Holder, to receive payment of the principal amount, redemption price, Repurchase Price, Fundamental Change Repurchase Price, interest or make-whole premium, if any, in respect of the Debentures held by such Holder, on or after the respective due dates expressed in the Debentures and this First Supplemental Indenture, and to convert such Debenture in accordance with Article 8 hereof, and to bring suit for the enforcement of any such payment on or after such respective due dates or for the right to convert in accordance with Article 8 hereof.

Article 7 **Amendments; Supplements and Waivers**

Section 7.01 Without Consent of Holders.

In addition to the provisions of Section 9.1 of the Base Indenture, the Company and the Trustee may also amend or supplement this First Supplemental Indenture or the Debentures without notice to or consent of any Holder of a Debenture for any of the following purposes:

(a) to provide for conversion rights of Holders of the Debentures and the Company's repurchase obligations in connection with a Fundamental Change in the event of any reclassification of the Class A Common Stock, merger or consolidation, or sale, conveyance, transfer or lease of the Company's property and assets substantially as an entity;

(b) to secure the Debentures;

(c) to provide for the assumption of the Company's obligations to the Holders of the Debentures in the event of a merger or consolidation, or sale, conveyance, transfer or lease of our property and assets substantially as an entirety;

(d) to surrender any right or power herein conferred upon the Company;

(e) to add to the covenants of the Company for the benefit of the Debentureholders;

(f) to cure any ambiguity or correct or supplement any inconsistent or otherwise defective provision contained in the Base Indenture or this First Supplemental Indenture or the Debentures; *provided*, that such modification or amendment does not adversely affect the interests of the Debentureholders in any material respect; *provided, further*, that any amendment made solely to conform the provisions of the Base Indenture or this First Supplemental Indenture or the Debentures to the description of the debentures contained in the Prospectus Supplement shall not be deemed to adversely affect the interests of the holders of the debentures;

(g) to make any provision with respect to matters or questions arising under the Base Indenture or this First Supplemental Indenture or the Debentures that the Company may deem necessary or desirable and that shall not be inconsistent with provisions of the Base Indenture or this First Supplemental Indenture or the Debentures; *provided*, that such change or modification does not, in the good faith opinion of the Board of Directors, adversely affect the interests of the Debentureholders in any material respect;

(h) to increase the Conversion Rate;

(i) to comply with the requirements of the SEC in order to effect or maintain the qualification of the Base Indenture or this First Supplemental Indenture under the TIA;

(j) to add guarantees of obligations under the Debentures; or

(k) to provide for a successor trustee.

Section 7.02 With Consent of Holders.

Notwithstanding Section 9.2 of the Base Indenture, this Section 7.02 (and not Section 9.2 of the Base Indenture) shall apply for purposes of this First Supplemental Indenture and the Debentures.

Except as provided below in this Section 7.02, this First Supplemental Indenture, the Base Indenture or the Debentures may be amended or supplemented, and noncompliance by the Company in any particular instance with any provision of the Indenture or the Debentures may be waived, in each case (i) with the written consent of the Holders of at least a majority in aggregate principal amount of the outstanding Debentures or (ii) by the adoption of a resolution, at a meeting of Holders of the Debentures outstanding at which a quorum is present, by the Holders of a majority in aggregate principal amount of the outstanding Debentures.

Without the written consent or the affirmative vote of each Holder of Debentures affected, an amendment or waiver under this Section 7.02 may not:

(a) extend the maturity of any Debentures;

(b) reduce the rate or extend the time for payment of interest on any Debentures;

- (c) reduce the principal amount of any Debentures;
- (d) reduce any amount payable upon redemption or repurchase of any Debentures in accordance with Article 3;
- (e) impair the right of a Holder to institute suit for payment of any Debentures;
- (f) change the currency in which any Debentures is payable;
- (g) change the redemption provisions in a manner adverse to the Holders;
- (h) change the Company's obligation to repurchase any Debentures at the option of the Holder in a manner adverse to the holders except as provided in Section 7.01(a);
- (i) change the Company's obligation to repurchase any Debentures upon a Fundamental Change in a manner adverse to the Holders after the occurrence of a Fundamental Change;
- (j) affect the right of a Holder to convert any Debentures into cash and, if applicable, shares of Class A Common Stock or reduce the number of shares of Class A Common Stock or any other property, including cash, receivable upon conversion pursuant to Article 8 hereof;
- (k) change the Company's obligation to maintain an agency for service of process in New York City;
- (l) modify this paragraph or Section 6.03 hereof; or
- (m) reduce the percentage of the Debentures required for consent to any modification of the Base Indenture or this First Supplemental Indenture that does not require the consent of each affected Holder.

It shall not be necessary for any act of Holders of Debentures under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such act shall approve the substance thereof.

After an amendment, supplement or waiver under this Section 7.02 becomes effective, the Company shall promptly deliver to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to deliver such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

Article 8

Conversion of Debentures

Section 8.01 Right to Convert.

(a) Subject to and upon compliance with the provisions of this First Supplemental Indenture, on or prior to the close of business on the Business Day immediately preceding February 15, 2027, the Holder of any outstanding Debentures shall have the right, at such Holder's option, to convert the principal amount of the Debentures held by such Holder, or any portion of such principal amount which is an integral multiple of \$1,000, into cash and, if applicable, fully paid and non-assessable shares of Class A Common Stock (as such shares shall then be constituted) as described in Section 8.12 hereof, at the Conversion Rate in effect at such time, by surrender of the Debentures so to be converted, together with any required funds, under the circumstances described in this Section 8.01 and in the manner provided in Section 8.02 hereof. The Debentures shall be convertible only at the following times:

- (1) prior to February 15, 2025 on any date during any Fiscal Quarter beginning after March 31, 2007 (and only during such Fiscal Quarter), if the Closing Sale Price

of one share of Class A Common Stock was more than 125% of the then current Conversion Price for at least 20 Trading Days in the 30 consecutive Trading-Day period ending on the last Trading Day of the immediately preceding Fiscal Quarter;

(2) on or after February 15, 2025;

(3) with respect to Debentures called for redemption pursuant to Section 3.01 hereof, until 5:00 p.m., New York City time, on the Business Day prior to the relevant redemption date;

(4) during the period specified in Section 8.01(c) hereof, if the Company distributes to all or substantially all holders of Class A Common Stock rights or warrants entitling them to purchase, for a period of 45 calendar days or less, shares of Class A Common Stock at less than the average Closing Sale Price per share of the Class A Common Stock for the 10 Trading Days preceding the declaration date for such distribution;

(5) during the period specified in Section 8.01(c) hereof, if the Company distributes to all or substantially all holders of Class A Common Stock, cash or other assets, debt securities or rights to purchase the Company's securities, which distribution has a per share value exceeding 10% of the Closing Sale Price per share of the Class A Common Stock on the Trading Day preceding the declaration for such distribution;

(6) if a Fundamental Change occurs, at any time beginning on the Business Day following the effective date of the Fundamental Change until 5:00 p.m., New York City time, on the Business Day preceding the Fundamental Change Repurchase Date relating to such Fundamental Change; or

(7) during the five consecutive Business Days immediately following any five consecutive Trading-Day period in which the Trading Price per \$1,000 principal amount of the Debentures is less than 98% of the average of the Closing Sale Price of a share of Class A Common Stock during such five Trading -Day period multiplied by the applicable Conversion Rate.

(b) (1) The Company shall notify the Trustee in writing on or prior to the fifth Business Day following the first day of each Fiscal Quarter (commencing prior to February 15, 2025, beginning with the Fiscal Quarter ending June 30, 2007) of the condition to conversion set forth in Section 8.01(a)(1) above shall have been satisfied with respect to such Fiscal Quarter.

(2) The Trustee shall have no obligation to determine the Trading Price of the Debentures and whether the Debentures are convertible pursuant to clause (7) of Section 8.01(a) hereof unless the Company has requested such determination; and the Company shall have no obligation to make such request unless a Holder makes a request for a determination and provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of Debentures is reasonably likely to be less than 98% of the average of the Closing Sale Price of the Class A Common Stock during such five Trading-Day period multiplied by the Conversion Rate then in effect per \$1,000 principal amount of Debentures. At such time, the Company shall instruct the Trustee to determine the Trading Price of the Debentures beginning on the next Trading Day and on each successive Trading Day until the Trading Prices for the Debentures for each Trading Day in any five consecutive Trading Day period exceeds 98% of the product of the Closing Sale Price of the Class A Common Stock and the then current Conversion Rate, and to notify the Company accordingly.

The Trustee shall be entitled at its sole discretion to consult with the Company and to request the assistance of the Company in connection with the Trustee's duties and obligations pursuant to Section 8.01(b)(2)

hereof and the Company agrees, if requested by the Trustee, to cooperate with, and provide assistance to, the Trustee in carrying out its duties under this Section 8.01. Upon determination of the Trading Price the Trustee shall notify the Company in writing of such determination and upon request the Company shall promptly confirm such determination in writing to the Trustee.

(c) In the case of a distribution contemplated by clauses (4) or (5) of Section 8.01(a), the Company shall notify Holders of Debentures and the Trustee in writing at least 20 calendar days prior to the ex-dividend date (the first date on which the Class A Common Stock trades, regular way, on the relevant market from which the Closing Sale Price was obtained without the right to receive such right, warrant, dividend or distribution) for such distribution (the “**Distribution Notice**”). Once the Company has given the Distribution Notice, Holders may surrender their Debentures for conversion at any time until the earlier of (i) 5:00 p.m., New York City time, on the Business Day immediately preceding the ex-dividend date or (ii) the Company’s announcement that such distribution will not take place. In the event of a distribution contemplated by clauses (4) or (5) of Section 8.01(a) hereof, holders may not convert the Debentures if the holders may otherwise participate in such distribution without converting their Debentures.

(d) In addition, if the Company consolidates with or merges with or into another Person or is a party to a binding share exchange or conveys, transfers, sells, leases or otherwise disposes of all or substantially all of its properties and assets in each case in a transaction not constituting a Fundamental Change, pursuant to which the Class A Common Stock would be converted into cash, securities and/or other property, other than in a transaction covered by the exceptions in clause (d)(i) or clause (d)(ii) of the definition of “Fundamental Change,” then the holders shall have the right to convert their Debentures at any time beginning 15 calendar days prior to the date announced by the Company as the anticipated effective date of the transaction and until and including the date which is 15 calendar days after the date that is the actual effective date of such transaction. The Board of Directors shall determine the anticipated effective date of the transaction, and such determination shall be conclusive and binding on the holders and shall be publicly announced by the Company and posted on its website not later than 20 calendar days prior to such date, to the extent the Company has the knowledge to make such public announcement and posting 20 days prior to the anticipated effective date, or as soon as possible after the Company obtains such knowledge.

(e) Whenever the Debentures shall become convertible pursuant to this Section 8.01, the Company or, at the Company’s request, the Trustee in the name and at the expense of the Company, shall notify the holders of the event triggering such convertibility in the manner provided in Section 12.2 of the Base Indenture, and the Company shall also publicly announce such information and publish it on the Company’s website. Any notice so given shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. Except as provided in Section 8.04 hereof, the Company shall notify Holders and the Trustee in writing at least 10 calendar days prior to the anticipated effective date of any Fundamental Change, to the extent the Company has the knowledge to do so, or as soon as possible after the Company obtains such knowledge.

(f) Debentures in respect of which a Holder has delivered a Repurchase Notice exercising such Holder’s right to require the Company to repurchase such Debentures pursuant to Section 3.04 or 3.05 hereof may be converted only if such Repurchase Notice is withdrawn in accordance with Section 3.07 hereof prior to 5:00 p.m., New York City time, on the Repurchase Date or the Business Day immediately preceding the Fundamental Change Repurchase Date, as applicable.

(g) A Holder of Debentures is not entitled to any rights of a holder of Class A Common Stock until such Holder has converted his Debentures to Class A Common Stock, and only to the extent such Debentures are deemed to have been converted to Class A Common Stock under this Article 8.

Section 8.02 Exercise of Conversion Right; Issuance of Class A Common Stock on Conversion; No Adjustment for Interest or Dividends. In order to exercise the conversion right with respect to any Debentures in certificated form, the Company must receive at the office or agency of the Company maintained for that purpose or, at the option of such Holder, the Corporate Trust Office, such Debentures with the original or facsimile of the form entitled “**Conversion Notice**” on the reverse thereof, duly completed and manually signed, together with such

Debentures duly endorsed for transfer, together with any other required transfer documents, accompanied by the funds, if any, required by this Section 8.02. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Class A Common Stock which shall be issuable on such conversion, if any, shall be issued, and shall be accompanied by transfer or similar taxes, if required pursuant to Section 8.07 hereof. Once delivered, a Conversion Notice is irrevocable.

In order to exercise the conversion right with respect to any interest in a Global Debenture, the Holder must complete, or cause to be completed, the appropriate instruction form for conversion pursuant to the Depositary's book-entry conversion program; deliver, or cause to be delivered, by book-entry delivery an interest in such Global Debenture; furnish appropriate endorsements and transfer documents if required by the Company or the Trustee or conversion agent; and pay the funds, if any, required by this Section 8.02 and any transfer or similar taxes if required pursuant to Section 8.07 hereof.

The cash and, if applicable, a certificate or certificates for the number of full shares of Class A Common Stock into which the Debentures are converted will be delivered to such Holder after satisfaction of the requirements for conversion set forth above, in accordance with Section 8.12 hereof. In case any Debentures of a denomination greater than \$1,000 shall be surrendered for partial conversion, and subject to Section 2.03 hereof, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of the Debentures so surrendered, without charge to the Holder, a new Debenture or Debentures in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Debentures.

Each conversion shall be deemed to have been effected as to any such Debentures (or portion thereof) on the date on which the requirements set forth above in this Section 8.02 have been satisfied as to such Debentures (or portion thereof) (the "**Conversion Date**") and such Debentures will be deemed to have been converted immediately prior to 5:00 p.m., New York City time, on the Conversion Date. The Person in whose name any certificate or certificates for shares of Class A Common Stock shall be issuable upon such conversion, if any, shall be deemed to have become, on said date, the holder of record of the shares represented thereby; *provided* that in the event of any such surrender on any date when the stock transfer books of the Company shall be closed, that Person shall constitute the Person in whose name the certificates are to be issued as the record holder thereof for all purposes on the next succeeding day on which such stock transfer books are open, but such conversion shall be at the Conversion Rate in effect on the Conversion Date.

Any Debentures or portion thereof surrendered for conversion during the period from 5:00 p.m., New York City time, on the Record Date for any Interest Payment Date to 5:00 p.m., New York City time, on the Business Day preceding the applicable Interest Payment Date shall be accompanied by payment, in immediately available funds or other funds acceptable to the Company, of an amount equal to the interest otherwise payable on such Interest Payment Date on the principal amount being converted; *provided* that no such payment need be made (1) if a Holder converts its Debentures in connection with a redemption and the Company has specified a redemption date that is after a Record Date and on or prior to the corresponding Interest Payment Date, (2) if a Holder converts its Debentures in connection with a Fundamental Change and the Company has specified a Fundamental Change Repurchase Date that is after a Record Date and on or prior to the corresponding Interest Payment Date or (3) to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to such Debentures. Except as provided above in this Section 8.02 and Section 8.05 hereof, no payment or other adjustment shall be made for interest accrued on any Debentures converted or for dividends on any shares issued upon the conversion of such Debentures as provided in this Article 8.

Upon the conversion of an interest in a Global Debenture, the Trustee (or other Conversion Agent appointed by the Company), or the custodian for the Global Debenture at the direction of the Trustee (or other Conversion Agent appointed by the Company), shall make a notation on such Global Debenture as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Debentures effected through any Conversion Agent other than the Trustee.

Upon the conversion of any Debentures, the accrued but unpaid interest attributable to the period from the Issue Date of the Debentures to the Conversion Date, with respect to the converted Debentures, shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through delivery of the cash (including a cash payment in lieu of fractional shares, if any) and shares of Class A Common Stock, if any, in exchange for the Debentures being converted pursuant to the provisions hereof.

Section 8.03 Cash Payments in Lieu of Fractional Shares. No fractional shares of Class A Common Stock or scrip certificates representing fractional shares shall be issued upon conversion of Debentures. If more than one Debenture shall be surrendered for conversion at one time by the same Holder, the number of full shares that shall be issuable upon conversion shall be computed on the basis of the aggregate principal amount of the Debentures (or specified portions thereof to the extent permitted hereby) so surrendered. If any fractional share of stock would be issuable upon the conversion of any Debenture or Debentures, the Company shall make an adjustment and payment therefor in cash to the Holder of Debentures at a price equal to the applicable fraction of the Closing Sale Price on the final Trading Day of the Conversion Period.

Section 8.04 Conversion Rate.

(a) Each \$1,000 principal amount of the Debentures shall be convertible into cash and the number of shares of Class A Common Stock, if any, based upon the Conversion Rate which is specified in the form of Debentures attached as Exhibit A hereto, subject to adjustment as provided in this Section 8.04 and Section 8.05 hereof.

(b) Prior to February 15, 2012, if and only to the extent a Holder elects to convert Debentures in connection with a Non-Stock Change of Control at any time beginning on the Business Day following the date on which such Non-Stock Change of Control becomes effective (the “**Effective Date**”) but before 5:00 p.m., New York City time, on the Business Day immediately preceding the related Fundamental Change Repurchase Date, the Company shall increase the Conversion Rate applicable to such converted Debentures by a number of additional shares of Class A Common Stock (the “**Additional Shares**”) as set forth below. A conversion of Debentures shall be deemed to be “in connection with” a Non-Stock Change of Control if the Conversion Notice is received by the Conversion Agent during the period specified in the previous sentence. The number of additional shares of Class A Common Stock shall be determined by reference to the table below, based on the Effective Date and the price (the “**Stock Price**”) paid per share for the Class A Common Stock in the Non-Stock Change of Control. If holders of Class A Common Stock receive only cash in the Non-Stock Change of Control, the Stock Price shall be the cash amount paid per share. Otherwise, the Stock Price shall be the average of the Closing Sale Prices of the Class A Common Stock on the five Trading Days prior to, but not including, the Effective Date of such Non-Stock Change of Control.

The numbers of Additional Shares of Class A Common Stock set forth in the table below shall be adjusted as of any date on which the Conversion Rate is adjusted in the same manner in which the Conversion Rate is adjusted. The Stock Prices set forth in the table below shall be adjusted, as of any date on which the Conversion Rate is adjusted, to equal the Stock Price applicable immediately prior to such adjustment multiplied by a fraction, of which

- (1) the numerator shall be the Conversion Rate immediately prior to the adjustment and
- (2) the denominator shall be the Conversion Rate as so adjusted.

The following table sets forth the Stock Price and number of Additional Shares by which the Conversion Rate shall be adjusted:

Stock Price

Effective Date	\$44.51	\$56.75	\$65.00	\$75.00	\$85.00	\$95.00	\$105.00	\$115.00	\$125.00	\$135.00
February 7, 2007	4.8457	2.8554	2.0857	1.4751	1.0750	0.8023	0.6101	0.4709	0.3677	0.2897
February 15, 2008	4.8457	2.7876	1.9823	1.3589	0.9619	0.6989	0.5188	0.3916	0.2996	0.2315
February 15, 2009	4.8457	2.6380	1.8012	1.1767	0.7961	0.5550	0.3969	0.2899	0.2153	0.1620
February 15, 2010	4.8457	2.3737	1.5086	0.9025	0.5613	0.3626	0.2428	0.1679	0.1193	0.0865
February 15, 2011	4.7473	1.8774	0.9997	0.4716	0.2308	0.1205	0.0687	0.0432	0.0296	0.0215
February 15, 2012	—	—	—	—	—	—	—	—	—	—

If the Stock Price and Effective Date are not set forth on the table above and the Stock Price is:

(i) between two Stock Prices on the table or the Effective Date is between two days on the table, the number of additional shares of Class A Common Stock shall be determined by the Trustee by straight-line interpolation between the number of additional shares of Class A Common Stock set forth for the higher and lower Stock Price and the two Effective Dates, as applicable, based on a 360-day year;

(ii) in excess of \$135.00 per share (subject to adjustment), no additional shares of Class A Common Stock shall be issued upon conversion; or

(iii) less than \$44.51 per share (subject to adjustment), no additional shares of Class A Common Stock shall be issued upon conversion.

Notwithstanding the foregoing, in no event will the Conversion Rate as adjusted pursuant to this Section 8.04 exceed 22.4668 shares per \$1,000 principal amount of the Debentures, subject to adjustments in the same manner as the number of Additional Shares of Class A Common Stock as set forth in this Section 8.04(b).

Additional Shares deliverable pursuant to this Section 8.04(b) or cash in lieu thereof, shall be delivered on the settlement date applicable to the relevant conversion.

The Company shall provide written notice to all Holders and to the Trustee as soon as practicable and if possible at least 20 calendar days prior to the anticipated Effective Date of a Non-Stock Change of Control. The Company must also provide written notice to all Holders and to the Trustee upon the effectiveness of such Non-Stock Change of Control.

Section 8.05 Adjustment of Conversion Rate. The Conversion Rate shall be adjusted from time to time by the Company as follows:

(a) In case the Company shall, at any time or from time to time while any of the Debentures are outstanding, pay a dividend in shares of Class A Common Stock or make a distribution in shares of Class A Common Stock to all or substantially all holders of its outstanding shares of Class A Common Stock, then the Conversion Rate in effect at the opening of business on the date following the record date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be increased by multiplying such Conversion Rate by a fraction:

(1) the numerator of which shall be the sum of the number of shares of Class A Common Stock outstanding at the close of business on the date fixed for the determination of stockholders entitled to receive such dividend or other distribution plus the total number of shares of Class A Common Stock constituting such dividend or other distribution; and

(2) the denominator of which shall be the number of shares of Class A Common Stock outstanding at the close of business on the date fixed for such determination,

such increase to become effective immediately after the opening of business on the day following the record date fixed for such determination. For the purpose of this paragraph (a), the number of shares of Class A Common Stock at any time outstanding shall not include shares held in the treasury of the Company. The Company will not pay any dividend or make any distribution on shares of Class A Common Stock held in the treasury of the Company. If any dividend or distribution of the type described in this Section 8.05(a) is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) In case outstanding shares of Class A Common Stock shall be subdivided into a greater number of shares of Class A Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and conversely, in case outstanding shares of Class A Common Stock shall be combined into a smaller number of shares of Class A Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately reduced, such increase or reduction, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(c) In case the Company shall issue rights or warrants to all or substantially all holders of its outstanding shares of Class A Common Stock entitling them to subscribe or purchase, for a period of up to 45 calendar days, shares of Class A Common Stock at a price per share less than the then Current Market Price, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the date fixed for determination of stockholders entitled to receive such rights or warrants by a fraction,

(1) the numerator of which shall be the number of shares of Class A Common Stock outstanding on the date fixed for determination of stockholders entitled to receive such rights or warrants plus the total number of additional shares of Class A Common Stock offered for subscription or purchase, and

(2) the denominator of which shall be the sum of the number of shares of Class A Common Stock outstanding at the close of business on the date fixed for determination of stockholders entitled to receive such rights or warrants plus the number of shares that the aggregate offering price of the total number of shares so offered would purchase at the Current Market Price on such date.

Such adjustment shall be successively made whenever any such rights or warrants are issued, and shall become effective immediately after the opening of business on the day following the date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Class A Common Stock are not delivered after the expiration of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Class A Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Class A Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Class A Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(d) In case the Company shall, by dividend or otherwise, distribute to all or substantially all holders of its outstanding shares of Class A Common Stock shares of any class of Capital Stock of the Company or evidences of its Debt or assets (including securities, but excluding (i) any rights or warrants referred to in Section 8.05(c) hereof, (ii) any dividends or distributions in connection with a reclassification, consolidation, merger, combination or sale or conveyance to which Section 8.06 hereof applies, (iii) any dividends or distributions paid exclusively in cash or (iv) any dividends or distributions referred to in Section 8.05(a) hereof) (any of the foregoing hereinafter in this Section 8.05(d)) called the “**Distributed Assets**”), then, in each such case, the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the record date with respect to such distribution by a fraction,

(1) the numerator of which shall be the Current Market Price on such record date; and

(2) the denominator of which shall be the Current Market Price on such record date less the Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and set forth in a resolution of the Board of Directors) on the record date of the portion of the Distributed Assets so distributed applicable to one share of Class A Common Stock,

such adjustment to become effective immediately prior to the opening of business on the day following such record date; *provided*, that if the then Fair Market Value (as so determined) of the portion of the Distributed Assets so distributed applicable to one share of Class A Common Stock is equal to or greater than the Current Market Price on the record date or the Current Market Price exceeds such Fair Market Value by less than \$1.00, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion the amount of Distributed Assets such Holder would have received had such Holder converted each Debentures solely into Class A Common Stock immediately prior to the record date; and *provided, further*, that no adjustment to the Conversion Rate shall be made if the Holder will otherwise participate in such distribution without conversion as a result of holding the Debentures. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

If the Board of Directors determines the Fair Market Value of any distribution for purposes of this Section 8.05(d) by reference to the actual or when issued trading market for any Distributed Assets comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period (the "**Reference Period**") used in computing the Current Market Price pursuant to Section 8.05(g)(1) hereof to the extent possible, unless the Board of Directors determines in good faith that determining the Fair Market Value during the Reference Period would not be a reasonably accurate measure of value. Notwithstanding the foregoing, in the event any such distribution consists of shares of Capital Stock of, or similar equity interests in, one or more of the Company's Subsidiaries (a "**Spin-Off**"), the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect immediately prior to the close of business on the record date with respect to such distribution by a fraction:

(1) the numerator of which shall be the Current Market Price of the Class A Common Stock, plus the Fair Market Value of the portion of the distributed assets so distributed applicable to one share of Class A Common Stock (determined on the basis of the number of shares of Class A Common Stock outstanding on the record date), determined as set forth above, and

(2) the denominator of which shall be the Current Market Price on such record date,

such increase shall become effective immediately prior to the opening of business on the day following the last Trading Day of the Spin-Off Valuation Period (as defined below). In the event that such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. In the case of a Spin-Off of a subsidiary whose securities are publicly traded, the Fair Market Value of the securities to be distributed shall equal the average of the Closing Sale Prices of such securities on the principal securities market on which such securities are traded for the five consecutive Trading Days commencing on and including the sixth day of trading of those securities after the effectiveness of the Spin-Off (the "**Spin-Off Valuation Period**"), and the Current Market Price shall be measured for the same period. In the event, however, that an underwritten initial public offering of the securities in the Spin-Off occurs simultaneously with the Spin-Off, Fair Market Value of the securities distributed in the Spin-Off shall mean the initial public offering price of such securities and the Current Market Price shall mean the Closing Sale Price for the Class A Common Stock on the same Trading Day.

Rights or warrants distributed by the Company to all holders of Class A Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of Class A Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Class A Common Stock, shall be deemed not to have been distributed for purposes of this Section 8.05 (and no adjustment to the Conversion Rate under this Section 8.05 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 8.05(d). If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this First Supplemental Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of Debt or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 8.05 was made, (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Class A Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Class A Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

No adjustment of the Conversion Rate shall be made pursuant to this Section 8.05(d) in respect of rights or warrants distributed or deemed distributed on any Trigger Event to the extent that such rights or warrants are actually distributed or reserved by the Company for distribution to Holders of Debentures upon conversion by such Holders of Debentures to Class A Common Stock.

For purposes of this Section 8.05(d) and Sections 8.05(a) and (b) hereof, any dividend or distribution to which this Section 8.05(d) is applicable that also includes shares of Class A Common Stock, or rights or warrants to subscribe for or purchase shares of Class A Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of Debt, assets or shares of Capital Stock other than such shares of Class A Common Stock or rights or warrants (and any Conversion Rate adjustment required by this Section 8.05(d) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Class A Common Stock or such rights or warrants (and any further Conversion Rate adjustment required by Sections 8.05(a) or 8.05(b) hereof with respect to such dividend or distribution shall then be made), except (A) the record date of such dividend or distribution shall be substituted as "the date fixed for the determination of stockholders entitled to receive such dividend or other distribution", "the date fixed for the determination of stockholders entitled to receive such rights or warrants" and "the date fixed for such determination" within the meaning of Sections 8.05(a) and 8.05(b) hereof and (B) any shares of Class A Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of Section 8.05(a) hereof.

(e) In case the Company shall, by dividend or otherwise, distribute to all holders of its Class A Common Stock cash (including any quarterly cash dividend, but excluding (x) any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company, whether voluntary or involuntary and (y) any dividend or distribution in connection with a reclassification, consolidation, merger, binding share exchange or sale to which Section 8.06 hereof applies), then the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect on the applicable record date by a fraction,

- (1) the numerator of which shall be the Current Market Price on such record date; and

(2) the denominator of which shall be the Current Market Price on such record date less the amount of the cash distribution applicable to one share of Class A Common Stock,

such adjustment to be effective immediately prior to the opening of business on the day following the record date; *provided*, that if the portion of the cash so distributed applicable to one share of Class A Common Stock is equal to or greater than the Current Market Price on the record date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion the amount of cash such Holder would have received had such Holder converted each Debentures solely into Class A Common Stock immediately prior to the record date. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(f) In case a tender or exchange offer made by the Company or any Subsidiary for all or any portion of the Class A Common Stock shall expire and such tender or exchange offer (as amended upon the expiration thereof) shall require the payment to stockholders of consideration per share of Class A Common Stock having a Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a resolution of the Board of Directors) that as of the last time (the “**Expiration Time**”) tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) exceeds the Closing Sale Price of a share of Class A Common Stock on the Trading Day next succeeding the Expiration Time, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Expiration Time by a fraction,

(1) the numerator of which shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the “**Purchased Shares**”) and (y) the product of the number of shares of Class A Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Closing Sale Price of a share of Class A Common Stock on the Trading Day next succeeding the Expiration Time, and

(2) the denominator of which shall be the number of shares of Class A Common Stock outstanding (including any Purchased Shares) at the Expiration Time multiplied by the Closing Sale Price of a share of Class A Common Stock on the Trading Day next succeeding the Expiration Time,

such adjustment to become effective immediately prior to the opening of business on the day following the Expiration Time. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

(g) For purposes of this Section 8.05, the following terms shall have the meaning indicated:

(1) “**Current Market Price**” on any date means the average of the daily Closing Sale Prices per share of Class A Common Stock for the ten consecutive Trading Days immediately prior to such date (the “day in question”); *provided* that if:

(A) the “ex” date (as hereinafter defined) for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Rate pursuant to Section 8.05 (a), (b), (c), (d), (e) or (f) occurs during such ten consecutive Trading Days, the Closing Sale Price for each Trading Day prior to the “ex” date for such other event shall be adjusted by dividing such Closing Sale Price by the same fraction by which the Conversion Rate is so required to be multiplied as a result of such other event;

(B) the “ex” date for the issuance or distribution requiring such computation is prior to the day in question, after taking into account any adjustment required pursuant to clause (A) of this proviso, the Closing Sale Price for each Trading Day on or after such “ex” date shall be adjusted by adding thereto the amount of any cash and the Fair Market Value (as determined by the Board of Directors in a manner consistent with any determination of such value for purposes of Section 8.05(d), (e) or (f)) of the evidences of Debt, shares of Capital Stock or assets being distributed applicable to one share of Class A Common Stock as of the close of business on the day before such “ex” date.

Notwithstanding the foregoing, whenever successive adjustments to the Conversion Rate are called for pursuant to this Section 8.05, such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this Section 8.05 and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

“Ex” date, when used:

(i) with respect to any issuance or distribution, means the first date on which the shares of Class A Common Stock trade regular way on the relevant exchange or in the relevant market from which the Closing Sale Price was obtained without the right to receive such issuance or distribution;

(ii) with respect to any subdivision or combination of shares of Class A Common Stock, means the first date on which the shares of Class A Common Stock trade regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective; and

(iii) with respect to any tender or exchange offer, means the first date on which the shares of Class A Common Stock trade regular way on such exchange or in such market after the Expiration Time of such offer.

(2) “**Fair Market Value**” shall mean the amount which a willing buyer would pay a willing seller in an arm’s-length transaction.

(3) “**record date**” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Class A Common Stock have the right to receive any cash, securities or other property or in which the Class A Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(h) The Company, in its sole discretion, may make such increases in the Conversion Rate, in addition to those required by Sections 8.05(a)-(f) hereof, as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Class A Common Stock or rights to purchase Class A Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least 20 Business Days, the increase is irrevocable during the period and the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall deliver to Holders of record of the Debentures and the Trustee a notice of the increase, which notice will be given at least 15 days prior to the effectiveness of any such increase, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(i) No adjustment in the Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least one percent (1%) in such rate; *provided* that any adjustments that by reason of this Section 8.05(i) are not required to be made shall be carried forward and the Company shall make such carry forward adjustments, regardless of whether the aggregate adjustment is less than 1%, (x) annually on the anniversary of the Closing Date and otherwise (y)(1) five Business Days prior to the maturity of the Debentures (whether at stated maturity or otherwise) or (2) prior to the redemption date or Repurchase Date or Fundamental Change Repurchase Date, unless such adjustment has already been made. All calculations under this Article 8 shall be made by the Company and shall be made to the nearest cent or to the nearest one-ten thousandth (1/10,000) of a share, as the case may be. No adjustment need be made for rights to purchase Class A Common Stock pursuant to a Company plan for reinvestment of dividends or interest or for any issuance of Class A Common Stock or convertible or exchangeable securities or rights to purchase Class A Common Stock or convertible or exchangeable securities. Interest will not accrue on any cash into which the Debentures are convertible.

(j) Whenever the Conversion Rate is adjusted as herein provided, the Company will issue a press release through Business Wire or another widely accepted business wire service containing the relevant information and make this information available on the Company's website or through another public medium as the Company may use at that time. In addition, the Company shall promptly file with the Trustee and any conversion agent other than the Trustee an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Trust Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume that the last Conversion Rate of which it has actual knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall deliver such notice of such adjustment of the Conversion Rate to the Holder of each Debentures at his last address appearing on the Register, within 20 calendar days after execution of such notice. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(k) In any case in which this Section 8.05 provides that an adjustment shall become effective immediately after (1) a record date for an event, (2) the date fixed for the determination of stockholders entitled to receive a dividend or distribution pursuant to Section 8.05(a) hereof, (3) a date fixed for the determination of stockholders entitled to receive rights or warrants pursuant to Section 8.05(b) hereof, or (4) the Expiration Time for any tender or exchange offer pursuant to Section 8.05(f) hereof, (each a "**Determination Date**"), the Company may elect to defer until the occurrence of the applicable Adjustment Event (as hereinafter defined) (x) issuing to the Holder of any Debentures converted after such Determination Date and before the occurrence of such Adjustment Event, the additional shares of Class A Common Stock, if any, or other securities, cash or other property issuable upon such conversion by reason of the adjustment required by such Adjustment Event over and above the Class A Common Stock, if any, issuable upon such conversion before giving effect to such adjustment and (y) paying to such Holder any amount in cash in lieu of any fractional share pursuant to Section 8.03 hereof. For purposes of this Section 8.05(k), the term "**Adjustment Event**" shall mean:

- (i) in any case referred to in clause (1) hereof, the occurrence of such event,
- (ii) in any case referred to in clause (2) hereof, the date any such dividend or distribution is paid or made,
- (iii) in any case referred to in clause (3) hereof, the date of expiration of such rights or warrants, and
- (iv) in any case referred to in clause (4) hereof, the date a sale or exchange of Class A Common Stock pursuant to such tender or exchange offer is consummated and becomes irrevocable.

(l) For purposes of this Section 8.05, the number of shares of Class A Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Class A Common Stock. The Company will not pay any dividend or make any distribution on shares of Class A Common Stock held in the treasury of the Company.

(m) No adjustment to the Conversion Rate shall be made pursuant to this Section 8.05 if the holders of the Debentures may participate in the transaction that would otherwise give rise to adjustment pursuant to this Section 8.05.

Section 8.06 Effect of Reclassification, Consolidation, Merger or Sale. If any of the following events occur, namely:

- (a) any reclassification or change of the outstanding Class A Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination),
- (b) any consolidation or merger of the Company with or into another Person, or
- (c) any sale, lease, transfer, conveyance or other disposition of all or substantially all of the Company's assets and those of its Subsidiaries taken as a whole to any other Person or Persons, as a result of which holders of Class A Common Stock shall be entitled to receive stock, other securities or other property or assets (including cash or any combination thereof) with respect to or in exchange for such Class A Common Stock,

in each case, the Company or the successor or purchasing corporation, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture, if such supplemental indenture is then required to so comply) providing that such Debentures shall, without the consent of any holders of Debentures, be convertible into the kind and amount of shares of stock and other securities or property or assets (including cash or any combination thereof) (the "**Applicable Consideration**") that such Holder would have been entitled to receive upon such reclassification, change, consolidation, merger, sale, lease, transfer, conveyance or other disposition had such Debentures been converted into Class A Common Stock immediately prior to such reclassification, change, consolidation, merger, sale, lease, transfer, conveyance or other disposition; *provided*, that in the event that holders of Class A Common Stock have the opportunity to elect the form of consideration to be received in such transaction, then from and after the effective date of such transaction, the Debentures shall be convertible into the consideration that a majority of the holders of Class A Common Stock who made such an election received in such transaction and the term "Applicable Consideration" shall be construed accordingly; and *provided, further*, that Section 8.12 hereof shall continue to apply following any such transaction. Such supplemental indenture shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 8. If, in the case of any such reclassification, change, consolidation, merger, sale, lease, transfer, conveyance or other disposition, the stock or other securities and assets receivable thereupon by a holder of Class A Common Stock includes shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such reclassification, change, consolidation, merger, sale, lease, transfer, conveyance or other disposition, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the holders of the Debentures as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent practicable the provisions providing for the conversion rights set forth in this Article 8.

The Company shall cause notice of the execution of such supplemental indenture to be delivered to each Holder, at the address of such Holder as it appears on the register of the Debentures maintained by the Registrar, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section 8.06 shall similarly apply to successive reclassifications, changes, consolidations, mergers, sales, leases, transfers, conveyances or other dispositions.

If this Section 8.06 applies to any event or occurrence, Section 8.05 hereof shall not apply.

Any additional shares of Class A Common Stock that a Holder is entitled to receive upon conversion pursuant to Section 8.04(b) hereof, if applicable, shall not be payable in shares of Class A Common Stock, but shall represent a right to receive the aggregate amount of cash, securities or other property into which the additional shares of Class A Common Stock would convert as a result of such recapitalization, change, consolidation, merger, sale, lease, transfer, conveyance or other disposition.

The Company may not become party to any such transaction described in clauses (a), (b) or (c) of this Section 8.06, unless the terms of such transactions are consistent with this Section 8.06.

Section 8.07 Taxes on Shares Issued. The issue of stock certificates on conversions of Debentures shall be made without charge to the converting Holder of Debentures for any documentary, stamp or similar issue or transfer tax in respect of the issue thereof. The Company shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than that of the Holder of any Debentures converted, and the Company shall not be required to issue or deliver any such stock certificate unless and until the Person or Persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 8.08 Reservation of Shares, Shares to be Fully Paid; Compliance with Governmental Requirements; Listing of Class A Common Stock. The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Class A Common Stock to provide for the conversion of the Debentures, including any Additional Shares, from time to time as such Debentures are presented for conversion.

Before taking any action which would cause an adjustment increasing the Conversion Rate to an amount that would cause the Conversion Price to be reduced below the then par value, if any, of the shares of Class A Common Stock issuable upon conversion of the Debentures, the Company will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Class A Common Stock at such adjusted Conversion Rate.

The Company covenants that all shares of Class A Common Stock which may be issued upon conversion of Debentures will upon issue be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

The Company covenants that, if any shares of Class A Common Stock to be provided for the purpose of conversion of Debentures hereunder require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued upon conversion, the Company will in good faith and as expeditiously as possible, to the extent then permitted by the rules and interpretations of the Commission (or any successor thereto), endeavor to secure such registration or approval, as the case may be.

The Company further covenants that, if at any time the Class A Common Stock shall be listed on any national securities exchange or automated quotation system, the Company will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Class A Common Stock shall be so listed on such exchange or automated quotation system, all Class A Common Stock issuable upon conversion of the Debentures; *provided* that if the rules of such exchange or automated quotation system permit the Company to defer the listing of such Class A Common Stock until the first conversion of the Debentures into Class A Common Stock in accordance with the provisions of this Indenture, the Company covenants to list such Class A Common Stock issuable upon conversion of the Debentures in accordance with the requirements of such exchange or automated quotation system at such time.

Section 8.09 Responsibility of Trustee. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Price or the Conversion Rate or whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Class A Common Stock, or of any Capital Stock, other securities or other assets or property, which may at any time be issued or delivered upon the conversion of any Debentures; and the Trustee and any other conversion agent make no representations with respect thereto. Neither the Trustee nor any conversion agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Class A Common Stock or stock certificates or

other securities or property or cash upon the surrender of any Debentures for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 8. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 8.06 hereof relating either to the kind or amount of shares of capital stock or other securities or other assets or property (including cash) receivable by holders of Debentures upon the conversion of their Debentures after any event referred to in such Section 8.06 hereof or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.1 of the Base Indenture, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 8.10 Notice to Holders Prior to Certain Actions. In case:

- (a) the Company shall declare a dividend (or any other distribution) on its Class A Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 8.05 hereof; or
- (b) the Company shall authorize the granting to the holders of all or substantially all of its Class A Common Stock or rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or
- (c) of any reclassification or reorganization of the Class A Common Stock of the Company (other than a subdivision or combination of its outstanding Class A Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or
- (d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

the Company shall cause to be filed with the Trustee and to be delivered to each Holder at his address appearing on the Register provided for in Section 2.4 of the Base Indenture, as promptly as possible but in any event at least ten calendar days prior to the applicable date hereinafter specified to the extent the Company has the knowledge to do so, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Class A Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of Class A Common Stock of record shall be entitled to exchange their Class A Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

Section 8.11 Stockholder Rights Plans. If the rights provided for in any future rights plan adopted by the Company have separated from the shares of Class A Common Stock in accordance with the provisions of the applicable stockholder rights agreement so that the holders of the Debentures would not be entitled to receive any rights in respect of Class A Common Stock issuable upon conversion of the Debentures, the Conversion Rate will be adjusted as provided in Section 8.05(d) hereof. If such rights have not separated, any shares of Class A Common Stock delivered upon the conversion of Debentures shall be accompanied by such rights.

Section 8.12 Settlement Upon Conversion. (a) Subject to Section 8.12 (b) hereof, upon any conversion of Debentures, the Company will deliver to converting Holders in respect of each \$1,000 principal amount of Debentures being converted a "**Settlement Amount**" equal to the sum of the Daily Settlement Amount for each of the 20 Trading Days during the Conversion Period.

"**Daily Settlement Amount**", for each \$1,000 principal amount of Debentures, for each of the 20 Trading Days during the Conversion Period, shall consist of:

(i) cash equal to the lesser of \$50 and the Daily Conversion Value; and

(ii) to the extent the Daily Conversion Value exceeds \$50, a number of shares of Class A Common Stock equal to, (A) the difference between the Daily Conversion Value and \$50, divided by (B) the Closing Sale Price of the Class A Common Stock for such day.

“**Daily Conversion Value**” means, for each of the 20 consecutive Trading Days during the Conversion Period, one-twentieth (1/20) of the product of (1) the applicable Conversion Rate and (2) the Closing Sale Price of the Class A Common Stock (or the consideration into which the Class A Common Stock has been converted in connection with transactions to which Sections 8.01(a)(6) or 8.06 hereof are applicable) on such day. For the purposes of determining the Daily Conversion Value the following provisions shall apply: (i) if the Applicable Consideration includes securities for which the price can be determined in a manner contemplated by the definition of “Closing Sale Price,” then the value of such securities shall be determined in accordance with the principles set forth in such definition; (ii) if the Applicable Consideration includes other property (other than securities as to which clause (i) applies or cash), then the value of such property shall be the fair market value of such property as determined by the Company’s Board of Directors in good faith; and (iii) if the Applicable Consideration includes cash, then the value of such cash shall be the amount thereof.

(b) If a Holder converts Debentures pursuant to Section 8.01(a)(6) hereof, the Holder shall receive per \$1,000 principal amount of Debentures being converted: (1) cash equal to the lesser of (i) \$1,000 and (ii) the Conversion Value and (2) if the Conversion Value exceeds \$1,000, an amount of cash, securities and other assets or property equal to such excess based on the consideration a Holder would have received had the Holder held a number of shares of Class A Common Stock based on the Conversion Rate immediately prior to the Fundamental Change, with the Conversion Value based on the consideration received in such Fundamental Change, if applicable.

The Settlement Amount will be delivered to converting Holders on the third Trading Day following the final Trading Day of the Conversion Period.

Article 9 **Discharge of Indenture**

Notwithstanding Article 8 of the Base Indenture, the following Article 9 (and not Article 8 of the Base Indenture) shall apply for purposes of this First Supplemental Indenture and the Debentures.

Section 9.01 Discharge of Liability on Debentures. (a) When (i) the Company delivers to the Trustee all outstanding Debentures (other than Debentures replaced pursuant to Section 2.8 of the Base Indenture) for cancellation or (ii) all outstanding Debentures have become due and payable, whether at maturity or as a result of the delivery of a notice of redemption or upon a repurchase pursuant to Article 3 hereof, and the Company irrevocably deposits with the Trustee money sufficient to pay at maturity or upon redemption or repurchase all outstanding Debentures, including interest thereon to maturity or such redemption or repurchase date (other than Debentures replaced pursuant to Section 2.8 of the Base Indenture), and any shares of Class A Common Stock or other property due in respect of converted Debentures, and if in each such case the Company pays all other sums payable hereunder by the Company, then this First Supplemental Indenture shall, subject to Section 9.01(b), cease to be of further effect. The Trustee shall acknowledge satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers’ Certificate and an Opinion of Counsel and at the cost and expense of the Company.

(b) Notwithstanding clause (a) above, the Company’s obligations in Sections 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 7.7 and 7.8 of the Base Indenture, in Sections 2.04 and 2.08 hereof and in this Article 9 shall survive until the Debentures have been paid in full. Thereafter, the Company’s obligations in Section 7.7 of the Base Indenture and Sections 9.03 and 9.04 hereof shall survive.

Section 9.02 Application of Trust Money. The Trustee shall hold in trust money and any shares of Class A Common Stock or other property due in respect of converted Debentures deposited with it pursuant to this Article 9. It shall apply the deposited money through the Paying Agent and in accordance with this Indenture to the

payment of principal of and interest on the Debentures or, in the case of any shares of Class A Common Stock or other property due in respect of converted Debentures, in accordance with this Indenture in relation to the conversion of Debentures pursuant to the terms hereof.

Section 9.03 Repayment to Company. The Trustee and the Paying Agent shall promptly turn over to the Company upon request any excess money or securities held by them at any time.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal or interest and any shares of Class A Common Stock or other property due in respect of converted Debentures that remains unclaimed for two years, and, thereafter, Debentureholders entitled to the money and/or securities must look to the Company for payment as general creditors.

Section 9.04 Reinstatement. If the Trustee or Paying Agent is unable to apply any money or to deliver any shares of Class A Common Stock or other property due in respect of converted Debentures in accordance with this Article 9 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Debentures shall be revived and reinstated as though no deposit had occurred pursuant to this Article 9 until such time as the Trustee or Paying Agent is permitted to apply all such money and any shares of Class A Common Stock or other property due in respect of converted Debentures in accordance with this Article 9; provided, however, that, if the Company has made any payment of interest on or principal of any Debentures because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Debentureholders of such Debentures to receive such payment from the money held by the Trustee or Paying Agent.

Section 9.05 Defeasance. Sections 8.3 and 8.4 of the Base Indenture shall not apply to the Debentures authorized and designated under this First Supplemental Indenture.

Article 10 **Miscellaneous**

Section 10.01 Governing Law. This First Supplemental Indenture and the Debentures shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 10.02 No Debenture Interest Created. Nothing in this First Supplemental Indenture or in the Debentures, express or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, now in effect or hereafter enacted and made effective, in any jurisdiction.

Section 10.03 Successors. All agreements of the Company in this First Supplemental Indenture and the Debentures shall bind its successor. All agreements of the Trustee in this First Supplemental Indenture shall bind its successor.

Section 10.04 Counterparts. This First Supplemental Indenture may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

Section 10.05 Severability. In case any provision in this First Supplemental Indenture or in the Debentures shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 10.06 Table of Contents, Headings, Etc. The table of contents, cross-reference sheet and headings of the Articles and Sections of this First Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 10.07 Inconsistency. In the event of any inconsistency or conflict between the Base Indenture and this First Supplemental Indenture, this First Supplemental Indenture shall govern.

Section 10.08 Calculations in Respect of Debentures. Except as explicitly stated herein, the Company will be responsible for making all calculations required pursuant to this First Supplemental Indenture, including, without limitation, calculations with respect to determinations of the Conversion Price and Conversion Rate. The Company or its Agents shall make all such calculations in good faith and, absent manifest error, the Company's calculations shall be binding on the Holders. The Company shall provide a written schedule of such calculations to the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent shall be entitled to rely upon the accuracy of the Company's calculations without responsibility for independent verification thereof. The Trustee shall forward a copy of such calculations to any Holder upon such Holder's written request.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the date and year first above written.

SUNPOWER CORPORATION

/Emmanuel T. Hernandez/

Name: Emmanuel T. Hernandez

Title: Chief Financial Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION

/Lynn M. Steiner/

Name: Lynn M. Steiner

Title: Vice President

EXHIBIT A

[FORM OF FACE OF SECURITY]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND, UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.¹

¹ This paragraph should be included only if the Debenture is a Global Debenture.

SUNPOWER CORPORATION

1.25% Senior Convertible Debentures due 2027

No. A1

CUSIP: 867652AA7
ISIN: US867652AA76

SunPower Corporation, a Delaware corporation, promises to pay to Cede & Co. or registered assigns the principal amount of [] (\$[] .00) on February 15, 2027.

Interest Payment Dates: February 15 and August 15.

Record Dates: February 1 and August 1.

Reference is made to the further provisions of this Debenture set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Debenture the right to convert this Debenture into cash and, if applicable, Class A Common Stock, on the terms and subject to the limitations referred to on the reverse hereof and as more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Debenture shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

SUNPOWER CORPORATION

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

By: /s/ Emmanuel T. Hernandez
Name: Emmanuel T. Hernandez
Title: Chief Financial Officer

Trustee's Certificate of Authentication:

This is one of the Debentures referred to in the within-mentioned Indenture.

Wells Fargo Bank, National Association, as Trustee

By:

Lynn M. Steiner

Authorized Signatory:

Dated: February 7, 2007

[FORM OF REVERSE SIDE OF SECURITY]

SUNPOWER CORPORATION

1.25% Senior Convertible Debentures due 2027

1. Interest

SUNPOWER CORPORATION, a Delaware corporation (such corporation, and its successors and assigns under the Indenture hereinafter referred to, being herein called the “Company”), promises to pay interest on the principal amount of this Debenture at the rate per annum shown above. The Company will pay interest semiannually on February 15 and August 15 of each year commencing on August 15, 2007. Interest on the Debentures will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from February 7, 2007. Interest will be computed on the basis of a 360-day year of twelve 30-day months. If a payment date is not a Business Day, payment will be made on the next succeeding Business Day, and no additional interest will accrue in respect of such payment by virtue of the payment being made on such later date.

2. Method of Payment

The Company will pay interest on the Debentures (except defaulted interest) to the Persons who are registered holders of Debentures at the close of business on the February 1 and August 1 next preceding the interest payment date even if Debentures are canceled after the record date and on or before the interest payment date, except as otherwise provided in the Indenture. Holders must surrender Debentures to a Paying Agent to collect principal payments. The Company will pay principal and interest in money of the United States of America that at the time of payment is legal tender for payment of public and private debts. The Company shall pay interest (i) on any Global Debentures by wire transfer of immediately available funds to the account of the Depository or its nominee, (ii) on any Debentures in certificated form having a principal amount of less than \$2,000,000, by check mailed to the address of the Person entitled thereto as it appears in the Register, *provided, however*, that at maturity interest will be payable at the office of the Company maintained by the Company for such purposes, which shall initially be an office or agency of the Trustee (as defined below) and (iii) on any Debentures in certificated form having a principal amount of \$2,000,000 or more, by check or otherwise by wire transfer in immediately available funds at the election of the Holder of such Debentures duly delivered to the Trustee at least five Business Days prior to the relevant interest payment date, *provided, however*, that at maturity interest will be payable at the office of the Company maintained by the Company for such purposes, which shall initially be an office or agency of the Trustee.

3. Paying Agent, Registrar, Service Agent and Conversion Agent

Initially, Wells Fargo Bank, National Association, a national banking association (the “Trustee”), will act as Paying Agent, Registrar, Service Agent and Conversion Agent. The Company may appoint and change any Paying Agent, Registrar or co-registrar, Service Agent or Conversion Agent without notice. The Company or any of its domestically incorporated Subsidiaries may act as Paying Agent, Registrar or co-registrar, Service Agent or Conversion Agent.

4. Indenture

The Company issued the Debentures under an Indenture dated as of February 7, 2007 (the “Base Indenture”), as supplemented by the First Supplemental Indenture dated as of February 7, 2007 (the “First Supplemental Indenture” and together with the Base Indenture the “Indenture”), between the Company and the Trustee. The terms of the Debentures include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb) as in effect on the date of the Indenture (the “TIA”). Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Debentures are subject to all such terms, and Debentureholders are referred to the Indenture and the TIA for a statement of those terms.

The Debentures are senior unsecured obligations of the Company. This Debenture is one of the Debentures referred to in the Indenture issued in an aggregate principal amount of \$200,000,000. The Indenture imposes limitations on the ability of the Company to consolidate or merge with or into any other Person or convey, transfer or lease all or substantially all of the property of the Company.

5. Optional Redemption

The Debentures will not be redeemable at the option of the Company prior to February 15, 2012. At any time on or after February 15, 2012, the Debentures will be redeemable at the option of the Company, in whole or in part, on not less than 30 calendar days' nor more than 60 calendar days' prior notice, at a redemption price equal to 100% of the principal amount of the Debentures being redeemed, plus accrued and unpaid interest to, but excluding, the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date).

6. Sinking Fund

The Debentures are not subject to any sinking fund.

7. Notice of Redemption

Notice of redemption will be delivered at least 30 calendar days but not more than 60 calendar days before the redemption date to each Holder of Debentures to be redeemed at his or her registered address. Debentures in denominations larger than \$1,000 may be redeemed in part but only in whole multiples of \$1,000. If money sufficient to pay the redemption price of and accrued interest on all Debentures (or portions thereof) to be redeemed on the redemption date is deposited with the Paying Agent on or before the redemption date and certain other conditions are satisfied, on and after such date interest ceases to accrue on such Debentures (or such portions thereof) called for redemption.

8. Repurchase of Debentures at the Option of Debentureholders

If a Fundamental Change occurs at any time prior to maturity of the Debentures, this Debenture will be subject to a repurchase, at the option of the Holder, on a Fundamental Change Repurchase Date, specified by the Company, that is not less than 20 calendar days nor more than 35 calendar days after notice thereof, at a repurchase price equal to 100% of the principal amount hereof, together with accrued and unpaid interest on this Debenture to, but excluding, the Fundamental Change Repurchase Date; *provided* that if such Fundamental Change Repurchase Date falls after a record date and on or prior the corresponding interest payment date, the accrued and unpaid interest shall be payable to the Holder of record of this Debenture on the preceding February 1 or August 1, as the case may be. The Debentures submitted for repurchase must be \$1,000 in principal amount or whole multiples thereof. The Company shall deliver to all holders of record of the Debentures a notice of the occurrence of a Fundamental Change and of the repurchase right arising as a result thereof on or before the fifth calendar day after the occurrence of such Fundamental Change. For Debentures to be so repurchased at the option of the Holder, the Holder must deliver to the Paying Agent in accordance with the terms of the Indenture, the Repurchase Notice containing the information specified by the Indenture, together with such Debentures, duly endorsed for transfer, or (if the Debentures are Global Debentures) book-entry transfer of the Debentures, prior to 5:00 p.m., New York City time, on the Fundamental Change Repurchase Date. The repurchase price must be paid in cash.

Subject to the terms and conditions of the Indenture, each Holder shall have the right, at such Holder's option, to require the Company to repurchase all or any portion of the Debentures held by such Holder, on February 15, 2012, February 15, 2017 and February 15, 2022 at a repurchase price equal to 100% of the principal amount of this Debenture, together with any accrued and unpaid interest on this Debenture to, but excluding, the Repurchase Date, as provided in the Indenture. To exercise such right, a Holder shall deliver to the Paying Agent the Repurchase Notice containing the information specified by the Indenture, together with the Debentures, duly endorsed for transfer, or (if the Debentures are Global Debentures) book-entry transfer of the Debentures, at any time during the period from 9:00 a.m., New York City time, on the date that is 20 Business Days prior to the applicable Repurchase Date to 5:00 p.m., New York City time, on the applicable Repurchase Date. The repurchase price must be paid in cash.

Holders have the right to withdraw any Repurchase Notice by delivering to the Paying Agent a written notice of withdrawal at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date or on the Repurchase Date, as applicable, all as provided in the Indenture.

If cash sufficient to pay the repurchase price of and accrued and unpaid interest, if any, on all Debentures or portions thereof to be repurchased as of the Fundamental Change Repurchase Date or Repurchase Date, as the case may be, is deposited with the Paying Agent, on the Business Day immediately following the Fundamental Change Repurchase Date or on the Repurchase Date, as the case may be, then such Debentures will cease to be outstanding and interest will cease to accrue, and the Holder thereof shall have no other rights as such other than the right to receive the repurchase price upon delivery or book-entry transfer of such Debentures.

9. Conversion

Upon the occurrence of certain events specified in the Indenture and in compliance with the provisions of the Indenture, on or prior to the close of business on the Trading Day immediately preceding the Maturity Date of this Debenture, the Holder hereof has the right, at its option, to convert each \$1,000 principal amount of this Debenture into cash and, if applicable, Common Stock based on a Conversion Rate of 17.6211 shares of Common Stock per \$1,000 principal amount of Debentures (a Conversion Price of approximately \$56.75 per share), as the same may be adjusted pursuant to the terms of the Indenture, as such shares shall be constituted at the date of conversion, upon surrender of this Debenture (if in certificated form) with the form entitled "Conversion Notice" on the reverse hereof duly completed and manually signed, to the Company at the office or agency of the Company maintained for that purpose in accordance with the terms of the Indenture, or at the option of such Holder, the Corporate Trust Office, together with any funds required pursuant to the terms of the Indenture, and, unless any shares issuable on conversion are to be issued in the same name as this Debenture, duly endorsed by, or accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or by such Holder's duly authorized attorney. The Company will notify the Holder thereof of any event triggering the right to convert the Debentures as specified above in accordance with the Indenture. In order to exercise the conversion right with respect to any interest in a Global Debenture, the Holder must complete the appropriate instruction form pursuant to the Depository's book-entry conversion program, deliver by book-entry delivery an interest in such Global Debenture, furnish appropriate endorsements and transfer documents if required by the Company or the Trustee or Conversion Agent, and pay the funds, if any, required pursuant to the terms of the Indenture. As specified in the Indenture, upon conversion, the Company will pay cash and shares of Class A Common Stock, if any, based on a Daily Conversion Value calculated on a proportionate basis for each day of the 20 Trading-Day Conversion Period.

Prior to February 15, 2012, if and only to the extent holders elect to convert the Debentures in connection with a Non-Stock Change of Control, the Company will increase the Conversion Rate applicable to such converting Debentures as set forth in the Indenture.

No adjustment in respect of interest on any Debentures converted or dividends on any shares issued upon conversion of such Debentures will be made upon any conversion except as set forth in the next sentence. If this Debenture (or portion hereof) is surrendered for conversion during the period from the 5:00 p.m., New York City time, on any applicable Record Date for the payment of interest to 5:00 p.m., New York City time, on the Business Day preceding the corresponding Interest Payment Date, this Debenture (or portion hereof being converted) must be accompanied by payment, in immediately available funds or other funds acceptable to the Company, of an amount equal to the interest otherwise payable on such Interest Payment Date on the principal amount being converted; *provided*, that no such payment shall be required (1) if the Holder surrenders this Debenture for conversion in connection with a redemption and the Company has specified a redemption date that is after a Record Date and on or prior to the corresponding Interest Payment Date, (2) if the Holder surrenders this Debenture in connection with a Fundamental Change and the Company has specified a Fundamental Change Repurchase Date that is after a Record Date and on or prior to the corresponding Interest Payment Date or (3) to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to this Debenture.

No fractional shares will be issued upon any conversion of Debentures, but an adjustment and payment in cash will be made, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon the surrender of any Debentures or Debentures for conversion.

A Debenture in respect of which a Holder is exercising its right to require repurchase may be converted only if such Holder validly withdraws its election to exercise such right to require repurchase in accordance with the terms of the Indenture.

10. Denominations, Transfer, Exchange

The Debentures are in registered form without coupons in denominations of \$1,000 and whole multiples of \$1,000. A Debentureholder may transfer or exchange Debentures in accordance with the Indenture. Upon any transfer or exchange, the Registrar or the Company may require a Debentureholder, among other things, to furnish appropriate endorsements or a written instrument or instruments of transfer in form satisfactory to the Company. Neither the Company, the Trustee nor the Registrar shall be required to exchange, issue or register a transfer of (a) any Debentures for a period of 15 calendar days next preceding the date of mailing of a notice of redemption of Debentures selected for redemption, (b) Debentures or portions thereof called for redemption, except for the unredeemed portion of Debentures being redeemed in part, (c) any Debentures or portions thereof surrendered for conversion pursuant to Article 8 of the First Supplemental Indenture, (d) any Debentures or portions thereof tendered for repurchase (and not withdrawn) pursuant to Section 3.04 of the First Supplemental Indenture, or (e) any Debentures or portions thereof tendered for repurchase (and not withdrawn) pursuant to Section 3.05 of the First Supplemental Indenture.

11. Persons Deemed Owners

The registered Holder of this Debenture may be treated as the owner of it for all purposes.

12. Unclaimed Money

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal or interest and any shares of Class A Common Stock or other property due in respect of converted Debentures that remains unclaimed for two years, and, thereafter, Debentureholders entitled to the money and/or securities must look to the Company for payment as general creditors.

13. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Debentures may be amended without prior notice to any Holder but with the written consent of the holders of at least a majority in aggregate principal amount of the outstanding Debentures and (ii) any default or noncompliance with any provision may be waived with the written consent or affirmative vote of the holders of at least a majority in principal amount of the outstanding Debentures. Without the consent of any Holder, the Company and the Trustee may amend the Indenture or the Debentures (i) to cure any ambiguity, defect or inconsistency, *provided*, that such modification or amendment does not adversely affect the interests of the Holders in any material respect, *provided, further*, that any amendment made solely to conform the provisions of the Indenture or the Debentures to the description of the Debentures contained in the Prospectus Supplement shall not be deemed to adversely affect the interests of the Holders; (ii) to comply with Article 5 of the First Supplemental Indenture; (iii) to provide for uncertificated Debentures in addition to or in place of certificated Debentures; (iv) to make any change that does not adversely affect the rights of any Holder; (v) to evidence and provide for the acceptance of appointment by a successor Trustee with respect to the Debentures; (vi) to comply with requirements of the SEC in order to effect or maintain the qualification of the Indenture under the TIA; (vii) to provide for conversion rights of Holders and the Company's repurchase obligations in connection with a Fundamental Change in the event of any reclassification of the Class A Common Stock, merger or consolidation, or sale, conveyance, transfer or lease of the Company's property and assets substantially as an entity; (viii) to secure the Debentures; (ix) to surrender any right or power conferred upon the Company in the Indenture; (x) to add to the covenants of the Company for the benefit of the Holders; (xi) to

make any provision with respect to matters or questions arising under the Base Indenture, the First Supplemental Indenture or the Debentures that the Company may deem necessary or desirable and that shall not be inconsistent with the Base Indenture or the First Supplemental Indenture or the Debentures, *provided*, that such change or modification does not, in the good faith opinion of the Board of Directors, adversely affect the interests of the Holders in any material respect; (xii) to increase the Conversion Rate; and (xii) to add guarantees of the obligations under the Debentures.

14. Defaults and Remedies

If an Event of Default occurs (other than an Event of Default relating to certain events of bankruptcy, insolvency or reorganization of the Company) and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the then-outstanding Debentures, by written notice to the Company and the Trustee, may declare due and payable 100% of the principal amount of all outstanding Debentures plus any accrued and unpaid interest to the date of payment. If an Event of Default relating to certain events of bankruptcy, insolvency or reorganization of the Company occurs, all unpaid principal and accrued and unpaid interest on the outstanding Debentures shall become due and immediately payable without any declaration or other act on the part of the Trustee or any Holder. Under certain circumstances, the Holders of a majority in aggregate principal amount of the outstanding Debentures may rescind and annul any such acceleration with respect to the Debentures and its consequences.

If an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under the Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee reasonable indemnity or security against any loss, liability or expense. Subject to certain exceptions, no Holder may pursue any remedy with respect to the Indenture or the Debentures unless (i) such Holder has previously given the Trustee notice that an Event of Default is continuing, (ii) holders of at least 25% in principal amount of the outstanding Debentures have requested the Trustee in writing to pursue the remedy, (iii) such Holders have offered the Trustee reasonable security or indemnity against any loss, liability or expense, (iv) the Trustee has not complied with such request within 60 days after the receipt of the request and the offer of indemnity and (v) the holders of a majority in principal amount of the outstanding Debentures have not given the Trustee a direction inconsistent with such request within such 60-day period. Subject to certain restrictions, the holders of a majority in principal amount of the outstanding Debentures are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. Subject to the Indenture, the Trustee, however, may refuse to follow any direction if the Trustee, in good faith shall, by a Trust Officer of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability. The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by the Indenture at the request, order or direction of any Holder pursuant to the provision of the Indenture, unless such Holders shall have offered to the Trustee reasonably security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby.

No reference herein to the Indenture and no provision of this Debenture or of the Indenture shall impair, as among the Company and the Holder of the Debentures, the obligation of the Company, which is absolute and unconditional, to pay the principal of, redemption price, Repurchase Price, Fundamental Repurchase Price, interest or make-whole premium, if any with respect of the Debenture at the place, at the respective times, at the rate and in the coin or currency herein and in the Indenture prescribed.

15. Trustee Dealings with the Company

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Debentures and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

16. No Recourse Against Others

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Debentures or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Debentureholder by accepting a Debenture waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Debentures.

17. Authentication

This Debenture shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on the other side of this Debenture.

18. Abbreviations

Customary abbreviations may be used in the name of a Debentureholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

19. GOVERNING LAW

THIS DEBENTURE SHALL BE DEEMED TO BE A CONTRACT UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF SUCH STATE INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

20. CUSIP and ISIN Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP and ISIN numbers to be printed on the Debentures and has directed the Trustee to use CUSIP and ISIN numbers in notices of redemption as a convenience to Debentureholders. No representation is made as to the accuracy of such numbers either as printed on the Debentures or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

The Company will furnish to any Holder upon written request and without charge to the Holder a copy of the Indenture which has in it the text of this Debenture.

CONVERSION NOTICE

TO: SUNPOWER CORPORATION
WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

The undersigned registered owner of this Debenture hereby irrevocably exercises the option to convert this Debenture, or the portion thereof (which is \$1,000 or a multiple thereof) below designated, into, cash and shares of Common Stock of SunPower Corporation, if any, in accordance with the terms of the Indenture referred to in this Debenture, and directs that the check in payment for cash and the shares, if any, issuable and deliverable upon such conversion, deliverable upon conversion or for fractional shares and any Debentures representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. If shares or any portion of this Debenture not converted are to be issued in the name of a person other than the undersigned, the undersigned will provide the appropriate information below and pay all transfer taxes payable with respect thereto. Any amount required to be paid by the undersigned on account of interest accompanies this Debenture.

Dated: _____

Signature(s)

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Signature Guarantee

Fill in the registration of shares of Common Stock, if any, if to be issued, and Debentures if to be delivered, and the person to whom cash, if any, and payment for fractional shares is to be made, if to be made, other than to and in the name of the registered holder:

Please print name and address

(Name)

(Street Address)

(City, State and Zip Code)

Principal amount to be converted
(if less than all):

\$ _____

Social Security or Other Taxpayer
Identification Number:

NOTICE: The signature on this Conversion Notice must correspond with the name as written upon the face of the Debentures in every particular without alteration or enlargement or any change whatever.

REPURCHASE NOTICE

TO: SUNPOWER CORPORATION
WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

The undersigned registered owner of this Debenture hereby irrevocably acknowledges receipt of a notice from SunPower Corporation (the "Company") regarding the right of holders to elect to require the Company to repurchase the Debentures and requests and instructs the Company to repay the entire principal amount of this Debenture, or the portion thereof (which is \$1,000 or an integral multiple thereof) below designated, in accordance with the terms of the Indenture at the price of 100% of such entire principal amount or portion thereof, together with accrued and unpaid interest to, but excluding, the Repurchase Date or the Fundamental Change Repurchase Date, as the case may be, to the registered holder hereof. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. The Debentures shall be repurchased by the Company as of the Repurchase Date or the Fundamental Change Repurchase Date, as the case may be, pursuant to the terms and conditions specified in the Indenture.

Dated: _____

Signature(s): _____

NOTICE: The above signatures of the holder(s) hereof must correspond with the name as written upon the face of the Debentures in every particular without alteration or enlargement or any change whatever.

Debentures Certificate Number (if applicable): _____

Principal amount to be repurchased (if less than all, must be \$1,000 or whole multiples thereof): _____

Social Security or Other Taxpayer Identification Number: _____

ASSIGNMENT FORM

To assign this Debenture, fill in the form below:

I or we assign and transfer this Security to

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code) and irrevocably appoint

Agent to transfer this Debenture on the books of the Company. The agent may substitute another to act for him or her.

Date:

Your
Signature:

(Sign exactly as your name appears on the other
side of this Debenture)

*Signature guaranteed by:

By:

* The signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL DEBENTURE2

The following increases or decreases in this Global Debenture have been made:

Date	Amount of decrease in Principal Amount of this Global Debenture	Amount of increase in Principal Amount of this Global Debenture	Principal Amount of this Global Debenture following such decrease or increase	Signature of authorized signatory of Trustee or Securities Custodian
	_____	_____	_____	_____

For Global Debentures only

AMENDMENT AND WAIVER

AMENDMENT AND WAIVER, dated as of January 10, 2007 (this "Amendment"), to and under that certain Credit Agreement, dated as of December 2, 2005 (as heretofore amended, supplemented or otherwise modified, the "Credit Agreement"), among SunPower Corporation (the "Borrower"), the several lenders from time to time parties to the Credit Agreement (the "Lenders"), and Credit Suisse, Cayman Islands Branch, as administrative agent for the Lenders (in such capacity, the "Administrative Agent").

WITNESSETH:

WHEREAS, the Borrower, the Lenders, and the Administrative Agent are parties to the Credit Agreement;

WHEREAS, the Borrower has entered into that certain Agreement and Plan of Merger, dated as of November 15, 2006 (as amended by (i) that certain First Amendment to Agreement and Plan of Merger, dated as of December 21, 2006 and (ii) that certain side letter agreement dated as of January 10, 2007), by and among Borrower, Pluto Acquisition Company LLC (to be renamed PowerLight LLC in connection with the Merger described below) (the "Merger Sub"), PowerLight Corporation (the "Target") and Thomas L. Dinwoodie, as shareholders' representative (the "Merger Agreement"), pursuant to which the Target merged into the Merger Sub with the Merger Sub continuing as the surviving company (the "Merger");

WHEREAS, Merger Sub is a wholly owned subsidiary of the Borrower and a Group Member under the Credit Agreement;

WHEREAS, Merger Sub is party to that certain Loan Agreement, dated as of January 10, 2007, among the Target and Union Bank of California, N.A. (the "Union Bank Loan Agreement") providing for extensions of credit in an aggregate amount not to exceed \$10,000,000 and which shall terminate on April 30, 2007 (the "Union Bank Termination Date");

WHEREAS, the Borrower has requested that the Lenders agree to waive compliance, with certain requirements of the Credit Agreement;

WHEREAS, the Borrower intends to issue convertible debt securities in an amount not to exceed \$200,000,000 with terms reasonably satisfactory to the Administrative Agent (the "Convertible Debt");

WHEREAS, in connection with the issuance of the Convertible Debt, the Borrower has requested that the Lenders agree to amend the Credit Agreement to permit the incurrence of the Convertible Debt by the Borrower; and

WHEREAS, the Required Lenders and Administrative Agent have agreed to amend the Credit Agreement and grant the waivers as provided herein upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein, and for other valuable consideration the receipt of which is hereby acknowledged, the Borrower, the Lenders, and the Administrative Agent agree as follows:

SECTION 1. DEFINITIONS. Unless otherwise defined herein, capitalized terms are used herein as defined in the Credit Agreement.

SECTION 2. WAIVER.

2.1 The Lenders hereby waive the compliance with the provisions of the following Subsections of the Credit Agreement as they relate to the Merger and Merger Agreement: Subsection 7.3 (Fundamental Changes), Subsection 7.6 (Investments) and Subsection 7.12 (Lines of Business).

2.2 The Lenders hereby waive the compliance with the provisions of the following Subsections of the Credit Agreement with respect to the Union Bank Loan Agreement, until the Union Bank Termination Date, solely as such Subsections relate to the Target and its subsidiaries (and subsequent to the Merger, Merger Sub and its subsidiaries) (collectively, the "Powerlight Group"): Subsection 4.8 (Ownership of Property; Liens), Subsection 6.8 (Additional Collateral, etc.), Subsection 7.1 (Indebtedness), Subsection 7.2 (Liens), Subsection 7.4 (Disposition of Property), Subsection 7.5 (Restricted Payments), Subsection 7.7 (Transactions with Affiliates), Subsection 7.10 (Negative Pledge Clauses) and Subsection 7.11 (Clauses Restricting Subsidiary Distributions).

2.3 Until the Union Bank Termination Date, the Lenders hereby agree that:

(a) no member of the Powerlight Group shall (i) be deemed a Subsidiary Guarantor or be required to become a party to the Guaranty and Collateral Agreement or any other Security Document, or (ii) be required to pledge, or grant a security interest in, any of its property; and

(b) notwithstanding Section 7.6 of the Credit Agreement, the Borrower may make Investments in the Powerlight Group in an amount not to exceed \$15,000,000 in addition to other Investments permitted under Section 7.6 of the Credit Agreement (collectively, the "Other Investment Baskets"); *provided* that until (i) the Union Bank Termination Date and (ii) such time as Merger Sub has become a Subsidiary Guarantor and complied with the provisions of Section 6.8 of the Credit Agreement, no more than \$10,000,000 in the aggregate of the Other Investment Baskets may be utilized to make any Investments in the Powerlight Group.

SECTION 3. AMENDMENT.

3.1 Amendment to Subsection 7.1. Subsection 7.1 of the Credit Agreement is hereby amended by (i) deleting the word "and" at the end of paragraph (g) in such

subsection, (ii) deleting the period at the end of paragraph (h) in such subsection and inserting in lieu thereof “; and” and (iii) adding at the end thereof immediately after paragraph (h) in such subsection the following:

“(i) additional Indebtedness in connection with convertible debt securities to be issued by the Borrower in an amount not to exceed \$200,000,000 with terms reasonably satisfactory to the Administrative Agent (the “Convertible Debt”).”

3.2 Amendment to Subsection 7.5. Subsection 7.5 of the Credit Agreement is hereby amended by (i) deleting the word “and” at the end of paragraph (b) in such subsection, (ii) deleting the period at the end of paragraph (c) in such subsection and inserting in lieu thereof “; and” and (iii) adding at the end thereof immediately after paragraph (c) in such subsection the following:

“(d) So long as no Default or Event of Default has occurred and is continuing, the Borrower may make Restricted Payments to the holders of the Convertible Debt to the extent necessary to permit the exercise of such holders’ conversion rights pursuant to such Convertible Debt, as such conversion rights are in effect at the time the Convertible Debt is issued.”

SECTION 4. CONDITIONS PRECEDENT.

4.1 Effective Date. This Amendment shall become effective as of the date first set forth above (the “Amendment Effective Date”) following the date on which all of the following conditions have been satisfied or waived:

(a) Execution and Delivery. The Administrative Agent shall have received counterparts of this Amendment duly executed by (i) the Borrower and (ii) the Required Lenders;

(b) After giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing;

(c) The Merger shall have been consummated pursuant to documentation substantially consistent with the Merger Agreement.

SECTION 5. GENERAL.

5.1 Representations and Warranties.

(a) In order to induce the Administrative Agent and the Lenders to enter into this Amendment, the Borrower hereby represents and warrants to the Administrative Agent and the Lenders that after giving effect to this Amendment, the representations and warranties of the Borrower contained in the Credit Agreement and the other Loan Documents are true and correct in all material respects on and as of the Amendment Effective Date and on and as of the date when the conditions precedent set forth in Section 4 have been satisfied (in each case, after giving effect hereto) as if made on and as of the Amendment Effective Date and on and as of the date when the conditions precedent set forth in Section 4 have been satisfied (except where such representations and warranties expressly relate to an earlier date in which

case such representations and warranties were true and correct in all material respects as of such earlier date); provided that (x) all references to the "Credit Agreement" in any Credit Document shall be and are deemed to mean the Credit Agreement as amended hereby.

(b) In order to induce the Administrative Agent and the Lenders to enter into this Amendment, the Borrower hereby represents and warrants to the Administrative Agent and the Lenders that the Borrower has all necessary corporate power and authority to execute and deliver this Amendment; the execution and delivery by the Borrower of this Amendment has been duly authorized by all necessary corporate action on its part; and this Amendment has been duly executed and delivered by the Borrower and constitute the Borrower's legal, valid and binding obligation, enforceable in accordance with its terms.

5.2 Pledge of Equity. No later than February 15, 2007 (or such later date as the Administrative Agent shall agree in its sole discretion), the Borrower shall deliver to the Administrative Agent the certificates (if any) representing the Capital Stock of Merger Sub, together with undated powers, in blank, executed and delivered by a duly authorized officer of the Borrower.

5.3 Miscellaneous.

(a) From and after the effectiveness of this Amendment, each of the Loan Documents, including the Credit Agreement, and any and all other agreements, documents or instruments now or hereafter executed and/or delivered pursuant to the terms of the Credit Agreement as amended hereby, are hereby amended so that any reference in such Loan Documents to the Credit Agreement, whether direct or indirect, and each reference in the Credit Agreement to "this Agreement," "hereof," "herein," "hereby" or words of like import, shall be deemed to be a reference to the Credit Agreement as amended hereby. This Amendment shall constitute a Loan Document under the Credit Agreement.

(b) Except as amended hereby, the Credit Agreement shall continue to be and shall remain in full force and effect in accordance with its terms, and nothing in this Amendment shall be deemed to constitute a waiver of compliance by any Loan Party with respect to any other term or provision of any Loan Document.

(c) This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

(d) Section headings used in this Amendment are for convenience of reference only, are not part of this Amendment and are not to affect the constructions of, or to be taken into consideration in interpreting, this Amendment

(e) THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

[signature page follows].

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered by their respective duly authorized officers as of the date first above written.

SUNPOWER CORPORATION, as Borrower

By: Emmanuel T. Hernandez/
Name: Emmanuel T. Hernandez
Title: Chief Financial Officer

CREDIT SUISSE, CAYMAN ISLANDS
BRANCH,
as Administrative Agent and as a Lender

By: /S/ [Illegible]_____
Name:
Title:

By: /S/ [Illegible]_____
Name:
Title:

LEHMAN COMMERCIAL PAPER INC.,
as a Lender

By: /S/ [Illegible]_____
Name:
Title: