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

FORM 10-K

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

For the fiscal year ended January 2, 2011

OR

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

For the transition period from _____ to _____

Commission file number 001-34166

SunPower Corporation

(Exact Name of Registrant as Specified in its Charter)

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

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

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

Securities registered pursuant to Section 12(b) of the Act:

Securities registered pursuant to Section 12(g) of the Act:

None
(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes x No o
Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 of Section 15(d) of the Act. Yes o No x
Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No o
Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulatio n S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No o
Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. x
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Title of each class	**Name of each exchange on which registered**
Class A Common Stock $0.001 par value	**Nasdaq Global Select Market**
Class B Common Stock $0.001 par value	**Nasdaq Global Select Market**

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes o No x
The aggregate market value of the voting stock held by non-affiliates of the registrant on July 4, 2010 was $1.2 billion. Such aggregate market value was computed by reference to the closing price of the common stock as reported on the Nasdaq Global Select Market on July 2, 2010. For purposes of determining this amount only, the registrant has defin ed affiliates as including the executive officers and directors of registrant on July 2, 2010.
The total number of outstanding shares of the registrant's class A common stock as of February 18, 2011 was 56,178,140.
The total number of outstanding shares of the registrant's class B common stock as of February 18, 2011 was 42,033,287.

DOCUMENTS INCORPORATED BY REFERENCE

Parts of the registrant's definitive proxy statement for the registrant's 2011 annual meeting of stockholders are incorporated by reference in Items 10, 11, 12, 13 and 14 of Part III of this Annual Report on Form 10-K.

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Trademarks

The following terms are our trademarks and may be used in this report: SunPower®, PowerGuard®, SunTile®, PowerTracker®, and PowerLight®. All other trademarks appearing in this report are the property of their holders.

Unit of Power

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

Cautionary Statement Regarding Forward-Looking Statements

This Annual Report on Form 10-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements that do not represent historical facts and the assumptions underlying such statements. We use words such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "plan," "predict," "potential," "should," "will," "would," and similar expressions to identify forward-looking statements. Forward-looking sta tements in this Annual Report on Form 10-K include, but are not limited to, our plans and expectations regarding future financial results, expected operating results, business strategies, projected costs, products, ability to monetize utility projects, competitive positions, management's plans and objectives for future operations, the sufficiency of our cash and our liquidity, our ability to obtain financing, the success of our joint ventures, expected capital expenditures, outcomes of litigation, our exposure to foreign exchange, interest and credit risk, general business and economic conditions, and industry trends. These forward-looking statements are based on information available to us as of the date of this Annual Report on Form 10-K and current expectations, forecasts and assumptions and involve a number of risks and uncertainties that could cause actual results to differ materially from those anticipated by these forward-looking statements. Such risks and uncertainties include a variety of fact ors, some of which are beyond our control. Please see "Item 1A: Risk Factors" and our other filings with the Securities and Exchange Commission ("SEC") for additional information on risks and uncertainties that could cause actual results to differ. These forward-looking statements should not be relied upon as representing our views as of any subsequent date, and we are under no obligation to, and expressly disclaim any responsibility to, update or alter our forward-looking statements, whether as a result of new information, future events or otherwise.

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

PART I

ITEM 1: *BUSINESS*

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

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

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

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

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

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

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

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

Business Segments Overview

In the second quarter of fiscal 2010, subsequent to our acquis ition of SunRay Malta Holdings Limited ("SunRay"), a leading European solar power plant project developer, we changed our segment reporting from our Components Segment and Systems Segment to our Utility and Power Plants (“UPP”) Segment and Residential and Commercial (“R&C”) Segment to align our internal organization to how we serve our customers. Historically, Components Segment sales were generally solar cells and solar panels sold to a third-party dealer or original equipment manufacturer (“OEM”) who would re-sell the product to the eventual customer, while Systems Segment sales were generally complete turn-key offerings sold directly to the end customer.

Under the new segmentation, our UPP Segment refers to our large-scale solar products and sy stems business, which includes power plant project development and project sales, turn-key engineering, procurement and construction (“EPC”) services for power plant construction, and power plant operations and maintenance (“O&M”) services. As part of the acquisition of SunRay, we acquired a project pipeline of solar photovoltaic projects in France, Greece, Israel, Italy, Spain and the United Kingdom as well as SunRay's power plant development and project finance teams. The UPP Segment sells components, including large volume sales of solar panels and mounting systems to third parties, often on a multi-year, firm commitment basis. Our R&C Segment focuses on solar equipment sales into the residential and small commercial market through our third-party global dealer network, as well as direct sales and EPC and O&M services in the United States for rooftop and ground-mounted solar power systems for the new homes, commercial and public sectors.

Our President and Chief Executive Officer, as the chief operating decision maker (“CODM”), has organized SunPower and manages resource allocations and measures performance of our activities between these two segments. Our UPP revenue for fiscal 2010, 2009 and 2008 was $1,186.1 million, $653.5 million and $742.4 million, respectively, and our R&C revenue for fiscal 2010, 2009 and 2008 was $1,033.2 million, $870.8 million and $695.2 million, respectively. For more information about the financial condition and results of operations of each segment, please see *Part II - “Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations”* and *“Item 8: Financial Statements and Supplement ary Data.”*

Our Products and Services

Products

Solar Panels

Solar panels are solar cells electrically connected together and encapsulated in a weatherproof panel. Solar cells are semiconductor devices that directly convert sunlight into direct current electricity. Our A-300 solar cell is a silicon solar cell

with a specified power value of 3.1 watts and a conversion efficiency averaging between 20.0% and 21.5%. Our A-330 solar cell delivers 3.3 watts with a conversion efficiency of up to 22.7%. Our solar cells are designed without highly reflective metal contact grids or current collection ribbons on the front of the solar cells. This feature enables our solar cells to be assembled into solar panels that exhibit a more uniform appearance than conventional solar panels.

We believe solar panels made with our solar cells are the highest efficiency solar panels available for the mass market. Because our solar cells are more efficient relative to conventional solar cells, when our solar cells are assembled into panels, the assembly cost per watt is less because more power can be incorporated into a given size panel. High er solar panel efficiency allows installers to mount a solar power system with more power within a given roof or site area and can reduce per watt installation costs. We also sell a line of Serengeti™ branded solar panels manufactured by third parties.

Inverters

Every solar power system needs an inverter to transform the direct current electricity collected from the solar panels into utility-grade alternating current power that is ready for househ old use. We sell a line of SunPower branded inverters manufactured by third parties.

Roof Mounted Products

We offer several types of photovoltaic rooftop products, including non-penetrating mounting systems for solar panels designed to integrate with conventional residential roofing materials primarily sold through our R&C Segment. The mounting systems sit directly on the roof and are engineered to maintain the structural integrity of the rooftops as compared to conventional mounting systems, whi ch attach through the roof and onto a support structure of the building and can reduce the lifespan of the roof. Our suite of rooftop products is designed for a broad range of geographical climates and to accommodate varying visual appeal and space constraints. The following tiles and systems are included within our suite of rooftop products:

- *PowerGuard® Roof System ("PowerGuard")*

  PowerGuard is a non-penetrating roof-mounted solar panel that deliv ers reliable, clean electricity while insulating and protecting the roof membrane from ultraviolet rays and thermal degradation to save both heating and cooling energy expenses. Designed for quick and easy installation, PowerGuard tiles fit together with interlocking tongue-and-groove side surfaces. PowerGuard is a patented, proprietary, pre-engineered solar power roofing tile system which operates within the existing roof line and electrical system. Each PowerGuard tile consists of a solar laminate, lightweight cement substrate and styrofoam base and typically weighs approximately four pounds per square foot, which is supported by most commercial rooftops. Our technology integrates this lightweight construction with a patented pressure equalizing design that has been tested to withstand winds of up to 140 miles per hour. Moreover, certain other conventional systems add weight for stability against wind and weather, which may exceed weight limits for some commercial buildings' roofs.

  The PowerGuard roof system has been tested and certified by Underwriters Laboratories Inc. ("UL") and has received a UL-listed Class B fire rating which we believe facilitates obtaining building permits and inspector approvals. Sold through our R&C Segment, PowerGuard roof systems have been installed in a broad range of climates principally in the United States and Switzerland, and on a wide variety of building types, from rural single story warehouses to urban high rise structures.

- *SunPower® T-5 Solar Roof Tile System ("T-5")*

  The development of the T-5 solar roof tile is a direct result of the investment in SunPower by the United States Department of Energy through its Solar America Initiative program. Tilted at a 5-degree angle, the T-5 solar r oof tile was the industry's first all-in-one, non-penetrating photovoltaic rooftop product that combines solar panel, frame and mounting system into a single pre-engineered unit. The T-5 solar roof tiles interlock for wind resistance and secure installation. The patented design is adaptable to virtually any flat or low-slope rooftop while providing the roof membrane protection from corrosion. The T-5 solar roof tile all-in-one mounting system and frame is made from an engineered glass-filled polymer that is non-reactive, eliminating the need for electrical grounding of the array.

  Since the T-5 solar roof tile typically weighs less than three pounds per square foot and is stacked for shipping, more KW per pound can be transported using l ess packaging, resulting in lower distribution costs.

These benefits make the T-5 solar roof tile easier and faster to install than other rooftop systems as well as an effective solution for area or weight constrained flat rooftops.
;
The T-5 solar roof tile systems are primarily sold through our R&C Segment.

- *SunPower® T-10 Commercial Solar Roof Tiles ("T-10")*

  T-10 commercial solar roof tiles are pre-engineered solar panels that tilt at a 10-degree angle. Depending on geographical location and local climate conditions, this can allow for the generation of up to 10% more annual energy output than traditional flat roof-mounted systems. These non-penetrating panels interlock for secure, rapid installation on rooftops without compromising the structural integrity of the roof. The patented T-10 commercial solar roof tile is lightweight, weighing less than four pounds per square foot. Sloped side and rear wind deflectors improve wind performance, allowing T-10 solar arrays to withstand winds up to 120 miles per hour.

  Sold through our R&C Segment, the T-10 commercial solar roof tile performance is optimized for larger roofs with less space constraints as well as underutilized tracks of land, such as ground reservoirs.

- SunTile® Roof Integrated System for Residential Market

  Our patented SunTile product is a highly efficient solar power shingle roofing system utilizing our solar cell technology that is designed to integrate with conventional residential roofing materials. SunTile solar shingles are designed to replace multiple types of roof panels, including the most common concrete flat, low and high profile “S” tile and composition shingles. We believe that SunTile systems are less visible on a roof than conventional solar technology because the solar panel is integrated directly into the roofing material instead of mounted onto the roof. SunTile systems have a UL-listed Class A fire rating, which is the highest level of fire rating provided by U L. Sold through our R&C Segment, the SunTile roof system is designed to be incorporated by production home builders into the construction of their new homes.

Ground Mounted SunPower® Tracker Systems

We offer several types of ground-mounted solar power systems, including our fixed tilt and patented SunPower Tracker products. Our SunPower Tracker is a single-axis tracking system that automatically pivots solar panels to track the sun’s movement throughout the day. This tracking feature increases the amount of sunlight that is captured and converted into energy by up to 30% over flat or fixed-tilt systems depending on geographic location and local climate conditions. A single motor and drive mechanism can control 10 to 20 rows, or more than 200 KW of solar panels. The multi-row feature represents a cost advantage for our customers over dual axis tracking systems, as such systems require more motors, drives, land and power to operate per KW of capacity. The SunPower Tracker system can be assembled onsite, and is easily scalable. We have installed ground-mounted systems integrating SunPower Tracker in a wide range of geographical markets principally in the United States, Germany, Italy, Portugal, South Korea and Spain. Although trackers are primarily sold through our UPP Segment, we have constructed several of our smaller ground mounted systems for the commercial and governmental sectors through our R&C Segment.

The SunPower Tracker system also features our TMAC Advanced Tracker Controller ("TMAC") software, which includes real-time tracker status updates, remote monitoring and control, proprietary energy production optimization algorithms, and improved reliability. In addition, the TMAC software enables power plant operators to wirelessly monitor the status of the SunPower Tracker system in real-time through the SunPower power plant supervisory control and data acquisition ("SCADA") control system, giving them the option to control the array from a central operations center.

Fully Integrated System

Sold through our UPP Segment, the SunPower Oasis™ Power Plant (“SunPower Oasis”) is the industry's first modular solar power block that scales from 1 MW distributed installations to large central station power plants. SunPower Oasis provides a fully integrated, cost-effective way to rapidly deploy utility-scale solar power systems, streaming the development and construction process while optimizing the use of available land. Each power block integrates the SunPower T-0 tracker, a 400-watt utility solar panel, pre-manufactured cabling, and the TMAC software. The power block kits are shipped pre-assembled to the job site for rapid field installation, and offer a high capacity factor and reliable long-term performance.

The SunPower Oasis operating system is designed to support future grid interconnection requirements for large-scale

so lar power plants, such as voltage ride through and power factor control. It also features utility-standard SCADA operation and analytical tools, which include intelligent sensor and control networks for optimized power plant operation. SunPower Oasis streamlines the entire power plant development process, from permitting through construction and financing.

Fixed Tilt and SunPower Tracker Systems for Parking Structures

We have developed and patented designs for solar power systems for p arking structures in multiple configurations. These systems are sold through both the UPP and R&C Segments. These dual-use systems typically incorporate solar panels into the roof of a carport or similar structure to deliver onsite solar power while providing shade and protection. Aesthetically pleasing, standardized and scalable, they are well suited for parking lots adjacent to facilities. In addition, we have incorporated our SunPower Tracker technology into certain of our systems for elevated parking structures to provide a differentiated product offering to our customers.

Other System Offerings

We have other products that leverage our core systems. For example, our metal roof system is designed for sloped-metal roof buildings, which are used in some winery and warehouse applications. This solar power system is designed for rapid installation. We also offer other architectural products such as day lighting with translucent solar panels.

Balance of System Components

“Balance of system components” are components of a solar power system other than the solar panels, and include SunPower branded inverters, mounting structures, charge controllers, grid interconnection equipment and other devices depending on the specific requirements of a particular system and project.

Services

We provide our solar power plant customers end-to-end management of the project lifecycle, from early stage site assessment, financing support, and project development, including full-scal e environmental and construction permitting, through engineering, procurement, construction and commissioning. Our projects are built incorporating industry-leading standards for safety, quality, performance and reliability. Once tested, our plant O&M organization provides customers with “utility-quality” data collection, performance monitoring, diagnostic and performance reporting services, as well as lifecycle asset planning and management with industry leading software applications.

Operations and Maintenance

Our solar power systems are designed to generate electricity over a system life typically exceeding 25 years under test conditions. We provide commissioning, warranty, administration, operations, maintenance and performance monitoring services with the objective of optimizing our customers' electrical energy production. Commissioning services include testing to verify that equipment and system performance meet design requirements and specifications. We also pass through to customers long-term warranties from the OEMs of certain system components. We provide warranties of 25 years for our solar panels, which is standard in the solar industry, while our inverters typically carry warranty periods ranging from 5 to 10 years. In addition, we generally warrant our workmanship on installed systems for periods ranging up to 10 years. Systems under warranty and systems under a performance monitoring contract use our proprietary software systems to collect and remotely analyze equipment operating and system performance data from all of our sites in our offices located in the United States and the Philippines. We offer our customers a comprehensive suite of solar power system maintenance services ranging from system monitoring, to preventive maintenance, to rapid-response outage restoration and inverter repair. Our Standard Monitoring Service Agreement includes continuous remote monitoring, system performance reports, and a 24/7 technical support line. Our Basic Service Level Agreement adds preventive maintenance to the Standard Monitoring Services Agreement, and our Plus Level Service Agreement includes all of the Basic Service Level Agreement features plus on-site corrective maintenance using regionally-located field service technicians.

Monitoring

Our O&M personnel have access to a powerful set of tools developed on industry standard information technology platforms that facilitate the management of a global fleet of commercial and utility scale photovoltaic power plants. Real time flow of data from our customers' sites is aggregated centrally where an engine applies advanced solar specific algorithms to detect and report potential performance issues. Our work management system routes any anomalies to the appropriate responders to ensure timely resolution. The enterprise asset management system stores the operational history of thousands of

systems sold and delivered through our UPP and R&C Segments. We have implemented highly automated workflow processes that minimize the time from detection to analysis to dispatch and repair. Our O&M photovoltaic fleet management systems are built on more than a decade of solar services experience, allowing us to provide premier O&M services to our customers worldwide.

< div style="line-height:120%;text-align:left;text-indent:36px;font-size:10pt;">We have developed a proprietary set of advanced monitoring applications built upon the leading electric utility real-time monitoring platform (the “SunPower Monitoring System”). The SunPower Monitoring System continuously scans the operational status and performance of the solar power system and automatically identifies system outages and performance deficiencies to our 24/7 monitoring technicians. Customers can access historical or daily system performance data through our customer website (www.sunpowermonitor.com). Some customers choose to install “digital signs” to display system performance information from the lobby of their facility. We believe these displays enhance our brand and educate the public and prospective customers about solar power.

In 2008, we released the SunPower Monitoring System, and in 2009, we released the industry’s first monitoring application for the Apple iPhone®, iPod touch® and iPad® mobile devices. With the addition of this application to the SunPower Monitoring System, residential customers now have three easy ways to access information about the energy generated by their SunPower solar power systems. Along with the iPhone, iPod touch and iPad application, the SunPower Monitoring System offers homeowners the ability to monitor SunPower solar power systems with a wireless, in-home wall-mounted liquid crystal display (“LCD”) that provides power production and cumulative energy information. The monitoring system also provides the convenience of Internet access to a solar power system’s performance from virtually anywhere. Customers can view a system’s energy performance and environmental savings on an hourly, monthly and annual basis.

Solar Park Project Development

As part of the acquisition of SunRay, we acquired a project pipeline of solar photovoltaic projects in Europe and Israel as well as SunRay's power plant development and project finance teams. In addition, we internally grew our Americas-bas ed power plant development and project finance teams. These additions have allowed us to establish a scalable, fully integrated, vertical approach to developing utility-scale photovoltaic power plants in a sustainable way. The power plant development and project finance teams evaluate sites for solar developments; obtain land rights through purchase and lease options; conduct environmental and grid transmission studies; and obtain building, construction and grid-interconnection permits, licenses and regulatory approvals.

The plants and project development rights, initially owned by us, are sold to third parties through our UPP Segment. In the United States, commercial and electric utility customers typically choose to purchase solar electricity under a PPA with an investor or financing company that buys the system from us. In Europe and Israel, the projects are typically purchased by an investor or financing company and operated as central-station solar power plants.

For more information about the costs associated with solar park project development see *“Item 1A: Risk Factors”* including "*We may make significant investments in building solar power plants without first obtaining project financing, and the delayed sale of our projects would adversely affect our business, liquidity and results of operations*" and "*Due to the general economic environment and other factors, we may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations and make adequate capital investments as planned.*"

Research and Development

We engage in extensive research and development efforts to i mprove solar cell efficiency through enhancement of our existing products, development of new techniques such as concentrating photovoltaic power, and reducing manufacturing cost and complexity. Our research and development group works closely with our manufacturing facilities, our equipment suppliers and our customers to improve our solar cell design and to lower solar cell, solar panel and system product manufacturing and assembly costs. In addition, we have dedicated employees who work closely with our current and potential suppliers of crystalline silicon, a key raw material used in the manufacture of our solar cells, to develop specifications that meet our standards and ensure the high quality we require, while at the same time controlling costs.

We have government c ontracts that enable us to develop new technologies and pursue additional research opportunities while helping to offset our research and development expense. In fiscal 2007, we signed a Solar America Initiative research and development agreement with the United States Department of Energy under which we were awarded $24.1 million. The award was fully funded by the end of the third quarter of fiscal 2010. Payments received under these contracts offset our research and development expense by approximately 10%, 22% and 25% in fiscal 2010, 2009 and 2008, respectively. Our research and development expenditures, net of payments received under these contracts, were approximately $49.1 million, $31.6 million

and $21.5 million for fiscal 2010, 2009 and 2008, respectively.

For more information about these contracts, including the government's rights to use technology developed as a result of such contracts, please see *"Item 1A: Risk Factors"* including *"Our reliance on government programs to partially fund our research and development programs could i mpair our ability to commercialize our solar power products and services."*

Supplier Relationships, Manufacturing and Module Assembly

We purchase polysilicon, ingots, wafers, solar cells, third-party standard efficiency solar panels and balance of system components from various manufacturers, including joint ventures, on both a contracted and a purchase order basis. We have contracted with some of our suppliers for multi-year supply agreements. Under such agreements, we have annual minimum purchase obligations and in certain cases prepayment obligations. We currently believe our supplier relationships and various short- and long-term contracts will afford us the volume of material and services required to meet our planned output. For more information about risks related to our supply chain, please see *"Item 1A: Risk Factors"* including *"Limited competition among suppliers has required us in some instances to enter into long-term, firm commitment supply agreements that could result in excess or insufficient inventory and place us at a competitive disadvantage."*

We are working with our suppliers and partners along all steps of the value chain to reduce costs by improving manufacturing technologies and expanding economies of scale. Crystalline silicon is the leading commercial material for solar cells and is used in several forms, including single-crystalline, or monocrystalline silicon, multicrystalline, or polycrystalline silicon, ribbon and sheet silicon and thin-layer silicon. Our solar cell value chain starts with high purity silicon called polysilicon. Polysilicon is created by refining quartz or sand. We have negotiated multiple long-term, fixed price contracts with large polysilicon suppliers.

Polysilicon is melted and grown into crystalline ingots by companies speciali zing in ingot growth, such as our joint venture Woongjin Energy Co., Ltd. ("Woongjin Energy") located in South Korea. The ingots are sliced into wafers by our joint venture First Philec Solar Corporation ("First Philec Solar") located in the Philippines, and by other vendors. The wafers are processed into solar cells in our two manufacturing facilities located in the Philippines and by our joint venture AUO SunPower Sdn. Bhd. ("AUOSP") located in Malaysia. Our first facility ("FAB1") is 215,000 square feet and began operations in the fall of 2004. In August 2006, we purchased a 344,000 square foot building in the Philippines ("FAB2"), which is located approximately 20 miles from FAB1, and began operations in the summer of 2007. We currently operate four solar cell manufacturing lines and twelve solar cell manufacturing lines at FAB1 and FAB2, respectively, with a total rated annual solar cell manufacturing capacity of 590 MW.

In December 2010, we announced the inauguration of AUOSP, SunPower's joint venture solar cell manufacturing facility ("FAB3") in Malaysia with AU Optronics Corp. ("AUO"). The construction and ramp of FAB3, located in Melaka, south of Kuala Lumpur, will continue through 2013 and, when completed, is expected to generate more than 1,400 MW annually of high-efficiency solar cells. The first of two factory buildings will house fourteen solar cell manufacturing lines when fully online. FAB3 began production in October 2010 and as of January 2, 2011 operates two solar cell manufacturing lines with a rated annual solar cell manufacturing capacity of 50 MW each.

Using our solar cells, we manufacture our solar panels at our solar panel assembly facility located in the Philippines where we currently operate six solar panel assembly lines with a rated annual solar panel manufacturing capacity of 220 MW. Our solar panels are also assembled for us by third-party contract manufacturers in China, Mexico and Poland. In addition, we recently partnered with a contract manufacturer to establish a solar panel assembly facility located in Milpitas, California.

We source the solar panels and balance of system components based on quality, performance and cost considerations both internally and from third-party suppliers. We ge nerally assemble proprietary components, such as cementitious coatings and certain adhesive applications, while we purchase generally available components from third-party suppliers. Certain of our products, such as our SunTile products, are assembled at our third-party contractors' assembly plant prior to shipment to the project location. Other products such as our SunPower Tracker and SunPower T-10 commercial roof tiles are field assembled with components shipped directly from suppliers. We currently have the capacity to produce up to an aggregate of 600 MW of our PowerGuard, SunTile, SunPower Tracker, T-0, T-5 and T-10 products per year, depending on product mix, in our California assembly plant and third-party contractors' assembly plants. The balance of system components can make up as much as two-thirds of the cost of a solar power system. Therefore, we are focused on standardizing our products with the goal of driving down installation costs, such as with our SunPower Oasis operating syste m.

Customers

In our UPP Se gment, our customers typically include investors, financial institutions, project developers, electric utilities and independent power producers in the United States, Europe and Asia. In our R&C Segment, we primarily sell our products to commercial and governmental entities, production home builders, and our third-party global dealer network serving residential owners and small commercial building owners. In the residential homeowner market, we sell our products to customers primarily in the United States, Australia and Europe while our commercial, governmental and production home builders are typically in the United States.

We work with development, construction, system integration and financing companies to deliver our solar power sy stems to wholesale sellers, retail sellers, and retail users of electricity. In the United States, we often work with investors and financing companies that purchase solar power systems from us, and they then sell solar electricity generated from these systems under PPAs to utilities or end-use customers. End-use customers typically pay the investors and financing companies over an extended period of time based on energy they consume from the solar power systems, rather than paying for the full capital cost of purchasing the solar power systems. Worldwide, we have more than 650 MW of SunPower solar power systems operating or under contract. In addition, our dealer network and our new homes division have deployed thousands of SunPower rooftop solar power systems to residential customers.

We sell our products in North America, Europe, the Middle East, Asia and Australia, principally in regions where government incentives have accelerated solar power adoption. In fiscal 2010, we opened offices in new markets such as England, Greece, Israel and Malta through our acquisition of SunRay and continued to invest in established markets such as France, Germany, Italy, Spain and Japan. We anticipate developing additional customer relationships in other markets and geographic regions as we expand our business. We generally do not have long-term agreements with our customers, see "*Item 1A: Risk Factors*" including "*We often do not have long-term agreements with our customers and accordingly could lose customers without warning, which could cause our op erating results to decline.*"

We have four customers that each accounted for 10 percent or more of our total revenue in one or more of fiscal years 2010, 2009 and 2008 as follows:

		Year Ended		
(As a percentage of total revenue)		**January 2, 2011**	**January 3, 2010**	**December 28, 2008**
Significant Customers:	**Business Segment**			
Customer A	UPP	12%	*	*
Customer B	UPP	*	12%	*
Customer C	UPP	*	* ;	18%
Customer D	UPP	*	*	11%

* denotes less than 10% during the period

In fiscal 2010, we completed the construction and sale of the 72 MWac Montalto di Castro solar park, the largest solar park in Italy, and a 17 MWac solar power plant in Colorado, to a consortium of international investors which includes one significant customer. In fiscal 2009, we constructed a 25 MWac solar power plant in Desoto County, Florida, and a 10 MWac solar power pl ant at the Kennedy Space Center in Florida for a significant customer. In fiscal 2008, we energized several large-scale solar power plants for significant customers in Spain rated at over 40 MWac in the aggregate.

Geographic Information

Information regarding the physical location of our property, plant and equipment and our foreign and domestic operations is contained in Note 6 and Note 16, respectively, of Notes to Consolidated Financial Statements in *Part II - "Item 8: Financial Statements a nd Supplemental Data,"* which information is incorporated herein by reference.

Seasonal Trends

Our business is subject to industry-specific seasonal fluctuations. Sales have historically reflected these seasonal trends with the largest percentage of total revenues realized during the last two calendar quarters of a fiscal year. Lower seasonal demand normally results in reduced shipments and revenues in the first two calendar quarters of a fiscal year. There are va rious reasons for this seasonality, mostly related to economic incentives and weather patterns. For example, in European countries with feed-in tariffs, the construction of solar power systems may be concentrated during the second half of the calendar year,

largely due to the annual reduction of the applicable minimum feed-in tariff and the fact that the coldest winter months are January through March. In the United States, customers will sometimes make purchasing decisions towards the end of the year in order to take advantage of tax credits or for other budgetary reasons. In addition, sales in the new home development market are often tied to construction market demands which tend to follow national trends in construction, including declining sales during cold weather months.

Marketing and Sales

We market and sell solar electric power technologies worldwide through a direct sales force and t hrough our third-party global dealer network. We sell products and services to residential, commercial, utility and power plant customers.

Through both our R&C and UPP Segments, we have direct sales personnel, and within our R&C Segment, we also have dealer representatives. Our direct sales personnel and dealer representatives are located in Australia, France, Germany, Greece, Italy, Japan, Korea, Spain, Switzerland and the United States. During fiscal 2010, we expanded the size of our dealer network to approximately 1,500 dealers worldwide from 1,000 in fiscal 2009. Approximately 63%, 56% and 69% of our total revenue for fiscal 2010, 2009 and 2008, respectively, was derived through our direct sales personnel, with the remainder from dealer representatives. We provide warranty coverage on systems we sell through our direct sales personnel and dealers through both the R&C and UPP Segments. To the extent we sell through dealers, we may provide system design and support services while the dealers are re sponsible for construction, maintenance and service.

Our overall marketing programs include conferences and seminars, website and social media campaigns, sales training, public relations and advertising. Our marketing group is also responsible for driving many qualified leads to support our sales teams lead generation efforts and assessing the productivity of our lead pipeline. For our R&C Segment, we assist our dealer network through a marketing resource center and customer support organization. We have marketing personnel in San Jose and Richmond, California, and Trenton, New Jersey, United States, as well as in Frankfurt, Germany, Madrid, Spain and Geneva, Switzerland.
&nbs p;
Backlog

Our solar power system project backlog within our North American commercial business and our systems business within the R&C Segment and UPP Segment, respectively, represents the uncompleted portion of contracted and financed projects. Contingent customer orders, including our 250 MWac California Valley Solar Ranch Project, that are not yet financed are excluded from backlog as of January 2, 2011. Our solar power system projects are often cancelable by our customers under certain conditions. In addition, revenue and related costs are often subject to delays or scope modifications based on change orders agreed to with o ur customers, or changes in the estimated construction costs to be incurred in completing the project.

Our residential and light commercial business and the components business within the R&C Segment and UPP Segment, respectively, include large volume sales of solar panels, mounting systems and other solar equipment to third parties, which are typically ordered by our third-party global dealer network and customers under standard purchase orders with relatively short delivery lead-times, generally within one to three months. We have entered into multi-year supply agreements with certain customers of our components business that contain minimum firm purchase commitments. However, specific products that are to be delivered and the relate d delivery schedules under these long-term contracts are often subject to modifications based on change orders and amendments agreed to with our customers. Our backlog represents the uncompleted portion of firm purchase commitments and open purchase orders by our third-party global dealer network.

Management believes that backlog at any particular date is not necessarily a meaningful indicator of future revenue for any particular period of time because our backlog excludes contracts signed and completed in the same quarter and contracts still conditioned upon obtaining financing. Backlog totaled approximately $1,373 million a nd $773 million as of January 2, 2011 and January 3, 2010, respectively, an increase of $600 million year-over-year primarily related to the growth of our system project backlog in both the R&C Segment and UPP Segment. Approximately $1,266 million of our backlog at January 2, 2011 is currently planned to be recognized as revenue during fiscal 2011.

Competition

The market for solar electric power technologies is competitive and continually evolving. We expect to face increased competition, which may result in price reductions, reduced margins or loss of market share. Our solar power products and systems compete with a large number of competitors in the solar power market, including, but not limited to:

- *R&C Segment:* Canadian Solar Inc., JA Solar Holdings Co., Kyocera Corporation, Mitsubishi Corporation,

Q-Cells AG, Sanyo Corporation (a subsidiary of Panasonic Corporation), Sharp Corporation, SolarWorld AG, Suntech Power Holdings Co. Ltd., Trina Solar Ltd., and Yingli Green Energy Holding Co. Ltd.

- *UPP Segment:* Abengoa Solar S.A., Acconia Energia S.A., AES Solar Energy Ltd., Chevron Energy Solutions (a subs idiary of Chevron Corporation), EDF Energy plc, First Solar Inc., NextEra Energy, Inc., OPDE Group, Sempra Energy, Solar Millennium AG, Solargen Energy, Inc., SunEdison (a subsidiary of MEMC Electronic Materials Inc.), and Tessera Solar.

We also face competition from resellers that have developed related offerings that compete with our product and service offerings, or have entered into strategic relationships with other existing solar power system providers. We compete for limited government funding for research and development contracts, customer tax rebates and other programs that promote the use of solar and other renewable forms of energy with other renewable energy providers and customers.

In addition, universities, research institutions and other companies have brought to market alternative technologies such as thin films and concentrators, which compete with our technology in certain applications. Furthermore, the solar power market in general competes with conventional fossil fuels supplied by utilities and other sources of renewable energy such as wind, hydro, biomass, solar thermal and emerging distributed generation technologies such as micro-turbines, sterling engines and fuel cells.

In the large-scale on-grid solar power s ystems market, we face direct competition from a number of companies, including those that manufacture, distribute, or install solar power systems as well as construction companies that have expanded into the renewable sector. In addition, we will occasionally compete with distributed generation equipment suppliers.

We believe that the key competitive factors in the market for solar panels include:

- total system price;
- levelized cost of energy (“LCOE”) evaluation of the lifecycle energy costs and lifecycle energy production;
- power efficiency and performance;
- aesthetic appearance of solar panels;
- strength of distribution relationships;
- timeliness of new product introductions; and
- warranty protection, quality and customer service.

The principal elements of competition in the solar power systems market include technical expertise, experience, delivery capabilities, diversity of product offerings, financing structures, marketing and sales, price, product performance, quality, efficiency and reliability, and technical service and support. We believe that we can compete favorably with respect to each of these factors, although we may be at a disadvantage in comparison to larger companies with broader product lines, greater technical service and support capabilities, and financial resources. For more information about risks related to our competition, please see *“Item 1A: Risk Factors”* including *“The increase in the global supply of solar cells and panels, and increasing competition, may cause substantial downward pressure on the prices of our products and cause us to lose sales or market share, resulting in lower revenues, earnings, and cash flow" and "If we fail to successfully develop and introduce new and enhanced products and services, while continuing to reduce our costs, we may not be able to compete effectively, and our ability to generate revenues will suffer.”*

Intellectual Property

We rely on a combination of patent, copyright, trade secret, trademark and contractual protections to establish and protect our proprietary rights. “SunPower” is our registered trademark in countries throughout the world for use wi th solar cells, solar panels and mounting systems. We also hold registered trademarks for "PowerLight," "PowerGuard," "PowerTracker" and "SunTile" in certain countries. We are seeking and will continue to seek registration of the “SunPower” trademark and other trademarks in additional countries as we believe is appropriate. As of January 2, 2011, we held registrations for 9 trademarks in the United States, and had 8 trademark registration applications pending. We also held 20 trademarks and had over 19 trademark applications pending in foreign jurisdictions. We require our business partners to enter

into confidentiality and nondisclosure agreements before we disclose any sensitive aspects of our solar cells, technology or business plans. We typically enter into proprietary information a greements with employees, consultants, vendors, customers and joint venture partners.

We own multiple patents and patent applications which cover aspects of the technology in the solar cells and mounting systems that we currently manufacture and market. We continue to file for and receive new patent rights on a regular basis. The lifetime of a utility patent typically extends for 20 years from the date of filing with the relevant government authority. We assess appropriate opportunities for patent protection of those aspects of our technology, designs, methodologies and processes that we believe provide significant competitive advantages to us, and for licensing opportunities of new technologies relevant to our business. As of January 2, 2011, we held 78 patents in the United States, which will expire at various times between now and 2029, and had 125 patent applications pending. We also held 63 patents and had 239 patent applications pending in foreign jurisdictions. While patents are an important element of our intellectual property strategy, our business as a whole is not dependent on any one patent or any single pending patent application. Additionally, we rely on trade secret rights to protect our proprietary information and know-how. We employ proprietary processes and customized equipment in our manufacturing facilities. We therefore require employees and consultants to enter into confidentiality agreements to protect them.

We are currently in litigation in California state court against PVT Solar, Inc. ("PVT Solar") and three current PVT Solar employees relating to alleged violations by such employees of our trade secret rights. The current CEO of PVT Solar is a former employee of SunPower.

For more information about risks related to our intellectual property, please see *"Item 1A: Risk Factors"* including *"We are dependent on our intellectual property, and we may face intellectual property infringement claims that could be time-consuming and costly to defend and could result in the loss of significant rights"* and *"We rely substantially upon trade secret laws and contractual restrictions to protect our proprietary rights, and, if these rights are not sufficiently protected, our ability to compete and generate revenue could suffer"* and *"We may not obtain sufficient patent protection on the technology embodied in the solar products we currently manufacture and market, which could harm our competitive position and increase our expenses."*

Public Policy Considerations

Different policy mechanisms have been used by governments to accelerate the adoption of solar power. Examples of customer-focused financial mechanisms include capital cost rebates, performance-based incentives, feed-in tariffs, tax credits and net metering. Some of these government mandates and economic incentives are scheduled to be reduced or to expire, or could be eliminated altogether, including the feed-in tariffs in Germany and Italy. Capital cost rebates provide funds to customers based on the cost and size of a customer's solar power system. Performance-based incentives provide funding to a customer based on the energy produced by their solar power system. Feed-in tariffs pay customers for solar power system generation based on energy produced, at a rate generally guaranteed for a period of time. Tax credits reduce a customer's taxes at the time the taxes are due. In the United States and other countries, net metering has often been used as a supplemental program in conjunction with other policy mechanisms. Under net metering, a customer can ge nerate more energy than used, during which periods the electricity meter will spin backwards. During these periods, the customer "lends" electricity to the grid, retrieving an equal amount of power at a later time.

In addition to the mechanisms described above, new market development mechanisms to encourage the use of renewable energy sources continue to emerge. For example, many states in the United States have adopted renewable portfolio standards which mandate that a certain portion of electricity delivered to customers come from eligible renewable energy resources. In certain developing countries, governments are establishing initiatives to expand access to electricity, including initiatives to support off-grid rural electr ification using solar power. For more information about risks related to public policies, please see *"Item 1A: Risk Factors"* including *"The reduction, modification or elimination of government and economic incentives could cause our revenue to decline and harm our financial results" and "Existing regulations and policies and changes to these regulations and policies may present technical, regulatory and economic barriers to the purchase and use of solar power products, which may significantly reduce demand for our products and services."*

Environ mental Regulations

We use, generate and discharge toxic, volatile or otherwise hazardous chemicals and wastes in our research and development, manufacturing and construction activities. We are subject to a variety of foreign, federal, state and local governmental laws and regulations related to the purchase, storage, use and disposal of hazardous materials.

We believe that we have all environmental permits necessary to conduct our business and expect to obtain all necessary

environmental permits for future construction activities. We believe that we have properly handled our hazardous materials and wastes and have appropriately remediated any contamination at any of our premises. We are not aware of any pending or threatened environmental investigation, proceeding or action by foreign, federal, state or local agencies, or third parties involving our current facilities. Any failure by us to control the use of, or to restrict adequately the discharge of, hazardous substances could subject us to substantial financial liabilities, operational interruptions and adverse publicity, any of which could materially and adversely affect our business, results of operations and financial condition.

Employees

As of January 2, 2011, we had approximately 5,150 employees worldwide, including approximately 700 employees located in the United States, 4,130 employees located in the Philippines and 320 employees located in other countries. Of these employees, approximately 3,850 were engaged in manufacturing, 190 in construction projects, 210 in research and development, 580 in sales and marketing and 320 in general and administrative services. None of our employees are represented by labor unions. Employees located in France, Italy and Spain are covered by collective bargaining agreements. We have never experienced a work stoppage and we believe relations with our employees are good.

Additional Information

We were originally incorporated in California in April 1985 by Dr. Richard Swanson to develop and commercialize high-efficiency solar cell technologies. Cypress Semiconductor Corporation ("Cypress") made a significant investment in SunPower in 2002 and in November 2004, Cypress acquired 100% ownership of all outstanding shares of our capital stock, excluding unexercised warrants and options. In November 2005, we reincorporated in Delaware, created two classes of common stock and held an initial public offering (“IPO”) of our class A common stock. After completion of our IPO, Cypress held all the outstanding shares of our class B common stock. On September 29, 2008, Cypress distributed to its shareholders all of its shares of our class B common stock, in the form of a pro rata dividend to the holders of record as of September 17, 2008 of Cypress common stock. As a result, our class B common stock trades publicly and is listed on the Nasdaq Global Select Market under the symbol “SPWRB”, along with our class A common stock under the symbol “SPWRA”, and we discontinued being a subsidiary of Cypress.

Available Information

We make available our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 free of charge on our website at www.sunpowercorp.com, as soon as reasonably practicable after they are electronically filed or furnished to the SEC. Additionally, copies of materials filed by us with the SEC may be accessed at the SEC’s Public Reference Room at 100 F Street NE, Washington, D.C. or at the SEC’s website at http://www.sec.gov. For information about the SEC’s Public Reference Room, the public may contact 1-800-SEC-0330. Copies of material filed by us with the SEC may also be obtained by writing to us at our corporate headquarters, SunPower Corporation, Attention: Investor Relations, 3939 North First Street, San Jose, California 95134, or by calling (408) 240-5500. The contents of our website are not incorporated into, or otherwise to be regarded as a part of, this Annual Report on Form 10-K.

ITEM 1A: *RISK FACTORS*

Our operations and financial results are subject to various risks and uncertainties, including risks related to our supply chain, sales channels, liquidity, operations, intellectual property, and our debt and equity securities. Although we believe that we have identified and discussed below certain key risk factors affecting our business, there may be additional risks and uncertainties that are not pre sently known or that are not currently believed to be significant that may also adversely affect our business, financial condition, results of operations, cash flows, and trading price of our class A and class B common stock as well as our 4.50% senior convertible debentures, 4.75% senior convertible debentures, 1.25% senior convertible debentures and 0.75% senior convertible debentures.

Risks Related to Our Sales Channels

The increase in the global supply of solar cells and panels, and increasing competition, ma y cause substantial downward pressure on the prices of such products and cause us to lose sales or market share, resulting in lower revenues, earnings, and cash flow.

Global solar cell and panel production capacity materially increased in 2009 and 2010, and is expected to continue to increase in the future. Many competitors or potential competitors, particularly in China, continue to expand their production,

creating a potential oversupply of solar panels and cells in key markets. Increases in solar panel production and industry competition have resulted, and will continue to result, in substantial downward pressure on the price of solar cells and panels, including SunPower products. Increasing competition could also result in us losing sales or market share. Such price reductions or loss of sales or market share could continue to have a negative impact on our revenue and earnings, and could materially adversely affect our business and financial condition and cash flows. See also "*If we fail to successfully develop and introduce new and enhanced products and services, whil e continuing to reduce our costs, we may not be able to compete effectively, and our ability to generate revenues will suffer.*"

Our operating results will be subject to fluctuations and are inherently unpredictable and in particular, revenues from our UPP Segment are susceptible to large fluctuations.

We do not know if our revenue will grow, or if it will grow sufficiently to outpace our expenses, which we expect to increase as we expand our manufacturing capacity. For example, in the second fiscal quarter of 2010 we experienced a net loss. We may not be profitable on a quarterly basis. Our quarterly revenue and operating results will be difficult to predict and have in the past fluctuated from quarter to quarter. In particular, revenue in our UPP Segment is difficult to forecast and is susceptible to large fluctuations. The amount, timing and mix of sales in our UPP Segment, often for a single medium or large-scale project, may cause large fluctuations in our revenue and other financial results as, at any given time, our UPP Segment is dependent on large-scale projects and often a single project can account for a material portion of our total revenue in a given quarter. Our inability to monetize our projects as planned, or any delay in obtaining the required initial payments to begin recognizing revenue under the relevant recognition criteria, and the corresponding revenue impact under the percentage-of-completion method of reco gnizing revenue, may similarly cause large fluctuations in our revenue and other financial results. A delayed disposition of a project could require us to recognize a gain on the sale of assets instead of recognizing revenue. Further, our revenue mix of materials sales versus project sales can fluctuate dramatically from quarter to quarter, which may adversely affect our margins and financial results in any given period. Any decrease in revenue from our large UPP Segment customers, whether due to a loss or delay of projects or an inability to collect, could have a significant negative impact on our business. Our agreements with these customers may be cancelled if we fail to meet certain product specifications or materially breach the agreement. In the event of a customer bankruptcy, our customers may seek to renegotiate the terms of current agreements or renewals. In addition, the failure by any significant customer to pay for orders, whether due to liquidity issues or otherwise, could materially and adverse ly affect our results of operations. Any of the foregoing may cause us to miss any current and future revenue or earnings guidance and negatively impact liquidity.

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

The execution of our growth strategy is dependent upon the continued availability of third-party financing arrangements for our solar power plants and our customers, and is affected by general economic conditions.

The general economy and limited availability of credit and liquidity could materially and adversely affect our business and results of operations. We often require project financing for development and construction of our solar power plant projects, which require significant investments before the equity is later sold to investors. Many purchasers of our systems projects have entered into third-party arrangements to fi nance their systems over an extended period of time while many end-customers have chosen to purchase solar electricity under a power purchase agreement ("PPA") with an investor or financing company that purchases the system from us or our authorized dealers. In addition, under our power purchase business model, we often execute PPAs directly with the end-user customer purchasing solar electricity, with the expectation that we will later assign the PPA to a financier. Under such arrangements, the financier separately contracts with us to build and acquire the solar power system, and then sells the electricity to the end-user customer under the assigned PPA. When executing PPAs with the end-user customers, we seek to mitigate the risk that a financier will not be available for the project by allowing termination of the PPA in such event without penalty. However, we may not always be successful in negotiating for penalty-free termination rights for failure to obtain financing, and certain end-user c ustomers have required substantial financial penalties in exchange for such rights. These structured finance arrangements are complex and may not be feasible in many situations.

Due to the general challenging credit markets worldwide, we may be unable to obtain project financing for our projects, customers may be unable or unwilling to finance the cost of our products, we may have difficulties in reaching agreements with financiers to finance the construction of our solar power systems, or the parties that have historically provided this financing may cease to do so, or only do so on terms that are substantially less favorable for us or our customers, any of which could materially and adversely affect our revenue and growth in all segments of our business. The lack of pro ject financing could delay the development and construction of our solar power plant projects, thus reducing our revenues in the UPP

Segment from the sale of such projects. Many customers, especially in the United States, choose to purchase solar electricity under a PPA with a financing company that buys the system from us and the lack of availability of such financing could lead to reduced revenues. If economic recovery is slow in the United States or elsewhere, we may experience decreases in the demand for our solar power products, which may harm our operating results. We may in some cases seek to pursue partnership arrangements with financing entities to assist residential and other customers to obtain financing for the purchase or lease of our systems, which would expose us to credit or other risks. In addition, a rise in interest rates would likely increase our customers' cost of financing our products and could reduce their profits and expected returns on investment in our products. The general reduction in available credit to would-be borrowers, the poor state of economies worldwide, and the condition of housing markets worldwide, could delay or reduce our sales of products to new homebuilders and authorized resellers.

The reduction, modification or elimination of government and economic incentives could cause our revenue to decline and harm our financial results.

The market for on-grid applications, where solar power is used to supplement a customer's electricity purchased from the utility network or sold to a utility under tariff, depends in large part on the availability and size of government mandates and economic incentives because, at present, the cost of solar power generally exceeds retail electric rates in many locations. Such incentives vary by geographic market. Various government bodies in most of the countries where we do business have provided incentives in the f orm of feed-in tariffs, rebates, and tax credits and other incentives and mandates, such as renewable portfolio standards, to end-users, distributors, system integrators and manufacturers of solar power products to promote the use of solar energy in on-grid applications and to reduce dependency on other forms of energy. Some of these government mandates and economic incentives are scheduled to be reduced or to expire, or could be fundamentally restructured, including the feed-in tariffs in Germany and Italy. Since our acquisition of SunRay Malta Holdings Limited ("SunRay") in March 2010, project development business in Europe, and particularly Italy in the near term, have expanded significantly, increasing our exposure to regulatory changes in certain European countries. Because our sales are into the on-grid market, the reduction, modification or elimination of government mandates and economic incentives in one or more of our customer markets would materially and adversely affect the growth of s uch markets or result in increased price competition, either of which could cause our revenue to decline and harm our financial results.

Existing regulations and policies and changes to these regulations and policies may present technical, regulatory and economic barriers to the purchase and use of solar power products, which may significantly reduce demand for our products and services.

The market for electricity generation products is heavily influenced by federal, state and local government regulations and policies concerning the electric utility industry in the United States and abroad, as well as policies promulgated by electric utilities. These regulations and policies often relate to electricity pricing and technical interconnection of customer-owned electricity generation, and could deter further investment in the research and development of alternative energy sources as well as customer purchases of solar power technology, which could result in a significant reduction in the potential demand for our solar power products. We anticipate that our solar power products and their installation will continue to be subject to oversight and regulation in accordance with federal, state, local and foreign regulations relating to construction, safety, environmental protection, utility interconnection and metering, and related matters. It is difficult to track the requirements of individual states or local jurisdictions and design equipment to comply with the varying standards. Any new regulations or policies pertaining to ou r solar power products may result in significant additional expenses to us, our resellers and our resellers' customers, which could cause a significant reduction in demand for our solar power products. See also "*Risks Related to Our Operations—We sell our solar products to agencies of the U.S. government, and as a result, we are subject to a number of procurement rules and regulations, and our business could be adversely affected by an audit by the U.S. government if it were to identify errors or failure to comply with regulations*."

We may incur unexpected warranty and product liability claims that could material ly and adversely affect our financial condition and results of operations.

Our current standard product warranty for our solar panels includes a 10-year warranty period for defects in materials and workmanship and a 25-year warranty period for declines in power performance. We believe our warranty periods are consistent with industry practice. We perform accelerated lifecycle testing that expose our solar panels to extreme stress and climate conditions in both environmental simulation chambers and in actual field deployments in order to highlight potential failures that would occur over the 25-year warranty period. Due to the long warranty period, we bear the risk of extensive warranty claims long after we have shipped product and recognized revenue. Although we conduct accelerated testing of our solar panels and have several years of experience with our all-back-contact solar cell architecture, our solar panels have not and cannot be tested in an environment that exactly simulates the 25-year warranty period and it is difficult to test for all conditions that may occur in the field. We have sold solar panels since the early 2000's and have therefore not tested the full warranty

cycle.

In our project installations, our current standard warranty for our solar power systems differs by geography and end-customer application and usually includes a limited warranty of up to 10 years for defects in work and workmanship, after which the customer may typically extend the period covered by its warranty for an additional fee. Due to the long warranty period, we bear the risk of extensive warranty claims long after we have completed a project and recognized revenues. Warranty and product liability claims may also result from defects or quality issues in certain third party technology and components that our business incorporates into its solar power systems, part icularly solar cells and panels, over which we have little or no control. While we generally pass through manufacturer warranties we receive from our suppliers to our customers, in some circumstances, we may be responsible for repairing or replacing defective parts during our warranty period, often including those covered by manufacturers' warranties, or incur other non-warranty costs. If the manufacturer disputes or otherwise fails to honor its warranty obligations, we may be required to incur substantial costs before we are compensated, if at all, by the manufacturer. Furthermore, our warranties may exceed the period of any warranties from our suppliers covering components, such as third party solar cells, third party panels and third party inverters, included in our systems. In addition, manufacturer warranties may not fully compensate us for losses associated with third-party claims caused by defects or quality issues in their products. For example, most manufacturer warranties exclude many losses that m ay result from a system component's failure or defect, such as the cost of de-installation, re-installation, shipping, lost electricity, lost renewable energy credits or other solar incentives, personal injury, property damage, and other losses. In certain cases our direct warranty coverage provided by SunPower to our customers, and therefore our financial exposure, may exceed our recourse available against cell, panel or other manufacturers for defects in their products. In addition, in the event we seek recourse through warranties, we will also be dependent on the creditworthiness and continued existence of the suppliers to our business.

Increases in the defect rate of SunPower or third party products could cause us to increase the amount of warranty reserves and have a corresponding negative impact on our results of operations. Further, potential future product failures could cause us to incur substantial expense to repair or replace defective products, and we have agreed in some circumstances to indemnify our customers and our distributors against liability from some defects in our solar products. A successful indemnification claim against us could require us to make significant damage payments. Repair and replacement costs, as well as successful indemnification claims, could materially and negatively impact our financial condition and results of operations.

Like other retailers, distributors and manufacturers of products that are used by customers, we face an inherent risk of exposure to product liability claims in the event that the use of the solar power products into which solar cells and solar panels are incorporated results in injury, property damage or other damages. We may be subject to warranty and product liability claims in the event that our solar power systems fail to perform as expected or if a failure of our solar power systems results, or is alleged to result, in bodily injury, property damage or other damages. Since our solar power products are electricity producing devices, it is possible that our systems could result in injury, whether by product malfunctions, defects, improper installation or other causes. In addition, since we only began selling our solar cells and solar panels in the early 2000s and the products we are developing incorporate new technologies and use new installation methods, we cannot predict whether or not product liability claims will be brought against us in the future or the effect of any resulting negative publicity on our business. Moreover, we may not have adequate resources in the event of a successful claim against us. We rely on our general liability insurance to cover product liability claims and have not obtained separate product liability insurance. A successful warranty or product liability claim against us that is not covered by insurance or is in excess of our available insurance limits could require us to make significant payments of damages. In addition, quality issues can have various other ramifications, including delays in the recognition of revenue, loss of revenue, loss of future sales opportunities, increased costs associated with repairing or replacing products, and a negative impact on our goodwill and reputation, which could also adversely affect our business and operating results.

If we fail to successfully develop and introduce new and enhanced products and services, while continuing to reduce our costs, we may not be able to compete effectively, and our ability to generate revenues will suffer.

The solar power market is characterized by continually changing technology requiring improved features, such as increased efficiency and higher power output and improved aesthetics. Technologies developed by our direct competitors, including thin film solar panels, concentrating solar cells, solar thermal electric and other solar technologies, may provide power at lower costs than our products. We also face competition in some markets from other power generation sources, including conventional fossil f uels, wind, biomass, and hydro. In addition, other companies could potentially develop a highly reliable renewable energy system that mitigates the intermittent power production drawback of many renewable energy systems. Companies could also offer other value-added improvements from the perspective of utilities and other system owners, in which case such companies could compete with us even if the cost of electricity associated with such new system is higher than that of our systems.

Our solar panels are currently competitive in the market compared with lower cost conventional solar cells, such as thin-film, due to their higher efficiency. If our competitors are able to drive down their manufacturing costs faster than us, our products may become less competitive even when adjusted for efficiency. If we cannot effectively execute our cost reduction roadmap, our competitive position would suffer, and we could lose market share and our margins would be adversely impacted as we face downward pricing pressure.

Our failure to further refine our technology and develop and introduce new solar power products could cause our products or our manufacturing facilities to become uncompetitive or obsolete, which could reduce our market share and cause our sales to decline. This will require us to continuously develop new solar power products and enhancements for existing solar power products to keep pace with evolving industry standards, competitive pricing and changing customer requirements. If we cannot continually improve the efficiency of our solar panels as compared to those of our competitors', our pricing will become less competitive, and we could lose market share and our margins would be adversely impacted. As we introduce new or enhanced products or integrate new technology into our products, we will face risks relating to such transitions including, among other things, technical challenges, acceptance of products by our customers, disruption in customers' ordering patterns, insuffici ent supplies of new products to meet customers' demand, possible product and technology defects arising from the integration of new technology and a potentially different sales and support environment relating to any new technology. Our failure to manage the transition to newer products or the integration of newer technology into our products could adversely affect our business's operating results and financial condition.

A limited number of customers are expected to continue to comprise a significant portion of our revenues and any decrease in revenue from these customers could have a significant adverse effect on us.

Even though we expect our customer base to expand and our revenue streams to diversify, a substantial portion of our revenues could continue to depend on sales to a limited number of customers and the loss of sales to or inability to collect from these customers would have a significant negative impact on our business. Our agreements with these customers may be cancelled if we fail to meet certain product specifications, materially breach the agreement, or in the event of bankruptcy, and our customers may seek to renegotiate the terms of current agreements or renewals. In addition, the failure by any significant customer to pay for orders, whether due to liquidity issues or otherwise, could materially and negatively affect our results of operations.

We often do not have long-term agreements with our customers and accordingly could lose customers without warning, which could cause our operating results to decline.

Our product sales to residential dealers and components customers are frequently not accomplished under long-term agreements. We also contract to construct or sell large projects with no assurance of repeat business from the same customers in the future. Although we believe that cancellations on our purchase orders to date have been insignificant, our customers may cancel or reschedule purchase orders with us on relatively short notice. Cancellations or rescheduling of customer orders could result in the delay or loss of anticipated sales without allowing us sufficient time to reduce, or delay the incurrence of, our corresponding inventory and operating expenses. In addition, changes in forecasts or the timing of orders from these or other customers expose us to the risks of inventory shortages or excess inventory. These circumstances, in addition to the completion and non-repetition of large projects, variations in average selling prices, changes in the relative mix of sales of solar equipment versus solar project installations, and the fact that our supply agreements are generally long-term in nature and many of our other operating costs are fixed, in turn could cause our operating results to fluctuate and may result in a material adverse effect in our business and financial results.

Almost all of our engineering, procurement and construction ("EPC") contracts are fixed price contracts which may be insufficient to cover unanticipated or dramatic changes in costs over the life of the project.

Almost all of our EPC contracts in both our UPP Segment and R&C Segment are fixed price contracts. All essential costs are estimated at the time of entering into the EPC contract for a particular project, and these are reflected in the overall price that we charge our customers for the project. These cost estimates are preliminary and may or may not be covered by contracts between us or the subcontractors, suppliers and any other parties that may become necessary to complete the project. Thus, if the cost of materials were to rise dramatically as a result of sudden increased demand, these costs may have to be borne by us.

In addition, we require qualified, licensed subcontractors to install most of our systems. Shortages of such skilled labor could significantly delay a project or otherwise increase our costs. In several instances in the past, we have obtained change orders that reimburse us for additional unexpected costs due to various reasons. Should miscalculations in planning a project or delays in execution occur, there can be no guarantee that we would be successful in obtaining reimbursement and we may not

achieve our expected margins or we may be required to record a loss in the relevant fiscal period.

Our business could be adversely affected by seasonal trends and construction cycles.

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

The competitive environment in which we operate often requires us to undertake customer obligations that could materially and adversely affect our financial condition and results of operations if our customer obligations are more costly than expected.

We are often required as a condition of financing or at the request of our end customer to undertake certain obligations such as:

- System output performance guarantees;
- System maintenance;
- Penalty payments or customer termination rights if the system we are constructing is not commissioned within specified timeframes or other construction milestones are not achieved;
- Guarantees of certain minimum residual value of the system at specified future dates; and
- System put-rights whereby we could be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met.

Such financing arrangements and customer obligations involve complex accounting analyses and judgments regarding the timing of revenue and expense recognition, and in certain situations these factors may require us to defer revenue recognition until projects are completed, which could adversely affect revenue and profits in a particular period.

Risks Related to Our Liquidity

Due to the general economic environment and other factors, we may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations and make adequate capital investments as planned.

We anticipate that our operating and capital expenditures will increase substantially in the foreseeable future. To develop new products, support future growth, achieve operating efficiencies and maintain product quality, we must make significant capital investments in manufacturing technology, facilities and capital equipment, research and development, and product and process technology. We also anticipate increased costs as we expand our manufacturing operations, hire additional personnel, make advance payments for raw materials or pay more to procure such materials, especially polysilicon, increase our sales and marketing efforts, invest in joint ventures and acquisitions, and continue our research and development efforts with respect to our products and manufacturing technologies. In addition, we expect to invest a significant amount of capital to develop solar power systems and plants initially owned by us. The development and constr uction of solar power plants can require long periods of time and substantial initial investments. The delayed disposition of such projects could have a negative impact on our liquidity. See "*Risk Related to Our Operations—We may make significant investments in building solar power plants without first obtaining project financing, and the delayed sale of our projects would adversely affect our business, liquidity and results of operations.*" Certain of our customers also require performance bonds issued by a bonding agency or letters of credit issued by financial institutions. Obtaining letters of credit requires adequate collateral. Our letter of credit facility with Deutsche Bank is at least 50% collateralized by restricted cash, which reduces the amount of cash available for operations.

We expect total capital expenditures in the range of $130.0 million to $150.0 million in 2011 relating to improvements

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

If our financial results or operating plans change from our current assumptions, or if the holders of our outstanding 4.50% convertible debentures due 2015 or 1.25% convertible debentures due 2027 become entitled, and elect, to convert the debentures into cash or cash and shares of class A common stock, respectively, we may not have sufficient resources to support our business plan or pay cash in connection with the redemption of outstanding 4.50% and 1.25% debentures. Holders of our 1.25% debentures may require us to repurchase all or a portion of their 1.25% debentures on February 15, 2012. Any repurchase of our 1.25% debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the 1.25% debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem some or all of our 1.25% debentures on or after February 15, 2012 for cash at a redemption pric e equal to 100% of the principal amount of the 1.25% debentures to be redeemed plus accrued and unpaid interest. Also, holders of our debentures may also require us to repurchase their debentures for cash equal to 100% of the principal amount of the debentures to be redeemed plus accrued and unpaid interest in the event that our obligations under other indebtedness in excess of $25 million or $50 million, as applicable, are accelerated and we fail to discharge such obligations. If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financings; although the current economic environment could also limit our ability to raise capital by issuing new equity or debt securities on acceptable terms, and lenders may be unwilling to lend funds on acceptable terms that would be required to supplement cash flows to support operations. Additional debt would result in increased expenses and would lik ely impose new restrictive covenants which may be similar or different than those restrictions contained in the covenants under our current debt agreements and debentures. Financing arrangements, including project financing for our solar power plants and letters of credit facilities, may not be available to us, or may not be available in amounts or on terms acceptable to us. We may also seek to sell assets, reduce or delay capital investments, or refinance or restructure our debt. For additional details see Note 10 of Notes to Consolidated Financial Statements.

There can be no assurance that we will be able to generate sufficient cash flows, find other sources of capital or access capital markets to fund our operations and solar power plant projects, make adequate capital investments to remain competitive in terms of technology development and cost efficiency, or provide bonding or letters of credit required by our projects. If adequate funds and alternative resources are not available on acceptable terms, our ability to fund our operations, develop and construct solar power plants, develop and expand our manufacturing operations and distribution network, maintain our research and development efforts, provide collateral for our projects or otherwise respond to competitive pressures would be significantly impaired. Our inability to do the foregoing could have a material adverse effect on our business and results of operations.

Our current tax holidays in the Philippines and Switzerland will expire within the next several years.

We currently benefit from income tax holiday incentives in the Philippines in accordance with our subsidiary’s registration with the Philippine Economic Zone Authority ("PEZA"), which provide that we pay no income tax in the Philippines. Our current income tax holidays were granted as manufacturing lines were placed in services and thereafter expire within the next several years beginning in 2011, and we have applied for extensions and renewals upon expiration. However, these tax holidays may or may not be extended and the holiday for two of the sixteen total manufacturing lines expired at the end of 2010 and were extended through November 2011. We believe that as our Philipp ine tax holidays expire, (a) gross income attributable to activities covered by our PEZA registrations will be taxed at a 5% preferential rate, and (b) our Philippine net income attributable to all other activities will be taxed at the statutory Philippine corporate income tax rate, currently 30%. An increase in our tax liability could materially and negatively affect our financial condition and results of operations.

We have an auxiliary company ruling in Switzerland where we sell our solar power products. The auxiliary company ruling results in a reduced effective Swiss tax rate of approximately 11.5%. The current ruling expires in 2015. If the ruling is not renewed in 2015, Swiss income would be taxable at the full Swiss tax rate of approximately 24.2%.

Our substantial indebtedness and other contractual commitments could adversely affect our business, financial condition and results of operations, as well as our ability to meet any of our payment obligations under the 1.25%, 4.50% and 4.75% debentures and our other debt.

We currently have a significant amount of debt and debt service requirements that could have material consequences on our future operations, including:

- making it more difficu lt for us to meet our payment and other obligations under the 1.25%, 4.50% and 4.75% debentures and our other outstanding debt;
- resulting in an event of default if we fail to comply with the financial and other restrictive covenants contained in our debt agreements (with certain covenants becoming more restrictive over time), which event of default could result in all of our debt becoming immediately due and payable;
- reducing the availability of our cash flow to fund working capital, capital expenditures, project development, acquisitions and other general corporate purposes, and limiting our ability to obtain additional financing for these purposes;

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- subjecting us to the risk of increased sensitivity to interest rate increases on our indebtedness with variable interest rates;
- subjecting us to the risk of currency fluctuations and government-fix ed foreign exchange rates and the effects of currency hedging activity or inability to hedge currency fluctuation;
- limiting our flexibility in planning for, or reacting to, and increasing our vulnerability to, changes in our business, the industry in which we operate and the general economy; and
- placing us at a competitive disadvantage compared to our competitors that have less debt or are less leveraged.

Any of the above-listed factors could have an adverse effect on our business, financial condition and results of operations and our ability to meet our payment obligations under the 1.25%, 4.50% and 4.75% debentures and our other debt. In addition, we also have significant contractual commitments for the purchase of polysilicon, some of which involve prepayments, and we may enter into additional, similar long-term supply agreements in the future. Further, if the holders of our outstanding 1.25% and 4.50% debentures have been entitled to, and do convert their debentures, the principal amount must be settled in cash and to the extent that the conversion obligation exceeds the principal amount of any debentures converted, we must satisfy the remaining conversion obligation of the 1.25% debentures in shares of our class A common stock. Future conversions could materially and adversely affect our liquidity and our ability to meet our payment obligations under our debt.

A change in our effective tax rate can have a significant adverse impact on our business.

A number of factors may adversely impact our future effective tax rates, such as the jurisdictions in which our profits are determined to be earned and taxed; changes in the valuation of our deferred tax assets and liabilities; adjustments to estimated taxes upon finalization of various tax returns; adjustments to the our interpretation of transfer pricing standards, changes in available tax credits; changes in stock-based compensation expense; changes in tax laws or the interpretation of such tax laws (for example, proposals for fundamental U.S. international tax reform); changes in U.S. generally accepted accounting principles (“U.S. GAAP"); expiration or the inability to renew tax rulings or tax hol iday incentives; and the repatriation of non-U.S. earnings for which we have not previously provided for U.S. taxes. A change in our effective tax rate due to any of these factors may adversely impact our future results from operations. See *Part II — “Item 7: Management’s Discussion and Analysis of Financial Condition and Results of Operations–Results of Operations–Income Tax*es.”

Because we self-insure for certai n indemnities we have made to our officers and directors, potential claims could materially and negatively impact our financial condition and results of operations.

Our certificate of incorporation, by-laws and indemnification agreements require us to indemnify our officers and directors for certain liabilities that may arise in the course of their service to us. We primarily self-insured with respect to

potential indemnifiable claims historically. Although we have insured our officers and directors against certain potential third-party claims for which we are legally or financially unable to indemnify them, we have historically primarily self-insured with respect to potential third-party claims which give rise to direct liability to such third party or an indemnification duty on our part. If we were required to pay a significant amount on account of these liabilities for which we self-insured, our business, financial condition and results of operations could be materially harmed. See also "*Risks Related to Our Operations -- We and certain of our current and former o fficers and directors have been named as parties to various lawsuits relating to our past Philippines accounting issues, and may be named in further litigation, including with respect to the restatement of our consolidated financial statements, all of which could require significant management time and attention, result in significant legal expenses or damages, and cause our business, financial condition, results of operations and cash flows to suffer.*"

Our credit agreements contain covenant restrictions that may limit our ability to operate our business.

We may be unable to respond to changes in business and economic conditions, engage in transactions that might otherwise be beneficial to us, or obtain additional financing, because our debt agreements, foreign exchange hedging agreements and equity derivative agreements contain, and any of our other future similar agreements may contain, covenant restrictions that limit our ability to, among other things:

- incur additional debt, assume obligations in connection with letters of credit, or issue guarantees;
- create liens;
- make certain investments or acquisitions;
- enter into transactions with our affiliates;
- sell certain assets;
- redeem capital stock or make other restricted payments;
- declare or pay dividends or make other distributions to stockholders; and
- merge or consolidate with any person.

Our ability to comply with these covenants is dependent on our future performance, which will be subject to many factors, some of which are beyond our control, including prevailing economic conditions. In addition, our failure to comply with these covenants could result in a default under the 1.25%, 4.50% and 4.75% debentures and our other debt, which could permit the holders to accelerate such debt. If any of our debt is accelerated, we may not have sufficient funds available to repay such debt, which could materially and negatively affect our financial condition and results of operation.

Risks Related to Our Supply Chain

We will continue to be dependent on a limited number of third-party suppliers for certain raw materials and components for our products, which could prevent us from delivering our products to our customers within required timeframes, which in turn could result in sales and installation delays, cancellations, penalty payments and loss of market share.

We rely on a limited number of third-party suppliers, including our joint ventures, for certain raw materials and components for our solar cells, panels and power systems such as polysilicon, inverters and third-party solar panels. If we fail to develop or maintain our relationships with our suppliers, we may be unable to manufacture our products or our products may be available only at a higher cost or after a long delay. Such delays could prevent us from delivering our products to our customers within required timeframes and cause order cancellations and loss of market share. To the extent the processes that our suppliers use to manufacture components are proprietary, we may be unable to obtain comparable components from alternative suppliers. In addition, the financial markets could limit our suppliers' ability to raise capital if required to expand their production or satisfy their operating capital requirements. As a result, they could be unable to supply necessary raw materials, in ventory and capital equipment to us which we would require to support our planned sales operations which would in turn negatively impact our sales volumes profitability and cash flows. The failure of a supplier to supply raw materials or components in a timely manner, or to supply raw materials or components that meet our quality, quantity and cost requirements, could impair our ability to manufacture our products or increase the cost of production. If we cannot obtain substitute materials or components on a timely basis or on acceptable terms, we could be prevented from delivering our products to our customers within required timeframes, which could result in sales and installation delays, cancellations, penalty

payments or loss of market share, any of which could have a material adverse effect on our business, results of operations, and cash flows.

Limited competition among suppliers has required us in some instances to enter into long-term, firm commitment supply agreements that could result in excess or insufficient inventory and place us at a competitive disadvantage.

Due to the industry-wide shortage of polysilicon experienced in previous years, we have purchased polysilicon that we resell to third-party ingot and wafer manufacturers who deliver wafers to us that we then use in the manufacturing of our solar cells. Without sufficient polysilicon, some of those ingot and wafer manufacturers would not be able to produce the wafers on which we rely. To match our estimated customer demand forecasts and growth strategy for the next several years, we have entered into multiple long-term supply agreements, including agreements with our joint ventures, Woongjin Energy and First Philec Solar. Some agreements provide for fixed or inflation-adjusted pricing, substantial prepayment obligations, and firm purchase commitments that require us to pay for the supply whether or not we accept delivery. If su ch agreements require us to purchase more polysilicon, ingots or wafers than required to meet our actual customer demand over time, the resulting excess inventory could materially and negatively impact our results of operations. In addition, if the prices under our long-term supply agreements result in our paying more for such supplies than the current market prices available to our competitors, we may also be placed at a competitive disadvantage, and our profitability could decline. If our agreements provide insufficient inventory to meet customer demand, or if our suppliers are unable or unwilling to provide us with the contracted quantities, we may purchase additional supply at available market prices which could be greater than expected and could materially and negatively impact our results of operations. Such market prices could also be greater than prices paid by our competitors, placing us at a competitive disadvantage and leading to a decline in our profitability. Further, we face significant specifi c counterparty risk under long-term supply agreements when dealing with suppliers without a long, stable production and financial history. In the event any such supplier experiences financial difficulties, it may be difficult or impossible, or may require substantial time and expense, for us to recover any or all of our prepayments. Any of the foregoing could materially harm our financial condition and results of operations.

If third-party manufacturers become unable or unwilling to sell their solar cells or panels to us, our business and results of operations may be materially negatively affected.

We purchase a portion of our total product mix from third-party manufacturers of solar cells and panels, often marketing them under our Serengeti brand. Such products increase our inventory available for sale to customers in some markets. However, such manufacturers may not be willing to sell solar cells and panels to us at the quantities and on the terms and conditions we require. Such manufacturers may be our direct competitors. If they are unable or unwilling to sell to us, we may not have sufficient products available to sell to customers and satisfy our sales commitments, thereby materially and negatively affecting our business and results of operations. In addition, warranty and product liability claims may result from defects or quality issues in connection with third party solar cells and panels that we incorporate into our solar power products. See also "*Risks Related to Our Sales Channels -- We may incur unexpected warranty and product liability claims that could materially and adversely affect our financial condition and results of operations.*"

Risks Related to Our Operations

We may not be able to increase or sustain our recent growth rate, and we may not be able to manage our future growth effectively.

We may not be able to continue to expand our business or manage future growth. We plan to significantly increase our production capacity in 2011 and 2012, which will require successful execution of:

- expanding our existing manufacturing facilities and developing new manufacturing facilities, which would increase our fixed costs and, if such facilities are underutilized, would negatively impact our results of operations;
- ensuring delivery of adequate polysilicon and ingots;
- enhancing our customer resource management and manufacturing management systems;
- implementing and improving additional and existing administrative, financial and operations systems, procedures and controls, including the need to centralize, update and integrate our globa l financial internal control;
- hiring additional employees;

- expanding and upgrading our technological capabilities;
- managing multiple relationships with our customers, suppliers and other third parties;
- maintaining adequate liquidity and financial resources; and
- continuing to increase our revenues from operations.

Our recent expansion has placed, and our planned expansion and any other future expansion will continue to place, a significant strain on our management, personnel, systems and resources. Expanding our manufacturing facilities or developing facilities may be delayed by difficulties such as unavailability of equipmen t or supplies or equipment malfunction. Ensuring delivery of adequate polysilicon and ingots is subject to many market risks including scarcity, significant price fluctuations and competition. Maintaining adequate liquidity is dependent upon a variety of factors including continued revenues from operations and compliance with our indentures and credit agreements. If we are unsuccessful in any of these areas, we may not be able to achieve our growth strategy and increase production capacity as planned during the foreseeable future. If we are unable to manage our growth effectively, we may not be able to take advantage of market opportunities, develop new solar cells and other products, satisfy customer requirements, execute our business plan or respond to competitive pressures. See also *"If we are not successful in adding additional production lines through our joint venture in Malaysia, or we experience interruptions in the oper ation of our solar cell production lines, our revenue and results of operations may be materially and adversely affected."*

We may make significant investments in building solar power plants without first obtaining project financing, and the delayed sale of our projects would adversely affect our business, liquidity and results of operations.

The development and construction of solar power plants require long periods of time and substantial initial investments, which we may make without first ob taining project financing or getting final regulatory clearance. Such costs may never be recovered if the necessary permits and government approvals are not obtained, project financing (including any Department of Energy loan guarantee) are not obtained, or if a potential project sale cannot be completed on commercially reasonable terms or at all. Our efforts in this area may consist of all stages of development, including land acquisition, permitting, financing, construction, operation and the eventual sale of the projects. We will often choose to bear the costs of such efforts prior to obtaining project financing, prior to getting final regulatory clearance, and prior to our final sale to a customer, if any. This involves significant upfront investments of resources (including, for example, large transmission deposits or other payments, which may be non-refundable), land acquisition, permitting, legal and other costs, and in some cases the actual costs of constructing a project, in advance of the signing o f PPAs and EPC contracts, the sale of equity in the project and the receipt of any cash or revenue, much of which may not be recognized for several additional months or years following contract signing. Our ability to monetize solar power plant projects is dependent on successfully executing and selling large scale projects and often a single project can account for a material portion of our total revenue in a given quarter. Since consummation of the acquisition of SunRay in March 2010, we have deferred revenue recognition on SunRay construction projects until the projects have been financed, constructed, and sold to independent third parties. Alternatively, we may choose to build, own and operate certain solar power plants for a period of time, after which the project assets may be sold to third parties. In such cases, the delayed disposition of projects could require us to recognize a gain on the sale of assets instead of recognizing revenue. Our potential inability to obtain regulatory clearance, pro ject financing, or enter into sales contracts with customers could adversely affect our business, liquidity and results of operations. Our inability to monetize our projects as planned, or any delay in obtaining the required initial payments to begin recognizing revenue under the relevant recognition criteria, and the corresponding revenue impact under the percentage-of-completion method of recognizing revenue, may cause large fluctuations in our revenue and other financial results. In the event the project is subsequently canceled, abandoned, or is deemed likely to occur, we will charge all prior capital costs as an operating expense in the quarter in which such determination is made, which could materially adversely affect operating results. Our liquidity could also be adversely impacted if we cannot obtain timely project financing or if project sales are delayed.

We have significant international activities and customers, and plan to continue these efforts, which subject us to additional business risks, including logistical complexity and political instability.

A substantial portion of our sales are made to customers outside of the United States, and a substantial portion of our supply agreements are with supply and equipment vendors located outside of the United States. Currently our solar cell production lines are located at our manufacturing facilities in the Philippines, and our joint venture is ramping up its manufacturing facility in Malaysia. The majority of our solar panel assembly functions has historic ally been conducted by third-party contract manufacturers in China, Poland and Mexico. In addition, in March 2010, we completed the acquisition of SunRay, a European-based project developer with significant international operations.

Risks we face in conducting busin ess internationally include:

- multiple, conflicting and changing laws and regulations, export and import restrictions, employment laws, environmental protection, regulatory requirements and other government approvals, permits and licenses;

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- difficulties and costs in staffing and managing foreign operations as well as cultural differences;
- potentially adverse tax consequences associated with our permanent establishment of operations in more countries;< /font>
- relatively uncertain legal systems, including potentially limited protection for intellectual property rights, and laws, changes in the governmental incentives we rely on, regulations and policies which impose additional restrictions on the ability of foreign companies to conduct business in certain countries or otherwise place them at a competitive disadvantage in relation to domestic companies;
- repatriation of non-U.S. earnings taxed at rates lower than the U.S. statutory effective tax rate;
- inadequate local infrastructure and developing telecommunications infrastructures;
- financial risks, such as longer sales and payment cycles and greater difficulty collecting accounts receivable;

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- currency fluctuations and government-fixed foreign exchange rates and the effects of currency hedging activity or inability to hedge currency fluctuations;
- political and econom ic instability, including wars, acts of terrorism, political unrest, boycotts, curtailments of trade and other business restrictions;
- trade barriers such as export requirements, tariffs, taxes and other restrictions and expenses, which could increase the prices of our products and make us less competitive in some countries; and
- liabilities associated with compliance with laws (for example, the Foreign Corrupt Practices Act and similar laws outside of the United States).

If we are unable to successfully manage any such risks, any one or more could materially and negatively affect our business, financial condition and results of operations.

Recent protests, violence and political instability in Egypt and certain Middle East countries has increased the risk of political turmoil spreading around the world. Such events may disrupt our operations or those of our customers and suppliers and may affect the availability of materials needed to manufacture our products or the means to transport those materials to manufacturing facilities and finished products to customers. Such events could also increase volatility in the U.S. and world financial markets, which could harm our stock price and may limit the capital resources available to us and our customers or suppliers, or adversely affect consumer confidence. Turmoil and unrest in the Middle East or other regions of the world could harm our business and results of operations.< /div>

If we are not successful in adding additional production lines through our joint venture in Malaysia, or we experience interruptions in the operation of our solar cell production lines, our revenue and results of operations may be materially and adversely affected.

If our current or future solar cell production lines were to experience any problems or downtime, we would be unable to meet our production targets and our business would suffer. Our manufacturing activities have required and will continue to requi re significant management attention, a significant investment of capital and substantial engineering expenditures.

Under a joint venture agreement, we and AU Optronics Corporation ("AUO") jointly own and manage a joint venture that is constructing a manufacturing facility in Malaysia. We expect the joint venture to provide a substantial portion of our solar cell supply beginning in 2011. The success of our joint venture is subject to significant risks including:

- cost overruns, delays, supply shortages, equipment problems and other operating difficulties;
- difficulties expanding our processes to larger production capacity;

- custom-built equipment may take longer and cost more to engineer than planned and may never operate as designed;
- incorporating first-time equipment designs and technology improvemen ts, which we expect to lower unit capital and operating costs, but this new technology may not be successful;
- problems managing the joint venture with AUO, whom we do not control and whose business objectives are different from ours and may be inconsistent with our best interests;
- AUO's ability to obtain interim financing to fund the joint venture's business plan until such time as third party financing is obtained;
- the joint venture's ability to obtain third party financing to fund its capital requirements;
- difficulties in maintaining or improving our historical yields and manufacturing efficiencies;
- difficulties in protecting our intellectual property and obtaining rights to intellectual property developed by the joint venture;
- difficulties in hiring key technical, management, and other personnel;
- difficulties in integration, implementing IT infrastructure and an effective control environment; and
- potential inability to obtain, or obtain in a timely manner, financing, or approvals from governmental authorities for operations.

If we experience any of these or similar difficulties, we may be unable to complete the addition of new production lines on schedule at our joint venture, and our supply from the joint venture may be delayed or be more costly than expected, substantially constraining our supply of solar cells. If we are unable to ramp up our manufacturing capacity at the joint venture as planned, or we experience interruptions in the operation of our existing production lines, our per-unit manufacturing costs would increase, we would be unable to increase sales or gross margins as planned, we would need to increase our supply of third party solar cells, and our results of operations would likely be materially and adversely affected.

If we do not achieve satisfactory yields or quality in manufacturing our solar cells, our sales could decrease and our relationships with our customers and our reputation may be harmed.

The manufacture of solar cells is a highly complex process. Minor deviations in the manufacturing process can cause substantial decreases in yield and in some cases, cause production to be suspended or yield no output. We have from time to time experienced lower than anticipated manufacturing yields. As we expand our manufacturing capacity and bring additional lines or facilities into production, we may initially exp erience lower yields. If we do not achieve planned yields, our product costs could increase, and product availability would decrease resulting in lower revenues than expected.

Additionally, products as complex as ours may contain undetected errors or defects, especially when first introduced. For example, our solar cells or solar panels may contain defects that are not detected until after they are shipped or are installed because we cannot test for all possible scenarios. These defects could cause us to incur significant warranty, non-warranty and re-engineering costs, divert the attention of our engineering personnel from product development efforts and significantly affect our customer relations and business reputation. If we deliver solar cells or sola r panels with errors or defects, including cells or panels of third-party manufacturers, or if there is a perception that such solar cells or solar panels contain errors or defects, our credibility and the market acceptance and sales of our products could be harmed. In addition, some of our arrangements with customers include termination or put rights for non-performance. In certain limited cases, we could incur liquidated damages or even be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met for periods up to two years.

We obtain certain of our capital equipment used in our manufacturing process from sole suppliers and if this equipment is damaged or otherwise unavailable, our ability to deliver products on time will suffer, which in turn could result in order cancellations and loss of revenue.

Some of the capital equipment used in the manufacture of our solar power products has been developed and made specifically for us, is not readily available from multiple vendors and would be difficult to repair or replace if it were to

become damaged or stop working. If any of these suppliers were to experience financial difficulties or go out of business, or if there were any damage to or a breakdown of our manufacturing equipment, our business would suffer. In addition, a supplier's failure to supply this equipment in a timely manner, with adequate quality and on terms acceptable to us, could delay our capacity expansion of our manufacturing facility and our joint venture and otherwise disrupt our production schedule or increase our costs of production.

Project development or construction activities may not be successful, which could increase our costs and impair our ability to recover our investments.

The development and construction of solar power electric generation facilities and other energy infrastructure projects involve numerous risks. We may be required to spend significant sums for preliminary engineering, permitting, legal, and other expenses before we can determine whether a project is feasible, economically attractive or capable of being built. Successful completion of a particular project may be adversely affected by numerous factors, including:

- failures or delays in obtaining desired or necessary land rights, including ownership, leases and/or easements;
- failures or delays in obtaining necessary permits, licenses or other governmental approvals, or in overcoming objections from members of the public or adjoining land owners;
- uncertainties relating to land costs for projects;
- unforeseen engineering problems;
- access to available transmission for electricity generated by our solar power plants;
- construction delays and contractor performance shortfalls;
- work stoppages or labor disruptions;
- cost over-runs;
- availability of products and components from suppliers;
- adverse weather conditions;
- environmental, archaeological and geological conditions; and
- availability of construction and permanent financing.

If we are unable to complete the development of a solar power plant, or fail to meet one or more agreed target construction milestone dates, we may be subject to liquidated damages and/or penalties under the EPC agreement or other agreements relating to the power plant, and we typically will not be able to recover our investment in the project. We expect to invest a significant amount of capital to develop projects initially owned by us or ultimately owned by third parties. If we are unable to complete the development of a solar power project, we may write-down or write-off some or all of these capitalized investments, which would have an adverse impact on our net income in the period in which the loss is recognized.

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We depend on third-party contract manufacturers to assemble a significant portion of our solar cells into solar panels and any failure to obtain sufficient assembly and test capacity could significantly delay our ability to ship our solar panels and damage our customer relationships.

The majority of our solar panel assembly functions have historically been conducted by third-party contract manufacturers in China, Poland and Mexico. We plan to add additional manufacturing capacity for our solar panels in the United States, whether produced internally or by third-party contract manufacturers located in states near attractive solar markets. As a result of outsourcing a significant portion of this final step in our production, we face several significant risks, including limited control over assembly and testing capacity, delivery schedules, quality assurance, manufacturing yields and production costs. If the operations of our third-party contract manufacturers were disrupted or their financial stability impaired, or if they were unable or unwilling to devote capacity to our solar panels in a timely manner, our business could suffer as we might be unable to produce finished solar panels on a timely basis. We also risk customer delays resulting from an inability to move module production to an alternate provider or to complete production internationally, and it may not be possible to obtain

sufficient capacity or comparable production costs at another facility in a timely manner. In addition, migrating our design methodology to a new third-party contract manufacturer or to a captive panel assembly facility could involve increased costs, resources and development time, and utilizing additional third-party contract manufacturers could expose us to further risk of losing control over our intellectual property and the quality of our solar panels. Any reduction in the supply of solar panels could impair our revenue by significantly delaying our ability to ship products and potentially damage ou r relationships with new and existing customers, any of which could have a material and adverse effect on our financial condition and results of operation.

We act as the general contractor for many of our customers in connection with the installations of our solar power systems and are subject to risks associated with construction, cost overruns, delays and other contingencies tied to performance bonds and letters of credit, which could have a material adverse effect on our business and results of operations.

We act as the general contractor for many of our customers in connection with the installation of our solar power systems. All essential costs are estimated at the time of entering into the sales contract for a particular project, and these are reflected in the overall price that we charge our customers for the project. These cost estimates are preliminary and may or may not be covered by contracts between us or the other project developers, subcontractors, suppliers and other parties to the project. In addition, we require qualified, licensed subcontractors to install most of our systems. Shortages of such skilled labor could significantly delay a project or otherwise increase our costs. Should miscalculations in planning a project or defective or late execution occur, we may not achieve our expected margins or cover our costs. Also, some customers require performance bonds issued by a bonding agency or letters of credit issued by financial institutions. Due to the gen eral performance risk inherent in construction activities, it has become increasingly difficult recently to attain suitable bonding agencies willing to provide performance bonding. Obtaining letters of credit requires adequate collateral. In the event we are unable to obtain bonding or sufficient letters of credit, we will be unable to bid on, or enter into, sales contracts requiring such bonding.

In addition, the contracts with some of our larger customers require that we would be obligated to pay substantial penalty payments for each day or other period a solar installation for any such customer is not completed beyond an agreed target date, up to and including the return of the entire project sale price. This is particularly true in Europe, where long-t erm, fixed feed-in tariffs available to investors are typically set during a prescribed period of project completion, but the fixed amount declines over time for projects completed in subsequent periods. We face material financial penalties in the event we fail to meet the completion deadlines, including but not limited a full refund of the contract price paid by the customers. In certain cases we do not control all of the events which could give rise to these penalties, such as reliance on the local utility to timely complete electrical substation construction.

Furthermore, investors often require that the solar power system generate specified levels of electricity in order to maintain their investment returns, allocating substantial risk and financial pe nalties to us if those levels are not achieved, up to and including the return of the entire project sale price. Also, our customers often require protections in the form of conditional payments, payment retentions or holdbacks, and similar arrangements that condition its future payments on performance. Delays in solar panel or other supply shipments, other construction delays, unexpected performance problems in electricity generation or other events could cause us to fail to meet these performance criteria, resulting in unanticipated and severe revenue and earnings losses and financial penalties. Construction delays are often caused by inclement weather, failure to timely receive necessary approvals and permits, or delays in obtaining necessary solar panels, inverters or other materials. Additionally, we sometimes purchase land in connection with project development and assume the risk of project completion. All such risks could have a material adverse effect on our business and results of operations.

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

To increase our business and maintain our competitive position, we may acquire other companies or engage in joint ventures in the future. For example, in March 2010, we completed our acquisition of SunRay and in July 2010, we formed a joint venture with AUO to jointl y own and operate our third solar cell manufacturing factory located in Malaysia. See also "*If we are not successful in adding additional production lines through our joint venture in Malaysia, or we experience interruptions in the operation of our solar cell production lines, our revenue and results of operations may be materially and adversely affected.*"

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

- insufficient experience with technologies and markets in which the acquired business or joint venture is involved, which may be necessary to successfully operate and/or integrate the business or the joint venture;

- problems integrating the acquired operations, personnel, IT infrastructure, technologies or products with the existing business and products;
- diversion of management time and attention from the core business to the acquired business or joint venture;
- potential failure to retain or hire key technical, management, sales and other personnel of the acquired business or joint venture;
- d ifficulties in retaining or building relationships with suppliers and customers of the acquired business or joint venture, particularly where such customers or suppliers compete with us;
- potential failure of the due diligence processes to identify significant issues with product quality and development or legal and financial liabilities, among other things;
- potential inability to obtain, or obtain in a timely manner, approvals from governmental authorities, which could delay or prevent acquisitions or the successful operation of joint ventures;
- potential necessity to re-apply for permits of acquired projects;
- problems managing joint ventures with our partners, and reliance upon joint ventures which we do not control; for example, our ability to effectively manage our joint venture with AUO for the expansion of our manufacturing capacity;
- subsequent impairment of the acquired assets, including intangible assets; and
- assumption of liabilities including, but not limited to, lawsuits, tax examinations, warranty issues, and liabilities associated with compliance with laws (for example, the Foreign Corrupt Practices Act).

Additionally, we may decide that it is in our best interests to enter into acquisitions or joint ventures that are dilutive to earnings per share or that negatively impact margins as a whole. In an effort to reduce our cost of goods sold, we have and may continue to enter into acquisitions or joint ventures involving suppliers or manufacturing partners, which would expose us to additional supply chain risks. Acquisitions or joint ventures could also require investment of significant financial resources and require us to obtain additional equity financing, which may dilute our stockholders' equity, or require us to incur additional indebtedness. Such equity or debt financing may not be available on terms acceptable to us. For example, we, along with AUO, have committed to funding the AUO SunPower Sdn. Bhd. joint venture $335 million from 2011 to 2014, and an additional $50 million if requested. In addition, we could in the future make additional investments in our joint ve ntures or guarantee certain financial obligations of our joint ventures, which could reduce our cash flows, increase our indebtedness and expose us to the credit risk of our joint ventures.

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

Fluctuations in foreign currency exchange rates and interest rates could adversely impact our business and results of operations.

We have significant sales globally, and we are exposed to movements in foreign exchange rates, primarily related to sales to European customers that are denominated in Euros. A depreciation of the Euro would adversely impact our margins on sales to European customers. When foreign currencies appreciate against the U.S. dollar, inven tories and expenses denominated in foreign currencies become more expensive. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar power products more expensive for international customers, thus potentially leading to a reduction in demand, our sales and profitability. As a result, substantial unfavorable changes in foreign currency exchange rates could have a substantial adverse effect on our financial condition and results of operations. Although we seek to reduce our currency exposure by engaging in hedging transactions where we deem it appropriate, we do not know whether our efforts will be successful. Because we hedge some of our expected future foreign exchange exposure, if associated revenues do not materialize, we could experience losses. In the past, we have experienced an adverse impact on our revenue, gross margin, cash

position and profitability as a result of foreign currency fluctuations.

We are exposed to interest rate risk because many of our customers depend on debt financing to purchase our solar power systems. An increase in interest rates c ould make it difficult for our customers to obtain the financing necessary to purchase our solar power systems on favorable terms, or at all, and thus lower demand for our solar power products, reduce revenue and adversely impact our operating results. An increase in interest rates could lower a customer's return on investment in a system or make alternative investments more attractive relative to solar power systems, which, in each case, could cause our customers to seek alternative investments that promise higher returns or demand higher returns from our solar power systems, which could reduce our revenue and gross margin and adversely impact our operating results. Our interest expense would increase to the extent interest rates rise in connection with our variable interest rate borrowings. In addition, lower interest rates has an adverse impact on our interest income. See also Item 7A "*Quantitative and Qualitative Disclosures About Market Risk*" and "*Risks Related to Our Sales Channels-The execution of our growth strategy is dependent upon the continued availability of third-party financing arrangements for our solar power plants and our customers, and is affected by general economic conditions*."

We are exposed to the credit risk of our financial counterparties, customers and suppliers.

We have certain financial and derivative instruments that subject us to credit risk. These consist primarily of cash and cash equivalents, restricted cash and cash equivalents, investments, accounts receivable, note receivable, advances to suppliers, foreign currency option contracts, foreign currency forward contracts, bond hedge and warrant transactions, purchased options and share lending arrangements for our class A common stock. We are exposed to losses in the event of nonperformance by the counterparties to our financial and derivative instruments. For example, in connection with the bankruptcy of Lehman, the fair value of the 2.9 million shares of our class A common stock loaned and unreturned by an affiliate of Lehman at the time of the bankruptcy was $213.4 million, which was reflected in the third quarter of fiscal 2008 as a loss on our statement of operations.

We enter into agreements with suppliers that specify future quantities and pricing of polysilicon to be supplied for periods up to 10 years. Under certain agreements, we are required to make significant prepayments to the vendors over the terms of the arrangements. We may be unable to recover such prepayments if the credit conditions of these suppliers materially deteriorate. In addition, we may not be able to collect from our customers in the event of the deterioration of their credit or if they enter into bankruptcy. Any of the preceding could materially and adversely impact our financial conditions, results of operations and liquidity. See also Item 7A "*Quantitative and Qualit ative Disclosures About Market Risk*."

A material weakness in our internal control over financial reporting could result in a material misstatement of our financial statements.

Our management is responsible for maintaining internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with U.S. GAAP. As previously disclosed under Item 9A, "Controls and Procedures" in our Annual Report on Form 10-K for the fiscal year ended January 3, 2010, we concluded that our disclosure controls and procedures were not effective based on certain material weaknesses identified in our Philippine operations. Management has actively engaged in efforts to remediate these material weaknesses, and concluded that as of January 2, 2011, our internal control over financial reporting and our disclosure controls and procedures were effective. See *Part II - "Item 9A: Controls and Procedures."*

A material weakness is a deficiency, o r combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. The effectiveness of any controls and procedures is subject to certain limitations, and, as a result, there can be no assurance that our controls and procedures will detect all errors or fraud. A control, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system will be attained. We also cannot assure you that new material weaknesses will not arise as a result of our past failure to maintain adequate internal controls and procedures or that circumvention of those controls and procedures will not occur. Additionally, even our improved controls and procedures may not be adequate to prevent or identify errors or irregularities or ensure that our financial statements are prepared in accordance with U.S. GAAP. A material weakness could cause investors to lose confidence in our reported financial information, and the expenses incurred in remediation could adversely affect our financial condition, results of operations and cash flows.

We and certain of our current and former officers and directors have been named as parties to various lawsuits relating to our past Philippines accounting issues, and may be named in further litigation, including with respect to the restatement of our consolidated financial statements, all of which could require significant management time and attention, result in significant legal expenses or damages, and cause our business, financial condition, results of operations and cash flows to

suffer.

Three securities class action lawsuits were filed against our Company and certain of our current and former officers in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired our securities from April 17, 2008, through November 16, 2009. The actions arise from our announcement on November 16, 2009, that our Audit Committee commenced an internal investigation regarding certain unsubstantiated accounting entries. The complaints allege that the defendants made material misstatements and omissions concerning our financial results for 2008 and 2009, seek an unspecified amount of damages, and allege violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Sections 11 and 15 of the Securities Act of 1933. These cases were consolidated under Case No. CV-09-5473-RS (N.D. Cal.). In addition, derivative actions purporting to be brought on our behalf have also been filed in state and federal courts against several of our current and former officers and directors based on the same events alleged in the s ecurities class action lawsuits described above. The California state derivative complaints assert state-law claims for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement, and waste of corporate assets. The federal derivative complaints assert state-law claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The complaints seek an unspecified amount of damages.

We cannot predict the outcome of these lawsuits. The matters which led to our Audit Committee's investigation and the restatement of our consolidated financial statements have exposed us to greater risks associated with litigation, regulatory proceedings and government enforcement actions. We and our current and former o fficers and directors may, in the future, be subject to additional private and governmental actions relating to such matters. Subject to certain limitations, we are obligated to indemnify our current and former officers and directors in connection with such lawsuits and governmental investigations and any related litigation or settlements amounts. Regardless of the outcome, these lawsuits, and any other litigation that may be brought against us or our current or former officers and directors, could be time-consuming, result in significant expense and divert the attention and resources of our management and other key employees. An unfavorable outcome in any of these matters could exceed coverage provided under potentially applicable insurance policies, which is limited. Any such unfavorable outcome could have a material adverse effect on our business, financial condition, results of operations and cash flows. Further, we could be required to pay damages or additional penalties or have other remedies imposed a gainst us, or our current or former directors or officers, which could harm our reputation, business, financial condition, results of operations or cash flows. In addition, our Company is largely self insured so that expenses, settlements or damages in excess of $5 million in these actions will not be recoverable under the primary coverage insurance policies. Moreover, such policies are subject to several terms, conditions and exclusions. See also *"Risks Related to Our Liquidity - Because we self-insure for certain indemnities we have made to our officers and directors, potential claims could materially and negatively impact our financial condition and results of operations."*

Our agreements with Cypress Semiconductor Corporation ("Cypress") require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to pursue certain business initiatives.

On October 6, 2005, while a subsidiary of Cypress, we entered into a tax sharing agreement with Cypress providing for each party's obligations concerning various tax liabilities. The tax sharing agreement is structured such that Cypress would pay all federal, state, local and foreign taxes that are calculated on a consolidated or combined basis while we were a member of Cypress's consolidated or combined group for federal, state, local and foreign tax purposes. Our portion of tax liabilities or benefits was determined based upon our separate return tax liability as defined under the tax sharing agreement. These tax liabilities or benefits were based on a pro forma calculation as if we were filing a separate income tax return in each jurisdiction, rather than on a combined or consolidated basis, subject to adjustments as set forth in the tax sharing agreement.

On June 6, 2006, we ceased to be a member of Cypress's consolidated group for federal income tax purposes and certain state income tax purposes. On September 29, 2008, we ceased to be a member of Cypress's combined group for all state income tax purposes. To the extent that we become entitled to utilize our separate portion of any tax credit or loss carryforwards existing as of such date, we will distri bute to Cypress the tax effect, estimated to be 40% for federal and state income tax purposes, of the amount of such tax loss carryforwards so utilized, and the amount of any credit carryforwards so utilized. We will distribute these amounts to Cypress in cash or in our shares, at Cypress's option. As of January 2, 2011, we have a potential liability of approximately $2.2 million that may be due under this arrangement. In fiscal 2010 and 2009, we paid $0.7 million and $16.5 million, respectively, in cash to Cypress, of which zero and $15.1 million, respectively, represents the federal component and $0.7 million and $1.4 million, respectively, represents the state component.

We will continue to be jointly and severally liable for any tax liability during all periods in which we are deemed to be a member of the Cypress consolidated or combined group. Accordingly , although the tax sharing agreement allocates tax liabilities between Cypress and all its consolidated subsidiaries, for any period in which we were included in Cypress's

consolidated or combined group, we could be liable in the event that any federal or state tax liability was incurred, but not discharged, by any other member of the group.

We will continue to be jointly and severally liable to Cypress until the statute of limitations runs or all appeal options are exercised for all years in which we joined in the filing of tax returns with Cypress. If Cypress experiences adjustments to their tax liability pursuant to tax examinations, we may incur an incremental liability.

In January 2010, Cypress was notified by the IRS that it intends to examine Cypress's corporate income tax filings for the tax years ended in 2006, 2007 and 2008. SunPower was included as part of Cypress's federal consolidated group in 2006 and part of 2007.

As of January 2, 2011, Cypress has not notified us of any adjustments to the tax liabilities that have been proposed by the IRS. However, the IRS has not completed its examination and there can be no assurance that there will be no material adjustments upon completion of their review. Additionally, while years prior to fiscal 2006 for Cypress's U.S. corporate tax return are not open for assessment, the IRS can adjust net operating loss and research and development carryovers that were generated in prior years and carried forward to fiscal 2006 and subsequent years. If the IRS sustains tax assessments against Cypress, we may be obligated to indemnify Cypress under the terms of the tax sharing agreement.< /font>

We would also be liable to Cypress for taxes that might arise from the distribution by Cypress of our class B common stock to Cypress's stockholders on September 29, 2008, or "spin-off". In connection with Cypress's spin-off of our class B common stock, we and Cypress, on August 12, 2008, entered into an amendment to our tax sharing agreement ("Amended Tax Sharing Agreement") to address certain transactions that may affect the tax treatment of the spin-off and certain other matters.

Subject to certain caveats, Cypress obtained a ruling from the IRS to the effect that the distribution by Cypress of our class B common stock to Cypress's stockholders qualified as a tax-free distribution under Section 355 of the Internal Revenue Code ("Code"). Despite such ruling, the distribution may nonetheless be taxable to Cypress under Section 355(e) of the Code if 50% or more of the voting power or value of our stock was or is later acquired as part of a plan or series of related transactions that included the distribution of our stock. The Amended Tax Sharing Agreement requires us to indemnify Cypress for any liability incurred as a result of issuances or dispositions of our stock after the distribution, other than liability attributable to certain dispositions of our stock by Cypress, that cause Cypress's distribution of shares of our stock to its stockholders to be taxable to Cypress under Section 355(e) of the Code.

In addition, under the Amended Tax Sharing Agreement, we are required to provide notice to Cypress of certain transactions that could give rise to our indemnification obligation relating to taxes resulting from the application of Section 355(e) of the Code or similar provisions of other applicable law to the spin-off as a result of one or more acquisitions, as described in the agreement. We are not required to indemnify Cypress for any taxes which would result solely from issuances and dispositions of our stock prior to the spin-off and any acquisition of our stock by Cypress after the spin-off.

Under the Amended Tax Sharing Agreement, we also agre ed that, until October 29, 2010, we would not effect a conversion of any or all of our class B common stock to class A common stock or any similar recapitalization transaction or series of related transactions (a "Recapitalization"). In addition, we agreed that until October 29, 2010, we would not enter into or facilitate any other transaction resulting in an acquisition, as described in the agreement, of our stock without first obtaining the written consent of Cypress. As further detailed in the agreement, we are not required to obtain Cypress's consent unless such transactions would involve the acquisition for purposes of Section 355(e) of the Code after August 4, 2008 of more than 25% of our outstanding shares of common stock. In addition, the requirement to obtain Cypress's consent does not apply to certain qualifying acquisitions of our stock, as defined in the agreement.

Under the Amended Tax Sharing Agreement, we agreed that we would not (i) effect a Recapitalization during the 36 month period following the spin-off without first obtaining a tax opinion from a nationally recognized tax counsel, in form and in substance reasonably satisfactory to Cypress, to the effect that such Recapitalization (either alone or when taken together with any other transaction or transactions) will not cause the spin-off to become taxable under Section 355(e), or (ii) seek any private ruling, including any supplemental private ruling, from the IRS with regard to the spin-off, or any transaction having any bearing on the tax treatment of the spin-off, without the prior written consent of Cypress.

Our headquarters and manufacturing facilities, as well as the facilities of certain subcontractors, are located in regions that are subject to earthquakes and other natural disasters, and climate change and climate change regulation could have an adverse effect on our operations.

Our headquarters and research and development operations are located in California, and our manufacturing facilities

are located in the Philippines. The facilities of our joint venture for manufacturing and subcontractors for assembly and test of solar panels are located globally, including in Malaysia, China, Poland and Mexico. Any significant earthquake, tsunami or other natural disaster in these countries could materially disrupt our management operations and/or our production capabilities, and could result in our experiencing a significant delay in delivery, or substantial shortage, of our products and services.

In addition, legislators, regulators, and non-governmental organizations, as well as companies in many business sectors, are considering ways to reduce green-house gas emissions. Regulation could be forthcoming at the federal or state level with respect to green-house gas emissions. Such regulation or similar regulations in other countries could result in regulatory or product standard requirements for our global business, including our manufacturing operations. Furthermore, the potential physical impacts of climate change on our operations may include changes in weather patterns (including floods, tsunamis, drought and rainfall levels), water availability, storm patterns and intensities, and temperature levels. These potential physical effects may adversely impact the cost, production, sales and financial performance of our operations.

We could be adversely affected by any violations of the U.S. Foreign Corrupt Practices Act ("FCPA") and foreign anti-bribery laws.

The U.S. FCPA generally prohibits companies and their intermediaries from making improper payments to non-U.S. government officials for the purpose of obtaining or retaining business. Other countries in which we operate also have anti-bribery laws, some of which prohibit improper payments to government and non-government persons and entities. Our policies mandate compliance with these anti-bribery laws. We operate in many parts of the world that have experi enced governmental corruption to some degree and, in certain circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. In addition, due to the level of regulation in our industry, our entry into new jurisdictions through internal growth or acquisitions requires substantial government contact where norms can differ from U.S. standards. Although we implement policies and procedures designed to facilitate compliance with these anti-bribery laws, our employees, subcontractors and agents may take actions in violation of our policies and anti-bribery laws. Any such violation, even if prohibited by our policies, could subject us to criminal or civil penalties or other sanctions, which could have a material adverse effect on our business, financial condition, cash flows and reputation.

We sell our solar products to agencies of the U.S. government, and as a result, we are subject to a number of procurement rules and regulations, and our business could be adversely affected by an audit by the U.S. government if it were to identify errors or a failure to comply with regulations.

We have sold and continue to sell our solar power systems to various U.S. government agencies. In connection with these contracts, we must comply with and are affected by laws and regulations relating to the award, administration, and performance of U.S. government contracts, which may impose added costs on our business. We are expected to perform in comp liance with a vast array of federal laws and regulations, including, without limitation, the Federal Acquisition Regulation, the Truth in Negotiations Act, the Federal False Claims Act, the Anti-Kickback Act of 1986, the Buy American Act and the Davis Bacon Act. A violation of specific laws and regulations could result in the imposition of fines and penalties, reductions of the value of our contracts, contract modifications or termination, or suspension or debarment from government contracting for a period of time.

In some instances, these laws and regulations impose terms or rights that are more favorable to the government than those typically available to commercial parties in negotiated transactions. For example, the U.S. government may terminate any of our government contracts either at its convenience or for default based on performance. A termination arising out of our default may expose us to liability and have a material adverse effect on our ability to compete for future contracts.

U.S. government agencies may audit and investigate government contractors. These agencies review a contractor's performance under its contracts, cost structure, and compliance with applicable laws, regulations, and standards. If an audit or investigation uncovers improper or illegal activities, we may be subject to civil or criminal penalties and administrative sanctions, including termination of contracts, forfeiture of profits, suspension of payments, fines, and suspension or prohibit ion from doing business with the U.S. government. In addition, we could suffer serious reputational harm if allegations of impropriety were made against us.

Compliance with environmental regulations can be expensive, and noncompliance with these regulations may result in adverse publicity and potentially significant monetary damages and fines.

We are required to comply with all foreign, U.S. federal, state and local laws and regulations regarding pollution control and protection of the environment. In addition, under some statutes and regulations, a government agency, or other parties, may seek recovery and response costs from operators of property where releases of hazardous substances have occurred or are

ongoing, even if the operator was not responsible for such release or otherwise at fault. We use, generate and discharge toxic, volatile and otherwise haza rdous chemicals and wastes in our research and development and manufacturing activities. Any failure by us to control the use of, or to restrict adequately the discharge of, hazardous substances could subject us to potentially significant monetary damages and fines or suspensions in our business operations. In addition, if more stringent laws and regulations are adopted in the future, the costs of compliance with these new laws and regulations could be substantial. To date such laws and regulations have not had a significant impact on our operations, and we believe that we have all necessary permits to conduct operations as they are presently conducted. If we fail to comply with present or future environmental laws and regulations, however, we may be required to pay substantial fines, suspend production or cease operations.

In addition, new U.S. legislation includes disclosure requirements regarding the use of “conflict” minerals mined from the Democratic Republic of Congo and adjoining countries and procedures regarding a manufacturer's efforts to prevent the sourcing of such “conflict” minerals. The implementation of these requirements could affect the sourcing and availability of minerals used in the manufacture of solar products. As a result, there may only be a limited pool of suppliers who provide conflict free metals, and we cannot assure you that we will be able to obtain products in sufficient quantities or at competitive prices. Also, since our supply chain is complex, we may face reputational challenges with our customers and other stakeholders if we are unable to sufficiently verify the origins for all minerals used in our products.

Our success depends on the continuing contributions of our key personnel.

We rely heavily on the services of our key executive officers and the loss of services of any principal member of our management team could adversely impact our operations. In addition, we anticipate that we will need to hire a significant number of highly skilled technical, manufacturing, sales, marketing, administrative and accounting personnel. The competition for qualified personnel is intense in our industry. We may not be successful in attracting and retaining sufficient numbers of qualified personnel to support our anticipated growth. We cannot guarantee that any employee will remain employed with us for any definite period of time since all of our employees, including our key executive officers, serve at-will and may terminate their employment at any time for any reason.

We may in the future be required to consolidate the assets, liabilities and financial results of certain of our existing or future joint ventures, which could have an adverse impact on our financial position, gross margin and operating results.

The Financial Accounting Standards Board has issued accounting guidance regarding variable interest entities (“VIEs”) that affects our accounting treatment of our existing and future joint ventures. We have variable interests in Woongjin Energy Co., Ltd., First Philec Solar Corporation and our joint venture with AUO. To ascertain if we are required to consolidate these entities, we determine whether these entities are VIEs and if we are the primary beneficiary in accordance with the accounting guidance. Factors we consider in determining whether we are the VIE's primary beneficiary include the decision making authority of each partner, which partner manages the day-to-day operations of the joint venture and each partner's obligation to absorb losses or right to receive benefits from the joint venture in relation to that of the other partner. Changes in the financial accounting guidance, or changes in circumstances at each of these joint ventures, could lead u s to determine that we have to consolidate the assets, liabilities and financial results of such joint ventures. This could have a material adverse impact on our financial position, gross margin and operating results. In addition, we may enter into future joint ventures or make other equity investments, which could have an adverse impact on us because of the financial accounting guidance regarding VIEs.

We carry significant goodwill on our balance sheet, which is subject to impairment testing and could subject us to significant non-cash charges to earnings in the future if impairment occurs.

We have completed strategic acquisitions which have increased our balance of goodwill on our Consolidated Balance Sheet and the balance of goodwill may increase in the future if we complete acquisitions as part of our overall business strategy. Goodwill is not amortized, but is tested for impairment annually. We conduct our annual review of the valuation of goodwill as of the Sunday closest to the end of the third fiscal quarter of each year, or more often if indicators of impairment exist. Triggering events for additional impairment review may include indicators such as adverse industry or economic trends, lower than projected operating results or cash flows, or a sustained decline in our stock price or market capitalization. Our stock price has declined significantly since mid-2008, which increases the risk of goodwill impairment if the price of our stock declines further. The evaluation of the fair value of goodwill involves valuation techniques which require significant management judgment. Should conditions be different from management's last impairment assessment, significant write-downs of goodwill may be required, which would result in a significant non-cash charge to earnings and lower stockholders' equity. From our prior annual goodwill impairment tests we concluded there was no impairment to goodwill; however, the triggering events described above associated with an event of impairment may require us to evaluate the fair value of goodwill prior to the next annual review.

Risks Related to Our Intellectual Property

Loss of government programs that partially fund our research and development programs would increase our research and development expenses.

We selectively pursue contract research, product development and market development programs funded by various agencies of the federal and state governments to complement and enhance our own resources. Funding from government contracts is generally recorded as an offset to our research and development expense. These government agencies may not continue their commitment to programs relevant to our development projects. Moreover, we may not be able to compete successfully to obtain funding through these or other programs, and generally government agencies may unilaterally terminate or modify such agreements. A reduction or discontinuance of these programs, or of our participation in these programs, would increase our research and development expenses, which could materially and adversely affect our results of operations and could impair our ability to develop competitive solar power products and services.

Our reliance on government programs to partially fund our research and development programs could impair our ability to commercialize our solar power products and services.

Government funding of some of our research and development efforts imposes certain restrictions on our ability to commercialize results and may grant commercialization rights to the government. In some funding awards, the government is entitled to intellectual property rights arising from the related research. Such rights could include a nonexclusive, nontransferable, irrevocable, paid-up license to p ractice or have practiced each subject invention developed under an award throughout the world by or on behalf of the government, or the right to require us to grant a license to the developed technology or products to a third party or, if we refuse, the government may grant the license itself, if the government determines that action is necessary because we fail to achieve practical application of the technology, or because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations, or to give the United States industry preference. Accepting government funding can also require that manufacturing of products developed with federal funding be conducted in the United States.

We are dependent on our intellectual pro perty, and we may face intellectual property infringement claims that could be time-consuming and costly to defend and could result in the loss of significant rights.

From time to time, we, our respective customers or third parties with whom we work may receive letters, including letters from various industry participants, alleging infringement of their patents. Although we are not currently aware of any parties pursuing or intending to pursue infringement claims against us, we cannot assure investors that we will not be subject to such claims in the future. Additionally, we are required by contract to indemnify some of our customers and our third-party intellectual property providers for certain costs and damages of patent infringement in circumstances where our products are a factor creating the customer's or these third-party providers' infringement liability. This practice may subject us to significant indemnification claims by our customers and our third-party providers. We cannot assure investors that indemnification claims will not be made or that these claims will not harm our business, operating results or financial condition. Intellectual property litigation is very expensive and time-consuming and could divert management's attention from our business and could have a material adverse effect on our business, operating results or financial condition. If there is a successful claim of infringement against us, our customers or our third-party intellectual property providers, we may be required to pay substantial damages to the party claiming infringement, stop selling products or using technology that contains the allegedly infringing intellectual property, or enter into royalty or license agreements that may not be available on acceptable terms, if at all. Parties making infringement claims may also be able to bring an action before the International Trade Commission that could result in an order stopping the importation into the United States of our solar products. Any of these judgments could materially damage our business. We may have to develop non-infringing technology, and our failure in doing so or in obtaining licenses to the proprietary rights on a timely basis could have a material adverse effect on our business.

We have filed, and may continue to file, claims against other parties for infringing our intellectual property that may be very costly and may not be resolved in our favor.

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To protect our intellectual property rights and to maintain our competitive advantage, we have, and may continue to, file suits against parties who we believe infringe our intellectual property. Intellectual property litigation is expensive and time consuming and could divert management's attention from our business and could have a material adverse effect on our business, operating results or financial condition, and our enforcement efforts may not be successful. In addition, the validity of our patents may be challenged in such litigation. Our participation in intellectual property enforcement actions may negatively impact our financial results.

We may not be able to prevent others from using the term SunPower or similar terms in connection with their solar power products which could adversely affect the market recognition of our name and our revenue.

"SunPower" i s our registered trademark in certain countries, including the United States, for use with solar cells and solar panels. We are seeking similar registration of the "SunPower" trademark in other countries but we may not be successful in some of these jurisdictions. We hold registered trademarks for SunPower®, PowerLight®, PowerGuard®, PowerTracker® and SunTile®, in certain countries, including the United States. We have not registered, and may not be able to register, these trademarks in other key countries. In the foreign jurisdictions where we are unable to obtain or have not tried to obtain registrations, others may be able to sell their products using trademarks compromising or incorporating "SunPower," or our other chosen brands, which could lead to customer confusion. In addition, if there are jurisdictions where another proprietor has already established trademark rights in marks containing "SunPower," or our other chosen brands, we may face trade mark disputes and may have to market our products with other trademarks, which may undermine our marketing efforts. We may encounter trademark disputes with companies using marks which are confusingly similar to the SunPower mark, or our other marks, which if not resolved favorably could cause our branding efforts to suffer. In addition, we may have difficulty in establishing strong brand recognition with consumers if others use similar marks for similar products.

We rely substantially upon trade secret laws and contractual restrictions to protect our proprietary rights, and, if these rights are not sufficiently protected, our ability to compete and generate revenue could suffer.

We seek to protect our proprietary manufacturing processes, documentation and other written materials primarily under trade secret and copyright laws. We also typically require employees, consultants, and third parties such as our vendors and customers, with access to our proprietary information to execute confidentiality agreements. The steps taken by us to protect our proprietary information may not be adequate to prevent misappropriation of our technology. In addition, our proprietary rights may not be adequately protected because:

- people may not be deterred from misappropriating our technologies despite the existence of laws or contracts prohibiting it;
- policing unauthorized use of our intellectual property may be difficult, expensive and time-consuming, and we may be unable to determine the extent of any una uthorized use;
- the laws of other countries in which we market our solar products, such as some countries in the Asia/Pacific region, may offer little or no protection for our proprietary technologies; and
- reports we file in connection with government-sponsored research contracts are generally available to the public and third parties may obtain some aspects of our sensitive confidential information.

Reverse engineering, unauthorized copying or other misappropriation of our proprietary technologies could enable third parties to benefit from our technologies without compensating us for doing so. Any inability to adequately protect our proprietary rights could harm our ability to compete, to generate revenu e and to grow our business.

We may not obtain sufficient patent protection on the technology embodied in the solar products we currently manufacture and market, which could harm our competitive position and increase our expenses.

Although we substantially rely on trade secret laws and contractual restrictions to protect the technology in the solar products we currently manufacture and market, our success and ability to compete in the future may also depend to a significant degree upon obtaining patent protection for o ur proprietary technology. We currently own multiple patents and patent applications which cover aspects of the technology in the solar cells and mounting systems that we currently manufacture and market. Material patents that relate to our systems products and services primarily relate to our rooftop mounting products and ground-mounted tracking products. We intend to continue to seek patent protection for those aspects of our technology, designs, and methodologies and processes that we believe provide significant competitive advantages.

Our patent applications may not result in issued patents, and even if they result in issued patents, the patents may not have claims of the scope we seek or we may have to refile patent applications due to newly discovered prior art. In addition, any issued patents may be challenged, invalidated or declared unenforceable, or even if we obtain an award of damages for infringement by a third party, such award could prove insufficient to compensate for all damages incurred as a result of such infringement. The term of any issued patents would be 20 years from their filing date and if our applications are pending for a long time period, we may have a correspondingly shorter term for any patent that may issue. Our present and future patents

may provide only limited protection for our technology and may not be sufficient to provide competitive advantages to us. For example, competitors could develop similar or more advantageous technologies on their own or design around our patents. Also, patent protection in certain foreign countries may not be available or may be limited in scope and any patents obtained may not be as readily enforceable as in the United States, making it difficult for us to effectively protect our intellectual property from misuse or infringement by other companies in these countries. Our inability to obtain and enforce our intellectual property rights in some countries may harm our business. In addition, given the costs of obtaining patent protection, we may choose not to protect certain innovations that later turn out to be important.

Risks Related to Our Debt and Equity Securities

Conversion of our outstanding 1.25% and 4.75% debentures, our warrants related to our outstanding 4.50% and 4.75% debentures, and future substantial issuances or dispositions of our class A or class B common stock or other securities, could dilute ownership and earnings per share or cause the market price of our stock to decrease.

To the extent we issue class A common stock upon conversion of our outstanding 1.25% and 4.75% debentures, the conversion of some or all of such debentures will dilute the ownership interests of existing stockholders, including holders who had previously converted their debentures. Any sales in the public market of the class A and class B common stock issuable upon such conversion could adversely affect prevailing market prices of our class A and class B common stock. Sales of our class A or class B common stock in the public market or sales of any of our other securities could dilute ownership and earnings per share, and even the perception that such sales could occur could cause the market prices of our class A and class B common stock to decline. In addition, the existence of our outstanding debentures may encourage short selling of our common stock by market participants who expect that the conversion of the debentures could depress the prices of our class A and class B common stock.

We issued warrants to affiliates of the underwriters of our 4.50% and 4.75% debentures, which are exercisable for a total of approximately 11.1 million shares and 8.7 million shares of our class A common stock, respectively. The warrants, together with certain convertible hedge transactions, are meant to reduce our exposure upon potential conversion of our 4.50% and 4.75% debentures. If the market price of our class A common stock exceeds the respective exercise prices of the warrants, such warrants will have a dilutive effect on our earnings per share, and could dilute the ownership interests for existing stockholders if exercised.

Approximately 4.7 million shares of class A common stock were lent to underwriters of our 1.25% and 0.75% debenture offerings, including approximately 2.9 million shares lent to Lehman Brothers International (Europe) Limited (“LBIE”) and approximately 1.8 million shares lent to Credit Suisse International (“CSI”). Such shares were lent to facilitate later hedging arrangements of future purchases for debentures in the after-market. Shares still held by CSI may be freely sold into the market at any time, and such sales could depress our stock price. In addition, any hedging activity facilitated by our debenture underwriters would involve short sales or privately negotiated derivatives transactions. Due to the September 15, 2008 bankruptcy filing of Lehman Brothers Holding Inc. (“Lehman”) and commencement of administrative proceedings for LBIE in the U.K., we recorded the share s lent to LBIE as issued and outstanding as of September 15, 2008, for the purpose of computing and reporting basic and diluted earnings per share. If Credit Suisse Securities (USA) LLC or its affiliates, including CSI, were to file bankruptcy or commence similar administrative, liquidating, restructuring or other proceedings, we may have to consider approximately 1.8 million shares lent to CSI as issued and outstanding for purposes of calculating earnings per share which would further dilute our earnings per share. These or other similar transactions could further negatively affect our stock price.

The price of our class A common stock, and therefore of our outstanding 0.75%, 1.25%, 4.50% and 4.75% debentures, as well as our class B common stock, may fl uctuate significantly.

Our class A and class B common stock have experienced extreme price and volume fluctuations. The trading price of our class A and class B common stock could be subject to further wide fluctuations due to many factors, including the factors discussed in this risk factors section. In addition, the stock market in general, and the Nasdaq Global Select Market and the securities of technology companies and solar companies in particular, have experienced severe price and volume fluctuations. These trading prices and valuations, including our own market valuation and those of companies in our industry generally, may not be sustainable. These broad market and industry factors may decrease the market price of our class A and class B common stock, regardless of our actual operating performance. Because the 0.75%, 1.25%, 4.50% and 4.75% debentures are convertible into our class A common stock (and/or cash equivalent to the value of our class A common stock), volatility or depressed prices of our class A common stock could have a similar effect on the trading price of these debentures.

Differences in trading history, liquidity, voting rights and other factors may continue to result in different market prices for

shares of our class A and our class B common stock.

The class A and class B common stocks continue to maintain different trading histories, liquidity, and voting rights. Our class B common stock has consistently maintained lower trading prices and liquidity compared to the class A common stock following our spin-off from Cypress on September 28, 2008. This may be caused by the lack of a long trading history and lower trading volume of the class B common stock, compared to the class A common stock, as well as other factors. In addition, the class B common stock is entitled to eight votes per share and the class A common stock is entitled to one vote per share. Additionally, our restated certificate of incorporation imposes certain limitations on the rights of holders of class B common stock to vote the full number of their shares. The difference in the voting rights of our class A and class B common stock could reduce the value of our class A common stock to the extent that any investor or potential future purchaser of our common stock ascribes value to the right of our class B common stock to eight votes per share. These and other factors could lead to ongoing differences in market values between our class A and our class B common stock.

Delaware law and our certificate of incorporation and by-laws contain anti-takeover provisions, our outstanding 0.75%, 1.25%, 4.50% and 4.75% debentures provide for a right to convert upon certain events, and our Board of Directors entered into a rights agreement and declared a rights dividend, any of which could delay or discourage takeover attempts that stockholders may consider favorable.

Provisions in our restated certificate of incorporation and by-laws may have the effect of delaying or preventing a change of control or changes in our management. These provisions include the following:

- the right of the Board of Directors to elect a director to fill a vacancy created by the expansion of the Board of Directors;
- the prohibition of cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect director candidates;
- the requirement for advance notice for nominations for election to the Board of Directors or for proposing matters that can be acted upon at a stockholders' meeting;
- the ability of the Board of Directors to issue, without stockholder approval, up to approximately 10.0 million shares of preferred stock with terms set by the Board of Directors, which rights could be senior to those of common stock;
- our Board of Directors is divided into three classes of directors, with the classes to be as nearly equal in number as possible;
- no action can be taken by stockholders except at an annual or special meeting of the stockholders called in accordance with our bylaws, and stockholders may not act by written consent;
- stockholders may not call special meetings of the stockholders;
- limitations on the voting rights of our stockholders with more than 15% of our class B common stock; and

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- our Board of Directors is able to alter our by-laws without obtaining stockholder approval.

Certain provisions of our outstanding debentures could make it more difficult or more expensive for a third party to acquire us. Upon the occurrence of certain transactions constituting a fundamental change, holders of our outstanding debentures will have the right, at their option, to require us to repurchase, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest on the debentures, all or a portion of their debentures. We may also be required to issue additional shares of our class A common stock upon conversion of such debentures in the event of certain fundamental changes. In addition, on August 12, 2008, we entered into a Rights Agreement with Computershare Trust Company, N.A. and our Board of Directors declared an accompanying rights dividend. The Rights Agreement became effective upon completion of Cypress' spin-off of our shares of class B common stock to the holders of Cypress common stock. The Rights Agreement contains specific features designed to address the potential for an acquirer or significant investor to take advantage of our capital structure and unfairly discriminate between classes of our common stock. Specifically, the Rights Agreement is designed to address the inequities that could result if an investor, by acquiring 20% or more of the outstanding shares of class B common stock, were able to gain significant voting influence over our Company without making a correspondingly significant economic investment. The rights dividend and Rights Agreement, commonly referred to as a "poison pill," could delay or discourage takeover attempts that stockholders may consider favorable.

ITEM 1B: ***UNRESOLVED STAFF COMMENTS***

None.

ITEM 2: ***PROPERTIES***

Our corporate headquarters is located in San Jose, California, where we occupy approximately 60,000 square feet under a lease from Cypress that expires in April 2011. We do not plan to renew our lease with Cypress and plan to move to new offices leased from an unaffiliated third party in May 2011. In Richmond, California, we occupy approximately 207,000 square feet for office, light industrial and research and development use under a lease from an unaffiliated third party that expires in D ecember 2018. In addition to these facilities, we also have our European headquarters located in Geneva, Switzerland where we occupy approximately 4,000 square feet under a lease that expires in September 2012, as well as sales and support offices in Southern California, New Jersey, Oregon, Australia, England, France, Germany, Greece, Israel, Italy, Malta, Spain and South Korea, all of which are leased from unaffiliated third parties.

We leased from Cypress an approximately 215,000 square foot building in the Philippines from fiscal 2003 through April 2008, which serves as FAB1 with four solar cell manufacturing lines in operation. In May 2008, we purchased FAB1 from Cypress and assumed the lease for the land from an unaffiliated third party for a total purchase price of $9.5 million. The lease for the land expires in May 2048 and is renewable for an additional 25 years. In August 2006, we purchased a 344,000 square foot building in the Philippines which serves as FAB2 with twelve solar cell manufacturing lines in operation. Our four solar cell manufacturing lines and twelve solar cell manufacturing lines operating at FAB1 and FAB2, respectively, have a total rated annual solar cell manufacturing capacity of 590 MW. In January 2008, we completed the construction of an approximately 175,000 square foot building in the Philippines which serves as our solar panel assembly facility that currently operates six solar panel assembly lines with a rated annual solar panel manufacturing capacity of 220 MW. We may require additional space in the future, which may not be available on commercially reasonable terms or in the location we desire.

Because of the interrelation of our business segments, both the UPP Segment and R&C Segment use substantially all of the properties at least in part, and we retain the flexibility to use each of the properties in whole or in part for each of the segments. Therefore, we do not identify or allocate assets by business segment. For more information on property, plant and equipment by country, see Note 6 of Notes to Consolidated Financial Statements in *Part II — "Item 8: Financial Statements and Supplemental Data."*

ITEM 3: ***LEGAL PROCEEDINGS***

Three securities class action lawsuits were filed against our Company and certain of our current and former officers and directors in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired our securities from April 17, 2008 through November 16, 2009. The cases were consolidated as Plichta v. SunPower Corp. et al., Case No. CV-09-5473-RS (N.D. Cal.), and lead plaintiffs and lead counsel were appointed on March 5, 2010. Lead plaintiffs filed a consolidated complaint on May 28, 2010. The actions arise from the Audit Committee's investigation announcement on November 16, 2009 regarding certain unsubstantiated a ccounting entries. The consolidated complaint alleges that the defendants made material misstatements and omissions concerning our financial results for 2008 and 2009, seeks an unspecified amount of damages, and alleges violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Sections 11 and 15 of the Securities Act of 1933. We believe we have meritorious defenses to these allegations and will vigorously defend ourselves in these matters. The court held a hearing on the defendants' motions to dismiss the consolidated complaint on November 4, 2010, and took the motions under submission. We are currently unable to determine if the resolution of these matters will have an adverse effect on our financial position, liquidity or results of operations.

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

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

ITEM 4: REMOVED AND RESERVED

PART II

ITEM 5: ***MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES***

Our class A and class B common stock is listed on the Nasdaq Global Select Market under the trading symbols "SPWRA" and "SPWRB," respectively. The high and low trading prices of our class A and class B common stock during fiscal 2010 and 2009 were as follows:

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	SPWRA		SPWRB	
	High	**Low**	**High**	**Low**
For the year end January 2, 2011				
Fourth quarter	$ 14.52	$ 11.65	$ 14.00	$ 11.48
Third quarter	14.49	10.03	13.86	9.66
Second quarter	19.29	10.73	17.11	9.41
First quarter	25.85	18.02	23.04	15.89
For the year end January 3, 2010				
Fourth quarter	$ 33.70	$ 20.05	29.19	< div style="text-align:right;font-$size:10pt;">17.60
Third quarter	33.45	22.35	28.63	19.90
Second quarter	32.34	22.61	< 28.97/font>	19.71
First quarter	45.15	20.91	38.16	19.27

As of February 18, 2011, there were approximately 56 and 1,003 record holders of our class A and class B common stock, respectively. A substantially greater number of holders of our class A and class B common stock are in "street name" or beneficial holders, whose shares are held of record by banks, brokers and other financial institutions.

Dividends

We have never declared or paid any cash dividend on our common stock, and we do not currently intend to pay any cash dividend on our common stock in the foreseeable future. We intend to retain future earnings, if any, to finance the operation and expansion of our business.

Our credit facilities place restrictions on our ability to pay cash dividends. Additionally, our 1.25% and 0.75% convertible debentures allow the holders to convert their bonds into our class A common stock if we declare a dividend that on a per share basis exceeds 10% of our class A common stock's market price.

Recent Sales of Unregistered Securities

On December 23, 2010, we entered into four amended and restated warrants (collectively, the "Warrants"), originally issued on March 25, 2010 and April 5, 2010, to each of Deutsche Bank AG, Bank of America, N.A., Barclays Bank PLC and Credit Suisse International (collectively, the "Warrantholders"). The original Warrants, together with convertible hedge transactions entered into on March 25, 2010 and April 5, 2010, are meant to reduce our exposure to potential cash payments upon conversion of our 4.50% convertible debentures due 2015. The exercise price of the Warrants is $27.03 per share of our class A common stock, subject to adjustment for customary anti-dilution and other events. Under the amended Warrants, the Warrantholders would, upon exercise of the Warrants, no longer receive cash but instead would acquire up to 11.1 million shares of our class A common stock.

The original Warrants were sold for aggregate cash consideration of $54.1 million and $7.4 million on March 25, 2010 and April 5, 2010, respectively, simultaneously with our purchase of the convertible debenture hedge transactions (collectively, the "Bond Hedge") for aggregate cash consideration of approximately $66.2 million and $9.0 million, respectively. We received no additional consideration for the amendment of the Warrants. We believe that the issuance and sale of the Warrants was exempt from the registration requirements of the Securities Act of 1933 pursuant to Section 4(2) thereunder.

Issuer Purchases of Equity Securities

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

periods.

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Period	Total Number of Shares Purchased (in thousands)(1)	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet Be Purchased Under the Plans or Programs
October 4, 2010 through October 31, 2010	8	$ 13.65	—	—
November 1, 2010 through November 28, 2010	66	$ 14.11	—	—
November 29, 2010 through January 2, 2011	9	$ 12.84	—	—
	83		—	—

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

Equity Compensation Plan Information

The following table provides certain information as of January 2, 2011 with respect to our equity compensation plans under which shares of our class A common stock are authorized for issuance:

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (in thousands)	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in the first column) (in thousands)
Equity compensation plans approved by security holders	1,304	$ 11.60	504
Equity compensation shares not approved by security holders	—	$ —	—
	1, 304 (1)	$ 11.60	504

(1) This table excludes options to purchase an aggregate of approximately 191,000 shares of class A common stock, at a weighted average exercise price of $12.40 per share, that we assumed in connection with the acquisition of PowerLight Corporation, now known as SunPower Corporation, Systems, in January 2007.

ITEM 6: *SELECTED CONSOLIDATED FINANCIAL DATA*

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The following selected consolidated financial data should be read together with "*Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations*" and "*Item 8: Financial Statements and Supplementary Data*" included elsewhere in this Annual Report on Form 10-K. We report our results of operations on the basis of 52- or 53-week periods, ending on the Sunday closest to December 31. Fiscal 2006 ended on December 31, 2006, fiscal 2007 ended on December 30, 2007, fiscal 2008 ended on December 28, 2008 and each fiscal year included 52 weeks. Fiscal 2009 end ed on January 3, 2010 and included 53 weeks. Fiscal 2010 ended on January 2, 2011 and included 52 weeks. Our fiscal quarters end on the Sunday closest to the end of the applicable calendar quarter, except in a 53-week fiscal year in which the additional week falls into the fourth quarter of that fiscal year.

(In thousands, except per share data)	Year Ended January 2, 2011 (1)	January 3, 2010 (2)	December 28,2008 (2)	December 30, 2007 (2) (3)	December 31, 2006
Consolidated Statements of Operations Data					
Revenue	$ 2,219,230	$ 1,524,283	$ 1,437,594	$ 774,790	$ 236,510
Cost of revenue	1,70 9,337	1,240,563	1,087,973	627,039	186,042
Gross margin	509,893	283,720	349,621	147,751	50,468
Operating income	138,867	61,834	154,407	2,289	19,107
Income (loss) before income taxes and equity in earnings of unconsolidated investees	183,413	43,620	(97,904)	6,095	28,461
Net income (loss)	$ 178,724	$ 32,521	$ (124,445)	$ 27,901	$ 26,51 6
Net income (loss) per share of class A and class B common stock:					
Basic	$ 1.87	$ 0.36	$ (1.55)	$ 0.36	$ 0.40
Diluted	$ 1.75	$ 0.35	$ (1.55)	$ 0.34	$ 0.37
Weighted-average shares:					
Basic	95,660	91,050	80,522	75,413	65,864
Diluted	105,698	92,746	80,522	80,439	71,011

(In thousands)	January 2, 2011 (1)	January 3, 2010 (2)	December 28, 2008 (2)	December 30, 2007 (2) (3)	December 31, 2006
Consolidated Balance Sheet Data					
Cash and cash equivalents, restricted cash and cash equivalents, current portion and short-term investments	$ 761,602	$ 677,919	$ 232,750	$ 390,667	$ 182,092
Working capital	1,005,492	747,335	420,067	206,167	228,269
Total assets	3,379,331	2,696,895	2,084,257	1,673,305	576,836
Long-term debt	50,000	237,703	54,598	—	—
Convertible debt, net of current portion	591, 923	398,606	357,173	333,210	—
Long-term deferred tax liabilities	—	6,777	6,493	45,512	46
Customer advances, net of current portion	160,485	72,288	91,359	60,153	27,687
Other long-term liabilities	131,132	70,045	44,222	14,975	—
Total stockholders' equity	1,657,434	1,376,380	1,100,198	947,296	488,771

(1) On March 26, 2010, we completed the acquisition of SunRay, a European solar power plant developer company. As part of the acquisition, we acquired SunRay's project pipeline of solar photovoltaic projects in Europe and Israel. The results of SunRay have been included in our selected consolidated financial information since March 26, 2010 (see Note 3 of Notes to Consolidated Financial Statements).

(2) As adjusted to reflect the adoption of new accounting guidance for share lending arrangements that were executed in connection with our convertible debt offerings in fiscal 2007 (see Note 1 of Notes to Consolidated Financial Statements).

(3) On January 10, 2007, we completed the acquisition of PowerLight Corporation, a global provider of large-scale solar power systems, which we renamed SunPower Corporation, Systems ("SP Systems") in June 2007. SP Systems designs, manufactures, markets and sells solar electric power system technology that integrates solar panels manufactured by us and other suppliers to convert sunlight to electricity compatible with the utility network. The results of SP Systems have been included in our selected consolidated financial information since January 10, 2007.

ITEM 7: *MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS*

General Overview

We are a vertically integrated solar products and services company that designs, manufactures and delivers high-performance solar electric systems worldwide for residential, commercial and utility-scale power plant customers. Of all the solar cells available for the mass market, we believe our solar cells have the highest conversion efficiency, a measurement of the amount of sunlight converted by the solar cell into electricity. Our solar power products and systems are sold through our Utility and Power Plants (“UPP”) and Residential and Commercial (“R&C”) Segments.

We were originally incorporated in California in April 1985 by Dr. Richard Swanson to develop and commercialize high-efficiency solar cell technologies. Cypress Semiconductor Corporation (“Cypress”) made a significant investment in SunPower in 2002 and in November 2004, Cypress acquired 100% ownership of all outstanding shares of our capital stock, excluding unexercised warrants and options. In November 2005, we reincorporated in Delaware, created two classes of common stock and held an initial public offering (“IPO”) of our class A common stock. After completion of our IPO, Cypress held all the outstanding shares of our class B common stock. On September 29, 2008, Cypress distributed to its shareholders all of its shares of our class B common stock, in the form of a pro rata dividend to the holders of record as of September 17, 2008 of Cypress common stock. As a result, our class B common stock now trades publicly and is listed on the Nasdaq Global Select Market, along with our class A common stock, and we discontinued being a subsidiary of Cypress.

Unit of Power

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

Financial Operations Overview

The following describes certain line items in our Consolidated Statements of Operations:

Revenue

UPP Segment Revenue: Our UPP Segment refers to our large-scale solar products and systems business, which includes power plant project development and project sales, turn-key engineering, procurement and construction (“EPC”) services for power plant construction, and power plant operations and maintenance (“O&M”) services. The UPP Segment sells components, including large volume sales of solar panels and mounting systems to third parties, often on a multi-year, firm commitment basis, in the United States, Europe and Asia.

R&C Segment Revenue: Our R&C Segment focuses on solar equipment sales into the residential and small commercial market through our third-party global dealer network, as well as direct sales and EPC and O&M services in the United States for rooftop and ground-mounted solar power systems for the new homes, commercial and public sectors.

Other Revenue Factors: Sales of EPC projects and other services relate to solar electric power systems that integrate our solar panels and balance of systems components. In the United States, where customers often utilize rebate and tax credit programs in connection with projects rated one MW or less of capacity, we typically sell solar power systems rated up to one MW of capacity to provide a supplemental, distributed source of electricity for a customer’s facility as well as ground mount systems reaching up to hundreds of MWs for regulated utilities. In the United States, many customers choose to purchase solar electricity under a power purchase agreement (“PPA”) with an investor or financing company which buys the system from us. In Europe and South Korea, our systems are often purchased by third-party investors as central-station solar power plants, typically rated from one to fifty MW, which generate electricity for sale under tariff to regional and public utilities. We also sell our solar panels and balance of systems components under materials-only sales contracts in the United States, Europe and Asia. Our revenue recognition policy is described in more detail under “Critical Accounting Policies and Estimates.”

Cost of Revenue

Our cost of revenue will fluctuate from period to period due to the mix of projects completed and recognized as revenue, in particular between large utility projects and large commercial installation projects. The cost of solar panels is the single largest cost element in our cost of revenue. Our cost of solar panels consists primarily of: (i) polysilicon, silicon ingots and wafers used in the production of solar cells, along with other materials such as chemicals and gas that are needed to transform silicon wafers into solar cells; (ii) raw materials such as glass, frame, backing and other materials; (iii) solar cells from our AUO SunPower Sdn. Bhd. ("AUOSP") joint venture; as well as (iv) direct labor costs and assembly costs we pay to our third-party contract manufacturers in China, Mexico and Poland. Other cost of revenue associated with the construction of solar

power systems includes real estate, mounting systems, inverters and third-party contract manufacturer costs. In addition, other factors contributing to cost of revenue include amortization of other intangible assets, stock-based compensation, depreciation, provisions for estimated warranty claims, salaries, personnel-related costs, freight, royalties, facilities expenses and manufacturing supplies associated with contracting revenue and solar cell fabrication as well as factory pre-operating costs associated with our manufacturing facilities. Such pre-operating costs included compensation and training costs for factory workers as well as utilities and consumable materials associated with preproduction activities.

We are seeking to improve cost of revenue over time as we implement cost reduction efforts, improve our manufacturing processes, and grow our business to attain economies of scale on fixed costs. An expected reduction in cost of revenue based on manufacturing efficiencies, however, could be partially or completely offset by increased raw material costs.

Gross Margin

Our gross margin each quarter is affected by a number of factors, including average selling prices for our solar power products, the types of projects in progress, the gross margins estimated for those projects in progress, our product mix, our actual manufacturing costs, the utilization rate of our solar cell manufacturing facilities, and actual overhead costs. Historically, revenue from materials-only sales contracts generate a higher gross margin percentage than revenue generated from turn-key solar power system contracts. Turn-key contracts generate higher revenue per watt as a result of the included EPC services, O&M services as well as power plant project development. In addition, we generally experience higher gross margin on construction projects that utilize SunPower solar panels compared to construction projects that utilize solar panels purchased from third parties.

From time t o time, we enter into agreements whereby the selling price for certain of our solar power products is fixed over a defined period. In addition, almost all of our construction contracts are fixed price contracts. However, we have in several instances obtained change orders that reimburse us for additional unexpected costs due to various reasons. We also have long-term agreements for polysilicon, ingots, wafers, solar cells and solar panels with suppliers, some with take-or-pay arrangements. An increase in our manufacturing costs and other project costs over such a defined period could have a negative impact on our overall gross margin. Our gross margin may also be impacted by fluctuations in manufacturing yield rates and certain adjustments for inventory reserves. Our inventory policy is described in more detail under “Critical Accounting Policies and Estimates.”

Operating Expenses

Our operating expenses include research and development ("R&D") expense and sales, general and administrative ("SG&A") expense. R&D expense consists primarily of salaries and related personnel costs, depreciation of equipment and the cost of solar cells, solar panel materials, various prototyping materials, and services used for the development and testing of products. We expect our R&D expense to continually increase in absolute dollars as we continue to develop new processes to further improve the conversion efficiency of our solar cells and reduce their manufacturing cost, and as we develop new products to diversify our product offerings.

R&D expense is reported net of any funding received under contracts with governmental agencies because such contracts are considered collaborative arrangements. These awards are typically structured such that only direct costs, R&D overhead, procurement overhead and general and administrative expenses that satisfy government accounting regulations are reimbursed. In addition, our government awards from state agencies will usually require us to pay to the granting governmental agency certain royalties based on sales of products developed with government funding or economic benefit derived from incremental improvements funded. Royalties paid to governmental a gencies are charged to the cost of goods sold. Our funding from government contracts offset our research and development expense by approximately 10%, 22% and 25% in fiscal 2010, 2009 and 2008, respectively.

SG&A expense for our business consists primarily of salaries and related personnel costs, professional fees , insurance and other selling and marketing expenses. We expect our SG&A expense to increase in absolute dollars as we expand our sales and marketing efforts, hire additional personnel and improve our infrastructure to support our growth.

Other Income (Expense), Net

Interest income represents interest income earned on our cash, cash equivalents, restricted cash, restricted cash equivalents and available-for-sale securities. Interest expense primarily relates to: (i) debt under our s enior convertible debentures; (ii) fees for our outstanding letters of credit; (iii) SunPower Malaysia Manufacturing Sdn. Bhd.'s ("SPMY") facility with the Malaysian government prior to the deconsolidation of this entity; (iv) our term loan; (v) our revolving credit facilities;

(vi) our mortgage loan; and (vii) customer advance payments. For additional details see Notes 7, 8 and 10 of Notes to Consolidated Financial Statements.

Gain on deconsolidation of consolidated subsidiary is the result of the deconsolidation of SPMY, subsequently renamed AUOSP, in the third quarter of fiscal 2010. Net gain on change in equity interest in unconsolidated investee refers to the value of our equity interests in Woongjin Energy Co., Ltd. (“Woongjin Energy”) and First Philec Solar Corporation (“First Philec Solar”) being adjusted upon dilutive events. For additional details see Note 9 of Notes to Consolidated Financial Statements.

Gain on mark-to-market derivatives during fiscal 2010 relates to derivative instruments associated with our 4.50% senior cash convertible debentures (“4.50% debentures”): (i) the embedded cash conversion option; (ii) the over-allotment option; (iii) the bond hedge transaction; and (iv) the warrant transactions. The changes in fair value of these derivatives are reported in our Consolidated Statement of Operations until such transactions settle or expire. The bond hedge and warrant transactions are meant to reduce our exposure to potential cash payments associated with the embedded cash conversion option. Gain on mark-to-market derivatives during fiscal 2009 relates to the change in fair value of certain convertible debenture hedge transactions (the “purchased options”) associated with the issuance of our 4.75% senior convertible debentures (“4.75% debentures”) intended to reduce the potential dilution that would occur upon conversion of the debentures. For additional details see Note 10 of Notes to Consolidated Financial Statements.

Gain (loss) on share lending arrangement relates to our historical share lending arrangement with Lehman Brothers International (Europe) Limited ("LBIE"). Under new accounting guidance adopted in the first quarter of fiscal 2010, in the event that counterparty default under the share lending arrangement becomes probable, we are required to recognize an expense in our Consolidated Statement of Operations equal to the then fair value of the unreturned loaned shares, net of any probable recoveries.

Other, net consists primarily of gains or losses on foreign exchange and derivatives as well as gain on sale and impairment charges for certain available-for-sale securities.

Income Taxes

For financial reporting purposes, during periods when we were a subsidiary of Cypress, income tax expense and deferred income tax balances were calculated as if we were a separate entity and had prepared our own separate tax return. Effective with the closing of our public offering of common stock in June 2006, we were no longer eligible to file federal and most state consolidated tax returns with Cypress. As of September 29, 2008, Cypress completed a spin-off of all of its shares of our class B common stock to its shareholders, so we are no longer eligible to file any remaining state consolidated tax returns with Cypress. Under our tax sharing agreement with Cypress, we agreed to pay Cypress for any federal and state income tax credit or net operating loss carryforwards utilized in our federal and state tax returns in subsequent periods that originated while our results were included in Cypress’s federal tax returns. Deferred tax assets and liabilities are recognized for temporary differences between financial statement and income tax bases of assets and liabilities. Valuation allowances are provided against deferred tax assets when management cannot conclude that it is more likely t han not that some portion or all deferred tax assets will be realized. For additional details see Notes 1, 2 and 12 of Notes to Consolidated Financial Statements.

We currently benefit from income tax holiday incentives in the Philippines in accordance with our subsidiary’s registration with the Philippine Economic Zone Authority ("PEZA"), which provide that we pay no income tax in the Philippines. Our current income tax holidays were granted as manufacturing lines were placed in services and thereafter expire within the next several years beginning in 2011, and we have applied for extensions and renewals upon expiration. However, these tax holidays may or may not be extended. The holiday for two of the sixteen total manufacturing lines expired at the end of 2010 and were extended through November 2011. We believe that as our Philippine tax holidays expire, (a) gross income attributable to activities covered by our PEZA registrations will be taxed at a 5% preferential rate, and (b) our Philippine net income attributable to all other activities will be taxed at the statutory Philippine corporate income tax rate, currently 30%. An increase in our tax liability could materially and negatively affect our financial condition and results of operations.

We have an auxiliary company ruling in Switzerland where we sell our solar power products. The auxiliary company ruling results in a reduced effective Swiss tax rate of approximately 11.5%. The current ruling expires at the end of 2015. If the ruling is not re newed in 2015, Swiss income would be taxable at the full Swiss tax rate of approximately 24.2%.

Equity in Earnings of Unconsolidated Investees

In the third quarter of fiscal 2006, we entered into an agreement to form Woongjin Energy, a joint venture to manufacture monocrystalline silicon ingots. This joint venture is located in South Korea and began manufacturing in the third

quarter of fiscal 2007. In the fourth quarter of fiscal 2007, we entered into an agreement to form First Philec Solar, a joint venture to provide wafer slicing services of silicon ingots. This joint venture is located in the Philippines and became operational in the second quarter of fiscal 2008. On May 27, 2010, we, through our subsidiaries SunPower Technology, Ltd. (“SPTL") and AUOSP, entered into a joint venture agreement with AU Optronics Singapore Pte. Ltd. ("AUO"), and AU Optro nics Corporation, the ultimate parent company of AUO (“AUO Taiwan”). The joint venture transaction closed on July 5, 2010 and we, through SPTL, and AUO each own 50% of the joint venture AUOSP. AUOSP owns a solar cell manufacturing facility ("FAB3") in Malaysia and will manufacture and sell solar cells on a “cost-plus” basis to us and AUO. AUOSP became operational in the fourth quarter of fiscal 2010 with construction to continue through fiscal 2013. We account for these investments using the equity method, in which the equity investments are classified as “Other long-term assets” in the Consolidated Balance Sheets and our share of the investees’ earnings (loss) is included in “Equity in earnings of unconsolidated investees” in the Consolidated Statements of Operations. For additional details see Note 9 of Notes to Consolidated Financial Statements.

Income from Discontinued Operations, Net of Taxes

In connection with our acquisition of SunRay Malta Holdings Limited (“SunRay”) on March 26, 2010, we acquired a SunRay project company, Cassiopea PV S.r.l (“Cassiopea”), operating a previously completed 20 MWac solar power plant in Montalto di Castro, Italy. In the period in which our asset is classified as held-for-sale, we are required to segregate for all periods presented the related assets, liabilities and results of operations associated with that asset as discontinued operation s. On August 5, 2010, we sold Cassiopea, including all related assets and liabilities. Cassiopea's results of operations for fiscal 2010 are classified as “Income from discontinued operations, net of taxes” in our Consolidated Statement of Operations. Unless otherwise stated, the discussion below pertains to our continuing operations. For additional details see Note 4 of Notes to Consolidated Financial Statements.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations are based on our financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States (“U.S. GAAP”). The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. Our most critical policies include: (a) revenue recognition, which impacts the recording of revenue; (b) allowance for doubtful accounts and sales returns, which impact revenue and SG&A expense; (c) warranty reserves, which impact cost of revenue and gross margin; (d) valuation of inventories, which impacts cost of revenue and gross margin; (e) valuation of stock-based compensation expense, which impacts cost of revenue, R&D and SG&A expense; (f) equity in earnings of unconsolidated investees, which impacts net income (loss); (g) accounting for business combinations, which impacts fair value of goodwill and other intangible assets; (h) valuation of long-lived assets, which impacts impairments of property, plant and equipment, project assets and other intangible assets; (i) goodwill impairment testing, which impacts our measurement of potential impairment of our goodwill; (j) fair value of financial instruments, valuation of debt without the conversion feature and valuation of share lending arrangements, which impacts net income (loss); and (k) accounting for income taxes, which impacts our tax provision. We also have other key accounting policies that are less subjective and, therefore, judgmen ts in their application would not have a material impact on our reported results of operations. The following is a discussion of our most critical policies as of and for the year ended January 2, 2011, as well as the estimates and judgments involved.

Revenue Recognition

Solar Power Products

We sell our solar panels and balance of system components primarily to dealers, system integrators and distributors, and recognize revenue, net of accruals for estimated sales returns, when persuasive evidence of an arrangement exists, delivery of the product has occurred, title and risk of loss has passed to the customer, the sales price is fixed or determinable, collectability of the resulting receivable is reasonably assured and the rights and risks of ownership have passed to the customer. Other than standard warranty obligations, there are no rights of return and there are no significant post-shipment obligations, including installation, training or customer acceptance clauses with any of our customers that could have an impact on revenue recognition. Our revenue recognition policy is consistent across all geographic areas.

Construction Contracts

Revenue is also comprised of EPC projects which are governed by customer contracts that require us to deliver functioning solar power systems and are generally completed within three to twelve months from commencement of construction. We recognize revenue from fixed price construction contracts using the percentage-of-completion method of accounting. Under this method, revenue arising from fixed price construction contracts is recognized as work is performed based on the percentage of incurred costs to estimated total forecasted costs.

Incurred costs used in our percentage-of-completion calculation include all direct material, labor, subcontract costs, and those indirect costs related to contract performance, such as indirect labor, supplies and t ools. Project material costs are included in incurred costs when the project materials have been installed by being permanently attached or fitted to the solar power system as required by the project's engineering design.

In addition to an EPC deliverable, a limited number of arrangements also include multiple deliverables such as post-installation systems monitoring and maintenance. For contracts with separately priced monitoring and maintenance, we recognize revenue related to such separately priced elements over the contract period. For contracts including monitoring and maintenance not separately priced, we determined that post-installation systems monitoring and maintenance qualify as separate units of accounting. Such post-installation monitoring and maintenan ce are deferred at the time the contract is executed and are recognized to revenue over the contractual term. The remaining EPC revenue is recognized on a percentage-of-completion basis.

In addition, when arrangements include contingent revenue clauses such as penalty payments or customer termination or put rights for non-performance, we defer the contingent revenue until such time as the contingencies expire. In certain limited cases, we could be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met for periods of up to two years. To date, no such repurchase obligations have been triggered.

Provisions for estimated losses on uncompleted contracts, if any, are recognized in the period in which the loss first becomes probable and reasonably estimable. Contracts may include profit incentives such as milestone bonuses. These profit incentives are included in the contract value when their realization is reasonably assured.

Development Projects

We develop and sell solar power plants which generally include the sale or lease of related real estate. Revenue recognition for these solar power plants require adherence to specific guidance for real estate sales, which provides that if we hold control over land or land rights prior to the execution of an EPC contract, we recognize revenue and the corresponding costs when all of the following requirements are met: the sale is consummated, the buyer's initial and any continuing investments are adequate, the resulting receivables are not subject to subordination and we have transferred the customary risk and rewards of ownership to the buyer. In general, a sale is consummated upon the execution of an agreement documenting the terms of the sale and a minimum initial payment by the buyer to substantiate the transfer of risk to the buyer. This may require us to defer revenue during construction, even if a sale was consummated, until we receive the b uyer's initial investment payment, at which time revenue would be recognized on a percentage-of-completion basis as work is completed. Our revenue recognition methods for solar power plants not involving real estate remain subject to our historical practice using the percentage-of-completion method.

Allowance for Doubtful Accounts and Sales Returns

We maintain allowances for doubtful accounts for estimated losses resulting from the inability of our customers to make req uired payments. A considerable amount of judgment is required to assess the likelihood of the ultimate realization of accounts receivables. We make our estimates of the collectability of our accounts receivable by analyzing historical bad debts, specific customer creditworthiness and current economic trends.

In addition, at the time revenue is recognized from the sale of solar panels and balance of system components, we record estimates for sales returns which reduce revenue. These estimates are based on historical sales returns, analysis of credit memo data and other known factors. Actual returns could differ from these estimates.

Warranty Reserves

We generally warrant or guarantee the performance of our solar panels that we manufacture at certain levels of power output for 25 years. In addition, we pass through to customers long-term warranties from the original equipment manufacturers

("OEMs") of certain system components, such as inverters. Warranties of 25 years from solar panel suppliers are standard in the solar industry, while inverters typically carry warranty periods ranging from 5 to 10 years. In addition, we generally warrant our workmanship on installed systems for periods ranging up to 10 years. We maintain reserves to cover the expected costs that could result from these warranties. Our expected costs are generally in the form of product replacement or repair. Warranty reserves are based on our best estimate of such costs and are recognized as a cost of revenue. We continuously monitor product returns for warranty failures and maintain a reserve for the related warranty expenses based o n various factors including historical warranty claims, results of accelerated lab testing, field monitoring, vendor reliability estimates, and data on industry averages for similar products. Historically, warranty costs have been within management's expectations. For additional details see Note 8 of Notes to Consolidated Financial Statements.

Valuation of Inventories

Inventories are valued at the lower of cost or market value. We evaluate the recoverability of our inventories bas ed on assumptions about expected demand and market conditions. Our assumption of expected demand is developed based on our analysis of bookings, sales backlog, sales pipeline, market forecast and competitive intelligence. Our assumption of expected demand is compared to available inventory, production capacity, available third-party inventory and growth plans. Our factory production plans, which drive materials requirement planning, are established based on our assumptions of expected demand. Historically, expected demand has been within our assumptions with the exception of the first quarter in fiscal 2009 when revenue was lower than our internal forecast due to a long winter season in Europe, primarily in Germany, and challenging business conditions due to the uncertain economic environment and tight credit conditions which negatively influenced overall demand and timing of customers' buying decisions. We respond to reductions in expected demand by temporarily reducing manufacturing output and adjust ing expected valuation assumptions as necessary. In addition, expected demand by geography has changed historically due to changes in the availability and size of government mandates and economic incentives.

We evaluate the terms of our long-term agreements with suppliers, including joint ventures, for the procurement of polysilicon, ingots, wafers, solar cells and solar panels and establish accruals for estimated losses on adverse purchase commitments as necessary, such as lower of cost of market value adjustments, forfeiture of advanced deposits and liquidated damages.

Other market conditions that could impact the realizable value of our inventories and are periodically evaluated by management include the aging of inventories on hand, historical inventory turnover ratio, anticipated sales price, new product development schedules, the effect new products might have on the sale of existing products, product obsolescence, customer concentrations, product merchantability and other factors. If we determine that the cost of inventories exceeds its estimated market value based on assumptions about expected demand and market conditions, including the replacement costs of raw materials, we record a write-down equal to the difference between the cost of inventories and the estimated market value. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required that could negatively impact our gross margin and operating results. If actual market con ditions are more favorable, we may have higher gross margin when products that have been previously written down are sold in the normal course of business. For additional details see Note 6 of Notes to Consolidated Financial Statements.

Stock-Based Compensation

We provide share-based awards to our employees, executive officers and directors through various equity compensation plans including our employee stock option and restricted stock plans. We measure and record compensation expense for all share-based payment awards based on estimated fair values. The fair value of stock option awards is measured at the date of grant using a Black-Scholes option pricing model, and the fair value of restricted stock awards and units is based on the market price of our class A common stock on the date of grant. We have not granted stock options in fiscal 2009 or 2010.

In determining fair value using the Black-Scholes option pricing model, management is required to make certain estimates of the key assumptions such as expected life, expected volatility, dividend yields and risk free interest rates. The estimates of these key assumptions involve judgment regarding subjective future expectations of market price and trends. The assumptions used in determi ning expected life and expected volatility have the most significant effect on calculating the fair value of share-based awards. We utilized the simplified method for estimating expected term, instead of our historical exercise data. Starting in fiscal 2008, we compute the expected volatility for our equity awards based on our historical volatility from traded options with a term of 6.5 years. If we were to determine that another method to estimate these assumptions was more reasonable than our current method, or if another method for calculating these assumptions were to be prescribed by authoritative guidance, the fair value for our share-based awards could change significantly. If the expected volatility and/or expected life were increased under our assumptions, then the Black-Scholes computations of fair value would also increase, thereby resulting in higher compensation costs being recorded.

We are required under current accounting guidance to estimate forfeitures at the date of grant. Our estimate of forfeitures is based on our historical activity, which we believe is indicative of expected forfeitures. In subsequent periods if the actual rate of forfeitures differs from our estimate, the forfeiture rates may be revised, as necessary. Changes in the estimated forfeiture rates can have a significant effect on share-based compensation expense since the effect of adjusting the rate is recognized in the period the forfeiture estimate is changed.

We also grant performance share units to executive officers and certain employees that require us to estimate expected achievement of performance targets over the performance period. This estimate involves judgment regarding future expectations of various financial performance measures. If there are changes in our estimate of the level of financial performance measures expected to be achieved, the related share-based compensation expense may be significantly increased or reduced in the period that our estimate chang es.

Investments in Equity Interests

Investments in entities in which we can exercise significant influence, but do not own a majority equity interest or otherwise control, are accounted for under the equity method. We record our share of the results of these entities as “Equity in earnings of unconsolidated investees” on the Consolidated Statements of Operations. We record our share of the results of Woongjin Energy and First Philec Solar in the same quarter and the results of AUOSP wi th a one quarter lag. To calculate our share of the investees’ income or loss, we adjust the net income (loss) of each joint venture to conform to U.S. GAAP and multiply that by our equity investment ownership percentage.

Variable Interest Entities ("VIE")

We regularly evaluate our relationships with Woongjin Energy, First Philec Solar and AUOSP to determine if we have a controlling financial interest in the VIEs and therefore become the primary beneficiary of the joint ventures r equiring us to consolidate their financial results into our financial statements. We do not consolidate the financial results of Woongjin Energy, First Philec Solar and AUOSP as we have concluded that we are not the primary beneficiary of these joint ventures. Although we are obligated to absorb losses or have the right to receive benefits from the joint ventures that are significant to the entities, such variable interests held by us do not empower us to direct the activities that most significantly impact the joint ventures' economic performance. For additional details see Note 9 of the Notes to Consolidated Financial Statements for discussions of our joint ventures.

In connection with the sale of the equity interests in the entities that hold solar power plants, we als o consider if we retain a variable interest in the entity sold, either through retaining a financial interest or by contractual means. If we determine that the entity sold is a VIE and that we hold a variable interest, we then evaluate whether we are the primary beneficiary. The entity that is the primary beneficiary consolidates the VIE. The determination of whether we are the primary beneficiary is based upon whether we have the power to direct the activities that most directly impact the economic performance of the VIE and whether we absorb any losses or benefits that would be potentially significant to the VIE. To date, there have been no sales of entities holding solar power plants in which we have concluded that we are the primary beneficiary after the sale.

Accounting for Business Combinations

We record all acquired assets and liabilities, including goodwill, other intangible assets and in-process research and development, at fair value. The initial recording of goodwill, other intangible assets and in-process research and development requires certain estimates and assumptions concerning the determination of the fair values and useful lives. The judgments made in the context of the purchase price allocation can materially impact our future results of operations. Accordingly, for significant acquisitions, we obtain assistance from third-party valuation specialists. The valuations calculated from estimates are based on information available at the acquisition date. Goodwill is not amo rtized but is subject to annual tests for impairment or more often if events or circumstances indicate it may be impaired. Other intangible assets are amortized over their estimated useful lives and are subject to impairment if events or circumstances indicate a possible inability to realize the carrying amount. For additional details see Notes 3 and 5 of Notes to Consolidated Financial Statements.

Valuation of Long-Lived Assets

Our long-lived assets include property, plant and equipmen t, project assets and other intangible assets with finite lives. Our business requires heavy investment in manufacturing facilities that are technologically advanced but can quickly become significantly under-utilized or rendered obsolete by rapid changes in demand for solar power products produced in those facilities.

We evaluate our long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. Factors considered important that could result in an impairment review include significant underperformance relative to expected historical or projected future operating results, significant changes in the manner of use of acquired assets and significant negative industry or economic trends. Our impairment evaluation of long-lived assets includes an analysis of estimated future undiscounted net cash flows expected to be generated by the assets over their remaining estimated useful lives. If our estimate of future undiscounted net cash flows is insufficient to recover the carrying value of the assets over the remaining estimated useful lives, we record an impairment loss in the amount by which the carrying value of the assets exceeds the fair value. Fair value is generally meas ured based on either quoted market prices, if available, or discounted cash flow analyses.

Goodwill Impairment Testing

Goodwill is tested for impairment at least annually, or more frequently if certain indicators are present. A two-step process is used to test for goodwill impairment. The first step is to determine if there is an indication of impairment by comparing the estimated fair value of each reporting unit to its carrying value, including existing goodwill. Goodwill is considere d impaired if the carrying value of a reporting unit exceeds the estimated fair value. Upon an indication of impairment, a second step is performed to determine the amount of the impairment by comparing the implied fair value of the reporting unit's goodwill with its carrying value.

We conduct our annual impairment test of goodwill as of the Sunday closest to the end of the third fiscal quarter of each year. Impairment of goodwill is tested at our reporting unit level. Management determined that the UPP Segment and R&C Segment each have two reporting units. The two reporting units of the UPP Segment are the systems business and the components business. The two reporting units of the R&C Segment are the North American commercial business and the residential and light commerc ial business. The process of evaluating the potential impairment of goodwill is highly subjective and requires significant judgment at many points during the analysis. In estimating the fair value of the reporting units, we make estimates and judgments about our future cash flows using an income approach defined as Level 3 inputs under fair value measurement standards. The income approach, specifically a discounted cash flow analysis, included assumptions for, among others, forecasted free cash flow, perpetual growth rates and long-term discount rates, all of which require significant judgment by management. The sum of the fair values of our reporting units are also compared to our external market capitalization to determine the appropriateness of our assumptions (i.e. the discounted cash flow analysis) and to reduce the fair values of our reporting units, if appropriate. These assumptions took into account the current economic environment and its impact on our business. Based on the impairment test as of th e third fiscal quarter ended October 3, 2010 for the fiscal year ended January 2, 2011, the fair value of each reporting unit exceeded the carrying value under the first step of the goodwill impairment test. Therefore, we determined that goodwill is not impaired. In the event that management determines that the value of goodwill has become impaired, we will incur an accounting charge for the amount of the impairment during the fiscal quarter in which the determination is made. For additional details see Notes 3 and 5 of Notes to Consolidated Financial Statements.

Fair Value of Financial Instruments

Certain of our financial assets and financial liabilities, specifically our cash, cash equivalents, restricted cash, restricted cash equivalents, available-for-sale securities, foreign currency derivatives, interest rate swaps derivatives and convertible debenture derivatives are carried at fair value in our Consolidated Financial Statements. Accounting guidance defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. We enter into over-the-counter ("OTC") foreign currency derivatives and use various valuation techniques to derive the value of option and forward contracts. In determining fair value, we use the market and income approaches. Current accounting guidance provides a hierarchy for inputs used in measuring fair value that maximizes the use of observa ble inputs and minimizes the use of unobservable inputs by requiring that the observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability developed based on market data obtained from sources independent of us. Unobservable inputs are inputs that reflect our assumptions about market participants assumptions used in pricing the asset or liability, developed based on the best information available in the circumstances. As such, fair value is a market-based measure considered from the perspective of a market participant who holds the asset or owes the liability rather than an entity specific measure. The hierarchy is broken down into three levels based on the reliability of inputs as follows:

- Level 1—Valuations based on quoted prices in active markets for identical assets or liabilities that we have the ability to access. Since valuations are based on quoted prices that are readily and regularly available in an active market, valuation of these products does not entail a significant degree of judgment. Financial assets utilizing Level 1 inputs include most money market funds.

• Level 2—Valuations based on quoted prices in markets that are not active or for which all significant inputs are observable, directly or indirectly. Financial assets utilizing Level 2 inputs include bank notes, debt securities, foreign currency option contracts, forward exchange contracts, interest rate swaps derivatives and convertible debenture derivatives. The selection of a particular technique to value a derivative depends upon the contractual term of, and specific risks inherent with, the instrument as well as the availability of pricing information in the market. We generally use similar techniques to value similar instruments. Valuation techniques utilize a variety of inputs, including contractual terms, market prices, yield curves, credit curves and measures of volatility. For derivatives that trade in l iquid markets, such as generic forward, option and swap contracts, inputs can generally be verified and selections do not involve significant management judgment.

• Level 3—Valuations based on inputs that are unobservable and significant to the overall fair value measurement. Financial assets utilizing Level 3 inputs include certain money market funds. We use the market approach to estimate the price that would be received to sell certain money market funds in an orderly transaction between market participants ("exit price"). We reviewed the underlying holdings and estimated the price of underlying fund holdings to estimate the fair value of these funds.

Availability of observable inputs can vary from instrument to instrument and to the extent that valuation is based on inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by our management in determining fair value is greatest for instruments categorized in Level 3. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, for disclosure purposes the level in the fair value hierarchy within which the fair value measurement in its entirety falls is determined based on the lowest level input that is significant to the fair value measurement in its entirety.

Unrealized gains and losses of our available-for-sale securities and the effective portion of foreign currency derivatives are excluded from earnings and reported as a component of accumulated other comprehensive income (loss) on the Consolidated Balance Sheets. To the extent our foreign currency derivatives are not effective hedges, unrealized gains or losses are included in earnings. Similarly, the change in fair value of our interest rate swaps derivatives and convertible debenture derivatives are included in earnings. Additionally, we assess whether an other-than-temporary impairment loss on our available-for-sale securities has occurred due to declines in fair value or other market conditions. Declines in fair value that are considered other-than temporary are recorded in “Other, net” in the Consolidated Statements of Operations.

In general, investments with original maturities of greater than ninety days and remaining maturities of one year or less are classified as short-term investments. Investments with maturities beyond one year may also be classified as short-term based on their highly liquid nature and because such investments represent the investment of cash that is available for current operations. For additional details see Note 7 of Notes to Consolidated Financial Statements.

Valua tion of Certain Convertible Debt

Convertible debt instruments that may be settled in cash upon conversion require recognition of both the liability and equity components in the Consolidated Financial Statements. The debt component is required to be recognized at the fair value of a similar debt instrument that does not have an associated equity component. The equity component is recognized as the difference between the proceeds from the issuance of the convertible debt and the fair value of the liability, after adjusting for the deferred tax impact. The accounting guidance also requires an accretion of the resulting debt discount over the expected life of the conver tible debt.

In February 2007, we issued $200.0 million in principal amount of our 1.25% senior convertible debentures (“1.25% debentures”) to Lehman Brothers Inc. (“Lehman Brothers”). In July 2007, we issued $225.0 million in principal amount of our 0.75% senior convertible debentures (“0.75% debentures”) to Credit Suisse Securities (USA) LLC (“Credit Suisse”). The 1.25% debentures and the 0.75% debentures contain partial cash settlement features and are therefore subject to the aforementioned accounting guidance. We estimated that the effective interest rate for similar debt without the conversion feature was 9.25% and 8.125% on the 1.25% debentures and 0.75% debentures, respectively. The resulting debt dis count is amortized to non-cash interest expense under the interest method through the first date the debt holders can require us to repurchase their debentures. For additional details see Note 10 of Notes to Consolidated Financial Statements.

Valuation of Share Lending Arrangements

In June 2009, the Financial Accounting Standards Board (“FASB”) issued accounting guidance that changed how companies account for share lending arrangements that were executed in connection with convertible debt offerings or other

financings. The new accounting guidance requires all such share lending arrangements to be valued and amortized as interest expense in the same manner as debt issuance costs. As a result of the new accounting guidance, existing share lending arrangements relating to our class A common stock are required to be measured at fair value and amortized as interest expense in our Consolidated Financial Statements. In addition, in the event that counterparty default under the share lending arrangement becomes probable, we are required to recognize an expense in our Consolidated Statement of Operations equal to the then fair value of the unreturned loaned shares, net of any probable recoveries. We adopted the new accounting guidance effective January 4, 2010, the start of our fiscal year, and applied it retrospectively to all prior periods as required by the guidance.

We have two historical share lending arrangements subject to the new guidance. In connection with the issuance of our 1.25% debentures and 0.75% debentures, we loaned 2.9 million shares of our class A common stock to LBIE and 1.8 million shares of our class A common stock to Credit Suisse International ("CSI") under share lending arrangements. Application of the new accounting guidance resulted in higher non-cash amortization of imputed share lending costs in the current and prior periods, as well as a significant non-cash loss resulting from Lehman Brothers Holding Inc. ("Lehman") filing a petition for protection under Chapter 11 of the U.S. bankruptcy code on September 15, 2008, and LBIE commencing administration proceedings (analogous to bankruptcy) in the United Kingdom. On December 16, 2010, we entered into an assignment agreement with Deutsche Bank AG - London Branch ("Deutsche Bank") under which we assigned to Deutsche Bank our claims against LBIE and Lehman in connection with the share lending arrangement. Under the assignment agreement, Deutsche Bank paid us $24.0 million for the claims on December 16, 2010, and we may receive, upo n the final allowance or admittance of the claims in the U.K. and U.S. proceedings, an additional payment for the claims. We cannot predict the amount of any such payment for the claims and cannot guarantee that we will receive any additional payment for the claims. The fair value of the 2.9 million shares of our class A common stock loaned and unreturned by LBIE at the time of the bankruptcy was $213.4 million, and the amount recovered under the assignment agreement on December 16, 2010 was $24.0 million, which was reflected in the third quarter of fiscal 2008 and fourth quarter of fiscal 2010, respectively, as "Gain (loss) on share lending arrangement" in our Consolidated Statements of Operations. For additional details see Notes 1 and 10 of Notes to Consolidated Financial Statements.

Accounting for Income Taxes

Our global operations involve manufacturing, R&D, selling and project development activities. Profit from non-U.S. activities is subject to local country taxation but not subject to United States tax until repatriated to the United States. It is our intention to indefinitely reinvest these earnings outside the United States. We record a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. In assessing the need for a valuation allowance, we consider historical levels of income, expectations and risks associated with the estimates of future taxable income and ongoing prudent and feasible tax planning strategies. In th e event we determine that we would be able to realize additional deferred tax assets in the future in excess of the net recorded amount, or if we subsequently determine that realization of an amount previously recorded is unlikely, we would record an adjustment to the deferred tax asset valuation allowance, which would change income tax in the period of adjustment. As of January 2, 2011, we believe there is insufficient evidence to realize additional deferred tax assets, although it is reasonably possible that a reversal of the valuation allowance, which could be material, could occur in fiscal 2011.

The calculation of tax liabilities involves dealing with uncertainties in the application of complex global tax regulations. We recognize potential liabilitie s for anticipated tax audit issues in the United States and other tax jurisdictions based on our estimate of whether, and the extent to which, additional taxes will be due. If payment of these amounts ultimately proves to be unnecessary, the reversal of the liabilities would result in tax benefits being recognized in the period in which we determine the liabilities are no longer necessary. If the estimate of tax liabilities proves to be less than the ultimate tax assessment, a further charge to expense would result. We accrue interest and penalties on tax contingencies which are classified as “Provision for income taxes” in the Consolidated Statements of Operations and are not considered material. For additional details see Note 12 of Notes to Consolidated Financial Statements.

Pursuant to the Tax Sharing Agreement with Cypress, we are obligated to indemnify Cypress upon current utilization of carryforward tax attributes generated while we were part of the Cypress consolidated or combined group. Further, to the extent Cypress experiences any tax examination assessments attributable to our operations while part of the Cypress consolidated or combined group, Cypress will require an indemnification from us for those aspects of the assessment that relate to our operations. See also *"Item 1A: Risk Factors"* including “*Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to pursue certain business initiatives.”*

In addition, foreign exchange gains (losses) may result from estimated tax liabilities, which are expected to be realized in

c urrencies other than the U.S. dollar.

Results of Operations

Fiscal Years

We report results of operations on the basis of 52- or 53-week p eriods, ending on the Sunday closest to December 31. Fiscal 2010 ended on January 2, 2011, fiscal 2009 ended on January 3, 2010 and fiscal 2008 ended on December 28, 2008. Each of fiscal 2010 and 2008 consisted of 52 weeks while fiscal 2009 consisted of 53 weeks.

Seasonal Trends

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

Revenue

	Year Ended		
(Dollars in thousands)	**January 2, 2011**	**January 3, 2010**	**December 28, 2008**
Utility and power plants	$ 1,186,054	$ 653,531	$ 742,432
Residential and commercial	1,033,176	870,752	695,162
Total revenue	$ 2,219,230	$ 1,524,283	$ 1,437,594

Total Revenue: During fiscal 2010 and 2009, our total revenue was $2,219.2 million and $1,524.3 million, respectively, an increase of 46% year-over-year, and we expect our total revenue to increase in 2011 as compared to 2010 as we continue to expand our sales across our UPP and R&C Segments. Our fiscal 2009 total revenue increased 6% compared to our total revenue in fiscal 2008. The increase in our total revenue in fiscal 2010 as compared to 2009 is primarily attributable to revenue related to the sale of several large scale projects, including projects acquired through our acquisition of SunRay, that were completed and monetized, as well as growing demand for our solar power products in the residential and commercial markets in the United States and Europe as a result of favorable renewable energy policies. The increase in our total revenue in fiscal 2009 as compared to 2008 resulted from strong demand in multiple geographies and market segments despite the difficult economic and credit environment.

Sales outside the United States represented approximately 71%, 57% and 64% of our total revenue for fiscal 2010, 2009 and 2008, respectively. The shift in revenue by geography in fiscal 2010 as compared to revenue reported in 2009 is due to the sale of several large scale projects completed or under construction in Italy during 2010. The change in geography mix in fiscal 2009 as compared to 2008 is primarily due to: (i) the expiration of an attractive governmental feed-in tariff in Spain in September 2008; (ii) the construction of a 25 MWac solar power plant in Desoto County, Florida in 2009; (iii) revenue growth in the United States, particularly in California, due to federal, state and local government incentives; and (iv) the growth of our third-party global dealer network.

Concentrations: We have three customers that each accounted for 10 percent or more of our total revenue in one or more of fiscal years 2010, 2009 and 2008 as follows:

(As a percentage of total revenue)		Year Ended January 2, 2011	Year Ended January 3, 2010	Year Ended December 28, 2008
Significant Customers:	**Business Segment**			
Customer A	UPP	12 %	*p;	*
Customer B	UPP	*	12 %	*
Customer C	UPP /font>	*	*	18 %
Customer D	UPP	*	*	11 %

* denotes less than 10% during the period

UPP Segment Revenue: Our UPP revenue for fiscal 2010, 2009 and 2008 was $1,186.1 million, $653.5 millio n and $742.4 million, respectively, which accounted for 53%, 43% and 52%, respectively, of our total revenue. UPP revenue increased 81% as compared to revenue reported in fiscal 2009 primarily due to revenue related to th e sale of several large scale development projects acquired from SunRay primarily in Italy as well as an increase in the number of EPC contracts. In the second half of fiscal 2010 our UPP Segment completed the sale of 44 MWac and 8 MWac solar power plants in Montalto di Castro, Italy to a consortium of international investors, and a 13 MWac solar power plant in Anguillara, Italy to another customer. The UPP Segment further recognized revenue under the percentage-of-completion method for several solar power plants totaling 27.6 MWac in the Sicily region and Piedmont region of Italy, a 20 MWac solar power plant in Toronto, Canada and a 17 MWac solar power plant in Colorado. In addition, in fiscal 2010 our UPP Segment began providing solar panels and balance of system components to a utility customer in the United States under a large five-year supply contract.

In fiscal 2009, our UPP Segment recognized revenue from the construction of a 20 MWac solar power plant for SunRay (in its capacity as our third-party customer) in Montalto di Castro, Italy prior to our acquisition of that company. In addition, our UPP Segment completed the construction of a 25 MWac solar power plant in Desoto County, Florida and began the construction of a 10 MWac solar power plant at the Kennedy Space Center in Florida.

In fiscal 2008, our UPP Segment benefited from strong solar power plant demand in Europe, primarily in Spain, and reflected the installation of more than 40 MWac of Spanish based projects before the expiration of a g overnmental feed-in tariff in September 2008.

R&C Segment Revenue: Our R&C revenue for fiscal 2010, 2009 and 2008 was $1,033.2 million, $870.8 million and $695.2 million, respectively, or 47%, 57% and 48%, respectively, of our total revenue. During fiscal 2010, R&C revenue increased 19% as compared to revenue reported in 2009 primarily due to growing demand for our solar power products in the residential and commercial markets in both the United States and Europe, and in part to our introduction of an additional product series in fiscal 2010 with increased solar panel efficiency and module configuration. The R&C revenue increase in fiscal 2010 was primary driven by demand in Germany, Italy and the United Stat es, particularly in California and New Jersey, due to federal, state and local government incentives and strong demand in the residential and small commercial roof-top markets through our third-party global dealer network in both Europe and the United States. In addition, the R&C Segment began construction on several large commercial projects in New Jersey. Our third-party global dealer network was composed of approximately 1,500 dealers worldwide at the end of fiscal 2010.

In fiscal 2009, R&C revenue was primary driven by demand in Germany, Italy and the United States, particularly in California, due to federal, state and local government incentives and strong demand in the residential and small commercial roof-top markets throug h our third-party global dealer network in both Europe and the United States. In addition, the R&C Segment completed the construction of an 8 MWac solar power plant in Chicago, Illinois.

In fiscal 2008, R&C revenue was primarily due to strong demand in the residential and small commercial roof-top markets through our third-party global dealer network in both Europe and the United States. We added approximately 500 dealers, 500 dealers and 350 dealers during each of fiscal 2010, 2009 and 2008, respectively.

Cost of Revenue

Details of cost of UPP revenue are as follows:

(Dollars in thousands)	Year Ended January 2, 2011		Year Ended January 3, 2010		Year Ended December 28, 2008	
Amortization of other intangible assets	$ 2,762		$ 2,732		$ 2,728	
Stock-based compensation	7,608		5,808		8,690	
Non-cash interest expense	5,412		1,231		329	
Impairment of long-lived assets	—		—		2,203	
Materials and other cost of revenue	892,544		517,079		520,424	
Total cost of UPP revenue	$ 908,326		$ 526,850		$ 534,374	
Total cost of UPP revenue as a percentage of UPP revenue	77	%	81	%	72	%
Total UPP gross margin percentage	23	%	19	%	28	%

Details of cost of R&C revenue are as follows:

(Dollars in thousands)

	Year Ended January 2, 2011		Year Ended January 3, 2010		Year Ended December 28, 2008	
Amortization of other intangible assets	$ 7,644	<	$ 8,465		$ 9,268	
Stock-based compensation	8,121		8,190		10,199	
Non-cash interest expense	1,495		1,508		465	
Materials and other cost of revenue	783,751		695,550		533,667	
Total cost of R&C revenue	$ 801,011		$ 713,713		$ 553,599	
Total cost of R&C revenue as a percentage of R&C revenue	78	%	82	%	80	%
Total R&C gross margin percentage	22	%	18	%	20	%

Total Cost of Revenue: During fiscal 2010, our two solar cell manufacturing facilities produced 577.7 MWdc as compared to fiscal 2009 and 2008 when we produced 397.4 MWdc and 236.9 MWdc, respectively. Our manufacturing cost per watt decreased in fiscal 2010 as compared to 2009 due to lower material cost and better material utilization as well as higher volume , resulting in increased economies of scale in production. We are working with our suppliers and partners along all steps of the value chain to reduce costs by improving manufacturing technologies and expanding economies of scale.

During fiscal 2010, our total cost of revenue was $1,709.3 million, which represented an increase of 38% as compared to the total cost of revenue reported in fiscal 2009. The increase in total cost of revenue corresponds to the increase of 46% in total revenue during fiscal 2010. As a percentage of total revenue, total cost of revenue decreased to 77% in fiscal 2010 as compared to 81% in fiscal 2009. The decrease in total cost of revenue as a percentage of total revenue reflects: (i) reduced charges for inventory write-downs related to declining average selling prices of third-party solar panels of $1.4 million in fiscal 2010 as compared to $15.3 million in 2009; (ii) reduced large commercial balance of systems costs; and (iii) improvements attributable to continued manufacturing scale and reductions in our manufacturing cost per watt described above. Inventory written-down in fiscal 2009 that was sold in 2010 improved our gross margin by an immaterial amount in fiscal 2010.

During fiscal 2009, our total cost of revenue was $1,240.6 million, which represented an increase of 14% as compared to the total cost of revenue reported in fiscal 2008. As a percentage of total revenue, our total cost of revenue increased to 81% in fiscal 2009 as compared to 76% in fiscal 2008. This increase in total cost of revenue as a percentage of total revenue reflects: (i) lower factory utilization during the first half of fiscal 2009 due to our planned transition to a demand driven manufacturing strategy to reduce inventory levels; and (ii) the write-down and subsequent sale of inventory to its estimated market value in fiscal 2009 based on our assumptions about future demand and market conditions. This increase in total cost of revenue as a percentage of total revenue was partially offset by: (i) decreased costs of polysilicon; (ii) reduced expenses associated with the amortization of other intangible assets and stock-based compensation; and (iii) an asset i mpairment charge of $2.2 million in fiscal 2008 relating to the wind down of our imaging detector product line.

UPP Segment Gross Margin: Gross margin was $277.7 million, $126.7 million and $208.1 million for fiscal 2010, 2009 and 2008, respectively, or 23%, 19% and 28%, respectively, of UPP revenue. UPP gross margin increased in fiscal 2010 as compared to 2009 due to a greater proportion of sales from development projects in Italy which have higher gross margins due to customers paying a premium for turn-key fully developed power plants. Additionally, gross margin increased due to reduced charges for inventory write-downs and subsequent sales of aged third-party solar panels in fiscal 2010 as compared to 2009.

Gross margin decreased in fiscal 2009 as compared to 2008 due to: (i) lower average selling prices for our solar power products; (ii) the write-down and subsequent sale of aged third-party solar panels to its estimated market value in 2009 based on our assumptions about future demand and market conditions; and (iii) our inability to reduce overhead costs incurred that are fixed in nature. This decrease in gross margin was partially offset by continued reduction in silicon costs.

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R&C Segment Gross Margin: Gross margin was $232.2 million, $157.0 million and $141.6 million for fiscal 2010, 2009 and 2008, respectively, or 22%, 18% and 20%, respectively, of R&C revenue. Gross margin increased in fiscal 2010 as compared to 2009 due to: (i) the reduction in large commercial balance of systems costs; and (ii) improvements attributable to continued manufacturing scale and reductions in our manufacturing cost per watt described above, partially offset by reduced average selling prices of our solar power products. Gross margin decreased in fiscal 2009 as compared to 2008 due to: (i) lower average selling prices for our solar power products; (ii) the write-down and subsequent sale of aged third-party solar panels to its estimated market value in 2009 based on our assumptions about future demand and market conditions; and (iii) our inability to reduce overhead costs incurred that are fixed in nature. This decr ease in gross margin was partially offset by continued reduction in silicon costs.

R&D Expense

Details of R&D expense are as follows:

	Year Ended		
(Dollars in thousands)	**January 2, 2011**	**January 3, 2010**	**December 28, 2008**
Sto ck-based compensation	$ 7,555	$ 6,296	$ 3,988
O ther R&D	41,535	25,346	17,486
Total R&D	$ 49,090	$ 31,642	$ 21,474
Total R&D as a percentage of revenue	2 %	2 %	1 %

During fiscal 2010 and 2009 our R&D expense was $49.1 million and $31.6 million, respectively, which represents an increase of 55% from fiscal 2009. Our fiscal 2009 R&D expense increased 47% compared to $21.5 million in fiscal 2008. The general increase in spending year-over-year resulted primarily from costs related to the improvement of our current generation solar cell manufacturing technology, development of our third generation of solar cells, development of next generation solar panels, development of next generation trackers and rooftop systems, and development of systems performance monitoring products. We expect our R&D expense to i ncrease in fiscal 2011 as compared to 2010 as we continue in efforts to improve solar cell efficiency through enhancement of our existing products, development of new techniques such as concentrating photovoltaic power, and reducing manufacturing cost and complexity.

The increase in our R&D expense from fiscal 2009 to 2010 further pertains to (i) personnel related expense (including salary, stock-based compensation costs and bonus) as a result of increased headcount from approximately 180 on January 3, 2010 to 210 as of January 2, 2011; (ii) increased equipment expense and depreciation due to general growth and development; and (iii) decrease in cost reimbursements received from government agencies in the United States due to phase out of related programs during fiscal 2010. The increase in our R&D expense from fiscal 2008 to 2009 further resulted from increases in salaries, benefits and stock-based compensation costs as a result of increased headcount from approximately 150 on December 28, 2008 to 180 on January 3, 2010. These increases were partially offset by cost reimbursements received from various government entities in the United States.

In fiscal 2007 through 2010 we benefited from a Solar America Initiative R&D agreement with the United States Department of Energy in which we have been awarded $24.1 million through January 2, 2011. Payments received under this contract offset our research and development expense by $5.2 million in fiscal 2010 as compared to $8.9 million, $7.0 million and $3.0 million in 2009, 2008 and 2007, respectively. The award was fully funded by the end of the third quarter of fiscal 2010.

SG&A Expense

Details of SG&A expense are as follows:

(Dollars in thousands)	Year Ended January 2, 2011	January 3, 2010	December 28, 2008
Amortization of other intangible assets	$ 28,071	$ 5,277	$ 4,766
Stock-based compensation	31,088	26,700	47,343
Amortization of promissory notes	11,054	—	—
Other SG&A	251,723	158,267	121,631
Total SG&A	$ 321,936	$ 190,244	$ 173,740
Total SG&A as a percentage of revenue	15 %	12 %	12 %

During fiscal 2010 and 2009, our SG&A expense was $321.9 million and $190.2 million, respectively, which represents an increase of 69%. Our fiscal 2009 SG&A expense increased 9% compared to $173.7 million in fiscal 2008. The increase in SG&A expense year-over-year resulted primarily from higher spending in all of the functional areas to support th e growth of our business, including through acquisitions. Headcount related to SG&A expense increased from approximately 640 on December 28, 2008 to 675 on January 3, 2010 to 900 on January 2, 2011. We expect our SG&A expense to increase in fiscal 2011 as compared to 2010 as we continue to invest in expanding our sales operations and continue to grow our business globally.

The increase in SG&A expense in fiscal 2010 as compared to 2009 primarily related to: (i) SunRay's operating and development expenses being consolidated into our financial results from March 26, 2010 through January 2, 2011; (ii) higher amortization of other intangible assets related to project assets acquired from SunRay; (iii) amortization of the $14.0 million in promissory notes issued to SunRay's management shareholders in connection with the acquisition; (iv) SunRay acquisition-related costs and integration-related costs such as legal, accounting, valuation and other professional services; (v) costs associated with the formation of the AUOSP joint venture; (vi) personnel related expense (including salary, stock-based compensation costs, bonus and commission) as a result of increased headcount; (vii) additional bad debt expense due to the overall increase in revenue and the collectability of outstanding accounts receiva ble related to several customers impacted by the difficult economic conditions experienced in the last two years; and (viii) $4.4 million of expenses incurred in the first quarter of fiscal 2010 associated with our Audit Committee independent investigation of certain accounting entries primarily related to cost of goods sold by our Philippines operations.

The increase in SG&A expense in fiscal 2009 as compared to 2008 primarily related to: (i) sales and marketing spending to expand our third-party global dealer network and global branding initiatives; (ii) the launch of our new marketing campaign; and (iii) $3.6 million of expenses incurred in the fourth quarter of fiscal 2009 associated with our Audit Committee independent investigati on of certain accounting entries primarily related to cost of goods sold by our Philippines operations. The increase was partially offset by reduced stock-based compensation associated with shares and options released from re-vesting restrictions.

Other Income (Expense), Net

$

(Dollars in thousands)	Year Ended January 2, 2011	January 3, 2010	December 28, 2008
Interest income	$ 1,541	2,109	$ 10,789
Non-cash interest expense	$ (23,709)	$ (19,843)	$ (16,716)
Other interest expense	(31, 567)	(16,444)	(6,699)
Total interest expense	$ (55,276)	$ (36,287)	$ (23,415)
Gain on deconsolidation of consolidated subsidiary	$ 36,849	$ —	$ —
Gain on change in equity interest in unconsolidated investee	$ 28,078	$ —	$ —
Gain on mark-to-market derivatives	$ 35,764	$ 21,193	$ —
Gain (loss) on share lending arrangement	$ 24,000	$ —	$ (213,372)
Other, net	$ (26,410)	$ (5,229)	$ (26,313)

Interest income during fiscal 2010, 2009 and 2008 primarily represents interest income earned on our cash, cash equivalents, restricted cash, restricted cash equivalents and available-for-sale securities during these periods. The decrease in interest income of 27% in fiscal 2010 as compared to 2009 and 80% in 2009 as compared to 2008 both resulted from lower

interest rates earned on cash holdings.

Interest expense during fiscal 2010 primarily relates to debt under our senior convertible debentures, fees for our outstanding letters of credit with Deutsche Bank, the revolving credit facility with Union Bank, N.A. ("Union Bank") and Société Générale, Milan Branch ("Société Générale"), and the mortgage loan with International Finance Corporation ("IFC"). Interest expense during fiscal 2009 primarily relates to borrowings under our senior convertible debentures, fees for our outstanding letters of credit with Wells Fargo Bank, N.A. ("Wells Fargo"), the SPMY facility with the Malaysian government, the term loan with Union Bank and customer advance payments. Interest expense during fiscal 2008 relates to interest due on our senior convertible debentures, fees for our outstanding letters of credit with Wells Fargo and customer advance payments. The increase in interest expense of 52% in fiscal 2010 as compared to 2009 is due to: (i) additional indebtedness related to our $250.0 million in principal amount of 4.50% debentures issued in April 2010, $70.0 million borrowed from Union Bank in October 2010, approximately $98.0 million borrowed from Société Générale in November 2010 and $50.0 million borrowed from IFC in November 2010; and (ii) fees for our outstanding letters of credit with Deutsche Bank. The increase in interest expense of 55% in fiscal 2009 as compared to 2008 is primarily due to additional indebtedness related to our $230.0 million in principal amount of 4.75% debentures, approximately $219.0 million outstanding under the facility with the Malaysian government and $30.0 million under the term loan with Union Bank. These increases were partially offset by the deconsolidation of the outstanding balance under the facility with the Malaysian government in the third quarter of fiscal 2010 as a result of the AUOSP joint venture transaction and the repurchase of a portion of our 0.75% debentures during fiscal 2010 and 2009 with a principal amount of $143.8 million and $81.1 million, respectively. For additional details see Note 10 of Notes to Consolidated Financial Statements.

On July 5, 2010, we closed our joint venture transaction with AUO. Under the joint venture agreement our equity interest in SPMY, formerly our subsidiary, was reduced to 50% and the entity was renamed AUOSP. As a result of the shared power arrangement with AUO, we deconsolidated AUOSP and account for our direct investment under the equity method in the third quarter of fiscal 2010. We recognized a non-cash gain of $36.8 million as a result of the deconsolidation of AUOSP in the third quarter of fiscal 2010 in our Consolidated Statement of Operations. For additional details see Note 9 of Notes to Consolidated Financial Statements.

On June 30, 2010, Woongjin Energy completed its IPO and the sale of 15.9 million new shares of common stock. We did not participate in this common stock issuance by Woongjin Energy. As a result of the new common stock issuance by Woongjin Energy in its IPO, our percentage equity interest in Woongjin Energy decreased from 42.1% to 31.3% of its issued and outstanding shares of common stock. In connection with the IPO, we recognized a non-cash gain of $28.3 million in the second quarter of fiscal 2010 in our Consolidated Statement of Operations as a result of our equity interest in Woongjin Energy being revalued upon a dilutive event. In the fourth quarter of fiscal 201 0, First Philec Solar issued an additional 0.5 million shares of common and preferred stock to investors which resulted in the reduction of our percent equity interest in First Philec Solar from 20% to 15% of its issued and outstanding shares of preferred and common stock. In connection with the additional funding, we recognized a non-cash loss of $0.3 million in the fourth quarter of fiscal 2010 as a result of our equity interest in First Philec Solar being diluted. For additional details see Note 9 of Notes to Consolidated Financial Statements.

The $35.8 million net gain on mark-to-market derivatives during fiscal 2010 relates to the change in fair value of the following derivative instruments associated with the 4.50% debentures: (i) the embedded cash conversion option; (ii) over-allotment option; (iii) bond hedge transaction; and (iv) warrant transaction. The changes in fair value of these derivatives are reported in our Consolidated Statement of Operations until such transactions settle or expire. The over-allotment option derivative settled on April 5, 2010 when the initial purchasers of the 4.50% debentures exercised the $30.0 million over-allotment option in full. As a result of the terms of the warrants being amended and restated so that they are settled in shares of our class A common stock rather than in cash, the warrants will not require mark-to-market accounting treatment subsequent to December 23, 2010. For additional details see Note 10 of Notes to Consolidated Financial Statements.

The $21.2 million non-cash gain on mark-to-market derivatives during fiscal 2009 relates to the change in fair value of the purchased options associated with the issuance of our 4.75% debentures. The purchased options, which are indexed to our class A common stock, were deemed to be ma rk-to-market derivatives during the one-day period in which the over-allotment option in favor of the 4.75% debenture underwriters was unexercised. We entered into the debenture underwriting agreement on April 28, 2009 and the 4.75% debenture underwriters exercised the over-allotment option in full on April 29, 2009. During the one-day period that the underwriters' over-allotment option was outstanding, our class A common stock price increased substantially, resulting in a non-cash gain on purchased options of $21.2 million in fiscal 2009 in our Consolidated Statement of Operations. For additional details see Note 10 of Notes to Consolidated Financial Statements.

In connection with the issuance of our 1.25% debentures, we loaned 2.9 million shares of our class A common stock to LBIE under a share lending arrangement. On September 15, 2008, Lehman filed a petition for protection under Chapter 11 of

the U.S. bankruptcy code and LBIE commenced administration procee dings (analogous to bankruptcy) in the United Kingdom. As a result, we recognized a $213.4 million non-cash loss in the third quarter of fiscal 2008 which was the then fair value of the 2.9 million shares of our class A common stock loaned and unreturned by LBIE. On December 16, 2010, we entered into an assignment agreement with Deutsche Bank under which we assigned to Deutsche Bank our claims against LBIE and Lehman in connection with the share lending arrangement. We recovered $24.0 million under the assignment agreement with Deutsche Bank which was reflected in the fourth quarter of fiscal 2010 as "Gain (loss) on share lending arrangement" in our Consolidated Statements of Operations. For additional details see N otes 1 and 10 of Notes to Consolidated Financial Statements.

The following table summarizes the components of other, net:

	Year Ended		
(Dollars in thousands)	**January 2, 2011**	**January 3, 2010**	**December 28, 2008**
Gain (loss) on derivatives and foreign exchange	$ (27,701)	$ (3,902)	$ (20,602)
Gain on sale (impairment) of investments	770	(1,443)	(5,408)
Other income (expense), net	521	116	(303)
Total other, net	$ (26,410)	$ (5,229)	$ (26,313)

Other, net expenses during fiscal 2010, 2009 and 2008 consists primarily of losses totaling $23.1 million, $0.9 million and $6.5 million, respectively, from expensing the time value of option contracts and forward point s on forward exchange contracts, losses totaling $4.6 million, $3.0 million and $14.1 million, respectively, on foreign currency derivatives and foreign exchange largely due to the volatility in the currency markets, impairment charges totaling $0.8 million, $2.0 million and $5.4 million, respectively, for debt securities, auction rate securities, certain money market funds and non-publicly traded investments, partially offset by gains totaling $1.6 million, $0.6 million and zero, respectively, for the sale of auction rate securities and distributions received from certain money market funds. For additional details see Notes 7 and 11 of Notes to Consolidated Financial Statements.

Income Taxes

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	Year Ended		
(Dollars in thousands)	**January 2, 2011**	**January 3, 2010**	**December 28, 2008**
Provision for income taxes	$ (23,375)	$ (21,028)	$ (40,618)
As a percentage of revenue	1 %	1 %	3 %

In fiscal 2010, our income tax provision of $23.4 million on income from continuing operations before income taxes and equity in ear nings of unconsolidated investees of $183.4 million was primarily due to the mix of income earned in domestic and foreign jurisdictions, nondeductible amortization of purchased other intangible assets, non deductible equity compensation, amortization of debt discount from convertible debentures, gain on change in equity interest in Woongjin Energy, mark-to-market fair value adjustments, changes in the valuation allowance on deferred tax assets, and discrete stock option deductions. In fiscal 2009, our income tax provision of $21.0 million on income from continuing operations before income taxes and equity in earnings of unconsolidated investees of $43.6 million was primarily due to domestic and foreign income taxes in certain jurisdictions where our operations were profitable, net of nondeductible amortization of purchased other intangible assets, discrete stock option deductions and the discrete non-cash non-taxable gain on purchased options. In fiscal 2008, our income tax provision of $40.6 million on loss from continuing operations before income taxes and equity in earnings of unconsolidated investees of $97.9 million was primarily attributable to the consumption of non-stock net operating loss carryforwards, net of foreign income taxes in profitable jurisdictions where the tax rates are less than the U.S. statutory rate.

We are subject to tax holidays in the Philippines where we manufacture our solar power products. The tax holidays are scheduled to expire within the next several years beginning in 2010, and we have applied for tax extensions. Tax holidays in the Philippines reduce our tax rate to 0% from 30%. Tax savings associated with the Philippine tax holidays were approximately $11.8 million, $11.1 million and $10.2 million in fiscal 2010, 2009 and 2008, respectively, which provided a diluted net income (loss) per share benefit of $0.11, $0.12 and $0.13, respectively.

We have a tax ruling in Switzerland where we sell our solar power products. The ruling in Switzerland reduces our tax rate to 11.5% from approximately 24.2%. Tax savings associated with this ruling was approximately $1.6 million, $0.4 million and zero in fiscal 2010, 2009 and 2008, respectively, which provided a diluted net income (loss) per share benefit of $0.02 in fiscal 2010 and zero in both fiscal 2009 and 2008. This current tax ruling expires at the end of 2015.

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

We have California state net operating loss carryforwards of approximately $27.6 million as of January 2, 2011, which expire at various dates from 2011 to 2017. We also had R&D credit carryforwards of approximately $4.0 million for federal tax purposes and $4.3 million for state tax purposes. We have provided a valuation allowance on our net deferred tax assets in the United States because of the uncertainty o f their realizability. We expect it is more likely than not that we will not realize our net deferred tax assets as of January 2, 2011. The majority of the net operating loss carryforwards were created by employee stock transactions. Because there is uncertainty as to the realizability of the loss carryforwards, the portion created by employee stock transactions are not reflected on our Consolidated Balance Sheets.

Equity in earnings of unconsolidated investees

	Year Ended		
(Dollars in thousands)	**January 2, 2011**	**January 3, 2010**	**December 28, 2008**
Equity in earnings of unconsolidated investees	$ 6,845	$ 9,929	$ 14,077
As a percentage of revenue	— %	1 %	1 %

Our equity in earnings of unconsolidated investees were gains of $6.8 million, $9.9 million and $14.1 million in fiscal 2010, 2009 and 2008, respectively. Our share of Woongjin Energy’s income totaled $14.4 million, $9.8 million and $14.2 million in fiscal 2010, 2009 and 2008, respectively. The change in our equity share of Woongjin Energy’s earnings year-over-year represents the growth of the joint venture's operations, foreign currency translation, and changes in our equity ownership. Our share of First Philec Solar’s income totaled $0.4 million and $0.1 million in fiscal 2010 and 2009, respectively, and our share of First Philec Solar’s losses totaled $0.1 million in fiscal 2008. Our equity share of First Philec Solar's earnings increased year-over-year due to increases in production since First Philec Solar became operational in the second quarter of fiscal 2008. Our share of AUOSP’s loss totaled $8.0 million in fiscal 2010. AUOSP became operational in the fourth quarter of fiscal 2010 with construction to continue through fiscal 2013. For additional details see Note 9 of Notes to Consolidated Financial Statements.

Income from discontin ued operations, net of taxes

	Year Ended		
(Dollars in thousands)	**January 2, 201 1**	**January 3, 2010**	**December 28, 2008**
Income from discontinued operations, net of taxes	$ 11,841	$ —	$ —
As a percentage of revenue	1 %	— %	— %

In connection with our acquisition of SunRay on March 26, 2010, we acquired a SunRay project company, Cassiopea, operating a previously completed 20 MWac solar power plant in Montalto di Castro, Italy. In the period in which our asset is classified as held-for-sale, we are required to segregate for all periods presented the related assets, liabilities and results of operations associated with that asset as discontinued operations. In fiscal 2010, we recognized a gain of $11.4 million for the sale of Cassiopea on August 5, 2010. Cassiopea's results of ope rations for the fiscal year ended January 2, 2011 were classified as “Income from discontinued operations, net of taxes” in our Consolidated Statement of Operations. For additional details see Note 4 of Notes to Consolidated Financial Statements.

Liquidity and Capital Resources

Cash Flows

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

(Dollars in thousands)	Year Ended January 2, 2011	January 3, 2010	December 28, 2008
Net cash provided by operating activities of continuing operations	$ 168,165	$ 121,325	$ 154,831
Net cash used in investing activities of continuing operations	(461,360)	(256,559)	(326,146)
Net cash provided by financing activities of continuing operations	244,282	552,350	92,553

Operating Activities

Net cash provided by operating activities of continuing operations of $168.2 mill ion in fiscal 2010 was primarily the result of: (i) income from continuing operations of $166.9 million plus non-cash charges totaling $255.1 million for depreciation, amortization, stock-based compensation, debt issuance costs and non-cash interest expense, partially offset by a $0.8 million net gain on investments, a $24.0 million recovery on a previously recorded l oss on a share lending arrangement to LBIE, a $35.8 million net gain on mark-to-market derivatives related to the change in fair value of the derivative instruments associated with the 4.50% debentures, and other non-cash income of $72.0 million primarily related to our equity share in earnings of joint ventures, gain on deconsolidation of AUOSP, net gain on change in our equity interest in joint ventures and a net gain on mark-to-market derivatives; and (ii) increases in accounts payable and other accrued liabilities of $158.0 million as well as an increase in customer advances of $90.6 million primarily from AUOSP. The increase was partially offset by increases in accounts receivable of $132.2 million related to the increase in revenue, inventories of $114.5 million as we continue to grow our business, and advances to polysilicon suppliers of $96.1 million primarily to one supplier, as well as other changes in operating assets and liabilities of $27.4 million.

Net cash provided by operating activities of continuing operations of $121.3 million in fiscal 2009 was primarily the result of: (i) income from continuing operations of $32.5 million, plus non-cash charges totaling $175.3 million for depreciation, amortization, impairment of investments, stock-based compensation and non-cash interest expense, less non-cash income of $31.1 million related to a gain on purchased options and our equity share in earnings of joint ventures; as well as (ii) decreases in inventories of $53.7 million due to improved inventory turns as a result of management's demand-driven manufacturing model. The increase was partially offset by an increase in accounts receivable of $50.5 million due to the increase in total revenue in the fourt h quarter of fiscal 2009 as compared to the same period in 2008 and in advances to polysilicon suppliers of $27.9 million and decreases in customer advances of $18.4 million, as well as other changes in operating assets and liabilities of $12.3 million.

Net cash provided by operating activities of continuing operation s of $154.8 million in fiscal 2008 was primarily the result of: (i) a loss from continuing operations of $124.4 million, plus non-cash charges totaling $382.1 million for depreciation, amortization, impairment of investments and long-lived assets, stock-based compensation, non-cash interest expense and the fair value of a share lending arrangement with LBIE, less non-cash income of $14.1 million for our equity share in earn ings of joint ventures; as well as (ii) increases in customer advances of $40.1 million, primarily for future polysilicon purchases by a third party that manufactures ingots which are sold back to us under an ingot supply agreement, and in accounts payable and other accrued liabilities of $150.1 million. These items were partially offset by decreases in billings in excess of costs and estimated earnings of $53.6 million related to contractual timing of system project billings, as well as increases in inventories of $95.7 million, mainly due to our agreement to design and build two solar photovoltaic power plants for a significant customer, accounts receivable of $57.6 million and other changes in operating assets and liabilities totaling $72.1 million.

Investing Activities

Net cash used in investing activities of continuing operations in fiscal 2010 was $461.4 million, of which: (i) $119.2 million relates to capital expenditures primarily associated with the continued construction of FAB3 in Malaysia prior to deconsolidation on July 5, 2010; (ii) $272.7 million in cash was paid for the acquisition of SunRay, net of cash acquired; (iii) $40.1 million for the purchase of debt securities; (iv) $5.6 million of increases in restricted cash and cash equivalents; (v) $17.8 million in cash paid for investments in AUOSP and non-public companies; and (vi) $12.9 million relates to cash of AUOSP that was deconsolidated on July 5, 2010. Cash used in investing activities was partially offset by $5.3 million in proceeds received from the sale of equipment to a third-party contract manufacturer and $1.6 million on money market fund distributions.

Net cash used in investing activities of continuing operations during fiscal 2009 was $256.6 million, of which: (i) $167.8 million relates to capital expenditures primarily associated with the completion of our second solar cell manufacturing facility ("FAB2") in the Philippines and the continued construction of FAB3 in Malaysia; (ii) $135.5 million relates to increases in

restricted cash and cash equivalents for the drawdown under the facility agreement with the Malaysian government; and (iii) $2.4 million relates to cash paid for investments in First Philec Solar and a non-public company. Cash used in investing activities was partially offset by $39.1 million in proceeds received from the sales or maturities of available-for-sale securities and $10.0 million in proceeds received from the sale of equipment to a third-party contract manufacturer.

Net cash used in investing activities of continuing operations during fiscal 2008 was $326.1 million, of which: (i) $265.9 million relates to capital expenditures primarily associated with the continued construction of FAB2 in the Philippines; (ii) $107.4 million relates to increases in restricted cash and cash equivalents for advanced payments received from customers for which we provided cash collatera lized bank standby letters of credit and for the first drawdown under the facility agreement with the Malaysian government; (iii) $18.3 million in cash which was paid for the acquisitions of Solar Solutions in Italy, and Solar Sales Pty. Ltd. in Australia, net of cash acquired; and (iv) $24.6 million in cash which was paid for investments in joint ventures and other non-public companies. Cash used in investing activities was partially offset by $90.1 million in proceeds received from the sales of available-for-sale securities, net of available-for-sale securities purcha sed during the period, and investment in certain money market funds re-designated from cash and cash equivalents to short-term investments.

Financing Activities

Net cash provided by financing activities of continuing operations in fiscal 2010 was $244.3 million and reflects cash received from the following sources: (i) $230.5 million in net proceeds from the issuance of $250.0 million in principal amount of our 4.50% debentures, after reflecting the payment of the net cost of the call spread overlay; (ii) $214.7 million and $318.6 million in net proceeds from various bank and project loans, respectively; (iii) $24.0 million received under the LBIE claim assignment agreement with Deutsche Bank; (iv) $0.2 million in excess tax benefits from stock-based award activity; and (v) $0.9 million from stock option exercises. Cash received was partially offset by: (i) $333.5 million principal amount of project loans assumed by customers with the sale of 44 MWac and 8 MWac solar power plants in Montalto di Castro, Italy to a consortium of international investors; (ii) cash paid of $30.0 million to Union Bank to terminate our $30.0 million term loan; (iii) repayment of $33.6 million to Piraeus Bank to terminate our current account overdraft agreement in Greece; (iv) repurchase of $143.8 million in principal amount of our 0.75% debentures; and (v) $3.7 million for treasury stock purchases that were used to pay withholding taxes on vested restricted stock.

Net cash provided by financing activities of continuing operations during fiscal 2009 was $552.4 million and reflects cash received from the following sources: (i) $218.8 million in net proceeds from our public offering of 10.35 million shares of our class A common stock; (ii) $198.7 million in net proceeds from the issuance of $230.0 million in principal amount of our 4.75% debentures, after reflecting the payment of the net cost of the call spread overlay; (iii) Malaysian Ringgit 560.0 million (approximately $163.4 million based on the exchange rate as of January 3, 2010) from the Malaysian government under AUOSP's facility agreement; (iv) $29.8 million in net proceeds from Union Bank under our $30.0 million term loan; (v) $20.1 million in excess tax benefits from stock-based award activity; and (vi) $1.5 million from stock option exercises. Cash received during fiscal 2009 was partially offset by cash p aid of $75.6 million to repurchase approximately $81.1 million in principal amount of our 0.75% debentures and $4.3 million for treasury stock purchases that were used to pay withholding taxes on vested restricted stock.

Net cash provided by financing activities of continuing operations during fiscal 2008 was < font style="font-family:inherit;font-size:10pt;color:#000000;text-decoration:none;">$92.6 million and reflects proceeds received of Malaysian Ringgit 190.0 million (approximately $54.6 million based on the exchange rate as of December 28, 2008) from the Malaysian government under AUOSP's facility agreement, $5.1 million from stock option exercises and $40.7 million in excess tax benefits from stock-based award activity, partially offset by cash paid of $6.7 million for treasury stock purchases that were used to pay withholding taxes on vested restricted stock and $1.2 million for conversion of 1.25% debentures.

Debt and Credit Sources

Convertible Debentures

On April 1, 2010, we issued $220.0 million in principal amount of our 4.50% debentures and received net proceeds of $214.9 million, before payment of the net cost of the bond hedge and warrant transactions of $12.1 million. On April 5, 2010, the initial purchasers of the 4.50% debentures exercised the $30.0 million over-allotment option in full and we received net proceeds of $29.3 million, before payment of the net cost of the bond hedge and warrant transactions of $1.6 million. Interest on the 4.50% debentures is payable on March 15 and September 15 of each year, which commenced September 15, 2010. The 4.50% debentures mature on March 15, 2015. The 4.50% debentures are convertible only into cash, and not into shares of our class A common stock (or any other securities). Prior to De cember 15, 2014, the 4.50% debentures are convertible only upon specified events and, thereafter, they will be convertible at any time, based on an initial conversion price of $22.53 per share of

our class A common stock. The conversion price will be subject to adjustment in certain events, such as distributions of dividends or stock splits. Upon conversion, we will deliver an am ount of cash calculated by reference to the price of our class A common stock over the applicable observation period. The 4.50% debentures will not be convertible until the first quarter of fiscal 2011. We may not redeem the 4.50% debentures prior to maturity. Holders may also require us to repurchase all or a portion of their 4.50% debentures upon a fundamental change, as defined in the debenture agreement, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as our failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.50% debentures will have the right to declare all amounts then outstanding due and payable. For additional details see Note 10 of Notes to Consolidated Financial Statements.

In May 2009, we issued $230.0 million in principal amount of our 4.75% debentures and received net proceeds of $225.0 million, before payment of the net cost of the call spread overlay of $26.3 million. Interest on the 4.75% debentures is payable on April 15 and October 15 of each year, which commenced October 15, 2009. Holders of the 4.75% debentures are able to exercise their right to convert the debentures at any time into shares of our class A common stock at a conversion price equal to $26.40 per share. The applicable conversion rate may adjust in certain circumstances, including upon a fundamental change, as defined in the indenture governing the 4.75% debentures. If not earlier converted, the 4.75% debentures mature on April 15, 2014. Holders may also require us to repurchase all or a portion of their 4.75% debentures upon a fundamental change at a cash repurcha se price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as our failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.75% debentures will have the right to declare all amounts then outstanding due and payable. For additional details see Note 10 of Notes to Consolidated Financial Statements.

In February 2007, we issued $200.0 million in principal amount of our 1.25% debentures and received net proceeds of $194.0 million. In fiscal 2008, we received notices for the conversion of $1.4 million in principal amount of the 1.25% debentures which we settled for $1.2 million in cash and 1,000 shares of class A common stock. As of January 2, 2011, an aggregate principal amount of $198.6 million of the 1.25% debentures remain issued and outstanding. Interest on the 1.25% debentures is payable on February 15 and August 15 of each year, which commenced August 15, 2007. The 1.25% debentures mature on February 15, 2027. Holders may require us to repurchase all or a portion of their 1.25% debentures on each of February 15, 2012, February 15, 2017 and February 15, 2022, or if we experience certain types of corporate transactions constituting a fundamental change, as defined in the indenture governing the 1.25% debentures. Any repurchase of the 1.25% debentures under these provisions will be for cash at a price equal to 100% of the principal amount of the 1.25% debentures to be repurchased plus accrued and unpaid interest. In additio n, we may redeem some or all of the 1.25% debentures on or after February 15, 2012 for cash at a redemption price equal to 100% of the principal amount of the 1.25% debentures to be redeemed plus accrued and unpaid interest. For additional details see Note 10 of Notes to Consolidated Financial Statements.

In July 2007, we issued $225.0 million in principal amount of our 0.75% debentures and received net proceeds of $220.1 million. In fiscal 2009, we repurchased $81.1 million in principal amount of the 0.75% debentures for $75.6 million in cash. In fiscal 2010, we repurchased $143.8 million in principal amount of the 0.75% debentures for $143.8 million in cash, of which $143.3 million was pursuant to the contracted debenture holder put on August 2, 2010. As of January 2, 2011, an aggregate principal amount of $0.1 million of the 0.75% debentures remain issued and outstanding. Interest on the 0.75% debentures is payable on February 1 and August 1 of each year, which commenced February 1, 2008. The 0.75% debentures mature on August 1, 2027. Holders of the remaining 0.75% debentures could require us to repurchase all or a portion of their debentures on each of August 1, 2015, August 1, 2020 and August 1, 2025, or if we experienced certain types of corporate transactions constituting a fundamental change, as defined in the indenture governing the 0.75% debentures. The 0.75% debentures were classified as long-term liabilities and short-term liabilities in our Consolidated Balance Sheets as of January 2, 2011 and January 3, 2010, respectively, due to the ability of the holders to require us to repurchase their 0.75% deb entures commencing on August 1, 2015 and August 2, 2010, respectively. Any repurchase of the 0.75% debentures under these provisions will be for cash at a price equal to 100% of the principal amount of the 0.75% debentures to be repurchased plus accrued and unpaid interest. In addition, we could redeem the remaining 0.75% debentures on or after August 2, 2010 for cash at a redemption price equal to 100% of the principal amount of the 0.75% debentures to be redeemed plus accrued and unpaid interest. For additional details see Note 10 of Notes to Consolidated Financial Statements.

Debt Facility Agreement with the Malaysian Government

On December 18, 2008, AUOSP, then our subsidiary, entered into a facility agreement with the Malaysian government. As of January 3, 2010, AUOSP had outstanding Malaysian Ringgit 750.0 million ($219.0 million based on the exchange rates as of January 3, 2010) under the facility agreement to finance the construction of FAB3 in Malaysia. On July 5, 2010, the joint venture closed between our subsidiary SPTL, AUOSP, AUO, and AUO Taiwan. Under the terms of the joint venture agreement,

our subsidiary SPTL and AUO each own 50% of the AUOSP joint venture. AUOSP retains the existing debt facility and we deconsolidated the outstanding balance on July 5, 2010 due to the shared power arrangement with AUO. We do not guarantee or collateralize the debt facility held by AUOSP. For additional details see Notes 9 and 10 of Notes to Consolidated Financial Statements.

Mortgage Loan Agreement with IFC

On May 6, 2010, our subsidiaries SPML and SPML Land, Inc. (“SPML Land”) entered into a mortgage loan agreement with IFC. Under the loan agreement, SPML may borrow up to $75.0 million during the first two years, and SPML shall repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. SPML shall pay interest of LIBOR plus 3% per annum on outstanding borrowings, and a front-end fee of 1% on the principal amount of borrowings at the time of borrowing, and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed. SPML may prepay all or a part of the outstanding principal, subject to a 1% prepayment premium. On November 12, 2010, SPML borrowed $50.0 million under the mortgage loan agreement. A total of $25.0 million remains available for borrowing under the mortgage loan agreement. SPML and SPML Land pledged certain assets as collateral supporting SPML's repayment obligation. For additional details see Note 10 of Notes to Consolidated Financial Statements.

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

On December 29, 2010, we borrowed from CEDA the proceeds of the $30.0 million aggregate principal amount of CEDA's tax-exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (the "Bonds") maturing April 1, 2031 under a loan agreement with CEDA. Our obligations under the loan agreement were contained in a promissory note dated December 29, 2010 issued by us to CEDA, which assigned the promissory note, along with all right, title and interest in the loan agreement, to Wells Fargo, as trustee, with respect to the Bonds for the benefit of the holders of the Bonds. The Bonds will initially bear interest at a variable interest rate (determined weekly), but at our option may be converted into fixed-rate bonds (which include covenants of, and other restrictions on, us to be determined at the time of conversion). As of January 2, 2011 the $30.0 million aggregate principal amount of the Bonds is classified as "Short-term debt" in our Consolidated Balance Sheet due to the potential for the Bonds to be redeemed or tendered for purchase on June 22, 2011 under the reimbursement agreement. If the Bonds are converted into fixed-rate bonds prior to June 22, 2011, they will be reclassified to "Long-term debt" in our Consolidated Balance Sheet. For additional details see Note 10 of Notes to Consolidated Financial Statements.

Term Loan with Union Bank

On April 17, 2009, we entered into a loan agreement with Union Bank under which we borrowed $30.0 million for a three year term at an interest rate of LIBOR plus 2%. As of January 3, 2010, the outstanding loan balance was $30.0 million of which $11.3 million and $18.7 million had been classified as “current portion of long-term debt” and “Long-term debt,” respectively, in our Consolidated Balance Sheet, based on projected quarterly installments commencing June 30, 2010. On April 9, 2010 we repaid all principal and interest outstanding under the term loan with Union Bank. For additional details see Note 10 of Notes to Consolidated Financial Statements.

Revolving Credit Facility with Union Bank

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

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

We are required to pay interest on outstanding borrowings of, at our option, (1) LIBOR plus 2.75% or (2) 1.75% plus a base rate equal to the highest of (a) the federal funds rate plus 1.5%, (b) Union Bank's prime rate as announced from time to time, or (c) LIBOR plus 1.0%, per annum; a front-end fee of 0.40% on the available borrowing; and a commitment fee of 0.25% per annum on funds available for borrowing and not borrowed. On January 11, 2011, we repaid $65.0 million plus interest to date under the revolving credit facility with Union Bank. For additional details see Note 10 of Notes to Consolidated Financial Statements.

Revolving Credit Facility with Société Générale

On November 23, 2010, we entered into a revolving credit facility with Société Générale under which we may borrow up to Euro 75.0 million from Société Générale. Amounts borrowed may be repaid and reborrowed until April 23, 2011. Interest periods are monthly. All amounts borrowed are due on May 23, 2011. On November 26, 2010 we drew down Euro 75.0 million ($98.0 million based on the exchange rates as of January 2, 2011) under the revolving credit facility which amount, as of January 2, 2011, was classified as "Short-term debt" in our Consolidated Balance Sheet. Borrowings under the revolving credit facility are not collateralized. We are required to pay interest on outstanding borrowings of (1) EURIBOR plus 2.20% per annum until and including February 23, 2011, and (2) EURIBOR plus 3.25% per annum after February 23, 2011; a front-end fee of 0.50% on the available borrowing; and a commitment fee of 1% per annum on funds available for borrowing and not borrowed. On January 25, 2011 we repaid Euro 70.0 million ($91.5 million based on the exchange rates as of January 2, 2011) on borrowings plus interest to date under the revolving credit facility with Société Générale. For additional details see Note 10 of Notes to Consolidated Financial Statements.

Lette r of Credit Facility with Deutsche Bank

On April 12, 2010, subsequently amended on December 22, 2010, we entered into a letter of credit facility with Deutsche Bank, as issuing bank and as administrative agent, and certain financial institutions. The letter of credit facility provides for the issuance, upon our request, of letters of credit by the issuing bank in order to support our obligations, in an aggregate amount not to exceed $375.0 million (or up to $400.0 million upon the agreement of the parties). Each letter of credit issued under the letter of credit facility must have an expiration date no later than the earlier of the second anniversary of the issuance of that letter of credit and April 12, 2013, except that: (i) a letter of credit may provid e for automatic renewal in one-year periods, not to extend later than April 12, 2013; and (ii) up to $100.0 million in aggregate amount of letters of credit, if cash-collateralized, may have expiration dates no later than the fifth anniversary of the closing of the letter of credit facility. For outstanding letters of credit under the letter of credit facility we pay a fee of 0.50% plus any applicable issuances fees charged by its issuing and correspondent banks. We also pay a commitment fee of 0.20% on the unused portion of the facility. As of January 2, 2011, letters of credit issued under the letter of credit facility totaled $326.9 million and we are required to collateralize at least 50% of the dollar-denominated obligations under the issued letters of credit, and 55% of the non-dollar-denominated obligations under the issued letters of credit, with restric ted cash on our Consolidated Balance Sheet. Our obligations are also guaranteed by our subsidiaries SunPower North America, LLC and SunPower Corporation, Systems, who, together with us, have granted a security interest in certain of their accounts receivable and inventory to Deutsche Bank to collateralize our obligations. For additional details see Note 10 of Notes to Consolidated Financial Statements.

Amended Credit Agreement with Wells Fargo

On April 12, 2010, we entered into an amend ment of our credit agreement with Wells Fargo. On April 26, 2010 and November 29, 2010, letters of credit under the uncollateralized letter of credit subfeature and collateralized letter of credit facility, respectively, expired and as of January 2, 2011 all outstanding letters of credit had been moved to the Deutsche Bank letter of credit facility. Letters of credit totaling $150.7 million were issued by Wells Fargo under the collateralized letter of credit facility as of January 3, 2010 and were fully collateralized with restricted cash on the Consolidated Balance Sheet. The Company paid a fee of 0.2% to 0.4% depending on maturity for outstanding letters of credit under the collateralized letter of credit facility. For additional details see Note 10 of Notes to Consolidated Financial Statements.

Commercial Project Financing Agreement with Wells Fargo

On June 29, 2009, we signed a commercial project financing agreement with Wells Fargo to fund up to $100 million of commercial-scale solar power system projects through May 31, 2010. In the fourth quarter of fiscal 2009, we sold two solar power system projects to Wells Fargo, and in the third quarter of fiscal 2010 we sold an additional two projects to Wells Fargo, under the terms and conditions of the initial agreement.

Under the financing agreement, we designed and built the systems, and upon completion of each system, sold the systems to Wells Fargo, who in turn, leased back the systems to us over minimum lease terms of up to 20 years. Separately, we

entered into PPAs with end customers, who host the systems and buy the electricity directly from us under PPAs of up to 20 years. At the end of the lease term, we have the option to purchase the systems at fair value or remove the systems. The deferred profit on the sale of the systems to Wells Fargo is being recognized over the minimum term of the lease. For additional details see Note 8 of Notes to Consolidated Financial Statements.

Liquidity

As of January 2, 2011, we had unrestricted cash and cash equivalents of $605.4 million as compared to $615.9 million as of January 3, 2010. Our cash balances are held in numerous locations throughout the world, including substantial amounts held outside of the United States. The amounts held outside of the United States representing the earnings of our foreign subsidiaries, if repatriated to the United States under current law, would be subject to United States federal and state tax less applicable foreign tax credits. Repatriation of earnings that have not been subjected to U.S. tax and which have been indefinitely reinveste d outside the U.S. could result in additional United States federal income tax payments in future years. As of January 2, 2011, our foreign subsidiaries have accumulated undistributed earnings of approximately $445.5 million that are intended to be indefinitely reinvested outside the United States and, accordingly, no provision for U.S. federal and state tax has been made for the distribution of these earnings. As of January 2, 2011, the amount of the unrecognized deferred tax liability on the indefinitely reinvested earnings was $84.6 million.

On July 5, 2010, we formed a joint venture among our subsidiary SPTL, AUOSP, AUO and AUO Taiwan. Under the terms of the joint venture agreement, our subsidiary SPTL and AUO each own 50% of AUOSP. Both SPTL and AUO are obligated to provide additional funding to AUOSP in the future. On July 5, 2010 and December 23, 2010, SPTL and AUO each contributed initial funding of Malaysian Ringgit 45.0 million and Malaysian Ringgit 43.6 million, respectively, and will contribute additional amounts from fiscal 2011 to 2014 amounting to $335 million by each shareholder, or such lesser amount as the parties may mutually agree (see the Contractual Obligations table below). In addition, if AUOSP, SPTL or AUO requests additional equity financing to AUOSP, then SPTL and AUO will each be required to make additional cash contributions of up to $50 million in the aggregate. In addition, we could in the future guarantee certain financial obligations of AUOSP. On November 5, 2010, our Company and AUOSP entered into an agreement under which we will resell to AUOSP polysilicon purchased from a third-party supplier and AUOSP will provide prepayments to us related to such polysilicon, which we will use to satisfy prepayments owed to the third-party supplier. Prepayments paid by AUOSP to us in fiscal 2010 was $100 million and prepayments to be paid by AUOSP to us in fiscal 2011 and 2012 total $60 million and $40 million, respectively. For additional details see Notes 8 and 9 of Notes to Consolidated Financial Statements.

Amounts borrowed under the revolving credit facility with Société Générale are due on May 23, 2011. On January 25, 2011 we re paid Euro 70.0 million ($91.5 million based on the exchange rates as of January 2, 2011) on borrowings plus interest to date under the revolving credit facility with Société Générale, leaving Euro 5.0 million ($6.5 million based on the exchange rates as of January 2, 2011) outstanding on our Consolidated Balance Sheet. For additional details see Note 10 of Notes to Consolidated Financial Statements.

The $70.0 million borrowed under the revolving credit facility with Union Bank matures on October 28, 2011. The amount available for borrowing under the Union Bank revolving credit facility is further capped at 30% of the market value of our shares in Woongjin Energy ("Borrowing Base"). As collateral under the revolving credit facili ty, we pledged our holding of 19.4 million shares of common stock of Woongjin Energy. If at any time the amount outstanding under the revolving credit facility is greater than the Borrowing Base, we must repay the difference within two business days. In addition, upon a material adverse change which, in the sole judgment of Union Bank, would adversely affect the ability of Union Bank to promptly sell the Woongjin Energy shares, including but not limited to any unplanned closure of the Korean Stock Exchange that lasts for more than one trading session, we must repay all outstanding amounts under the revolving credit facility within five business days, and the revolving credit facility will be terminated. On January 11, 2011, we repaid $65.0 million plus interest to date under the revolving credit facility with Union Bank, leaving $5.0 million outstanding on our Consolidated Balance Sheet. For additional details see Note 10 of Notes to Consolidated Financial Statements.

The $30.0 million borrowed under the Bonds from CEDA mature on April 1, 2031; however, the Bonds are classified as "Short-term debt" in our Consolidated Balance Sheet due to the potential for the Bonds to be redeemed or tendered for purchase on June 22, 2011 under the reimbursement agreement. If the Bonds are converted into fixed-rate bonds prior to June 22, 2011, they will be reclassified to "Long-term debt" in our Consolidated Balance Sheet. For additional details see Note 10 of Notes to Consolidated Financial Statements.

Holders of our 1.25 % debentures may require us to repurchase all or a portion of their 1.25% debentures on February 15, 2012. Any repurchase of our 1.25% debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the 1.25% debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem

some or all of our 1.25% debentures on or after February 15, 2012 for cash at a redemption price equal to 100% of the principal amount of the 1.25% debentures to be redeemed plus accrued and unpaid interest. For additional details see Note 10 of Notes to Consolidated Financial Statements.

If the closing price of our class A common stock equaled or exceeded 125% of the initial effective conversion price governing the 1.25% debentures for 20 out of 30 consecutive trading days in the last month of any fiscal quarter, then holders of the 1.25% debentures would have the right to convert the debentures into cash and shares of class A common stock any day in the following fiscal quarter. Because the closing price of our class A common stock on at least 20 of the last 30 trading days during the fiscal quarter ending January 2, 2011 and January 3, 2010 did not equal or exceed $70.94, or 125% of the applicable conversion price for our 1.25% debentures, holders of the 1.25% debentures are and were unable to exercise their right to convert the debentures, based on the market price conversion trigger, on any day in the first quarters of fiscal 2011 and 2010. Accordingly, we classified our 1.25% debentures as long-term in our Consolidated Balance Sheets as of both January 2, 2011 and January 3, 2010. This test is repeated each fiscal quarter, therefore, if the market price conversion trigger is satisfied in a subsequent quarter, the 1.25% debentures may be reclassified as short-term. For additional details see Note 10 of Notes to Condensed Consolidated Financial Statements.

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

Under the terms of the original warrants, we sold to affiliates of certain of the initial purchasers of the 4.50% cash convertible debentures warrants to acquire, at an exercise price of $27.03 per share, subject to anti-dilution adjustments, cash in an amount equal to the market value of up to 11.1 million shares of our class A common stock. On December 23, 2010, we amended and restated the original warrants so that the holders would, upon exercise of the warrants, no longer receive cash but instead would acquire up to 11.1 million shares of our class A common stock. The bond hedge and warrants described above represent a call spread overlay with respect to the 4.50% debentures. Assuming full performance by the counterparties, the transactions effectively reduce our potential payout over the principal amount on the 4.50% debentures upon conversion of the 4.50% debentures.

We expect total capital expenditures related to purchases of property, plant and equipment in the range of $130.0 million to $150.0 million in fiscal 2011. Total capital expenditures in fiscal 2010 of $113.2 million primarily relates to the continued construction of FAB3 in Malaysia prior to deconsolidation on July 5, 2010. Capital expenditures anticipated to occur in fiscal 2011 relate to improvements of our current generation solar cell manufacturing technology and other projects. In addition, we expect to invest a significant amount of capital to develop solar power systems and plants. The development of solar power plants can require long periods of time and substantial initial investments. Our efforts in this area may co nsist of all stages of development, including land acquisition, permitting, financing, construction, operation and the eventual sale of the projects. We will often choose to bear the costs of such efforts prior to the final sale to a customer. This involves significant upfront investments of resources (including, for example, large transmission deposits or other payments, which may be non-refundable), land acquisition, permitting, legal and other costs, and in some cases the actual costs of constructing a project, in advance of the signing of PPAs and EPC contracts and the receipt of any revenue, much of which is not recognized for several additional months or years following contract signing. The delayed disposition of such projects could have a negative impact on our liquidity.

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

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

certain financial obligations of our joint ventures, which could reduce our cash flows, increase our indebtedness and expose us to the credit risk of our joint ventures.

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

Contractual Obligations

The following summarizes our contractual obligations as of January 2, 2011:

		Payments Due by Period			
(In thousands)	**Total**	**2011**	**2012-2013**	**2014-2015**	**Beyond 2015**
Convertible debt, including interest (1)	$ 764,788	$ 24,658	$ 243,270	$ 496,860	$ —
IFC mortgage loan, including interest (2)	56,955	1,645	12,986	21,770	20,554
CEDA loan, including interest (3)	30,045	30,045	—	—	—
Union Bank revolving credit facility, including interest (4)	71,622	71,622	—	—	—
Société Générale revolving credit facility, including interest (5)	100,932	100,932	—	—	—
Future financing commit ments (6)	339,940	65,900	177,270	96,770	—
Customer advances (7)	181,529	21,044	31,142	48,447	80,896
Operating lease commitments (8)	85,295	10,812	19,392	16,611	38,480
Utility obligations (9)	750	—	—	—	750
Non-cancelable purchase orders (10)	52,399	52,399	—	—	—
Purchase commitments under agreements (11)	5,831,273	857,190	1,303,865	1,812,315	1,857,903
Total	$ 7,515,528	$ 1,236,247	$ 1,787,925	$ 2,492,773	$ 1,998,583

(1) Convertible debt and interest on convertible debt relate to the aggregate of $678.7 million in outstanding principal amount of our senior convertible debentures on January 2, 2011. For the purpose of the table above, we assume that all holders of the 4.50% debentures and 4.75% debentures will hold the debentures through the date of maturity in fiscal 2015 and 2014, respectively, and all holders of the 1.25% debentures and 0.75% debentures will require us to repurchase the debentures on February 15, 2012 and August 1, 2015, respectively, and upon conversion, the values of the 1.25% debentures and 0.75% debentures will be equal to the aggregate principal amount of $198.7 million with no premiums (see Note 10 of Notes to Consolidated Financial Statements).

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

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

through June 22, 2011 is calculated using the variable interest rate as of January 2, 2011 (see Note 10 of Notes to Consolidated Financial Statements).

(4) Union Bank revolving credit facility and interest relates to the $70.0 million borrowed on October 29, 2010 and maturing on October 28, 2011. Estimated interest through October 28, 2011 is calculated using the LIBOR plus 2.75%. On January 11, 2011, we repaid $65.0 million plus interest to date under the revolving credit facility with Union Bank (see Note 10 of Notes to Consolidated Financial Statements).

(5) Société Générale revolving credit facility and interest relates to the Euro 75.0 million borrowed on November 26, 2010 and matures on May 23, 2011. Interest periods are monthly. We are required to pay interest on outstanding borrowings of (1) EURIBOR plus 2.20% per annum until and including February 23, 2011, and (2) EURIBOR plus 3.25% per annum after February 23, 2011. On January 25, 2011 we repaid Euro 70.0 million ($91.5 million based on the exchange rates as of January 2, 2011) on borrowings plus interest to date under the revolving credit facility with Société Générale (see Note 10 of Notes to Consolidated Financial Statements).

(6) SPTL and AUO will contribute additional amounts to AUOSP from 2011 to 2014 amounting to $335 million by each shareholder, or such lesser amount as the parties may mutually agree. Further, in connection with a purchase agreement with a related party we will be required to provide additional financing to such party of up to $4.9 million, subject to certain conditions (see Notes 8 and 9 of Notes to Consolidated Financial Statements).

(7) Customer advances relate to advance payments received from customers for future purchases of solar power products and future polysilicon purchases (see Note 8 of Notes to Consolidated Financial Statements).

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

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

(10) Non-cancelable purchase orders relate to purchases of raw materials for inventory and manufacturing equipment from a variety of vendors (see Note 8 of Notes to Consolidated Financial Statements).

(11) Purchase commitments under agreements relate to arrangements entered into with several suppliers, including joint ventures, for polysilicon, ingots, wafers, solar cells and solar panels as well as agreements to purchase solar renewable energy certificates from solar installation owners in New Jersey. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years and there are certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that we terminate the arrangements (see Note 8 of Notes to Consolidated Financial Statements).

As of January 2, 2011 and January 3, 2010, total liabilities associated with uncertain tax positions were $24.9 million and $14.5 million, respectively, and are included in “Other long-term liabilities” in our Consolidated Balance Sheets as they are not expected to be paid within the next twelve months. Due to the complexity and uncertainty associated with our tax positions, we cannot make a reasonably reliable estimate of the period in which cash settlement will be made for our liabilities associated with uncertain tax positions in other long-term liabilities, therefore, they have been excluded from the table above. For additional details see Note 12 of Notes to Consolidated Financial St atements.

Off-Balance-Sheet Arrangements

As of January 2, 2011, we did not have any significant off-balance-sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K.

Recently Adopted Accounting Guidance and Issued Accounting Guidance Not Yet Adopted

For a description of accounting changes and issued accounting guidance not yet adopted, including the expected dates of adoption and estimated effects, if any, see Note 1 of Notes to Consolidated Financial Statements.

ITEM 7A: *QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK*

Foreign Currency Exchange Risk

Our exposure to movements in foreign currency exchange rates is primarily related to sales to European customers that are denominated in Euros. Revenue generated from European customers represented 65%, 53% and 57% of our total revenue in fiscal 2010, 2009 and 2008, respectively. A 10% change in the Euro exchange rate would have impacted our revenue by approximately $144.2 million, $80.8 million and $81.9 million in fiscal 2010, 2009 and 2008, respectively.

In the past, we have experienced an adverse impact on our revenue, gross margin and profitability as a result of foreign currency fluctuations. When foreign currencies appreciate against the U.S. dollar, inventories and expenses denominated in foreign currencies become more expensive. Weakening of the Korean Won against the U.S. dollar could result in a foreign currency rem easurement loss by Woongjin Energy which in turn negatively impacts our equity in earnings of the unconsolidated investee. In addition, strengthening of the Malaysian Ringgit against the U.S. dollar would increase AUOSP's liability under the facility agreement with the Malaysian government which in turn would negatively impact our equity in earnings of the unconsolidated investee. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar power products more expensive for international customers, thus potentially leading to a reduction in demand, our sales and profitability. Furthermore, many of our competitors are foreign companies that could benefit from such a currency fluctuation, making it more difficult for us to compete with those companies. We currently conduct hedging activities which involve the use of option and forward contracts to address our exposure to changes in the foreign exchange rate between the U.S. dollar and other currencies. As of January 2, 2011, we had outstanding hedge option contracts and forward contracts with aggregate notional values of $358.9 million and $1,469.5 million, respectively. As of January 3, 2010, we held option and forward contracts totaling $228.1 million and $466.4 million, respectively, in notional value. Because we hedge some of our expected future foreign exchange exposure, if associated revenues do not materialize we could experience losses. We cannot predict the impact of future exchange rate fluctuations on our business and operating results. For additional details see Note 11 of Notes to Consolidated Financial Statements.

Credit Risk

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

We enter into agreements with vendors that specify future quantities and pricing of polysilicon to be supplied for periods up to 10 years. Under certain agreements, we are required to make prepayments to the vendors over the terms of the arrangements. As of January 2, 2011 and January 3, 2010, advances to suppliers totaled $287.1 million and $190.6 million, respectively. Two suppliers accounted for 83% and 13% of total advances to suppliers as of January 2, 2011, and 76% and 15% of total advances to suppliers as of January 3, 2010. We may be unable to recover such prepayments if the credit conditions of these suppliers materially deteriorate.

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

In fiscal 2007, we entered into share lending arrangements of our class A common stock with high-quality financial institutions for which we received a nominal lending fee of $0.001 per share. We loaned 2.9 million shares and 1.8 million shares of our class A common stock to LBIE and CSI, respectively. Physical settlement of the shares is required when the arrangement is terminated. However, on September 15, 2008, Lehman filed a petition for protection under Chapter 11 of the U.S. bankruptcy code, and LBIE commenced administration proceedings (analogous to bankruptcy) in the United Kingdom. The Company filed a claim in the LBIE proceeding for $240.9 million and a corresponding claim in the Lehman Chapter 11 proceeding under Lehman's guaranty of LBIE's obligations . On December 16, 2010, we entered into an assignment agreement with Deutsche Bank under which we assigned to Deutsche Bank our claims against LBIE and Lehman in connection with the share lending arrangement. For additional details see Notes 8, 10 and 11 of Notes to Consolidated Financial Statements.

Interest Rate Risk

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

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

Minority Investments in Joint Ventures and Other Non-Public Companies

Our investments held in joint ventures and other non-public companies expose us to equity price risk. As of January 2, 2011 and January 3, 2010, investments of $116.4 million and $39.8 million, respectively, are accounted for using the equity method, and $6.4 million and $4.6 million, respectively, are accounted for using the cost method. These strategic investments in third parties are subject to risk of changes in market value, which if determined to be other-than-temporary, could result in realized impairment losses. We generally do not attempt to reduce or eliminate our market exposure in equity and cost method investments. We monitor these investments for impairment and record reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market price and declines in operations of the issuer. There can be no assurance that our equity and cost method investments will not face risks of loss in the future. For additional details see Notes 7 and 9 of Notes to Consolidated Financial Statements.

Convertible Debt

The fair market value of our 4.75%, 4.50%, 1.25% and 0.75% convertible debentures is subject to interest rate risk, market price risk and other factors due to the convertible feature of the debentures. The fair market value of the debentures will generally increase as interest rates fall and decrease as interest rates rise. In addition, the fair market value of the debentures will generally increase as the market price of our class A common stock increases and decrease as the market price of our class A common stock falls. The interest and market value changes affect the fair market value of the debentures but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligations except to the extent increases in the value of our class A common stock may provide the holders of our 4.50% debentures, 1.25% debentures and/or 0.75% debentures the right to convert such debentures into cash in certain instances. The aggregate estimated fair value of the 4.75% debentures, 4.50% debentures, 1.25% debentures and 0.75% debentures was $633.7 million as of January 2, 2011 and the aggregate estimated fair value of the 4.75% debentures, 1.25% debentures and 0.75% debentures was $582.8 million as of January 3, 2010, based on quoted market prices as reported by an independent pricing source. A 10% increase in quoted market prices would increase the estimated fair value of our then-outstanding debentures to $697.1 million and $641.1 million as of January 2, 2011 and January 3, 2010, respectively, and a 10% decrease in the quoted market prices would decrease the estimated fair value of our then-outstanding debentures to $570.4 million and $524.5 million as of January 2, 2011 and January 3, 2010, respectively. For additional details see Note 10 of Notes to Consolidated Financial Statements.

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ITEM 8: *FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA*

SUNPOWER CORPORATION

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of
SunPower Corporation:

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of SunPower Corporation and its subsidiaries at January 2, 2011 and January 3, 2010, and the results of their operations and their cash flows for each of the three years in the period ended January 2, 2011 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the accompanying index presents fairly, in all mate rial respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of January 2, 2011, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements and financial statement schedule, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on these financial statements, on the financia l statement schedule, and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluati ng the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

As discussed in Note 1 to the consolidated financial statements, the Company changed the manner in which it accounts for share lending arrangements that were executed in connection with convertible debt offerings in 2010 and business combinations in 2009.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or dis position of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

As described in Management's Report on Internal Control over Financial Repo rting, appearing under Item 9A, management has excluded SunRay Malta Holdings Limited and its subsidiaries ("SunRay") from its assessment of internal control over financial reporting as of January 2, 2011 because SunRay was acquired by the Company in a purchase business combination during 2010. We have also excluded SunRay from our audit of internal control over financial reporting. SunRay is a subsidiary whose total assets and total revenues represent 8% and 21%, respectively, of the related consolidated financial statement amounts as of and for the year ended January 2, 2011.

/s/ PricewaterhouseCoopers LLP

San Jose, California
February 25, 2011

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

	January 2, 2011	January 3, 2010 (1)
Assets		
Current assets:		
Cash and cash equivalents	$ 605,420	$ 615,879
Rest ricted cash and cash equivalents, current portion	117,462	61,868
Short-term investments	38,720	172
Accounts receivable, net	381,200	248,833
Costs and estimated earnings in excess of billings	89,190	26,062
Inventories	313,398	202,301
Advances to suppliers, current portion	31,657	< div style="text-align:right;font-size:10pt;">22,785
Project assets - plants and land, current portion	23,868	6,010
Prepaid expenses and other current assets (2)	192,934	98,521
Total current assets	1,793,849	1,282,431
Restricted cash and cash equivalents, net of current portion	138,837	248,790
Property, plant and equipment, net	578,620	682,344
Project assets - plants and land, net of current portion	22,238	9,607
Goodwill	345,270	198,163
Other intangible assets, net	66,788	&n bsp; 24,974
Advances to suppliers, net of current portion	255,435	167,843
Other long-term assets (2)	178,294	82,743
Total assets	$ 3,379,331	$ 2,696,895
Liabilities and Stock holders' Equity		
Current liabilities:		
Accounts payable (2)	$ 382,884	$ 234,692
Accrued liabilities	137,704	114,008
Billings in excess of costs and estimated earnings	48,715	17,346
Short-term debt and current portion of long-term debt	198,010	11,250
Convertible debt, current portion	—	137,968
Customer advances, current portion (2)	21,044	19,832
Total current liabilities	788,357	535,096
Long-term debt	50,00 0	237,703
Convertible debt, net of current portion< /div>	591,923	398,606
Customer advances, net of current portion (2)	160,485	72,288
Long-term deferred taxes	—	6,777
Other long-term liabilities	131,132	70,045
Total liabilities	1,721,897	1,320,515
Commitments and contingencies (Note 8)		
Stockholders' equity:		
Preferred stock, $0.001 par value, 10,042,490 shares authorized; none issued and outstanding	—	—
Common stock, $0.001 par value, 150,000,000 shares of class B common stock authorized; 42,033,287 shares of class B common stock issued and outstanding; $0.001 par value, 217,500,000 shares of class A common stock authorized; 56,664,413 and 55,394,612 shares of class A common stock issued; 56,073,083 and 55,039,193 shares of class A common stock outstanding, at January 2, 2011 and January 3, 2010, respectively	98	97
Additional paid-in capital	1,606,697	1,520,933
Retained earnings (accumulated deficit)	63,672	(114,309)
Accumulated other comprehensive income (loss)	3,640	(17,357)
Treasury stock, at cost; 591,330 and 355,419 shares at January 2, 2011 and January 3, 2010, respectively	(16,673)	(12,984)
Total stockholders' equity	1,657,434	&nbs p; 1,376,380
Total liabilities and stockholders' equity	$ 3,379,331	$ 2,696,895

(1) As adjusted to reflect the adoption of new accounting guidance for share lending arrangements that were executed i n connection with the Company's convertible debt offerings in fiscal 2007 (see Note 1).

(2) The Company has related party balances in connection with transactions made with their joint ventures which are recorded within the "Prepaid expenses and other current assets," "Other long-term assets," "Accounts payable," "Customer advance, current portion" and "Customer advances, net of current portion" financial statement line items in the Consolidated Balance Sheets (see Note 8 and Note 9).

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

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

	Year Ended		
	January 2, 2011	January 3, 2010 (1) (2)	December 28, 2008 (2)
Revenue:			
Utility and power plants	$ 1,186,054	$ 653,531	$ 742,432
Residential and commercial	1,033,176	870,752	695,162
Total revenue	2,219,230	1,524,283	1,437,594
Cost of revenue:			
Utility and power plants	908,326	526,850	534,374
Residential and commercial	801,011	713,713	553,599
Total cost of revenue	1,709,337	1,240,563	1,087,973
Gross margin	509,893	283,720	349,621
Operating expenses:			
Research and development	49,090	31,642	21,474
Selling, general and administrative	321,936	190,244	173,740
Total operating expenses	371,026	221,886	195,214
Operating income	138,867	61,834	154,407
Other income (expense):			
Interest income	1,541	2,109	10,789
Interest expense	(55,276)	(36,287)	(23,415)
Gain on deconsolidation of consolidated subsidiary	36,849	—	—
Gain on change in equity i nterest in unconsolidated investee	28,078	—	—
Gain on mark-to-market derivatives	35,764	21,193	—
Gain (loss) on share lending arrangement	24,000	—	(213,372)
Other, net	(26,410)	(5,229)	(26,313)
Other income (expense), net	44,546	(18,214)	(252,311)
Income (loss) from continuing operations before income taxes and equity in earnings of unconsolidated inve stees	183,413	43,620	(97,904)
Provision for income taxes	(23,375)	(21,028)	(40,618)
Equity in earnings of unconsolidated investees	6,845	9,929	14,077
Income (loss) from continuing operations	166,883	32,521	(124,445)
Income from discontinued operations, net of taxes	11,841	—	—
Net income (loss)	$ 178,724	$ 32,521	$ (124,445)
Net income (loss) per share of class A and class B common stock:			
Net income (loss) per share - basic:			
Continuing operations	$ 1.74	$ 0.36	$ (1.55)
Discontinued operations	0.13	—	—
Net income (loss) per share - basic	$ 1.87	$ 0.36	$ (1.55)
Net income (loss) per share - diluted:			
Continuing operations	$ 1.64	$ 0.35	$ (1.55)
Discontinued operations	0.11	—	—
Net income (loss) per share - diluted	$ 1.75	$ 0.35	$ (1.55)
Weighted-average shares:			
Basic	95,660	91,050	80,522
Dilute d (3)	105,698	92,746	80,522

(1) Fiscal 2009 consisted of 53 weeks while each of fiscal 2010 and 2008 consisted of 52 weeks (see Note 1).

(2) As adjusted to reflect the adoption of new accounting guidance for share lending arrangements that were executed in connection with the Company's convertible debt offerings in fiscal 2007 (see Note 1).
(3) See Note 14 for the calculation of diluted net income per share under the if-converted method.

The acco mpanying notes are an integral part of these financial statements.

SunPower Corporation
Consolidated Statements of Stockholders' Equity and Comprehensive Income
(In thousands)

	Class A and Class B Common Stock		Additional Paid-in Capital	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Retained Ear (Accumula Deficit)
	Shares	Value				
Balances at December 30, 2007 (1)	**84,710**	**$ 85**	**$ 947,540**	**$ (1,975)**	**$ 5,762**	**$ (4,116**
Components of comprehensive loss:						
Net loss (1)					—	(124,445
Translation adjustment					(9,264)	—
Net loss on derivatives (Note 11)					(23,401)	—
Unrealized gain on investments					36	—
Income taxes	< font style="font-family:inherit;font-size:10pt;">				1,256	—
Total comprehensive loss						
Issuance of common stock upon exercise of options	1,129	1	5,127	—	—	—
Issuance of restricted stock to employees, net of cancellations	96	—	—	—	—	—
Issuance of common stock for purchase acquisition	40	—	3,054	—	—	—
Issuance of common stock for repurchased convertible debt	1	—	40	—	—	—
Equity component of repurchased convertible debt	—	—	(188)	—	—	—
Fair value of unreturned loaned shares (1)< /div>	—	—	213,372	—	—	—
Exc ess tax benefits from stock-based award activity	—	—	40,696	—	—	—
Stock-based compensation expense	—	—	71,176	—	—	—
Distribution to Cypress under tax sharing agreement	—< /td>	—	—	—	—	(17,876
Purchases of treasury stock	(93)	—	—	(6,682)	< div style="text-align:right;font-size:10pt;">—	—
Balances at December 28, 2008 (1)	**85,883**	**86**	**1,280,817**	**(8,657)**	**(25,611)**	**(146,437**
Components of comprehensive income:						
Net income (1)					—	32,521
Translation adjustment					(4,346)	—
Net gain on derivatives (Note 11)					14,928	—
Unrealized gain on investments					8	—
Income taxes					(2,336)	—
Total comprehensive income						
Issuance of common stock upon exercise of options	587	1	1,528	—	—	—
Issuance of restrict ed stock to employees, net of cancellations	346	—	—	—	—	—
Issuance of common stock in relation to offering,	10,350	10	218,771	—	—	—

net of offering expenses						
Issuance of common stock for purchase acquisition	55	—	1,471	—	—	—
Cash paid for purchased options	—	—	(97,336)	—	—	—
Proceeds from warrant transactions	—	—	71,001	—	—	—
Gain on purchased options	—	—	(21,193)	—	—	—
Equity component of repurchased convertible debt	—	—	(882)	—	—	—
Excess tax benefits from stock-based award activity	—	—	20,064	—	—	—
Stock-based compensation expense	—	—	46,692	—	—	—
Distribution to Cypress under tax sharing agreement	—	—	—	—< /td>	—	(393
Purchases of treasury stock	(149)	—	—	(4,327)	—	—
Balances at January 3, 2010	**97,072**	**97**	**1,520,933**	**(12,984)**	**(17,357)**	**(114,309**
Components of comprehensive income:						
Net income < /td>						178,724
Translation adjustment					1,103	—
Net gain on derivatives (Note 11)					23,124	—
Income taxes					(3,230)	—
Total comprehensive income						
Issuance of common stock upon exercise of options	< font style="font-family:inherit;font-size:10pt;">303	—	867	—	—	—
Issuance of restricted stock to employees, net of cancellations	967	1	—	—	—	—
Fair value of warrant transactions	—	—	30,218	—	—	—
Excess tax benefits from stock-based award activity	—	—	237	— &nb sp;	—	—
Stock-based compensation expense	—	—	54,442	—< /td>	—	—
Distribution to Cypress under tax sharing agreement	—	—	—	—	—	(743
Purchases of treasury stock	(236)	—	—	(3,689)	—	—
Balances at January 2, 2011	**98,106**	**$ 98**	**$ 1,606,697**	**$ (16,673)**	**$ 3,640**	**$ 63,672**

(1) As adjusted to reflect the adoption of new accounting guidance for share lending arrangements that were executed in connection with the Company's convertible debt offerings in fiscal 2007 (see Note 1).

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

SunPower Corporation
Consolidated Statements of Cash Flows
(In thousands)

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20,064

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	Year Ended		
	January 2, 2011	January 3, 2010 (1)	December 28, 2008 (1)
Cash flows from operating activities:			
Net income (loss)	$ 178,724	$ 32,521	$ (124,445)
Less: Income from discontinued operations, net of taxes	11,841	—	—
Income (loss) from continuing operations	166,883	32,521	(124,445)
Adjustments to reconcile income (loss) from continuing operations to net cash provided by operating activities of continuing operations:			
Stock-based compensation	54,372	46,994	70,220
Depreciation	102,192	84,630	54,473
Amortization of other intangible assets	38,477	16,474	16,762
Impairment (gain on sale) of investments	(770)	1,443	7,611
Gain on mark-to-market derivatives	(35,764)	(21,193)	—
Non-cash interest expense	30,61 6	22,582	17,510
Debt issuance costs	18,426	3,141	2,148
Amortization of promissory notes	11,054	—	—
Gain on deconsolidation of consolidated subsidiary	(36,849)	—	—
Gain on change in equity interest in unconsolidated investees	(28,078)	—	—
< div style="text-align:left;font-size:10pt;">Loss (gain) on share lending arrangement	(24,000)	—	213,372
Equity in earnings of unconsolidated investees	(6,845)	(9,929)	(14,077)
Excess tax benefits from stock-based award activity	(237)	(20,064)	(40,696)
Deferred income taxes and other tax liabilities	15,889	12,238	17,363
Changes in operating assets and liabilities, net of effect of acquisition and deconsolidation:			
Accounts receivable	(132,184)	(50,510)	(57,575)
Costs and estimated earnings in excess of billings	(63,444)	5,610	9,256
Inventories	(114,534)	53,740	(95,712)
Project assets	(10,687)	—	—
Prepaid expenses and other assets	(2,519)	(13,091)	(59,284)
Advances to suppliers	(96,060)	(27,894)	1,297< /div>
Accounts payable and other accrued liabilities	157,993	2,123	150,078
Billings in excess of costs and estimated earnings	33,591	919	(53,595)
Customer advances	90,643	(18,409)	40,125
Net cash provided by operating activities of continuing operations	168,165	121,325	154,831
Net cash used in operating activities of discontinued operations	(1,593)	—	—
Net cash provided by operating activities	166,572	121,325	154,831
Cash flows from investing activities:			
Increase in restricted cash and cash equivalents	(5,555)	(135,455)	(107,390)
Purchases of property, plant and equipment	(119,152)	(167,811)	(265,905)
Proceeds from sale of equipment to third party	5,284	9,961	—
Purchases of available-for-sale securities	(40,132)	—	(65,748)
Proceeds from sales or maturities of available-for-sale securities	1,572	39,149	155,833
Cash paid for acquisitions, net of cash acquired	(272,699)	—	(18,311)
Cash decrease due to deconsolidation of c onsolidated subsidiary	(12,879)	—	—
Cash pai d for investments in joint ventures and other non-public companies	(17,799)	(2 ,403)	(24,625)
Net cash used in investing activities of continuing operations	(461,360)	(256,559)	(326,146)
Net cash provided by investing activities of discontinued operations	33,950	—	—
Net cash used in investing activities	(427,410)	(256,559)	(326,146)
Cash flows from financing activities:			
Proceeds from issuance of bank loans, net of issuance costs	214,655	193,256	54,598
Proceeds from issuance of convertible debt, net of issuance costs	244,241	225,018	—
Proceeds from issuance of project loans, net of issuance costs	318,638	—	—
Assumption of project loans by customers	(333,467)	—	—
Proceeds from offering of class A common stock, net of offering expenses	—	218,781	—
Proceeds from sale of claim in connection with share lending arrangement	24,000	—	—
Repayment of bank loans	(63,646)	—	—
Cash paid for repurchase of convertible debt	(143,804)	(75,636)	(1,187)
Cash paid for purchased options	—	(97,336)	—
Cash paid for bond hedge	(75,200)	—	—
Proceeds from warrant transactions	61,450	71,001	—
Proceeds from exercises of stock options	867	1,529	5,128
Excess tax benefits from stock-based award activity	237	40,696	
Purchases of stock for tax withholding obligations on vested restricted stock	(3,689)	(4,327)	(6,682)
Net cash provided by financing activities from continuing operations	244,282	552,350	92,553
Net cash provided by financing activities from discontinued operations	17,059	—	—
Net cash provided by financing activities	261,341	552,350	92,553
Effect of exchange rate changes on cash and cash equivalents	(10,962)	(3,568)	(4,121)
Net increase (decrease) in cash and cash equivalents	(10,459)	413,548	(82,883)
Cash and cash equivalents at beginning of year	615,879	202,331	285,214
Cash and cash equivalents at end of year	$ 605,420	$ 615,879	$ 202,331
Less: Cash and cash equivalents of discontinued operations	—	—	—
Cash and cash equivalents of continuing operations, end of year	$ 605,420	$ 615,879	$ 202,331
Non-cash transactions:			
Issuance of common stock for purchase acquisitions	$ —	$ 1,471	$ 3,054
Issuance of common stock for repurchased convertible debt	—	—	40
Property, plant and equipment acquisitions funded by liabilities	5,937	28,914	41,274
Non-cash interest expense capitalized and added to the cost of qualified assets	5,957	4,964	8,930
Proceeds from issuance of bond, net o f issuance costs	29,538	—	—
Change in goodwill relating to adjustments to acquired net assets	—	—	1,176
Supplemental cash flow information:			
Cash paid for interest, net of amount capitalized	16,592	7,922	4,220
Cash paid for income taxes	10,582	17,169	13,431

(1) As adjusted to reflect the adoption of new accounting guidance for share lending arrangements that were executed in connection with the Company's convertible debt offerings in fiscal 2007 (see Note 1).

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

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

The Company

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

In the second quarter of fiscal 2010, subsequent to the Company's acquisition of SunRay Malta Holdings Limited ("SunRay"), a leading European solar power plant project developer, the Company changed its segment reporting from its Components Segment and Systems Segment to its Utility and Power Plants (“UPP”) Segment and Residential and Commercial (“R&C”) Segment to align its internal organization to how it serves its customers.

Under the new segmentation, the Company's UPP Segment refers to its large-scale solar products and systems business, which includes power plant project development and project sales, turn-key engineering, procurement and construction (“EPC”) services for power plant construction, and power plant operations and maintenance (“O&M”) services. As part of the acquisition of SunRay, the Company acquired a project pipeline of solar photovoltaic projects in Europe and Israel as well as SunRay's power plant development and project finance teams. The UPP Segment sells components, including large volume sales of solar panels and mounting systems to third parties, often on a multi-year, firm commitment basis. The Company's R&C Segment focuses on solar equipment sales into the residential and small commercial market through its third-party global dealer network, as well as direct sales and EPC and O&M services in the United States for rooftop and ground-mounted solar power systems for the new homes, commercial and public sectors.

The Company's President and Chief Executive Officer, as the chief operating decision maker (“CODM”), has organized the Company and manages resource allocations and measures performance of the Company's activities between these two segments.

Summary of Significant Accounting Policies

Basis of Presentation and Preparation

Principles of Consolidation

The Consolidated Financial Statements are prepared in accordance with accounting principles generally accepted in the United States of America ("United States" or "U.S.") and include the accounts of the Company and all of its subsidiaries. Intercompany transactions and balances have been eliminated in consolidation.

Reclassifications

Certain prior period balances have been reclassified to conform to the current period presentation in the Company’s Consolidated Financial Statements and the accompanying notes. Such reclassification had no effect on previously reported results of operations or retained earnings.

Fiscal Years

The Company reports results of operations on the basis of 52- or 53-week periods, ending on the Sunday closest to December 31. Fiscal 2010 ended on January 2, 2011, fiscal 2009 ended on January 3, 2010 and fiscal 2008 ended on December 28, 2008. Fiscal 2010 and 2008 each consisted of 52 weeks while fiscal 2009 consisted of 53 weeks.

Management Estimates

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

materially differ from those estimates.

Fair Value of Financial Instruments

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The carrying values of cash and cash equivalents, accounts receivable and accounts payable approximate their respective fair values due to their short-term maturities. Investments in available-for-sale securities are carried at fair value based on quoted market prices or estimated based on market conditions and risks existing at e ach balance sheet date. Foreign currency derivatives are carried at fair value based on quoted market prices for financial instruments with similar characteristics. Unrealized gains and losses of the Company's available-for-sale securities and the effective portion of foreign currency derivatives are excluded from earnings and reported as a component of "Accumulated other comprehensive income (loss)" in the Consolidated Balance Sheets. Additionally, the Company assesses whether an other-than-temporary impairment loss on its available-for-sale securities has occurred due to declines in fair value or other market conditions. Declines in fair value that are considered other-than-temporary and the ineffective portion of foreign currency derivatives are included in "Other, net" in the Consolidated Statements of Operations.

Comprehensive Income (Loss)

Comprehensive income (loss) is defined as the change in equity during a period from non-owner sources. The Company's comprehensive income (loss) for each period presented is comprised of (i) the Company's net income (loss); (ii) foreign currency translation adjustment of the Company's foreign subsidiaries whose assets and liabilities are translated from their respective functional currencies at exchange rates in effect at the balance sheet date, and revenues and expenses are translated at average exchange rates prevailing during the applicable period; and (iii) changes in unrealized gains or losses, net of tax, for the effective portion of derivatives designated as cash flow hedges (see Note 11) and available-for-sale securities carried at their fair value (see Note 7).

Cash Equivalents

Highly liquid investments with original or remaining maturities of ninety days or less at the date of purchase are considered cash equivalents.

Cash in Restricted Accounts

The Company maintains cash and cash equivalents in restricted accounts of $256.3 million and $310.7 million as of January 2, 2011 and January 3, 2010, respectively, pursuant to various letters of credit, surety bonds, loan ag reements, long-term polysilicon supply agreements and other agreements as follows.

The Company enters into various contractual agreements to build and develop turn-key photovoltaic projects for customers which require obtaining letters of credit. In certain customer contracts, the Company is required to provide construction or warranty letters of credit. Some utilities and regulatory bodies also require the Company to provide letters of credit to obtain the Company's position in project bid or power transmission queues. The Company issues letters of credit for such purposes through its letter of credit facility with Deutsche Bank AG New York Branch ("Deutsche Bank") and, previously, with Wells Fargo Bank, N.A. ("Wells Fargo "). The Company's letter of credit agreement with Deutsche Bank requires the Company to collateralize at least 50% of the value of letters of credit issued under the collateralized letter of credit facility for such purposes with cash placed in an interest bearing restricted account with Deutsche Bank which is invested at the Company's discretion according to the terms outlined in the letter of credit facility agreement. As of January 2, 2011, outstanding collateralized letters of credit issued by Deutsche Bank totaled $326.9 million of which $264.8 million relates to contractual agreements with customers or other project development obligations that the Company has to utilities or regulatory bodies. As of January 2, 2011 the letter of credit agreement between the Company and Wells Fargo had expired and no letters of credit could be issued by Wells Fargo on behalf of the Company. As of January 3, 2010, outstanding collateralized letters of credit issued by Wells Fargo totaled $150.7 million of which $145.6 million related to contractual agreements with customers or other project development obligations the Company had to utilities or regulatory bodies (see Note 10). As of January 2, 2011 and January 3, 2010, the Company had restricted cash and cash equivalents of $174.0 million and $161.6 million, respectively, related to outstanding collateralized letters of credit issued by Deutsche Bank or Wells Fargo.

Under certain contractual agreements, the Company is required to issue surety bonds. To facilitate the issuance of these surety bonds, the Company has entered into an agreement with Travelers Casualty and Surety Company of America ("Travelers") which allows the Company to offer bonds to its customers when required by the contract. Travelers has committed to issue up to $100.0 million of surety bonds on behalf of the Company. If the Company requests Travelers to issue

additional surety bonds in excess of $35.0 million, the Company is required to post partial cash collateral to collateralize the bonds in an interest bearing money market account. As long as the surety bonds remain open, the Company will not be able to withdraw funds from this account. As of January 2, 2011 and January 3, 2010, Travelers issued in excess of $35.0 million in total sure ty bonds on behalf of the Company, therefore, the Company was required to post as collateral $11.7 million and $11.8 million, respectively, which is considered restricted cash and cash equivalents.

On May 6, 2010, the Company entered into a mortgage loan agreement with International Finance Corporation (“IFC”) and borrowed $50.0 million as of January 2, 2011. In accordance with the terms of the mortgage loan agreement the Company is required to establish a debt service reserve account which shall contain the amount, as determined by IFC, equal to the aggregate principal and interest due on the next succeeding interest payment date after such date (see Note 10). As of January 2, 2011 the Company had restricted cash and cash equivalents of $0.9 million related to the IFC debt service reserve.

On December 29, 2010, the Company entered into a loan agreement with California Enterprise Development Authority ("CEDA") and borrowed $30.0 million. In accordance with the terms of the loan agreement, the Company is required to keep all loan proceeds on deposit with Wells Fargo, the trustee, until funds are withdrawn by the Company for use in relation to the design and leasehold improvements of its new corporate headquarters in San Jose, California. In addition, the Company entered into a reimbursement agreement with Barclays Bank PLC (“Barclays”) pursuant to which the Company deposited $31.8 million in a sequestered account with Barclays, which funds collateralized a letter of credit pursuant to a cash collateral account pledge agreement entered into by the Company and Barclays on December 29, 2010. As of January 2, 2011 the Company had restricted cash and cash equivalents of $60.3 million related to the CEDA loan agreement.

In December 2008, AUO SunPower Sdn. Bhd. ("AUOSP"), then the Company's subsidiary, entered into a facility agreement with the Malaysian government to finance the construction of a solar cell manufacturing facility ("FAB3") in Malaysia. As of January 3, 2010, the Company had outstanding Malaysian Ringgit 750.0 million (approximately $219.0 million based on the exchange rate as of January 3, 2010) under the facility agreement, of which the proceeds reserved for future purchases of property, plant and equipment is considered “Restricted cash and cash equivalents”. The Company deconsolidated AUOSP in the third quarter of fiscal 2010, and the debt facility has been retained by AUOSP (see Note 9). As of January 2, 2011 and January 3, 2010, the Company had restricted cash and cash equivalents of zero and $11 7.0 million, respectively, available to finance the construction of FAB3.

As of January 2, 2011 and January 3, 2010, the Company provided collateral for advance payments received in fiscal 2007 from a third party in the form of $4.6 million and $4.2 million, respectively, held in an escrow account, all of which is considered restricted cash and cash equivalents. The funds held in the escrow account may be released at any time in exchange for bank guarant ees, letters of credit issued under the collateralized letter of credit facility and/or asset collateralization (see Note 8).

In January 2008, the Company entered into a long-term polysilicon supply agreement pursuant to which it delivers cash advance payments to the supplier for the purchase of polysilicon. As of January 2, 2011 and January 3, 2010, the Company’s balance in an escrow account to support the supplier’s right to such advance payments was zero and $16.0 million, respectively, all of which is considered restricted cash and cash equivalents (see Note 9).

As of January 2, 2011, the Company has an additional $4.8 million classified as restricted cash and cash equivalents on its Consolidated Balance Sheet related to: (i) amounts held in escrow to collateralize certain obligations per the terms of an existing agreement; (ii) future operating lease commitments of systems leased back from Wells Fargo; and (iii) a security deposit.

Short-Term and Long-Term Investments

The Company invests in money market funds, bank notes and debt securities. In general, investments with original maturities of greater than ninety days and remaining maturities of one year or less are classified as short-term investments. Investments with maturities beyond one year may be classified as short-term based on their highly liquid nature and because such investments represent the investment of cash that is available for current operations. Despite the long-term maturities, the Company has the ability and intent, if necessary, to liquidate any of these investments in order to meet the Company’s working capital needs within its normal operating cycles. The Company has classified these investments as available-for-sale securities (see Note 7).

Inventories

Inventories are valued at the lower of cost or market value. The Company evaluates the recoverability of its inventories

based on assumptions about expected demand and market conditions. The Company's assumption of expected demand is developed based on its analysis of bookings, sales backlog, sales pipeline, market forecast and competitive intelligence. The Company's assumption of expected demand is compared to available inventory, production capacity, available third-party inventory and growth plans. The Company's factory production plans, which drive materials requirement planning, are established based on its assumptions of expected demand. The Company responds to reductions in expected demand by temporarily reducing manufacturing output and adjusting expected valuation assumptions as necessary. In addition, expected demand by geography has changed historically due to changes in the availability and size of government mandates and economic incentives.

Other market conditions that could impact the realizable value of the Company's inventories and are periodically evaluated by management include historical inventory turnover ratio, anticipated sales price, new product development schedules, the effect new products might have on the sale of existing products, product obsolescence, customer concentrations, product merchantability and other factors. If the Company determines that the cost of inventories exceeds its estimated market value based on assumptions about expected demand and market conditions, including the replacement costs of raw materials, the Company records a write-down equal to the difference between the cost of inventories and the estimated market value. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be require d that could negatively impact the Company's gross margin and operating results. If actual market conditions are more favorable, the Company may have higher gross margin when products that have been previously written down are sold in the normal course of business (see Note 6).

Property, Plant and Equipment

Property, plant and equipment are stated at cost, less accumulated depreciation. Depreciation is computed for financial reporting purposes using the straight-line method over the esti mated useful lives of the assets as presented below. Leasehold improvements are amortized over the shorter of the estimated useful lives of the assets or the remaining term of the lease. Repairs and maintenance costs are expensed as incurred (see Note 6).

	Useful Lives in Years
Buildings	15
Leasehold improvements	1 to 15
Manufacturing equipment	2 to 7
Computer equipment	2 to 7
Solar power systems	30
Furniture and fixtures	3 to 5

Interest Capitalization

The interest cost associated with major development and construction projects is capitalized and included in the cost of the property, plant and equipment or project assets. Interest capitalization ceases once a project is substantially complete or no longer undergoing construction activities to prepare it for its intended use. When no debt is specifically identified as being incurred in connection with a construction project, the Company capitalizes interest on amounts expended on the project at the Company's weighted average cost of borrowed money (see Note 6).

Project Assets - Plant and Land

Project assets consist primarily of capitalized costs relating to solar power system projects in various stages of development that the Company incurs prior to the sale of the solar power system to a third party. These costs include costs for land and costs for developing and constructing a solar power system. Development costs can include legal, consulting, permitting, and other similar costs. Once the Company enters into a definitive sales agreement, it reclassifi es these costs to deferred project costs within "Prepaid expenses and other current assets" in its Consolidated Balance Sheet. The Company expenses these project assets to cost of revenue as each respective project asset or solar power system is sold to a customer, since the project is constructed for a customer (matching the underlying revenue recognition method), or if it determines that the project is commercially not viable.

The Company reviews project assets for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. The Company considers the project commercially viable if it is anticipated to be

sellable for a profit once it is either fully developed or fully constructed. The Company examines a number of factors to determine if the project will be profitable, including whether there are any environmental, ecological, permitting or regulatory conditions that have changed for the project since the start of development. Such changes could cause the cost of the project to increase or the selling price of the project to decrease. Due to the development, construction and sa le timeframe of the Company's larger solar projects, it classifies project assets which are not expected to be sold within the next 12 months as "Project assets - plants and land, net of current portion" on the Consolidated Balance Sheets. Once specific milestones have been achieved, the Company determines if the sale of the project assets will occur within the next 12 months from a given balance sheet date and, if so, it then reclassifies the project assets as current.

Long-Lived Assets

The Company evaluates its long-lived assets, including property, plant and equipment and other intangible assets with finite lives, for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. Factors considered important that could result in an impairment review include significant underperformance relative to expected historical or projected future operating results, significant changes in the manner of use of acquired assets and significant negative industry or economic trends. The Company's impairment evaluation of long-lived assets includes an analysis of estimated future undiscounted net cash flows expected to be generated by the assets over their remaining estimated useful lives. If the Company's estimate of future undiscounted net cash flows is insufficient to recover the carrying value of the assets over the remaining estimated useful lives, it records an impairment loss in the amount by which the carrying value of the asset s exceeds the fair value. Fair value is generally measured based on either quoted market prices, if available, or discounted cash flow analyses (see Note 6).

Other intangible assets with finite useful lives are amortized using the straight-line method over their useful lives ranging primarily from one to six years (see Note 5).

Goodwill

Goodwill is tested for impairment at least annually, or more frequently if certain indicators are present. A two-step process is used to test for goodwill impairment. The first step is to determine if there is an indication of impairment by comparing the estimated fair value of each reporting unit to its carrying value, including existing goodwill. Goodwill is considered impaired if the carrying value of a reporting unit exceeds the estimated fair value. Upon an indication of impairment, a second step is performed to determine the amount of the impairment by comparing the implied fair value of the reporting unit’s goodwill with its carrying value.

The Company conducts its annual impairment test of goodwill as of the Sunday closest to the end of the third fiscal quarter of each year. Impairment of goodwill is tested at the Company’s reporting unit level. Management determined the UPP Segment and R&C Segment each have two reporting units. In estimating the fair value of the reporting units, the Company makes estimates and judgments about its future cash flows using an income approach defined as Level 3 inputs under fair value measurement standards (see Note 7). The income approach, specifically a discounted cash flow analysis, included assumptions for, among others, forecasted free cash flow, perpetual growth rates and long-term discount rates, all of which require significant judgment by management. The sum of the fair values of the Company's reporting units are also compared to its external market capitalization to determine the appropriateness of its assumptions (i.e. the discounted cash flow analysis) and to reduce the fair values of the Company's reporting units, if appropriate. These assumptions took into account the current economic environment and its impact on the Company's business. Based on the impairment test as of the third fiscal quarter ended October 3, 2010 for the fiscal year ended January 2, 2011, the fair value of each reporting unit exceeded the carrying value under the first step of the goodwill impairment test. Therefore, goodwill was not impaired. In the event that management determines that the value of goodwill has become impaired, the Company would incur an accounting charge for the amount of the impairment during the fiscal quarter in which the determination is made (see Note 5).

Product Warranties

The Company generally warrants or guarantees the performance of the solar panels that it manufactures at certain levels of power output for 25 years. In addition, the Company passes through to customers long-term warranties from the original equipment manufacturers ("OEMs") of certain system components, such as inverters. Warranties of 25 years from solar panel suppliers are standard in the solar industry, while inverters typically carry warranty periods ranging from 5 to 10 years. In addition, the Company generally warrants its workmanship on installed systems for periods ranging up to 10 years. The Company maintains reserves to cover the expected costs that could result from these warranties. The Company’s expected costs are g enerally in the form of product replacement or repair. Warranty reserves are based on the Company’s best estimate of such costs and are recognized as a cost of revenue. The Company continuously monitors product returns for warranty failures and

maintains a reserve for the related warranty expenses based on various factors including historical warranty claims, results of acc elerated lab testing, field monitoring, vendor reliability estimates, and data on industry averages for similar products. Historically, warranty costs have been within management's expectations (see Note 8).

Revenue Recognition

Solar Power Products

The Company sells its solar panels and balance of system components primarily to dealers, system integrators and distributors, and recognizes revenue, net of accruals for estimated sales returns, when persuasive evidence of an arrangement exists, delivery of the product has occurred, title and risk of loss has passed to the customer, the sales price is fixed or determinable, collectability of the resulting receivable is reasonably assured and the rights and risks of ownership have passed to the customer. Other than standard warranty obligations, there are no rights of return and there are no significant post-shipment obligations, including installation, training or customer acceptance clauses with any of the Company's customers that could have an impact on revenue recognition. The Company's revenue recognition policy is consistent across all geographic areas.

The provision for estimated sales returns on product sales is recorded in the same period the related revenues are recorded. These estimates are based on historical sales returns, analysis of credit memo data and other known factors. Actual returns could differ from these estimates. The Company recorded charges for sales returns on product sales of $2.2 million, $1.7 million and $0.1 million in fiscal 2010, 2009 and 2008, respectively. Amounts utilized against the sales return allowance aggregated $1.7 million, zero and $0.2 million in fiscal 2010, 2009 and 2008, respectively. The allowance for sales returns was $2.4 million and $1.9 million as of January 2, 2011 and January 3, 2010, respectively.

Construction Contracts

Revenue is also comprised of EPC projects which are governed by customer contracts that require the Company to deliver functioning solar power systems and are generally completed within three to twelve months from commencement of construction. The Company recognizes revenue from fixed price construction contracts using the percentage-of-completion method of accounting. Under this method, revenue arising from fixed price construction contracts is recognized as work is performed based on the percentage of incurred costs to estima ted total forecasted costs.

Incurred costs used in the Company's percentage-of-completion calculation include all direct material, labor, subcontract costs, and those indirect costs related to contract performance, such as indirect labor, supplies and tools. Project material costs are included in incurred costs when the project materials have been installed by being permanently attached or fitted to the solar power system as required by the project's engineering design.

In addition to an EPC deliverable, a limited number of arrangements also include multiple deliverables such as post-installation systems monitoring and maintenance. For contracts with separately priced monitoring and maintenance, the Company recognizes revenue related to such separately priced elements over the contract period. For contracts including monitoring and maintenance not separately priced, the Company determined that post-installation systems monitoring and maintenance qualify as separate units of accounting. Such post-installation monitoring and maintenance are deferred at the time the contract is executed and are recognized to revenue over the contractual term. The remaining EPC revenue is recognized on a percentage-of-completion basis.

In addition, when arrangements include cont ingent revenue clauses such as penalty payments or customer termination or put rights for non-performance, the Company defers the contingent revenue until such time as the contingencies expire. In certain limited cases, the Company could be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met for periods of up to two years. To date, no such repurchase obligations have been required.

Provisions for estimated losses on uncompleted contracts, if any, are recognized in the period in which the loss first becomes probable and reasonably estimable. Contracts may include profit incentives such as milestone bonuses. These profit incentives are included in the cont ract value when their realization is reasonably assured.

Development Projects

The Company develops and sells solar power plants which generally include the sale or lease of related real estate.

Revenue recognition for these solar power plants require adherence to specific guidance for real estate sales, which provides that if the Company holds control over land or land rights prior to the execution of an EPC contract, it recognizes revenue and the corresponding costs when all of the following requirements are met: the sale is consummated, the buyer's initial and any continuing investments are adequate, the resulting receivables are not subject to subordination and the Company has transferred the customary risk and rewards of ownership to the buyer. In general, a sale is consummated upon the execution of an agreement documenting the terms of the s ale and a minimum initial payment by the buyer to substantiate the transfer of risk to the buyer. This may require the Company to defer revenue during construction, even if a sale was consummated, until it receives the buyer's initial investment payment, at which time revenue would be recognized on a percentage-of-completion basis as work is completed. The Company's revenue recognition methods for solar power plants not involving real estate remains subject to its historical practice using the percentage-of-completion method.

Shipping and Handling Costs

The Company records costs related to shipping and handling in cost of revenue.

Stock-Based Compensation

The Company measures and records compensation expense for all share-based payment awards based on estimated fair values. The Company provides share-based awards to its employees, executive officers and directors through various equity compensation plans including its emp loyee stock option and restricted stock plans. The fair value of stock option awards is measured at the date of grant using a Black-Scholes option pricing model, and the fair value of restricted stock awards and units is based on the market price of the Company's class A common stock on the date of grant. The Company has not granted stock options in fiscal 2009 or 2010. See Note 15 for further details on how the Company determines the fair value of its stock options using the Black-Scholes option pricing model.

The Company is required under current accounting guidance to estimate forfeitures at the date of grant. The Company's estimate of forfeitures is based on its historical activity, which it believes is indicative of expected forfeitures. In subsequent periods if the actual rate of forfeitures differs from the Company's estimate, the forfeiture rates may be revised, as necessary. Changes in the estimated forfeiture rates can have a significant effect on share-based compensation expense since the effect of adjusting the rate is recognized in the period the forfeiture estimate is changed.

The Company also grants performance share units to executive officers and certain employees that require it to estimate expected achievement of performance targets over the performance period. This estimate involves judgment regarding future expectations of various financial performance measures. If there are changes in the Company's estimate of the level of financial performance measures expected to be achieved, the related share-based compensation expense may be significantly increased or reduced in the period that its estimate changes.

Advertising Costs

Advertising costs are expensed as incurred. Advertising expense totaled approximately $3.3 million, $4.3 million and $2.2 million in fiscal 2010, 2009 and 2008, respectively.

Research and Development Expense

Research and development expense consists primarily of salaries and related personnel costs, depreciat ion and the cost of solar cell and solar panel materials and services used for the development of products, including experiments and testing. All research and development costs are expensed as incurred. Research and development expense is reported net of any funding received under contracts with governmental agencies because such contracts are considered collaborative arrangements. These awards are typically structured such that only direct costs, research and development overhead, procurement overhead and general and administrative expenses that satisfy government accounting regulations are reimbursed. In addition, the Company's government awards from state agencies will usually require it to pay to the granting governmental agency certain royalties based on sales of products developed with government funding or economic benefit derived from incremental improvements funded. Royalties paid to governmental agencies are charged to the cost of goods sold. The Company's funding from government contracts offset its research and development expense by approximately 10%, 22% and 25% in fiscal 2010, 2009 and 2008, respectively. The Company's research and development expenditures, net of payments received under these contracts, were approximately $49.1 million, $31.6 million and $21.5 million for fiscal 2010, 2009 and 2008, respectively.

Translation of Foreign Currency

The Company and certain of its subsidiaries use their respective local currency as their functional currency. Accordingly, foreign currency assets and liabilities are translated using exchange rates in effect at the end of the period. Foreign subsidiaries that use the U.S. dollar as their functional currency translate monetary assets and liabilities using exchange rates in effect at the end of the period. Non-monetary assets and liabilities are translated at their historical values.

The Company includes gains or losses from foreign currency transactions in "Other, net" in the Consolidated Statements of Operations with the other hedging activities described in Note 11. The Company experienced losses on derivatives and foreign exchange of $27.7 million, $3.9 million and $20.6 million in fiscal 2010, 2009 and 2008, respectively, largely due to volatility in the currency markets.

Concentration of Credit Risk

The Company is exposed to credit losses in the event of nonperformance by the counterparties to its financial and derivative instruments. Financial and derivative instruments that potentially subject the Company to concentrations of credit risk are primarily cash and cash equivalents, restricted cash and cash equivalents, investments, accounts receivable, note receivable, advances to suppliers, foreign currency option contracts, foreign currency forward contracts, bond hedge and warrant transactions, purchased options and share lending arrangements for its class A common stock. The Company's investment policy requires cash and cash equivalents, restricted cash and cash equivalents and investments to be placed with high-quality financial institutions and to limit the amount of credit risk from any one issuer (see Note 7). Similarly, the Company enters into foreign currency derivative contracts and convertible debenture hedge transactions with high-quality financial institutions and limits the amount of credit exposure to any one counterparty. The foreign currency derivative contracts are limited to a time period of less than two years, while the purchased options will expire in 2014 and the bond hedge and warrant transactions expire in 2015. The Company regularly evaluates the credit standing of its counterparty financial institutions (see Notes 7, 10 and 11).

The Company performs ongoing credit evaluations of its customers' financial condition whenever deemed necessary and generally does not require collateral. The Company maintains an allowance for doubtful accounts based on the expected collectability of all accounts receivable, which takes into consideration an analysis of historical bad debts, specific customer creditworthiness and current economic trends. The allowance for doubtful accounts was $6.0 million and $2.3 million as of January 2, 2011 and January 3, 2010, respectively. For fiscal 2010, 2009 and 2008 the Company provided $11.4 mill ion, $1.4 million and $2.2 million, respectively, for allowance for doubtful accounts. During fiscal 2010, 2009 and 2008 the Company wrote off $7.7 million, $1.0 million and 1.7 million, respectively, of bad debts. One c ustomer accounted for 11% and 13% of accounts receivable as of January 2, 2011 and January 3, 2010, respectively (see Note 6). In addition, two customers accounted for approximately 17% and 15% of the Company's "Costs and estimated earnings in excess of billings" balance as of January 2, 2011 on the Consolidated Balance Sheet as compared to three customers that accounted for approximately 28%, 21% and 17% of the balance as of January 3, 2010.

The Company has entered into agreements with vendors that specify future quantities and pricing of polysilicon to be supplied for periods up to 10 years. Under certain agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements. As of January 2, 2011 and January 3, 2010, advances to suppliers totaled $287.1 million and $190.6 million, respectively. Two suppliers accounted for 83% and 13% of total advances to suppliers as of January 2, 2011, and 76% and 15% as of January 3, 2010 (see Note 8).

In fiscal 2007, the Company entered into share lending arrangements of its class A common stock with financial institutions for which it received a nominal lending fee of $0.001 per share. The Company loaned 2.9 million shares and 1.8 million shares of its class A common stock to Lehman Brothers International (Europe) Limited ("LBIE") and Credit Suisse International ("CSI"), respectively. Physical settlement of the shares is required when the arrangement is terminated. However, on September 15, 2008, Lehman Brothers Holding Inc. ("Lehman") filed a petition for protection under Chapter 11 of the U.S. bankruptcy code, and LBIE commenced administration proceedings (analogous to bankruptcy) in the United Kingdom. The Company filed a claim in the LBIE proceeding for $240.9 million and a corresponding claim in the Lehman Chapter 11 proceeding under Lehman's guaranty of LBIE's obligations. On December 16, 2010, the Company entered into an assignment agreement with Deutsche Bank under which the Company assigned to Deutsche Bank its claims against LBIE and Lehman in connection with the share lending arrangement. The Company received proceeds of $24.0 million as a result of the assignment agreement (see Note 10).

Income Taxes

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Deferred tax assets and liabilities are recognized for temporary differences between financial statement and income tax bases of assets and liabilities. Valuation allowances are provided against deferred tax assets when management cannot conclude

that it is more likely than not that some portion or all deferred tax assets will be realized.

As applicable, interest and penalties on tax contingencies are included in "Provision for income taxes" in the Consolidated Statements of Operations and such amounts were not material for any periods presented. In addition, foreign exchange gains (losses) may result from estimated tax liabilities, which are expected to be settled in currencies other than the U.S. dollar.

Investments in Equity Interests

Investments in entities in which the Company can exercise significant influence, but does not own a majority equity interest or otherwise control, are accounted for under the equity method. The Company records its share of the results of these entities as "Equity in earnings of unconsolidated investees" on the Consolidated Statements of Operations. The Company monitors its investments for other-than-temporary impairment by considering factors such as current economic and market conditions and the operating performance of the entities and records reductions in carrying values when necessary. The fair value of privately held investments is estimated using the best available information as of the valuation date, including current earnings trends, undiscounted cash flows, quoted stock prices of comparable public companies, and other company specific information, including recent financing rounds (see Notes 7 and 9).

Business Combinations

On December 29, 2008, the Company adopted new accounting guidance which significantly changed the accounting for business combinations in a number of areas including the treatment of contingent consideration, acquisition costs, in-process research and development and restructuring costs. In addition, changes in deferred tax asset valuation allowances and acquired income tax uncertainties in a business combination after the measurement period affect income tax expense under the new accounting guidance.

In April 2009, the Financial Accounting Standards Board ("FASB") issued new accounting guidance for the initial recognition and measurement, subsequent measurement and accounting, and disclosures for assets and liabilities arising from contingencies in business combinations. The new accounting guidance eliminates the distinction between contractual and non-contractual contingencies. The Company's adoption of the new accounting guidance for contingent assets and liabilities acquired in business combinations during the first quarter of fiscal 2009 had no impact on its Consolidated Financial Statements.

The Company records all acquired assets and liabilities, including goodwill, other intangible assets and in-process research and development, at fair value. The initial recording of goodwill, other intangible assets and in-process research and development requires certain estimates and assumptions concerning the determination of the fair values and useful lives. The judgments made in the context of the purchase price allocation can materially impact the Company's future results of operations. Accordingly, for significant acquisitions, the Company obtains assistance from third-party valuation specialists. The valuations calculated from estimates are based on inf ormation available at the acquisition date (see Notes 3 and 5).

Recently Adopted Accounting Guidance

Share Lending Arrangements

In June 2009, the FASB issued accounting guidance that changed how companies account for share lending arra ngements that were executed in connection with convertible debt offerings or other financings. The new accounting guidance requires all such share lending arrangements to be valued and amortized as interest expense in the same manner as debt issuance costs. As a result of the new accounting guidance, existing share lending arrangements relating to the Company's class A common stock are required to be measured at fair value and amortized as interest expense in its Consolidated Financial Statements. In addition, in the event that counterparty default under the share lending arrangement becomes probable, the Company is required to recognize an expense in its Consolidated Statement of Operations equal to the then fair value of the unreturned loaned shares, net of any probable recoveries. The Company adopted the new accounting guidance effective January 4, 2010, the start of its fiscal year, and applied it retrospectively to all prior periods as required by the guidance.

The Company has two historical share lending arrangements subject to the new guidance. In connection with the issuance of its 1.25% senior convertible debentures ("1.25% debentures") and 0.75% senior convertible debentures ("0.75% debentures"), the Company loaned 2.9 million shares of its class A common stock to LBIE and 1.8 million shares of its class A common stock to CSI under share lending arrangements. Application of the new accounting guidance resulted in higher non-cash amortization of imputed share lending costs in the current and prior periods, as well as a significant non-cash loss resulting

from Lehman filing a petition for protection under Chapter 11 of the U.S. bankruptcy code on September 15, 2008, and LBIE commencing administration proceedings (analogous to bankruptcy) in the United Kingdom. The then fair value of the 2.9 million shares of the Company's class A common stock loaned and unreturned by LBIE is $213.4 million, which was expensed retrospectively in the third quarter of fiscal 2008. In addition, on a cumulative basis from the respective issuance dates of the share lending arrangements through January 3, 2010, the Company has recognized $1.6 million in additional non-cash interest expense (see Note 10).

As a result of the Company's adoption of the new accounting guidance for share lending arrangements, the Company's Consolidated Balance Sheet as of January 3, 2010 has been adjusted as follows:

(In thousands)	As Adjusted in this Annual Report on Form 10-K	As Previously Reported in the 2009 Annual Report on Form 10-K (1)
Assets		
Prepaid expenses and other current assets	$ 98,521	$ 98,432
Other long-term assets	82,743	81,973
Total assets	2,696,895	2,696,036
Stockholders' Equity		
Additional paid-in capital	1,520,933	1,305,032
Retained earnings (accumulated deficit)	(114,309)	100,733
Total stockholders' equity	1,376,380	1,375,521

(1) The prior period balance of “Other long-term assets” has been reclassified to conform to the current period presentation in the Company's Consolidated Balance Sheets which separately discloses “Project assets - plants and land, net of current portion.”

As a result of the Company's adoption of the new accounting guidance for share lending arrangements, the Company's Consolidated Statement of Operations for the y ears ended January 3, 2010 and December 28, 2008 have been adjusted as follows:

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89,528

(In thousands, except per share data)	Year Ended			
	January 3, 2010		December 28, 2008	
	As Adjusted in this Annual Report on Form 10-K	As Previously Reported in the 2009 Annual Report on Form 10-K	As Adjusted in this Annual Report on Form 10-K &nb sp;	As Previously Reported in the 2009 Annual Report on Form 10-K
Interest expense	$ (36,287)	$ (35,635)	$ (23,415)	$ (22,814)
Loss on share lending arrangement	—	—	(213,372)	—
Income (loss) before income taxes and equity in earnings of unconsolidated investees	43,620	44,272	(97,904)	116,069
Net income (loss)< /div>	32,521	33,173	(124,445)	
Net income (loss) per share of class A and class B common stock:				
Basic	$ 0.36	$ 0.36	$ (1.55)	$ 1.10
Diluted	$ 0.35	$ 0.36	$ (1.55)	$ 1.05

As a result of the Company's adoption of the new accounting guidance for share lending arrangements, the Company's Consolidated Statement of Cash Flows for the years ended January 3, 2010 and December 28, 200 8 have been adjusted as follows:

(In thousands)	Year Ended			
	January 3, 2010		December 28, 2008	
	As Adjusted in this Annual Report on Form 10-K	As Previously Reported in the 2009 Annual Report on Form 10-K	As Adjusted in this Annual Report on Form 10-K	As Previously Reported in the 2009 Annual Report on Form 10-K
Cash flows from operating activities:				
Net income (loss)	$ 32,521	$ 33,173	$ (124,445)	$ 89,528
Non-cash interest expense	22,582	21,930	17,510	16,909
Loss on share lending arrangement	—	—	213,372	—
Net cash provided by operating activities	121,325	121,325	154,831	154,831

Variable Interest Entities ("VIEs")

In June 2009, the FASB issued new accounting guidance regarding consolidation of VIEs to eliminate the exemption for qualifying special purpose entities, provide a new approach for determining which entity should consolidate a VIE, and require an enterprise to regularly perform an analysis to determine whether the enterprise's variable interest or interests give it a controlling financial interest in a VIE. The new accounting guidance became effective for fiscal years beginning after November 15, 2009. The Company's adoption of the new accounting guidance in the first quarter of fiscal 2010 had no impact on its Consolidated Financial Statements.

The Company regularly evaluates its relationships with joint ventures to determine if it has a controlling financial interest in the VIEs and therefore become the primary beneficiary of the joint ventures requiring it to consolidate their financial results into its financial statements. The Company does not consolidate the financial results of its joint ventures as it has concluded that it is not the primary beneficiary of these joint ventures. Although the Company is obligated to absorb losses or has the right to receive benefits from the joint ventures that are significant to the entities, the variable interests held by the Company do not empower it to direct the activities that most significantly impact the joint ventures' economic performance (see Note 9).

In connection with the sale of the equity interests in the entities that hold solar power plants, the Company also considers if it retains a variable interest in the entity sold, either by retaining a financial interest or by contractual means such as an O&M agreement. If the Company determines that the entity sold is a VIE and that it holds a variable interest, it then evaluates whether it is the primary beneficiary. The entity that is the primary beneficiary consolidates the VIE. The determination of whether the Company is the primary beneficiary is based upon whether the Company has the power to direct the activities that most directly impact the economic performance of the VIE and whether the Company absorbs any losses or benefits that would be potentially significant to the VIE. To date, there have been no sales of entities which hold solar power plants in which the Company has concluded that it is the primary beneficiary after the sale.

Revenue Arrangements with Multiple Deliverables

In October 2009, the FASB issued new accounting guidance for revenue arrangements with multiple deliverables. Specifically, the new guidance requires an entity to allocate arrangement consideration at the inception of an arrangement to all of its deliverables based on their relative selling prices. In addition, the new guidance eliminates the use of the residual method of allocation and requires the relative-selling-price method in all circumstances in whi ch an entity recognizes revenue for an arrangement with multiple deliverables. The new accounting guidance is effective in the fiscal year beginning on or after June 15, 2010. Early adoption is permitted. The Company adopted the new accounting guidance in the first quarter of fiscal 2010 and applied the prospective application for new or materially modified arrangements with multiple deliverables. The Company's adoption of the new accounting guidance did not have a material impact on its Consolidated Financial Statements.

Fair Value of Assets and Liabilities

In January 2010, the FASB issued updated guidance related to fair value measurements and disclosures, which will require the Company to disclose separately the amounts of significant transfers in and out of Level 1 and Level 2 fair value measurements and to describe the reasons for the transfers. In addition, in the reconciliation for fair value measurements using significant unobservable inputs, or Level 3, the Company will disclose separately information about purchases, sales, issuances and settlements on a gross basis rather than on a net basis. The updated guidance also requires that the Company provide fair value measurement disclosures for each class of assets and liabilities and disclosures about the valuation techniques and inputs

used to measure fair value for both recurring and non-recurring fair value measurements for Level 2 and Level 3 fair value measurements. The updated guidance is effective for interim or annual financial reporting periods beginning after December 15, 2009, except for the disclosures about purchases, sales, issuances and settlements in the roll forward activity in Level 3 fair value measurements, which are effective for fiscal years beginning after December 15, 2010 and for interim periods within those fiscal years. The Company's adoption of the updated guidance had no impact on its financial position, results of operations, or cash flows and only required additional financial statements disclosures as set forth in Notes 7, 10 and 11.

Issued Accounting Guidance Not Yet Adopted

There has been no issued accounting guidance not yet adopted by the Company that it believes is material, or is potentially material to the Company's Consolidated Financial Statements.

Note 2. TRANSACTIONS WITH CYPRESS SEMICONDUCTOR CORPORATION ("CYPRESS")

The Company was formerly a subsidiary of Cypress. After completion of the Company's initial public offering ("IPO") in November 2005, Cypress held, in the aggregate, approximately 52.0 million shares of the Company's class B common stock, representing all of the then-outstanding class B common stock. On May 4, 2007 and August 18, 2008, Cypress completed the sale of 7.5 million shares and 2.5 million s hares, respectively, of the Company's class B common stock in offerings pursuant to Rule 144 of the Securities Act. Such shares were converted to 10.0 million shares of the Company's class A common stock upon sale. The Company was a majority-owned subsidiary of Cypress through September 29, 2008. After the close of trading on the New York Stock Exchange ("NYSE") on September 29, 2008, Cypress distributed to its shareholders all of its remaining shares of the Company's class B common stock, in the form of a pro rata dividend to the holders of record as of September 17, 2008 of Cypress common stock. As a result, the Company discontinued being a subsidiary of Cypress.

Two of the seven members of the Company's Board of Directors have a relationship with Cypress. Mr. T.J. Rodgers, Chairman of SunPower's Board of Directors, is also the co-founder, board member, President and Chief Executive Officer of Cypress. On November 9, 2010, Mr. T.J. Rodgers notified the Company of his decision to retire from the Board following the completion of his current term at the Company's 2011 Annual Meeting of Stockholders. In addition, Mr. W. Steve Albrecht currently serves on the boards of both Cypress and SunPower.

Administrative Services Provided by Cypress

Cypress seconded employees and consultants to the Company for different time periods through 2008 for which the Company paid their fully-burdened compensation. In addition, Cypress personnel rendered services to the Company to assist with administrative functions, such as employee benefits and other Cypress corporate services and infrastructure, for which the Company paid for a portion of the Cypress employees' fully-burdened compensation. In the case of the Philippines subsidiary, which entered into a services agreement for such secondments and other consulting services in January 2005, the Company paid the fully burdened compensation plus 10%. The amounts that the Company recorded as general and administrative expenses in the accompanying Consolidated Statements of Operations for these services was approximately $3.5 million in fiscal 2008.

Leased Facility in the Philippines

In 2003, the Company and Cypress reached an understanding that the Company would build out and occupy a building owned by Cypress for its first solar cell manufacturing facility ("FAB1") in the Philippines. The Company entered into a lease agreement for FAB1 and a sublease for the land under which the Company paid Cypress at a rate equal to the cost to Cypress for FAB1 (including taxes, insurance, repairs and improvements). Under the lease agreement, the Company had the right to purchase FAB1 and assume the lease for the land from Cypress at any time at Cypress's original purchase price of approximately $8.0 million, plus interest computed on a variable index starting on the date of purchase by Cypress until the sale to the Company, unless such purchase option was exercised after a change of control of the Company, in which case the purchase price would be at a market rate, as reasonably determined by Cypress. In May 2008, the Company exercised its right to purchase FAB1 from Cypress and assumed the lease for the land from an unaffiliated third party for a total purchase price of $9.5 million. The lease for the land expires in May 2048 and is renewable for an additional 25 years. Rent expense paid to Cypress for FAB1 was $0.1 million in fiscal 2008. In addition, the Company paid Cypress $0.6 million and $0.2 million in fiscal 2010 and 2009, respectively, for certain electronic equipment located at its manufacturing facilities.

Leased Headquarters Facility in San Jose, California

In May 2006, the Company entered into a lease agreement for its approximately 44,000 square foot headquarters, which

is located in a building owned by Cypress in San Jose, California, for $6.0 million over the five-year term of the lease expiring in April 2011. In October 2008, the Company amended the lease agreement, increasing the rentable square footage and the total lease obligations to approximately 60,000 and $7.6 million, respectively, over the five-year term of the lease. The Company paid Cypress $3.2 million, $1.6 million and $1.6 million in fiscal 2010, 2009 and 2008, respectively, to rent the building as well as other related services on the premises under a transition services agreement entered into at the time of Cypress's distribution of the Company's class B common stock. The Company will not be renewing its lease with Cypress and wil l be moving to new offices leased from an unaffiliated third party in May 2011.

Employee Matters Agreement

In October 2005, the Company entered into an employee matters agreement with Cypress to allocate assets, liabilities and responsibilities relating to its current and former U.S. and international employees and its participation in the employee benefits plans that Cypress sponsored and maintained. In July 2008, the Company transferred all accounts in the Cypress 401 (k) Plan held by the Company's employees to its SunPower 401(k) Savings Plan. In September 2008, all of the Company's eligible employees began participating in SunPower's own health and welfare plans and no longer participate in the Cypress health and welfare plans. In connection with Cypress' spin-off of its shares of the Company's class B common stock in September 2008, the Company and Cypress agreed to terminate the employee matters agreement.

Indemnification and Insurance Matters Agreement

The Company has indemnified Cypress and its affiliates, agents, successors and assigns from all liabilities arising from environmental conditions: existing on, under, about or in the vicinity of any of the Company's facilities, or arising out of operations occurring at any of the Company's facilities, including its California facilities, whether prior to or after Cypress's spin-off of the Company's class B common stock held by Cypress; existing on, under, about or in the vicinity of the Philippines facility which the Company occupies, or arising out of operations occurring at such facility, whether prior to or after the separation, to the extent that those liabilities were caused by the Company; arising out of hazardous materials found on, under or about any landfill, waste, storage, transfer or recycling site and resulting from hazardous materials stored, treated, recycled, disposed or otherwise handled by any of the Company's operations or the Company's California and Philippines facilities prior to the separation; and arising out of the construction activity conducted by or on behalf of the Company at Cypress's Texas facility.

The indemnification and insurance matters agreement also contains provisions governing the Company's insurance coverage, which was under the Cypress insurance policies. As of September 29, 2008, the Company obtained its own separate policies for the coverage previously provided under the indemnification and insurance matters agreement.

Tax Sharing Agreement

On October 6, 2005, while a subsidiary of Cypress, the Company entered into a tax sharing agreement with Cypress providing for each party's obligations concerning various tax liabilities. The tax sharing agreement is structured such that Cypress would pay all federal, state, local and foreign taxes that are calculated on a consolidated or combined basis while the Company was a member of Cypress's consolidated or combined group for federal, state, local and foreign tax purposes. The Company's portion of tax liabilities or benefits was determined based upon its separate return tax liability as defined under the tax sharing agreem ent. These tax liabilities or benefits were based on a pro forma calculation as if the Company were filing a separate income tax return in each jurisdiction, rather than on a combined or consolidated basis, subject to adjustments as set forth in the tax sharing agreement.

On June 6, 2006, the Company ceased to be a member of Cypress's consolidated group for federal income tax purposes and certain state income tax purposes. On September 29, 2008, the Company ceased to be a member of Cypress's combined group for all state income tax purposes. To the extent that the Company becomes entitled to utilize the Company's separate tax returns portions of any tax credit or loss carryforwards existing as of such date, the Company will distribute to Cypress the tax effect, estimated to be 40% for federal and state income tax purposes, of the amount of such tax loss carryforwards so utilized, and the amount of any credit carryforwards so utilized. The Company will distribute these amounts to Cypress in cash or in the Company's shares, at Cypress's option. As of January 2, 2011, the Company has a potential liability of approximately $2.2 million that may be due under this arrangement. These amounts do not reflect potential adjustments for the effect of the restatement of the Company's consolidated financial statements in fiscal 2009 and 2008. In fiscal 2010 and 2009, the Company paid $0.7 million and $16.5 million, respectively, in cash to Cypress, of which zero and $15.1 million, respectively, represents the federal component and $0.7 million and $1.4 million, respectively, represents the state component.

The Company will continue to be jointly and severally liable for any tax liability during all periods in which it is deemed

to be a member of the Cypress consolidated or combined group. Accordingly, although the tax sharing agreement allocates tax liabilities between Cypress and all its consolidated subsidiaries, for any period in which the Company was included in Cypress's consolidated or combined group, the Company could be liable in the event that any federal or state tax liability was incurred, but not discharged, by any other member of the group.

The Company will continue to be jointly and severally liable to Cypress until the statute of limitations runs or all appeal options are exercised for all years where the Company joined in the filing of tax returns with Cypress. If Cypress experiences adjustments to their tax liability pursuant to tax examinations, the Company may incur an incremental liability.

The Company would also be liable to Cypress for taxes that might arise from the distribution, or "spin-off," by Cypress of the Company's class B common stock to Cypress's stockholders on September 29, 2008. In connection with Cypress's spin-off of the Company's class B common stock, the Company and Cypress, on August 12, 2008, entered into an amendment to its tax sharing agreement ("Amended Tax Sharing Agreement") to address certain transactions that may affect the tax treatment of the spin-off and certain other matters.

Subject to certain caveats, Cypress obtained a ruling from the Internal Revenue Service ("IRS") to the effect that the distribution by Cypress of the Company's class B common stock to Cypress's stockholders qualified as a tax-free distribution under Section 355 of the Internal Revenue Code ("Code"). Despite such ruling, the distribution may nonetheless be taxable to Cypress under Section 355(e) of the Code if 50% or more of the voting power or value of the Company's stock was or is later acquired as part of a plan or series of related transactions that included the distribution of the Company's stock. The Amended Tax Sharing Agreement requires the Company to indemnify Cypress for any liability incurred as a result of issuances or dispositions of the Company's stock after the distribution, other than liability attributable to certain dispositions of the Company's stock by Cypress, that cause Cypress's distribution of shares of the Company's stock to its stockholders to be taxable to Cypress under Section 355(e) of the Code.

In addition, under the Amended Tax Sharing Agreement, the Company is required to provide notice to Cypress of certain transactions that could give rise to the Company's indemnification obligation relating to taxes resulting from the application of Section 355(e) of the Code or similar provisions of other applicable law to the spin-off as a result of one or more acquisitions, as described in the agreement. The Company is not required to indemnify Cypress for any taxes which would result solely from issuances and dispositions of the Company's stock prior to the spin-off and any acquisition of the Company's stock by Cypress after the spin-off.

Under the Amended Tax Sharing Agreement, the Company also agreed that, until October 29, 2010, it would not effect a conversion of any or all of its class B common stock to class A common stock or any similar recapitalization transaction or series of related transactions (a "Recapitalization"). In addition, the Company agreed that until October 29, 2010, it would not enter into or facilitate any other transaction resulting in an acquisition, as described in the agreement, of its stock without first obtaining the written consent of Cypress. As further detailed in the agreement, the Company is not required to obtain Cypress's consent unless such transactions would involve the acquisition for purposes of Section 355(e) of the Code after August 4, 2008 of more than 25% of its outstanding shares of common stock. In addition, the requirement to obtain Cypress's consent does not apply to certain qualifying acquisitions of the Company's stock, as defined in the Amended Tax Sharing Agreement.

The Company also agreed that it will not (i) effect a Recapitalization during the 36 month period following the spin-off without first obtaining a tax opinion from a nationally recognized tax counsel, in form and in substance reasonably satisfactory to Cypress, to the effect that such Recapitalization (either alone or when taken together with any other transaction or transactions) will not cause the spin-off to become taxable under Section 355(e), or (ii) seek any private ruling, including any supplemental private ruling, from the IRS with regard to the spin-off, or any transaction having any bearing on the tax treatment of the spin-off, wi thout the prior written consent of Cypress.

In January 2010, Cypress was notified by the IRS that it intends to examine Cypress's corporate income tax filings for the tax years ended in 2006, 2007 and 2008. SunPower was included as part of Cypress's federal consolidated group in 2006 and part of 2007.

Cypress has not notified the Company of any agreed notices of proposed adjustments to the tax liabilities. However, the IRS has not completed its examination and there can be no ass urance that there will be no material adjustments upon completion of their review. Additionally, while years prior to fiscal 2006 for Cypress's U.S. corporate tax return are not open for assessment, the IRS can adjust net operating loss and research and development carryovers that were generated in prior years and carried forward to fiscal 2006 and subsequent years. If the IRS sustains tax assessments against Cypress SunPower may be obligated to indemnify Cypress under the terms of the Amended Tax Sharing Agreement.

Note 3. BUSINESS COMBINATIONS

SunRay

On March 26, 2010, the Company completed its acquisition of SunRay, a European solar power plant developer company organized under the laws of Malta, under which the Company purchased all the issued share capital of SunRay for $296.1 million. As a result, SunRay became a subsidiary of the Company and the results of operations of SunRay have been included in the Consolidated Statement of Operations of the Company since March 26, 2010. As part of the acquisition, the Company acquired SunRay's project pipeline of solar photovoltaic projects in Europe and Israel. The pipeline consists of projects in various stages of development. SunRay's power plant development and project finance teams consisted of approximately 70 employees at the date of acquisition.

Purchase Price Consideration

The total consideration for the acquisition was $296.1 million, including: (i) $263.4 million paid in cash to SunRay's class A shareholders, class B shareholders and class C shareholders; (ii) $18.7 million paid in cash to repay outstanding debt of SunRay; and (iii) $14.0 million in promissory notes issued by the Company's subsidiary SunPower North America, LLC, and guaranteed by SunPower. A portion of the purchase price allocated to SunRay's class A shareholders, class B shareholders and certain non-management class C shareholders ($244.4 million in total) was paid by the Company in cash and the remaining portion of the purchase price allocated to SunRay's class C management shareholders was paid with a combination o f $19.0 million in cash and $14.0 million in promissory notes.

The $14.0 million in promissory notes issued to SunRay's management shareholders have been structured to provide a retention incentive. Since the vesting and payment of the promissory notes are contingent on future employment, the promissory notes are considered deferred compensation and therefore are not included in the purchase price allocated to the net assets acquired.

A total of $32.3 million of the purchase price paid and promissory not es payable to certain principal shareholders of SunRay will be held in escrow for two years following March 26, 2010, and be subject to potential indemnification claims that may be made by the Company during that period. The escrow fund consists of $28.7 million paid in cash and $3.6 million in promissory notes issued by SunPower North America, LLC. The escrow is generally tied to compliance with the representations and warranties made as part of the acquisition. Therefore, the $28.7 million in cash of the $263.4 million cash consideration is considered a part of the purchase price allocated to the net assets acquired. The funds in escrow, less any amounts relating to paid or pending claims, will be released two years following March 26, 2010.

Purchase Price Allocation

The Company accounted for this acquisition using the acquisition method. The Company preliminarily allocated the purchase price to the acquired assets and liabilities based on their estimated fair values at the acquisition date as summarized in the following table. The allocation of the purchase price on March 26, 2010 was adjusted in this report as follows:

(In thousands)	As Adjusted in t his Annual Report on Form 10-K	As Previously Reported in the Third Quarterly Report on Form 10-Q
Net tangible assets acquired	$ 54,094	$ 54,915
Project assets	79,160	79,160
Purchased technology	1,120	1,120
Goodwill	147,716	146,895
Total purchase consideration	$ 282,090	$ 282,090

The fair value of net tangible assets acquired on March 26, 2010 was adjusted in this report as follows:

(In thousands)	As Adjusted in this Annual Report on Form 10-K	As Previously Reported in the Third Quarterly Report on Form 10-Q
Cash and cash equivalents	$ 9,391	$ 9,391
Restricted cash and cash equivalents	36,701	36,701
Accounts receivable, net	1,958	1,958
Prepaid expenses and other assets	5,765	5,765
Project assets - plants and land	18,803	19,624
Property, plant and equipment, net	452	452
Assets of discontinued operations	199,071	199,071
Total assets acquired	272,141	272,962
Accounts payable	(4,324)	(4,324)
Other accrued expenses and liabilities	(11,688)	(11,688)
Debt (see Note 10)	(42,707)	(42,707)
Liabilities of discontinued operations	(159,328)	(159,328)
Total liabilities assumed	(218,047)	(218,047)
Net assets acquired	$ 54,094	$ 54,915

Since the Company's purchase price allocation was not fully complete as of the third quarter ended October 3, 2010, the Company recorded adjustments to the fair value of certain assets and liabilities as additional information became available in the fourth quarter ended January 2, 2011. These fair value adjustments were retrospectively applied to the acquisition date of March 26, 2010 as required by current accounting guidance. The Company has now completed its review of the fair value of assets and liabilities acquired.

In the Company's determination of the fair value of the project assets and purchased technology acquired, it considered, among other factors, three generally accepted valuation approaches: the income approach, the market approach and the cost approach. The Company selected the approaches that it believed to be most indicative of the fair value of the assets acquired.

Project Assets

The project assets totaling $79.2 million represent intangible assets that consist of: (i) projects and EPC pipeline, which relate to the development of power plants; and (ii) O&M pipeline, which relate to maintenance contracts that are established after the developed plants are sold. The Company applied the income approach using the multi-period excess earnings method based on estimates and assumptions of future performance of these project assets provided by SunRay's and the Company's management to determine the fair value of the project assets. SunRay's and the Company's estimates and assumptions regarding the fair value of the project assets is derived from probability adjusted cash flows of certain project assets acquired based on the varying development stages of each project asset on the acquisition date. The Company is amortizing the project assets to "Selling, general and administrative" expense based on the pattern of economic benefit provided using the same probability adjusted cash flows from the sale of solar power plants over estimated lives of 4 years from the date of acquisition.

Purchased Tec hnology

The Company applied the cost approach to calculate the fair value of internally developed technologies related to the project development business. The Company determined the fair value of the purchased technology totaling $1.1 million based on estimates and assumptions for the cost of reproducing or replacing the asset based on third party charges, salaries of employees and other internal development costs incurred. The Company is amortizing the purchased technology to "Cost of revenue" within the UPP Segment on a straight-line basis over estimated lives of 5 years.

Goodwill

Of the total estimated purchase price paid at the time of acquisition, $133.2 million had been initially allocated to goodwill within the UPP Segment during the first quarter ended April 4, 2010. During the second, third and fourth quarters in fiscal 2010, the Company recorded adjustments aggregating $14.5 million to increase goodwill related to the acquisition of

SunRay on March 26, 2010 to $147.7 million. These adjustments were based upon the Company obtaining addit ional information on the acquired assets and liabilities as additional information became available in the second, third and fourth quarters of fiscal 2010. The adjustments included: (i) the elimination of a non-current tax receivable and a related non-current tax liability; (ii) changes to the value of certain assets and liabilities acquired in "Assets of discontinued operations" and "Liabilities of discontinued operations," respectively; and (iii) changes to the value of certain acquired prepaid expenses, other current assets, accounts payable, other accrued liabilities and debt. These fair value adjustments were retrospectively applied to the acquisition date of March 26, 2010 as required by current accounting guidance. Goodwill represents the excess of the purchase price of an acquired business over the fair value of the underlying net tangible and other intangible assets and is not deductible for tax purposes. Among the factors that contributed to a purchase price in excess of th e fair value of the net tangible and other intangible assets was the acquisition of an assembled workforce, synergies in technologies, skill sets, operations, customer base and organizational cultures.

Acquisition Related Costs

Acquisition related costs of $6.5 million recognized in the twelve months ended January 2, 2011 inc lude transaction costs such as legal, accounting, valuation and other professional services, which the Company has classified in "Selling, general and administrative" expense in its Consolidated Statement of Operations.

Utility and Power Plants Revenue

In fiscal 2010, SunRay's electricity revenue from discontinued operations totaled $11.1 million (see Note 4). In addition, SunRay completed the sale of multiple Italian solar parks which represented 21% of the Company's total revenue in fiscal 2010.

Pro Forma Financial Information

Supplemental information on an unaudited pro forma basis, as if the acquisition of SunRay was completed at the beginning of the first quarter in fiscal 2009, is as follows:

	Year Ended	
(In thousands, except per share amounts)	**January 2, 2011**	**January 3, 2010**
Revenue	$ 2,218,666	$ 1,382,838
Net income (loss)	150,136	(64,042)
Basic net income (loss) per share	$ 1.57	$ (0.70)
Diluted net income (loss) per share	$ 1.42	$ (0.70)

The unaudited pro forma supplemental information is based on estimates and assumpt ions, which the Company believes are reasonable. The unaudited pro forma supplemental information prepared by management is not necessarily indicative of the consolidated results of operations in future periods or the results that actually would have been realized had the Company and SunRay been a combined company during the specified periods.

Tilt Solar LLC ("Tilt Solar")

On April 14, 2009, the Company completed the acquisition of Tilt Solar, a non-public company based in California with in-process research and develop ment associated with tracking systems. The acquisition of Tilt Solar was not material to the Company's financial position or results of operations.

Solar Sales Pty. Ltd. ("Solar Sales")

On July 23, 2008, the Company completed the acquisition of Solar Sales, a solar systems integration and product distribution company based in Australia. Solar Sales distributes components such as solar panels and inverters via a national network of dealers throughout Australia, and designs, builds and commissions large-scale commercial systems. Prior to the acquisition, Solar Sales had been a customer of the Company since fiscal 2005. As a result of the acquisition, Solar Sales became a subsidiary of the Company. In connection with the acquisition, the Company changed Solar Sales' name to SunPower Corporation Australia Pty. Ltd. ("SunPower Australia"). The acquisition of SunPower Australia was not material to the Company's financial position or results of operations.

Solar Solutions

On January 8, 2008, the Company completed the acquisition of Solar Solutions, a solar systems integration and product distribution company based in Italy. Solar Solutions was a division of Combigas S.r.l., a petroleum products trading firm. Active since 2002, Solar Solutions distributes components such as solar panels and inverters, and offers turn-key solar power systems and standard system kits via a network of dealers throughout Italy. Prior to the acquisition, Solar Solutions had been a customer of the Company since fiscal 2006. As a result o f the acquisition, Solar Solutions became a subsidiary of the Company. In connection with the acquisition, the Company changed Solar Solutions' name to SunPower Italia S.r.l. ("SunPower Italia"). The acquisition of SunPower Italia was not material to the Company's financial position or results of operations.

Note 4. SALE OF DISCONTINUED OPERATIONS

In connecti on with the Company's acquisition of SunRay on March 26, 2010, it acquired a SunRay project company, Cassiopea PV S.r.l ("Cassiopea"), operating a previously completed 20 megawatt alternating current ("MWac") solar power plant in Montalto di Castro, Italy. In the period in which an asset of the Company is classified as held-for-sale, it is required to present for all periods the related assets, liabilities and results of operations associated with that asset as discontinued operations. Cassiopea's results of operations in fiscal 2010 were classified as "Income from discontinued operations, net of taxes" in the Consolidated Statement of Operations. On August 5, 2010, the Company sold the assets and liabilities of Cassiopea.

Results o f operations in fiscal 2010 relating to Cassiopea are as follows:

(In thousands)	Year Ended January 2, 2011
Utility and power plants revenue	$ 11,081
Gross margin	11,081
Income from discontinued operations before sale of business unit	5,862
Gain on sale of business unit	11,399
Income before income taxes	17,261
Income from discontinued operations, net of taxes	11,841

Note 5. GOODWILL AND OTHER INTANGIBLE ASSETS

Goodwill

The followin g table presents the changes in the carrying amount of goodwill under the Company's historical reportable segments during fiscal 2009:

(In thousands)	Systems	Components	Total
As of December 28, 2008	$ 181,801	$ 14,919	$ 196,720
Goodwill arising from business combination	581	—	581
Translation adjustment	—	862	862
As of January 3, 2010	$ 182,382	$ 15,781	$ 198,163

The balance of goodwill within the Systems Segment increased $0.6 million as of January 3, 2010 due to the Company's acquisition of Tilt Solar, which represents the excess of the purchase price over the fair value of the underlying net tangible and other intang ible assets of Tilt Solar. The translation adjustment for the revaluation of the Company's subsidiaries' goodwill into U.S. dollar equivalents increased the balance of goodwill within the Components Segment by $0.9 million during the year ended January 3, 2010.

In the second quarter of fiscal 2010, the Company changed its segment reporting structure to establish the UPP Segment and R&C Segment to align its internal organization to how it serves its customers. Management evaluated all the facts and circumstances relating to the change in its segment reporting structure and concluded that no impairment indicator existed as of July 4, 2010 that would require impairment testing of its new reporting units. The following table presents the changes in the carrying amount of goodwill under the Company's new reportable business segments during fiscal 2010:

(In thousands)	UPP	R&C	Total
As of January 3, 2010	$ 78,634	$ 119,529	$ 198,163
Goodwill arising from business combination	147,716	—	147,716
Translation adjustment	—	(609)	(609)
As of January 2, 2011	$ 226,350	$ 118,920	$ 345,270

The b alance of goodwill within the UPP Segment increased $147.7 million as of January 2, 2011 due to the Company's acquisition of SunRay. This amount represents the excess of the purchase price over the fair value of the underlying net tangible and other intangible assets of SunRay (see Note 3). The translation adjustment for the revaluation of the Company's subsidiaries' goodwill into U.S. dollar equivalents decreased the balance of goodwill within the R&C Segment by $0.6 million during the year ended January 2, 2011. Based on the impairment test as of the third fiscal quarter ended October 3, 2010 for the year ended January 2, 2011, the Company determined there was no impairment (see Note 1).

Intangible Assets

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

(In th ousands)	Gross	Accumulated Amortization	Net
As of January 2, 2011			
Project assets	$ 79,160	$ (22,627)	$ 56,533
Patents and purchased technology	52,519	(51,953)	566
Purchased in-process research and development	1,000	(28)	972
Trade names	2,625	(2,610)	15
Customer relationships and other	40,525	(31,823)	8,702
	$ 175,829	$ (109,041)	$ 66,788
As of January 3, 2010			
Patents and purchased technology	$ 51,398	$ (42,014)	$ 9,384
Purchased in-process research and development	1,000	—	1,000
Trade names	2,623	(2,212)	411
Customer relationships and other	28,616	(14,437)	14,179
	$ 83,637	$ (58,663)	$ 24,974

In connection with the acquisition of SunRay on March 26, 2010, the Company recorded $80.3 million of other intangible assets. All of the Company's acquired other intangible assets are subject to amortization. Aggregate amortization expense for other intangible assets totaled $38.5 million, $16.5 million and $16.8 million in fiscal 2010, 2009 and 2008, respectively. As of January 2, 2011, the estimated future amortization expense related to other intangible assets is as follows:

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(In thousands)	Amount
Year	
2011	$ 27,182
2012	22,709
2013	16,301
2014	252
2015	186
Thereafter	158
	$ 66,788

Note 6. BALANCE SHEET COMPONENTS

(In thousands)	January 2, 2011	January 3, 2010
Accounts receivable, net:		
Accounts receivable, gross	$ 389,554	$ 253,039
Less: allowance for doubtful accounts	(5,967)	(2,298)
Less: allowance for sal es returns	(2,387)	(1,908)
	$ 381,200	$ 248,833
Inventories:		
Raw materials	$ 70,683	$ 76,423
Work-in-process	35,658	20,777
Finished goods	207,057	105,101
	$ 313,398	$ 202,301

$

(In thousands)	January 2, 2011	January 3, 2010
Prepaid expenses and other current assets:		
VAT receivables, current portion	$ 26,500	$ 27,054
Short-term deferred tax assets	3,605	5,920
Foreign currency derivatives	35,954	5,000
Income tax receivable	1,513	3,171
Deferred project costs	934	501
Note receivable (1)	10,000	—
Other receivables (2)	83,712	43,531
Other prepaid expenses	30,716	13,344
	192,934	$ 98,521

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

(2) Includes tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured silicon ingots from the suppliers (see Notes 8 and 9).

Project assets - plant and land:		
Project assets - plant	$ 28,784	$ 11,506
Project assets - land	17,322	4,111
	$ 46,106	$ 15,617
Project assets - plants and land, current portion	$ 23,868	$ 6,010
Project assets - plants and land, net of current portion	22,238	9,607

Property, plant and equipment, net:		
Land and buildings	$ 13,912	$ 17,409
Lease hold improvements	207,248	197,524
Manufacturing equipment (3)	551,815	547,968
Computer equipment	46,603	34,835
Solar power systems	10,614	8,708
Furniture and fixtures	5,555	4,540
Construction-in-process	28,308	57,305
	864,055	868,289
Less: accumulated depreciation (4)	(285,435)	(185,945)
	$ 578,620	$ 682,344

(3) Certain manufacturing equipment associated with solar cell manufacturing lines located at one of the Company's facilities in the Philippines is collateralized in favor of a third-party lender. The Company provided security for advance payments received from a third party in fiscal 2008 totaling $40.0 million in the form of collateralized manufacturing equipment with a net book value of $28.3 million and $35.8 million as of January 2, 2011 and January 3, 2010, respectively (see Note 8).

(4) Total depreciation expense was $102.2 million, $84.6 million and $54.5 million in fiscal 2010, 2009 and 2008, respectively.

(In thousands)	January 2, 2011	January 3, 2010
Property, plant and equipment, net by geography (5):		
Philippines	$ 502,131	$ 600,135
United States	73,860	43,772
Malaysia	—	37,088
Europe	2,400	1,117
Australia	229	282
	$ 578,620	$ 682,394

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

	Year Ended		
(In thousands)	January 2, 2011	January 3, 2010	December 28, 2008
Interest expense:			
Interest cost incurred	$ (65,324)	$ (43,439)	$ (33,743)
Cash interest cost capitalized - property, plant and equipment	565	2,188	1,398
Non-cash interest cost capitalized - property, plant and equipment	774	4,964	8,930
Cash interest cost capitalized - project assets - pla nt and land	3,526	—	—
Non-cash interest cost capitalized - - project assets - plant and land	5,183	—	—
Interest expense	$ (55,276)	$ (36,287)	$ (23,415)

(In thousands)	January 2, 2011	January 3, 2010
Other long-term assets:		
Investments in joint ventures	$ 116,444	$ 39,820
Bond hedge derivative	34,491	< /font> —
Note receivable (1)	—	10,000
Investments in non-public companies	6,418	4,560
VAT receivables, net of current portion	7,002	7,357
Long-term debt issuance cost	12,241	6,942
Other	1,698	14,064
	$ 178,294	$ 82,743

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

(In thousands)	January 2, 2011	January 3, 2010
Accrued liabilities:		
VAT payables	$ 11,699	$ 15,219
Foreign currency derivatives	10,264	27,354
Short-term warranty reserves	14,639	9,693
Interest payable	6,982	3,740
Deferred revenue	21,972	4,840
Employee compensation and employee benefits	33,227	18,161
Other	38,921	35,001
	$ 137,704	$ 114,008
Other long-term liabilities:		
Embedded conversion option derivatives	$ 34,839	$ —
Long-term warranty reserves	48,923	36,782
Unrecognized tax benefits	24,894	14,478
Other	22,476	18,785
	$ 131,132	$ 70,045
Accumulated other comprehensive income (loss):		
Cumulative translation adjustment	$ (2,761)	$ (3,864)
Net unrealized gain (loss) on derivatives	10,647	(12,477)
Deferred taxes	(4,246)	(1,016)
	$ 3,640	$ (17,357)

Note 7. INVESTMENTS

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

The following tables present information about the Company's investments in money market funds, bank notes and debt securities that are measured at fair value on a recurring basis and indicate the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value. Information about the Company's interest rate swaps derivatives and convertible debenture derivatives measured at fair value on a recurring basis is disclosed in Note 10. Information about the Company's foreign currency derivatives measured at fair value on a recurring basis is disclosed in Note 11. The Company does not have any nonfinancial assets or liabilities that are recogniz ed or disclosed at fair value on a recurring basis in its consolidated financial statements.

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

	January 3, 2010			
(In thousands)	Level 1	Level 2	Level 3	Total
Assets				
Money market funds	$ 418,372	$ —	$ 172	$ 418,544
Bank notes	—	101,085	—	101,085
	$ 418,372	$ 101,085	$ 172	$ 519,629

There have been no transfers between Level 1, Level 2 and Level 3 measurements during the twelve months ended January 2, 2011. Investments utilizing Level 2 inputs to determine fair value are comprised of debt securities and bank notes totaling $38.5 million and $101.1 million, respectively, as of January 2, 2011 and January 3, 2010, respectively. Investments utilizing Level 3 inputs to determine fair value are comprised of money market funds totaling $0.2 million as of both January 2, 2011 and January 3, 2010.

Money Market Funds

The majority of the Company's money market fund instruments are classified within Level 1 of the fair value hierarchy because they are valued using quoted prices for identical instruments in active markets. Investments in money market funds utilizing Level 3 inputs consist of the Company's investment in the Reserve International Liquidity Fund which amounted to $0.2 million as of both January 2, 2011 and January 3, 2010. The Company had estimated the value of its investment in the Reserve International Liquidity Fund to be $0.2 million based on information publicly disclosed by the Reserve International Liquidity Fund relative to its holdings and remaining obligations. On January 18, 2011, the Company received notice that the Reserve International Liquidity Fund will make another distribution in 2011 and the Company anticipates recovering the full $0.2 million.

Debt Securities

Investments in debt securities utilizing Level 2 inputs consist of bonds purchased in the fourth quarter of fiscal 2010. The bonds are guaranteed by the Italian government. The Company bases its valuation of these bonds on movements of Italian sovereign bond rates since the time of purchase and incurred an other-than-temporary impairment loss of $0.8 million in "Other, net" of the Consolidated Statement of Operations in fiscal 201 0. This valuation is authenticated by comparison to third-party financial institution valuations. The fair value of the Company's investments in bonds totaled $38.5 million and zero as of January 2, 2011 and January 3, 2010, respectively (see Note 10).

Bank Notes

Investments in bank notes utilizing Level 2 inputs consist of short-term certificates of deposit and select interest bearing bank accounts. Such investments are not traded on an open market and reside with the bank. Bank notes are highly liquid with maturities of zero to ninety days. Due to the short-term maturities, the Company has determined that the fair value of these investments should be at face value. Bank notes totaled zero and $101.1 million as of January 2, 2011 and January 3, 2010, respectively.

Available-for-Sale Securities

The following table summarizes unrealized gains and losses by major security type designated as available-for-sale:

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	January 2, 2011				January 3, 20			
		Unrealized				Unrealized		
(In thousands)	Cost	Gross Gains	Gross Losses	Fair Value	Cost	Gross Gains	Gross Losses	
Debt securities	$ 38,548	$ —	$ —	$ 38,548	$ —	$ —		

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

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(In thousands)	January 2, 2011			January 3, 2010		
	Available-For- Sale	Cash And Cash Equivalents (2)	Total	Available-For-Sale	Cash And Cash Equivalents (2)	
Cash and cash equivalents	$ —	$ 605,420	$ 605,420	$ —	$ 615,879	$
Short-term restricted cash and cash equivalents (1)	—	117,462	117,462	—	61,868	
Short-term investments	38,548	172	38,720	—	172	
Long-term restricted cash and cash equivalents (1)	—	138,837	138,837	—	248,790	
	$ 38,548	$ 861,891	$ 900,439< font style="font-family:inherit;font-size:10pt;">	$ —< /td>	$ 926,709	$

(1) See "Summary of Significant Accounting Policies" in Note 1 for the composition of this balance.

(2) Includes money market funds and bank notes.

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

(In thousands)	January 2, 2011	January 3, 2010
Due on November 30, 2028	$ 38,548	$ —

Minority Investments in Joint Ventures and Other Non-Public Companies

The Company holds minority investments comprised of common and preferred stock in joint ventures and other non-public companies. The Company monitors these minority investments for impairment, which are included in "Other long-term assets" in its Consolidated Balance Sheets and records reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market price and declines in operations of the issuer. As of January 2, 2011 and January 3, 2010, the Company had $116.4 million and $39.8 million, respectively, in investments in joint ventures accounted for under the equity method and $6.4 million and $4.6 million, respectively, in investments accounted for under the cost method (see Note 9).

On September 28, 2010, the Company entered into a $0.2 million investment in a related party accounted for under the cost method. In connection with the investment the Company entered into licensing, lease and facility service agreements. Under the lease and facility service agreements the investee will lease space from the Company for a period of five years. Facility services will be provided by the Company over the term of the lease on a "cost-plus" basis. Payments received under the lease and facility service agreement totaled $0.7 million in the twelve months ended January 2, 2011. As of January 2, 2011, $0.7 million remained due and receivable from the investee related to capital purchases made by the Company on behalf of the investee. The Company will be required to provide additional financing of up to $4.9 million (see Note 8).

Note 8. COMMITMENTS AND CONTINGENCIES

Operating Lease Commitments

On June 29, 2009, the Company signed a commercial project financing agreement with Wells Fargo to fund up to $100 million of commercial-scale solar power system projects through May 31, 2010. I n the fourth quarter of fiscal 2009, the Company sold two solar power system projects to Wells Fargo, and in the third quarter of fiscal 2010 it sold an additional two projects to Wells Fargo, under the terms and conditions of the initial agreement.

Under the financing agreement, the Company designed and built the systems, and upon completion of each system, sold the systems to Wells Fargo, who in turn, leased back the systems to the Company over minimum lease terms of up to 20 years. Separately, the Company entered into power purchase agreements ("PPAs") with end customers, who host the systems and buy the electricity directly from the Company under PPAs of up to 20 years. At the end of the lease term, the Company has the option to purcha se the systems at fair value or remove the systems. The deferred profit on the sale of the systems to Wells Fargo is being recognized over the minimum term of the lease.

The Company leases its San Jose, California facility under a non-cancelable operating lease from Cypress which expires

in April 2011. The Company will not be renewing its lease with Cypress and will be moving to new offices leased from an unaffiliated third party in May 2011. In addition, the Company leases its Richmond, California facility under a non-cancelable operating lease from an unaffiliated third party, which expires in September 2018. The Company also has various lease arrangements, including for its European headquarters located in Geneva, Switzerland under a lease that expires in September 2012, as well as sales and support offices in Southern California, New Jersey, Oregon, Australia, England, France, Germany, Greece, Israel, Italy, Malta, Spain and South Korea, all of which are leased from unaffiliated third parties. In addition, the Company acquired a lease arrangement in London, England, which is leased from a party affiliated with the Company.

Future minimum obligations under all non-cancelable operating leases as of January 2, 2011 are as follows:

(In thousands)	Amount
Year	
2011	$ 10,812
2012	9,609
2013	9,783
2014	8,867
2015	7,744
Thereafter	38,480
	$ 85,295

&n bsp;
Rent expense was $8.6 million, $8.3 million and $6.9 million in fiscal 2010, 2009 and 2008, respectively.

Purchase Commitments

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

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

As of January 2, 2 011, total obligations related to non-cancelable purchase orders totaled $52.4 million and long-term supply agreements with suppliers totaled $5,831.3 million. Of the total future purchase commitments of $5,883.7 million as of January 2, 2011, $2,734.9 million are for commitments to its non-consolidated joint ventures. Future purchase obligations under non-cancelable purchase orders and long-term supply agreements as of January 2, 2011 are as follows:

(In thousands)	Amount
Year	
2011	$ 909,589
2012	646,389
2013	657,476
2014	869,802
2015	942,513
Thereafter	1,857,903
	$ 5,883,672

Total future purchase commitments of $5,883.7 million as of January 2, 2011 included tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured sil icon

ingots from the supplier. Annual future purchase commitments in the table above are calculated using the gross price paid by the Company for silicon ingots and are not reduced by the price paid by suppliers for polysilicon. Total future purchase commitments as of January 2, 2011 would be reduced by $1,618.9 million to $4,264.8 million had the Company's obligations under such tolling agreements been disclosed using net cash outflows.

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

Advances to Suppliers

As noted above, the Company has entered into agreements with various polysilicon, ingot, wafer, solar cell and solar panel vendors that specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years. Certain agreements also provide for penalties or forfeiture of advanced depo sits in the event the Company terminates the arrangements. Under certain agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements. During the twelve months ended January 2, 2011, the Company paid advances totaling $128.6 million in accordance with the terms of existing long-term supply agreements. As of January 2, 2011 and January 3, 2010, advances to suppliers totaled $287.1 million and $190.6 million, respectively, the current portion of which is $31.7 million and $22.8 million, respectively. Two suppliers accounted for 83% and 13% of total advances to suppliers as of January 2, 2011, and 76% and 15% as of January 3, 2010.

The Company's future prepayment obligations related to these agreements as of January 2, 2011 are as follows:

(In thousands)		Amount
Year		
2011	$	134,504
2012		102,097
2013		7,159
	$	243,760

Advances from Customers

On November 5, 2010, the Company and AUOSP entered into an agreement under which the Company will resell to AUOSP polysilicon purchased from a third-party supplier and AUOSP will provide prepayments to the Com pany related to such polysilicon, which prepayments will then be made by the Company to the third-party supplier. Prepayments paid by AUOSP to the Company in fiscal 2010 was $100 million and prepayments to be paid by AUOSP to the Company in fiscal 2011 and 2012 total $60 million and $40 million, respectively (see Note 9). Beginning in the first quarter of fiscal 2011 and continuing through 2020, these advance payments will be applied as a credit against AUOSP's polysilicon purchases from the Company. Such polysilicon is used by AUOSP to manufacture solar cells which are sold to the Company on a "cost-plus" basis. As of January 2, 2011, the outstanding advance was $100.0 million of which $3.5 million had been classified in short-term customer advances and $96.5 million in long-term customer advances in the accompanying Consolidated Balance Sheet, based on projected product shipment dates.

In August 2007, the Company entered into an agreement with a third party to supply polysilicon. Under the polysilicon agreement, the Company received advances of $40.0 million in each of fiscal 2008 and 2007 from this third party. Beginning in the first quarter of fiscal 2010 and continuing through 2019, these advance payments are applied as a credit against the third party's polysilicon purchases from the Company. Such polysilicon is used by the third party to manufacture ingots, and

potentially wafers, which are sold to the Company under an ingot supply agreement. As of January 2, 2011, the outstanding advance was $72.9 million of which $8.9 million had been classified in short-term customer advances and $64.0 million in long-term customer advances in the accompanying Consolidated Bala nce Sheet, based on projected product shipment dates. As of January 3, 2010, the outstanding advance was $80.0 million of which $8.0 million and $72.0 million had been classified in short-term customer advances and long-term customer advances, respectively. The Company provided security for the advances in the form of collateralized manufacturing equipment with a net book value of $28.3 million and $35.8 million as of January 2, 2011 and January 3, 2010, respectively. The Company also had $40.0 million of letters of credit issued by Deutsche Bank as of January 2, 2011 and by Wells Fargo as of January 3, 2010, and $4.6 million and $4.2 million held in an escrow account as of January 2, 2011 and January 3, 2010, respectively (see Notes 6 and 10).

The Company has also entered into other agreements with customers who have made advance payments for solar power products. These advances will be applied as shipments of product occur. As of January 2, 2011 and January 3, 2010, such customers had made advances of $8.6 million and $12.1 million, respectively, in the aggregate.

The estimated utilization of advances from customers as of January 2, 2011 is as follows:

(In thousands)	Amount
Year	
2011	$ 21,044
2012	13,408
2013	17,734
2014	22,060
2015	26,387
Thereafter	80,896
	$ 181,529

Product Warranties

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

Provisions for warranty reserves charged to cost of revenue were $22.4 million, $22.0 million and $14.2 million during fiscal 2010, 2009 and 2008, respectively. Activity within accrued warranty for fiscal 2010, 2009 and 2008 is summarized as follows:

(In thousands)	January 2, 2011	January 3, 2010	December 28, 2008
Balance at the beginning of the period	$ 46,475	$ 28,062	$ 17,194
Accruals for warranties iss ued during the period	22,396	22,029	14,207
Settlements made dur ing the period	(5,309)	(3,616)	(3,339)
Balance at the end of the period	$ 63,562	$ 46,475	$ 28,062

System Put-Rights

EPC projects often require the Company to undertake customer obligations including: (i) system output performance guarantees; (ii) system maintenance; (iii) penalty payments or customer termination rights if the system the Company is

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

Future Financing Commitments

As specified in the Company's joint venture agreement with AU Optronics Singapore Pte. Ltd. ("AUO"), the Company and its joint venture partner ("the shareholders") contributed certain funding on July 5, 2010 and December 23, 2010. The shareholders will each contribute additional amounts from fiscal 2011 to 2014 amounting to $335 million, or such lesser amount as the parties may mutually agree. In addition, if the shareholders or the joint venture requests additional equity financing to the joint venture, then each shareholder will be required to make addition al cash contributions of up to $50 million in the aggregate.

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

The Company's future financing obligations related to these agreements as of January 2, 2011 are as follows:

(In thousands)	Amount
Year	
2011	$ 65,900
2012	75,870
2013	101,400
2014	96,770
< /div>	$ 339,940

Uncertain Tax Positions

Total liabilities associated with uncertain tax positions were $24.9 million and $14.5 million as of January 2, 2011 and January 3, 2010, respectively, and are included in "Other long-term liabilities" in the Company's Consolidated Balance Sheets as they are not expected to be paid within the next twelve months. Due to the complexity and uncertainty associated with its tax positions, the Company cannot make a reasonably reliable estimate of the period in which cash settlement wi ll be made for its liabilities associated with uncertain tax positions in other long-term liabilities (see Note 12).

Indemnifications

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

Legal Matters

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

complaint alleges that the defendants made material misstatements and omissions concerning t he Company's financial results for 2008 and 2009, seeks an unspecified amount of damages, and alleges violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Sections 11 and 15 of the Securities Act of 1933. The Company believes it has meritorious defenses to these allegations and will vigorously defend itself in these matters. The court held a hearing on the defendant's motions to dismiss the consolidated complaint on November 4, 2010, and took the motions under submission. The Company is currently unable to determine if the resolution of these matters will have an adverse effect on the Company's financial position, liquidity or results of operations.

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

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

Note 9. JOINT VENTURES

Joint Venture with Woongjin Energy Co., Ltd ("Woongjin Energy")

The Company and Woongjin Holdings Co., Ltd. ("Woongjin") formed Woongjin Energy in fiscal 2006, a joint venture to manufacture monocrystalline silicon ingots in Korea. The Company and Woongjin have funded the joint venture through capital investments. In addition, Woongjin Energy obtained a $33.0 million loan originally guaranteed by Woongjin. The Company supplies polysilicon, services and technical support required for silicon ingot manufacturing to the joint venture. Once manufactured, the Company purchases the silicon ingots from the joint venture under a nine-year agreement through 2016. In October 2007, the Company entered into an agreement with Woongjin and Woongjin Holdings Co., Ltd. ("Woongjin Holdings"), whereby Woongjin transferred its equity investment held in Woongjin Energy to Woongjin Holdings and Woongjin Holdings assumed all rights and obligations formerly owned by Woongjin under the joint venture agreement described above, including the $33.0 million loan guarantee. In January 2008, the Company and Woongjin Holdings provided Woongjin Energy with additional funding through capital investments in which the Company invested an additional $5.4 million in the joint venture.

On June 30, 2010, Woongjin Energy completed its IPO and the sale of 15.9 million new shares of common stock. Shares of Woongjin Energy's common stock are now traded publicly on the Korean Exchange. The Company did not participate in this common stock issuance by Woongjin Energy. The Company continues to hold 19.4 million shares of Woongjin Energy's common stock with a market value of $318.8 million on December 30, 2010. As a res ult of the new common stock issuance by Woongjin Energy in its IPO, the Company's percentage equity interest in Woongjin Energy decreased from 42.1% to 31.3% of its issued and outstanding shares of common stock. In connection with the IPO, the Company recognized a non-cash gain of $28.3 million in the second quarter of fiscal 2010 as a result of its equity interest in Woongjin Energy being diluted. There is no obligation or expectation for the Company to provide additional funding to Woongjin Energy. On October 29, 2010, the Company entered into a revolving credit facil ity with Union Bank, N.A. ("Union Bank"), and all shares of Woongjin Energy held by the Company have been pledged as security under the revolving credit facility (see Note 10).

As of January 2, 2011 and January 3, 2010, the Company had a $76.6 million and $33.8 million, respectively, investment in the joint venture in its Consolidated Balance Sheets which represented a 31.3% and 42.1% equity investment, respectively. The Company accounts for its investment in Woongjin Energy using the equity method in which the investment is classified as "Other long-term assets" in the Consolidated Balance Sheets and the Company's share of Woongjin Energy's income totaling $14.4 million, $9.8 million and $14.2 million in fiscal 2010, 2009 and 2008, respect ively, is included in "Equity in earnings of unconsolidated investees" in the Consolidated Statements of Operations. As of January 2, 2011, the Company's maximum exposure to loss as a result of its involvement with Woongjin Energy is limited to the carrying value of its investment.

As of January 2, 2011 and January 3, 2010, $18.4 million and $19.3 million, respectively, remained due and receivable from Woongjin Energy related to the polysilicon the Company supplied to the joint venture for silicon ingot manufacturing. Payments to Woongjin Energy for manufactured silicon ingots totaled $183.6 million, $152.3 million and $52.7 million in fiscal 2010, 2009 and 2008, respectively. As of January 2, 2011 and January 3, 2010, $32.6 million and $29.2 million, respectively, remained due and payable to Woongjin Energy. In addition, the Company conducted other related-party transactions with Woongjin Energy in fiscal 2010 and 2008. The Company recognized $0.3 million, zero and $5.6 million in revenue during fiscal 2010, 2009 and 2008, respectively, related to the sale of solar panels to Woongjin Energy. As of January 2, 2011 and January 3, 2010, zero remained due and receivable from Woongjin Energy related to the sale of these solar panels.

Woongjin Energy qualified as a "significant investee" of the Company in fiscal 2009 as defined in SEC Regulation S-X Rule 4-08(g), Summarized financial information adjusted to conform to U.S. GAAP for Woongjin Energy as of January 2, 2011 and January 3, 2010 and for the years ended January 2, 2011, January 3, 2010 and December 28, 2008 is as follows:

$

Balance Sheets

(In thousands)	January 2, 2011	January 3, 2010
Assets		
Current assets	$ 163,617	$ 73,976
Noncurrent assets	72,911	116,720
Total assets	$ 236,528	$ 190,696
Liabilities		
Current liabilities	$ 53,518	$ 38,719
Noncurrent liabilities	57,418	75,627
Total liabilities	110,936	$ 114,346

Statement of Operations

(In thousands) < /font>	January 2, 2011	January 3, 2010	December 28, 2008
Revenues	$ 138,362	$ 91,257	$ 60,624
Cost of sales	80,959	42,262	23,568
Gross margin	57,403	48,995	37,056
Operating income	49,703	43,978	32,887
Net income	41,103	21,094	44,919

In the past, the Company concluded that it was not the primary beneficiary of the joint venture since, although the Company and Woongjin Holdings were both obligated to absorb losses or had the right to receive benefits from Woongjin Energy that were significant to Woongjin Energy, such variable interests held by the Company did not empower it to direct the activities that most significantly impacted Woongjin Energy's economic performance. In reaching this determination, the Company considered the significant control exercised by Woongjin Holdings over the venture's Board of Directors, management and daily operations, and Woongjin Holdings' guarantee of the venture's debt. Furthermore, as a result of Woongjin Energy completing its IPO and the sale of 15.9 million new shares of common stock on June 30, 2010, the Company has concluded that Woongjin Energy is no longer a VIE.

Joint Venture with First Philec Solar Corporation ("First Philec Solar")

The Company and First Philippine Electric Corporation ("First Philec") formed First Philec Solar in fiscal 2007, a joint venture to provide wafer slicing services of silicon ingots to the Company in the Philippines. The Company and First Philec have funded the joint venture through capital investments. In fiscal 2009 and 2008, the Company invested $0.9 million and $4.2 million, respectively, in the joint venture. The Company supplies to the joint venture silicon ingots and technology required for slicing silicon. O nce manufactured, the Company purchases the completed silicon wafers from the joint venture under a five-year wafering supply and sales agreement through 2013. In the fourth quarter of fiscal 2010, First Philec Solar issued an additional 0.5 million shares of common and preferred stock to investors which resulted in the reduction of the

Company's percent equity interest in First Philec Solar from 20% to 15% of its issued and outstanding shares of preferred and common stock. In connection with the additional funding, the Company recognized a non-cash loss of $0.3 million in the fourth quarter of fiscal 2010 as a result of its equity interest in First Philec Solar being diluted. There is no obligation or expectation for the Company to provide additional funding to First Philec Solar.

As of January 2, 2011 and January 3, 2010, the Company had a $6.1 million and $6.0 million, respectively, investment in the joint venture in its Consolidated Balance Sheets which represented a 15% and 20%, respectively, equity investment. The Company accounts for its investment in First Philec Solar using the equit y method since the Company is able to exercise significant influence over the joint venture due to its board positions. The Company's investment is classified as "Other long-term assets" in the Consolidated Balance Sheets and the Company's share of First Philec Solar's income of $0.4 million and $0.1 million and losses of $0.1 million during fiscal 2010, 2009 and 2008, respectively, is included in "Equity in earnings of unconsolidated investees" in the Consolidated Statements of Operations. The amount of equity in earnings increased year over yea r due to increases in production since First Philec Solar became operational in the second quarter of fiscal 2008. As of January 2, 2011, the Company's maximum exposure to loss as a result of its involvement with First Philec Solar is limited to the carrying value of its investment.

As of January 2, 2011 and January 3, 2010, $3.3 million and $1.3 million, respectively, remained due and receivable from First Philec Solar related to the wafer slicin g process of silicon ingots supplied by the Company to the joint venture. Payments to First Philec Solar for wafer slicing services of silicon ingots totaled $87.1 million, $48.5 million and $8.5 million during fiscal 2010, 2009 and 2008, respectively. As of January 2, 2011 and January 3, 2010, $9.0 million and $3.1 million, respectively, remained due and payable to First Philec Solar related to the purchase of silicon wafers.

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

Equity Option Agreement with NorSun AS ("NorSun")

In January 2008, the Company entered into an Option Agreement with NorSun, a manufacturer of silicon ingots and wafers, under which the Company would deliver cash advance payments to NorSun for the purchase of polysilicon under a long-term polysilicon supply agreement. The Company paid a cash advance totaling $16.0 million to an escrow account as security for NorSun's right to future advance payments. This $16.0 million cash advance was ref lected as restricted cash on the Consolidated Balance Sheet as of January 3, 2010. In addition, the Company paid a cash advance of $5.0 million to NorSun during the fourth quarter of fiscal 2009 that was reflected as advances to suppliers on the Consolidated Balance Sheet as of January 3, 2010. Under the terms of the Option Agreement, the Company could exercise a call option and apply the advance payments to purchase from NorSun a 23.3% equity interest, subject to certain adjustments, in a joint venture that is being constructed to manufacture polysilicon in Saudi Arabia. The Company could exercise its option at any time until six months following the commercial operation of the Saudi Arabian polysilicon manufacturing facility. The Option Agreement also provided NorSun an option to sell the 23.3% equity interest to the Company. NorSun's option was exercisable through the six months following commercial operation of the polysilicon manufacturing facility. The Company accounted for the put and call options as one instrument, which were measured at fair value at each reporting period. The changes in the fair value of the combined option were recorded in "Other, net" in the Consolidated Statements of Operations and have not been material.

On July 2, 2010, NorSun exercised its option to sell the 23.3% equity interest in the joint venture to the Company at a price of $5.0 million, equivalent to the cash advance paid to NorSun by the Company during the fourth quarter of fiscal 2009. On December 3, 2010, NorSun entered into an agreement with a third party to sell its equity interest in the joint venture at cost, including the Company's indirect equity interest of 23.3% at $5.0 million. However, the agreement becomes effective after satisfying certain cond itions anticipated to occur in the first quarter of fiscal 2011. Therefore, the Company reclassified the $5.0 million from advances to suppliers to other receivables within "Prepaid expenses and other current assets" in the Consolidated Balance Sheet as of January 2, 2011 as the advance will be returned upon closing of the sale agreement.

On December 21, 2010, NorSun entered into an agreement with the Company that removed its obligation to hold $16.0 million in an escrow account as security for NorSun's right to future advance payments. Therefore, the Company reclassified the $16.0 million from restricted cash to "Cash and cash equivalents" in the Consolidated Balance Sheet as of January 2, 2011. If the sale agreement is terminated, NorSun will transfer the shares totaling a 23.3% equity interest in the joint venture to the Company and it will account for its investment in the joint venture using the equity method.

The Company has concluded that it is not the primary beneficiary of t he joint venture since, although the Company, NorSun and other private equity and principal investment firms that own equity in the joint venture are each obligated to absorb losses or have the right to receive benefits from the joint venture that are significant to the venture, such variable interests held by the Company do not empower it to direct the activities that most significantly impact the joint venture's economic performance. In reaching this determination, the Company considered the significant control exercised by NorSun and other private equity and principal investment firms over the venture's Board of Directors, management and daily operations.

Joint Venture with AUO

On May 27, 2010, the Company, through its subsidiaries SunPower Technology, Ltd. ("SPTL") and AUOSP, formerly SunPower Malaysia Manufacturing Sdn. Bhd. ("SPMY"), entered into a joint venture agreement with AUO and AU Optronics Corporation, the ultimate parent company of AUO ("AUO Taiwan"). The joint venture transaction closed on July 5, 2010. The Company, through SPTL, and AUO each own 50% of the joint venture AUOSP. AUOSP owns FAB3 in Malaysia and will manufacture solar cells and sell them on a "cost-plus" basis to the Company and AUO.

On July 5, 2010, the Company and AUO also e ntered into licensing and joint development, supply, and other ancillary transaction agreements. Through the licensing agreement, SPTL and AUO licensed to AUOSP, on a non-exclusive, royalty-free basis, certain background intellectual property related to solar cell manufacturing (in the case of SPTL), and manufacturing processes (in the case of AUO). Under the seven-year supply agreement with AUOSP, renewable by the Company for one-year periods thereafter, the percentage of AUOSP's total annual output allocated on a monthly basis to the Company, which the Company is committed to purchase, ranges from 95% in the fourth quarter of fiscal 2010 to 80% in fiscal year 2013 and thereafter. The Company and AUO have the right to reallocate supplies from time to time under a written agreement. As required under the joint venture agreement, on November 5, 2010, the Company and AUOSP entered into an agreement under which the Company will resell to AUOSP polysilicon purchased from a third-party supplier and AUOSP will pro vide prepayments to the Company related to such polysilicon, which prepayment will then be made by the Company to the third-party supplier (see Note 8).

The joint venture agreement provides for both equity and debt financing components. The shareholders will not be permitted to transfer any of AUOSP's shares held by them, except to each other and to their direct or indirect wholly-owned subsidiaries. On July 5, 2010 and December 23, 2010, the Company, through SPTL, and AUO each contributed total initial funding of Malaysian Ringgit 45.0 million and Malaysian Ringgit 43.6 million, respectively, and will contribute additional amounts from fiscal 2011 to 2014 amounting to $335 million by each shareholder, or such lesser amount as the parties may mutually agree. In addition, if AUOSP, SPTL or AUO requests additional equity financing to AUOSP, then SPTL and AUO will each be required to make additional cash contributions of up to $50 million in the aggregate (See Note 8).

AUOSP retains the existing debt facility agreement with the Malaysian government for FAB3 and AUO has arranged for additional third-party debt financing for AUOSP. If such third-party debt financing is not sufficient in accordance with the joint venture agreement, then AUO has agreed to procure or provide to AUOSP, on an interim basis, the debt financing reasonably necessary to fund in a timely manner AUOSP's business plan, until such time as third-party financing is procured and replaces such interim financing.

The Company has concluded that it is not the primary beneficiary of the joint venture since, although the Company and AUO are both obligated to absorb losses or have the right to receive benefits, the Company alone does not have the power to direct the activities of the VIE that most significantly impact its economic performance. In making this determination the Company considered the shared power arrangement, including equal board governance for significant decisions, elective appointment, and the fact that both parties contribute to the activities that most significantly impact the joint venture's economic performance. As a result of the shared power arrangement the Company deconsolidated AUOSP in the third quarter of fiscal 2010 and accounts for its investment in the joint venture under the equity method. The Company recognized a non-cash gain of $23.0 million as a result of deconsolidating the carrying value of AUOSP as of July 5, 2010. Under the deconsolidation accounting guidelines, an investor's opening investment is recorded at fair value on the date of deconsolidation. The Company recognized an additional non-cash gain of $13.8 million representing the difference between the initial fair value of the investment and its carrying value. The total non-cash gain of $36.8 million upon deconsolidation is classified as "Gain on deconsolidation of consolidated subsidiary" in fiscal 2010 within the Company's Consolidated Statement of Operations.

In determining the fair value of the opening investment in AUOSP the Company used a combination of the cost, market and income approaches. The gain resulting from the fair value of the initial investment is primarily related to the intellectual property contributed by both shareholders under the licensing agreement. The contributed technology under the licensing agreement with AUOSP was valued using a relief from royalty method, which applies a royalty rate based on an analysis of market-derived royalty rates for guideline intangible assets. The royalty rate was applied to anticipated revenue which is

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projected over the expected remaining useful life of the technology.

As of January 2, 2011, the Company had a $33.7 million investmen t in AUOSP in its Consolidated Balance Sheet which represents its 50% equity investment. The Company accounts for its investment in AUOSP using the equity method in which the investment is classified as "Other long-term assets" in the Consolidated Balance Sheet. The Company accounted for its share of AUOSP's net loss of $8.0 million for the three months ended October 3, 2010 in "Equity in earnings of unconsolidated investees" in the Consolidated Statement of Operations during the fourth quarter of fiscal 2010 due to a quarterly lag in reporting. As of January 2, 2011, $6.0 million remained due and payable to AUOSP and $7.5 million remained due and receivable from AUOSP. As of January 2, 2011, the Company's maximum exposure to loss as a result of its involvement with AUOSP is limited to the carrying value of its investment.

Note 10. DEBT AND CREDIT SOURCES

The following table summarizes the Company's outstanding debt as of January 2, 2 011 and related maturity dates:

		Payments Due by Period				
(In thousands)	Face Value	2011	2012	2013	2014	
Convertible debt:				< div style="overflow:hidden;font-size:10pt;">		
4.50% debentures	$ 250,000	$ —	$ —	$ —	$ —	$ 2
4.75% debentures	230,000	—	—	—	230,000	—
1.25% debentures	198,608	—	198,608	—	—	—
0.75% debentures	79	—	—	—	—	
IFC mor tgage loan	50,000	—	—	10,000	10,000	
CEDA loan	30,000	30,000	—	—	—	
Union Bank revolving credit f acility	70,000	70,000	—	—	—	
Société Générale revolving credit facility	98,010	98,010	—	—	—	
	$ 926,697	$ 198,010	$ 198,608	$ 10,000	$ 240,000	$ 2

Convertible Debt

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

	January 2, 2011			January 3, 2010		
(In thousands)	Carrying Value	Face Value	Fair Value (1)	Carrying Value	Face Value	Fair Valu
4.50% debentures	$ 179,821	$ 250,000	$ 230,172	$ —/div>	$ —	$
4.75% debentures	230,000	230,000	215,050	230,000	230,000	270,2
1.25% debentures	182,023	198,608	188,429	168,606	198,608	172,7
0.75% debentures	79	79	75	137,968	143,883	139,7
	$ 591,923	$ 678,687	$ 633,726	$ 536,574	$ 572,491	$ 582,7

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

4.50% Debentures

On April 1, 2010, the Company issued $220.0 million in principal amount of its 4.50% senior cash convertible debentures ("4.50% debentures") and received net proceeds of $214.9 million, before payment of the net cost of the call spread overlay described below. On April 5, 2010, the initial purchasers of the 4.50% debentures exercised the $30.0 million over-allotment option in full and the Company received net proceeds of $29.3 million. Inter est on the 4.50% debentures is payable

on March 15 and September 15 of each year, which commenced September 15, 2010. The 4.50% debentures mature on March 15, 2015. The 4.50% debentures are convertible only into cash, and not into shares of the Company's class A common stock (or any other securities). Prior to December 15, 2014, if the weighted average price of the Company's cla ss A common stock was more than 130% of the then current conversion price for at least 20 out of 30 consecutive trade days in the last month of the fiscal quarter, then holders of the 4.50% debentures have the right to convert the debentures any day in the following fiscal quarter and, thereafter, they will be convertible at any time, based on an initial conversion price of $22.53 per share of the Company's class A common stock. The conversion price will be subject to adjustment in certain events, such as distributions of dividends or stock splits. Upon conversion, the Company will deliver an amount of cash calculated by reference to the price of its class A common stock over the applicable observation period. The 4.50% debentures will not be convertible, in accordance with the provisions of the debenture agreement, until the first quarter of fiscal 2011. The Company may not redeem the 4.50% debentures prior to maturity. Holders may also require the Company to repurchase all or a portion of their 4.50% deben tures upon a fundamental change, as defined in the debenture agreement, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as the Company's failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.50% debentures will have the right to declare all amounts then outstanding due and payable.

The 4.50% debentures are senior, unsecured obligations of the Company, ranking equally with all existing and future senior unsecured indebtedness of the Company. The 4.50% debentures are effectively subordinated to the Company's secured indebtedness to the extent of the value of the related collateral and structurally subordinated to indebtedness and other liabilities of the Company's subsidiaries. The 4.50% debentures do not contain any sinking fund requirements.

The embedded cash conversion option within the 4.50% debentures and the over-allotment option related to the 4.50% debentures are derivative instruments that are required to be separated from the 4.50% debentures and accounted for separately as derivative instruments (derivative liabilities) with changes in fair value reported in the Company's Consolidated Statements of Operations until such transactions settle or expire. The initial fair value liabilities of the embedded cash conversion option and over-allotment option of $71.3 million and $0.5 million, respec tively, were classified within " Other long-term liabilities" and simultaneously reduced the carrying value of "Convertible debt, net of current portion" (effectively an original issuance discount on the 4.50% debentures of $71.8 million) in the Company's Consolidated Balance Sheet.

From April 1, 2010 to April 5, 2010, the date the initial purchasers of the 4.50% debentures exercised the $30.0 million over-allotment option in full, the Company incurred a non-cash loss of $1.4 million related to the change in fair value of the over-allotment option during that period. The non-cash loss of $1.4 million is reflected in "Gain on mark-to-market derivatives" in the Company's Consolidated Statement of Operations for fiscal 2010. Upon the exercise of the over-allotment option, the ending fair value liability of the over-allotment option on April 5, 2010 of $1.9 million was reclassified to the original issuance discount of the 4.50% debentures.

In addition, the initial $10.0 million fair value liability of the embedded cash conversion option within the $30.0 million of additional principal of the Company's 4.50% debentures purchased upon exercise of the over-allotment option was classified within "Other long-term liabilities" and simultaneously reduced the carrying value of "Convertible debt, net of current portion" (the total original issuance discount on the 4.50% debentures was $79.9 million) in the Company's Consolidated Balance Sheet. In fiscal 2010, the Company recognized a non-cash gain of $46.6 million recorded in "Gain on mark-to-market derivatives" in the Company's Consolidated Statement of Operations related to the change in fair value of the embedded cash conversion option. The fair value liability of the embedded cash conversion option as of January 2, 2011 totaled $34.8 million and is classified within "Other long-term liabilities" in the Company's Consolidated Balance Sheet.

The embedded cash conversion option and the over-allotment option derivative instruments are fair valued utilizing Level 2 inputs consisting of the exercise price of the instruments, the Company's class A common stock price and volatility, the risk free interest rate and the contractual term. Such derivative instruments are not traded on an open market as the banks are the counterparties to the instruments. The over-allotment option was exercised during the second quarter of fiscal 2010 and the final value of the over-allotment option represented the difference between the value of the embedded cash conversion option at the original trade date of the initial $220.0 million in principal amount of the 4.50% debentures and the trade date of the over-allotment option. This final value was adjusted against the original issuance discount of the cash convertible debentures.

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Significant inputs for the valuation of the embedded cash conversion option as of January 2, 2011 are as follows:

	Embedded option (1)	
Stock price	$ 12.83	
Exercise price	$ 22.53	
Interest rate	1.63	%
Stock volatility	49.80	%
Maturity date	February 18, 2015	

(1) The valuation model utilizes these inputs to value the right but not the obligation to purchase one share at $22.53. The Company utilized a Black-Scholes valuation model to value the embedded cash conversion option. The underlying input assumptions were determined as follows:

(i) Stock price. The closing price of the Company's class A common stock on the last trading day of the quarter.
(ii) Exercise price. The exercise price of the embedded conversion option.
(iii) Interest rate. The Treasury Strip rate associated with the life of the embedded conversion option.
(iv) Stock volatility. The volatility of the Company's class A common stock over the life of the embedded conversion option.

The Company recognized $7.4 million in non-cash interest expense during fiscal 2010 related to the amortization of the debt discount on the 4.50% debentures. The principal amount of the outstanding 4.50% debentures, the unamortized discount and the net carrying value as of January 2, 2011 was $250.0 million, $70.2 million and $179.8 million, respectively. As of January 2, 2011 the remaining weighted average period over which the unamortized debt discount associated with the 4.50% debentures will be recognized is as follows:

(In thousands)	Debt Discount	
2011	$ 13,504	
2012	15,225	
2013	17,340	
2014	19,748	
2015	4,362	
	$ 70,179	

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

Concurrent with the issuance of the 4.50% debentures, the Company entered into privately negotiated convertible debenture hedge transactions (collectively, the "Bond Hedge") and warrant transactions (collectively, the "Warrants" and together with the Bond Hedge, the “CSO2015”), with certain of the initial purchasers of the 4.50% cash convertible debentures or their affiliates. The CSO2015 is mea nt to reduce the Company's exposure to potential cash payments upon conversion of the 4.50% debentures. The net cost of the CSO2015 was $12.1 million and $1.6 million in the first and second quarters of fiscal 2010, respectively.

Under the terms of the Bond Hedge, the Company bought from affiliates of certain of the initial purchasers' options to acquire, at an exercise price of $22.53 per share, subject to anti-dilution adjustments, cash in an amount equal to the market value of up to 11.1 million shares of the Company's class A common stock. Each Bond Hedge is a separate transaction, entered into by the Company with each option counterparty, and is not part of the terms of the 4.50% debentures. The Company paid aggregate consideration of $66.2 million an d $9.0 million for the Bond Hedge on March 25, 2010 and April 5, 2010, respectively.

Under the terms of the original Warrants, the Company sold to affiliates of certain of the initial purchasers of the 4.50% cash convertible debentures warrants to acquire, at an exercise price of $27.03 per share, subject to anti-dilution adjustments, cash in an amount equal to the market value of up to 11.1 million shares of the Company's class A common stock. Each Warrant transaction is a separate transaction, entered into by the Company with each option counterparty, and is not part of the terms of the 4.50% debentures. The Warrants were sold for aggregate cash consideration of $54.1 million and $7.4 million on March 25, 2010 and April 5, 2010, respectively. On December 23, 2010, the Company amended and restated the original Warrants so that the holders would, upon exercise of the Warrants, no longer receive cash but instead would acquire up to 11.1 million shares of the Company's class A common stock.

The Bond He dge and Warrants described above represent a call spread overlay with respect to the 4.50% debentures. Assuming full performance by the counterparties, the transactions effectively reduce the Company's potential payout over the principal amount on the 4.50% debentures upon conversion of the 4.50% debentures.

The original CSO2015, which are indexed to the Company's class A common stock, are derivative instruments that require mark-to-market accounting treatment due to their cash settlement features until such transactions settle or expire. The initial fair value of the Bond Hedge of $75.2 million was classified as "Other long-term assets" and the initial fair value of the original Warrants of $61.5 million was classified as &ldq uo;Other long-term liabilities" in the Company's Consolidated Balance Sheet. As of January 2, 2011, the fair value of the Bond Hedge is $34.5 million, a decrease of $40.7 million. As of December 23, 2010, the date of the amendment and restatement of the Warrants, the fair value of the original Warrants was $30.2 million, a decrease of $31.3 million. As a result of the terms of the Warrants being amended and restated s o that they are settled in shares of the Company's class A common stock rather than in cash, the fair value as of December 23, 2010 of $30.2 million was reclassified from "Other long-term liabilities" to "Additional paid in capital" in the Company's Consolidated Balance Sheet. Further, the Warrants will not be subjected to mark-to-market accounting treatment subsequent to December 23, 2010. The change in fair value of the original CSO2015 resulted in a mark-to-market net non-cash loss of $9.4 million in "Gain on mark-to-market derivatives" in the Company's Consolidated Statement of Operations during fiscal 2010.

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

Significant inputs for the valuation of the Bond Hedge at the January 2, 2011 measurement date are as follows:

	Bond Hedge (1)	
Stock price	$ 12.83	
Exercise price	$ 22.53	
Interest rate	1.63	%
Stock volatility	49.80	%
Credit risk adj ustment	1.25	%
Maturity date	February 18, 2015	

(1) The valuation model utilizes these inputs to value the right but not the obligation to purchase one share at $22.53 for the Bond Hedge. The Company utilized a Black-Scholes valuation model to value the Bond Hedge. The underlying input assumptions were determined as follows:

(i) Stock price. The closing price of the Company's class A common stock on the last trading day of the quarter.
(ii) Exercise price. The exercise price of the Bond Hedge.
(iii) Interest rate. The Treasury Strip rate associated with the life of the Bond Hedge.
(iv) Stock volatility. The volatility of the Company's class A common stock over the life of the Bond Hedge.
(v) Credit risk adjustment. Represents the a verage of the credit default swap rate of the counterparties.

4.75% Debentures

In May 2009, the Company issued $230.0 million in principal amount of its 4.75% senior convertible debentures (4.75% debentures") and received net proceeds of $225.0 million, before payment of the net cost of the call spread overlay described below. Interest on the 4.75% debentures is payable on April 15 and October 15 of each year, which commenced O ctober 15, 2009. Holders of the 4.75% debentures are able to exercise their right to convert the debentures at any time into shares of the Company's class A common stock at a conversion price equal to $26.40 per share. The applicable conversion rate may adjust in certain circumstances, including upon a fundamental change, as defined in the indenture governing the 4.75% debentures. If not earlier converted, the 4.75% debentures mature on April 15, 2014. Holders may also require the Company to repurchase all or a portion of their 4.75% debentures upon a fundamental change at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as the Company's failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.75% debentures will have the right to declare all amounts then outstanding due and payable.

The 4.75% debentures are senior, unsecured obligations of the Company, ranking equally with all existing and future

senior unsecured indebtedness of the Company. The 4.75% debentures are effectively subordinated to the Company's secured indebtedness to the extent of the value of the related collateral and structurally subordinated to indebtedness and other liabilities of the Company's subsidiaries.

Call Spread Overlay with Respect to 4.75% Debentures (“CSO2014”)

Concurrent with the issuance of the 4.75% debentures, the Company entered into certain convertible debenture hedge transactions (the “Purchased Options& rdquo;) with affiliates of certain of the underwriters of the 4.75% debentures. The Purchased Options allow the Company to purchase up to 8.7 million shares of the Company's class A common stock and are intended to reduce the potential dilution upon conversion of the 4.75% debentures in the event that the market price per share of the Company's class A common stock at the time of exercise is greater than the conversion price of the 4.75% debentures. The Purchased Options will be settled on a net share basis. Each convertible debenture hedge transaction is a separate transaction, entered into by the Company with each option counterparty, and is not part of the terms of the 4.75% debentures. The Company paid aggregate consideration of $97.3 million for the Purchased Options on May 4, 2009. The exercise price of the Purchased Options is $26.40 per share of the Company's class A common stock, subject to adjustment for customary anti-dilution and other events.

The Purchased Options, which are indexed to the Company's class A common stock, were deemed to be mark-to-market derivatives during the one-day period in which the over-allotment option in favor of the 4.75% debenture underwriters was unexercised, resulting in a non-cash gain on Purchased Options of $21.2 million in the second quarter of fiscal 2009 in “Gain on mark-to-market derivatives” in the Company's Consolidated Statement of Operations.

The Company also entered into certain warrant transactions whereby the Company agreed to sell to affili ates of certain of the 4.75% debenture underwriters warrants to acquire up to 8.7 million shares of the Company's class A common stock. The warrants expire in 2014. Each warrant transaction is a separate transaction, entered into by the Company with each option counterparty, and is not part of the terms of the 4.75% debentures. Holders of the 4.75% debentures do not have any rights with respect to the warrants. The warrants were sold for aggregate cash consideration of $71.0 million on May 4, 2009. The exercise price of the warrants is $38.50 per share of the Company's class A common stock, subject to adjustment for customary anti-dilution and other events.

Other than the initial period before the exercise of the 4.75% debenture underwriters' over-allotmen t option, as described above, the CSO2014 are not subject to mark-to-market accounting treatment since they may only be settled by issuance of the Company's class A common stock. The Purchased Options and sale of warrants described above represent a call spread overlay with respect to the 4.75% debentures. Assuming full performance by the counterparties, the transactions effectively increase the conversion price of the 4.75% debentures from $26.40 to $38.50. The Company's net cost of the Purchased Options and sale of warrants for the CSO2014 was $26.3 million.

1.25% Debentures and 0.75% Debentures

In February 2007, the Company issued $200.0 million in principal amount of its 1.25% senior convertible debentures and received net proceeds of $194.0 million. During the fourth quarter of fiscal 2008, the Company received notices for the conversion of $1.4 million in principal amount of the 1.25% debentures which it settled for $1.2 million in cash and 1,000 shares of class A common stock. As of January 2, 2011, an aggregate principal amount of $198.6 million of the 1.25% debentures remain issued and outstanding. Interest on the 1.25% debentures is payable on February 15 and August 15 of each year, which commenced August 15, 2007. The 1.25% debentures mature on February 15, 2027. Holders may require the Company to repurchase all or a portion of thei r 1.25% debentures on each of February 15, 2012, February 15, 2017 and February 15, 2022, or if the Company experiences certain types of corporate transactions constituting a fundamental change, as defined in the indenture governing the 1.25% debentures. In addition, the Company may redeem some or all of the 1.25% debentures on or after February 15, 2012. The 1.25% debentures are convertible, subject to certain conditions, into cash up to the lesser of the principal amount or the conversion value. If the conversion value is greater than $1,000, then the excess conversion value will be convertible into the Company's class A common stock. The initial effective conversion price of the 1.25% debentures is $56.75 per share and is subject to customary adjustments in certain circumstances.

In July 2007, the Company issued $225.0 million in principal amount of its 0.75% senior convertible debentures and received net proceeds of $220.1 million. In fiscal 2009, the Company repurchased $81.1 million in principal amount of the 0.75% debentures for $75.6 million in cash. In fiscal 2010, the Company repurchased $143.8 million in principal amount of the 0.75% debentures for $143.8 million in cash, of which $143.3 million was pursuant to the contracted debenture holder put on August 2, 2010. As of January 2, 2011, an aggregate principal amount of $0.1 million of the 0.75% debentures remain issued and outstanding. Interest on the 0.75% debentures is payable on February 1 and August 1 of each year, which commenced

February 1, 2008. The 0.75% debentures mature on August 1, 2027. Holders of the remaining 0.75% debentures could require the Company to repurchase all or a portion of their debentures on each of August 1, 2015, August 1, 2020 and August 1, 2025, or if the Company was involved in certain types of corporate transactions constituting a fundamental change, as defined in the indenture governing the 0.75% debentures. In addition, the Company could redeem the remaining 0.75% debentures on or after August 2, 2010. The 0.75% debentures were classified as long-term liabilities and short-term liabilities in the Company's Consolidated Balance Sheets a s of January 2, 2011 and January 3, 2010, respectively, due to the ability of the holders to require the Company to repurchase its 0.75% debentures commencing on August 1, 2015 and August 2, 2010, respectively. The 0.75% debentures are convertible, subject to certain conditions, into cash up to the lesser of the principal amount or the conversion value. If the conversion value is greater than $1,000, then the excess conversion value will be convertible into cash, class A common stock or a combination of cash and class A common stock, at the Company's election. The initial effective conversion price of the 0.75% debentures is $82.24 per share and is subject to customary adjustments in certain circumstances.

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

If the closing price of the Company's class A common stock equals or exceeds 125% of the initial effective conversion price governing the 1.25% debentures and 0.75% debentures for 20 out of 30 consecutive trading days in the last month of the fiscal quarter then holders of the 1.25% debentures and 0.75% debentures have the right to convert the debentures any day in the following fiscal quarter. Because the closing price of the Company's class A common stock on at least 20 of the last 30 trading days during the fiscal quarters ending January 2, 2011 and January 3, 2010 did not equal or exceed 125% of the applicable conversion price for its 1.25% debentures and 0.75% debentures, holders of the 1.25% debentures and 0.75% debentures are and were unable to exercise their right to convert the debentures, based on the market price conversion trigger, on any day in the first quarters of fiscal 2011 and 2010. Accordingly, the Company classified its 1.25% debentures and 0.75% debentures as long-term in its Consolidated Balance Sheet as of January 2, 2011 and its 1.25% debentures as long-term in its Consolidated Balance Sheet as of January 3, 2010. This test is repeated each fiscal quarter, therefore, if the market price conversion trigger is satisfied in a subsequent quarter, the 1.25% debentures and 0.75% debentures may be reclassified as short-term.

The 1.25% debentures and 0.75% debentures are subject to accounting guidance for convertible debt instruments that may be settled in cash upon conversion since the debentures must be settled at least partly in cash upon conversion. The Company estimated that the effective interest rate for similar debt without the conversion feature was 9.25% and 8.125% on the 1.25% debentures and 0.75% debentures, respectively. The principal amount of the outstanding debentures, the unamortized discount and the net carrying value as of January 2, 2011 was $198.7 million, $16.6 million and $182.1 million, respectively, and as of January 3, 2010 was $342.5 million, $35.9 million and $306.6 million, resp ectively.

The Company recognized $15.8 million, $21.9 million and $16.9 million in non-cash interest expense during fiscal 2010, 2009 and 2008, respectively, related to the 1.25% debentures and 0.75% debentures. As of January 2, 2011 the remaining weighted average period over which the unamortized debt discount associated with the 1.25% debentures will be recognized is as follows:

(In thousands)		Debt Discount
2011	$	14,687
2012		1,898
	$	16,585

February 2007 Amended and Restated Share Lending Arrangement and July 2007 Share Lending Arrangement

Concurrent with the offering of the 1.25% debentures, the Company lent 2.9 million shares of its class A common stock to LBIE, an affiliate of Lehman Brothers, one of the underwriters of the 1.25% debentures. Concurrent with the offering of the 0.75% debentures, the Company also lent 1.8 million shar es of its class A common stock to CSI, an affiliate of Credit Suisse Securities (USA) LLC ("Credit Suisse"), one of the underwriters of the 0.75% debentures. The loaned shares are to be used to facilitate the establishment by investors in the 1.25% debentures and 0.75% debentures of hedged positions in the Company's class A common stock. Under the share lending agreement, LBIE had the ability to offer the shares that remain in LBIE's possession to facilitate hedging arrangements for subsequent purchasers of both the 1.25% debentures and 0.75% debentures and, with the Company's consent, purchasers of securities the Company may issue in the future. The Company did not receive

any proceeds from these offerings of class A common stock, but received a nominal lending fee of $0.001 per share for each share of common stock that is loaned under the share lending agreements described below.

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

Any shares loaned to LBIE and CSI are considered issued and outstanding for corporate law purposes and, accordingly, the holders of the borrowed shares have all of the rights of a holder of the Company's outstanding shares, including the right to vote the shares on all matters submitted to a vote of the Company's stockholders and the right to receive any dividends or other distributions that the Company may pay or make on its outstanding shares of class A common stock. However, LBIE and CSI agreed to pay to the Company an amount equal to any dividends or other distributions that the Company pays on the borrowed shares. The shares are listed for trading on the Nasdaq Global Select Market.

While the shar e lending agreement does not require cash payment upon return of the shares, physical settlement is required (i.e., the loaned shares must be returned at the end of the arrangement). In view of this share return provision and other contractual undertakings of LBIE and CSI in the share lending agreement, which have the effect of substantially eliminating the economic dilution that otherwise would result from the issuance of the borrowed shares, historically the loaned shares were not considered issued and outstanding for the purpose of computing and reporting the Company's basic and diluted weighted average shares or earnings per share. However, on September 15, 2008, Lehman filed a petition for protection under Chapter 11 of the U.S. bankruptcy code, and LBIE commenced administration proceedings (analogous to bankruptcy) in the United Kingdom. Notwithstanding the commencement of administrative proceeding, shares loaned under the arrangement with LBIE were not returned as required under the agreement. After r eviewing the circumstances of the Lehman bankruptcy and LBIE administration proceedings, the Company began to reflect the 2.9 million shares lent to LBIE as issued and outstanding starting on September 15, 2008, the date on which LBIE commenced administration proceedings, for the purpose of computing and reporting the Company's basic and diluted weighted average shares and earnings per share.

The Company filed a claim in the LBIE proceeding for $240.9 million and a corresponding claim in the Lehman Chapter 11 proceeding under Lehman's guaranty of LBIE's obligations. On December 16, 2010, the Company entered into an assignment agreement with Deutsche Bank under which the Company assigned to Deutsche Bank its claims against LBIE and Lehman in connection with the share lending arrangement. Under the assignment agreement, Deutsche Bank paid the Company $24.0 million for the claims on December 16, 2010, and the Company may receive, upon the final allowance or admittance of the claims in the U.K. and U.S. proceedings, an additional payment for the claims. The Company cannot predict the amount of any such payment for the claims and cannot guarantee that it will receive any additional payment for the claims. Under the assignment agreement, rights to any shares lent to LBIE, which were not returned as required pursuant to the terms of the original agreement, were assigned to Deutsche Bank.

The shares lent to CSI will continue to be excluded for the purpose of computing and reporting the Company's b asic and diluted weighted average shares or earnings per share. If Credit Suisse or its affiliates, including CSI, were to file bankruptcy or commence similar administrative, liquidating, restructuring or other proceedings, the Company may have to consider 1.8 million shares lent to CSI as issued and outstanding for purposes of calculating earnings per share.

In the first quarter of fiscal 2010, the Company adopted new accounting guidance that requires its February 2007 amended and restated share lending arrangement and July 2007 share lending arrangement to be valued and amortized as interest expense in its Consolidated Statements of Operations in the same manner as debt issuance costs. In addition, in the event that counterparty default under the share l ending arrangement becomes probable, the Company is required to recognize an expense in its Consolidated Statement of Operations equal to the then fair value of the unreturned loaned shares, net of any probable recoveries. The Company estimated that the imputed share lending costs (also known as issuance costs) associated with the 2.9 million shares and 1.8 million shares loaned to LBIE and CSI, respectively, totaled $1.8 million and $0.7 million, respectively. The new accounting guidance resulted in a significant non-cash loss due to Lehman filing a petition for protection under Chapter 11 of the U.S. bankruptcy code on September 15, 2008, and LBIE commencing administration proceedings (analogous to bankruptcy) in the United Kingdom. The then fair value of the 2.9 million shares of the Company's class A common stock loaned and unreturned by LBIE was $213.4 million, and amount recovered under the assignment agreement on

December 16, 2010 was $24.0 million, which was reflected in the third quarter of fiscal 2008 and fourth quarter of fiscal 2010, respectively, as "Gain (loss) on share lending arrangement" in the Company's Consolidated Statements of Operations (see Note 1). The Company presents proceeds received for transactions involving its class A common stock as financing cash flows.

The Company recognized $0.5 million, $0.7 million and $0.6 million in non-cash interest expense during fiscal 2010, 2009 and 2008, respectively, related to the share lending arrangements. As of January, 2, 2011 the remaining weighted average period over which the unamortized issuance costs will be recognized is as follows:

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(In thousands)	Issuance Costs
2011	$ 362
2012	45
	$ 407

Debt Facility Agreement with the Malaysian Government

On December 18, 2008, AUOSP, then a subsidiary of the Company, entered into a facility agreement with the Malaysian government. In connection with the facility, AUOSP executed a debenture and deed of assignment in favor of the Malaysian governmen t, granting a security interest in a deposit account and all assets of AUOSP to collateralize its obligations under the facility. As of January 3, 2010, the Company had outstanding Malaysian Ringgit 750.0 million ($219.0 million based on the exchange rates as of January 3, 2010) under the facility to finance the construction of FAB3 in Malaysia. The Company deconsolidated AUOSP in the third quarter of fiscal 2010, and the debt facility has been retained by AUOSP. The Company does not guarantee or collateralize the debt facility held by AUOSP (see Note 9).

Project Loans

In order to facilitate the sale of certain solar parks, the Company obtains non-recourse project loans which permit customers to assume the loans at the time of sale. These loans are contemplated as part of the structure of the sales transaction and not guaranteed or otherwise supported by SunPower. In instances where the debt is issued as a form of pre-established customer financing, subsequent debt assumption is reflected as a financing outflow and operating inflow for purposes of the statement of cash flows to reflect the substance of the assumption as a facilitation of customer financing from third-party lenders.

On May 20, 2010, Centauro PV S.r.l. (&ld quo;Centauro"), a subsidiary of the Company, entered into a credit facility agreement with Barclays for the 8 MWac Centauro Photovoltaic Park that was being constructed in Montalto di Castro, Italy. In connection with the credit facility, Centauro executed various deeds of assignment in favor of Barclays, granting it a security interest in substantially all assets and future cash flows of Centauro. Proceeds from issuance of project loans, net of issuance costs, were Euro 41.0 million (or $51.2 million) in contemplation of the definitive sale agreement dated August 8, 2010. The sale of Centauro closed on October 1, 2010 and included all related assets and liabilities, including outstanding debt of Euro 42.0 million (or $57.7 million).

On November 26, 2010, Andromeda PV S.r.l. ("Andromeda"), a subsidiary of the Company, entered into loan agreements with a consortium of lenders ("Andromeda Lenders") for the issuance of bonds ("Class A1 Notes and Class A2 Notes") in connection with a solar park in Montalto di Castro, Italy which totaled 44 MWac. Proceeds from the issuance of the bonds, net of issuance costs, were Euro 200.7 million (or $262.3 million), which were received on December 15, 2010 in contemplation of the closing of the sale of Andromeda. The sale of Andromeda on December 27, 201 0 included all related assets and liabilities, including outstanding debt of Euro 211.0 million (or $275.7 million)in support of payments on Class A1 Notes and Class A2 Notes.

In addition to the loans issued in contemplation of the sale of the solar parks, the Company also sold one solar park which had been in operation by SunRay. In connection with its acquisition of SunRay, the Company consolidated the entity which held the project debt of Cassiopea, which was provided by a consortium of lenders ("Cassiopea Lenders"), to finance the construction and operations of the 20 MWac solar power plant in Montalto di Cas tro, Italy. In connection with the credit agreement, Cassiopea executed various deeds of assignment in favor of the Cassiopea Lenders, granting them a security interest in substantially all assets and future cash flows of Cassiopea. The sale of Cassiopea on August 5, 2010, which is reflected as a discontinued operation, included all related assets and liabilities, including outstanding debt of Euro 116.4 million (or $153.4 million) (see Note 4).

Concurrent with entering into the agreements above, Cassiopea and Centauro entered into interest rate swaps with the

Cassiopea Lenders and Barclays, respectively, to mitigate the interest rate risk on the debt. The interest rate swaps are derivative instruments which are fair valued utilizing Level 2 inputs because valuations are based on quoted prices in markets that are not active and for which all significant inputs are observable, directly or indirectly. Valuation techniques utilize a variety of inputs, including contractual terms, market prices, yield curves, credit curves and measures of volatility. Such inputs can generally be verified and selections do not involve significant mana gement judgment. Prior to the sale of Cassiopea and Centauro on August 5, 2010 and October 1, 2010, respectively, which included all related assets and liabilities, including interest rate swaps, the Company had not designated the interest rate swaps as hedging instruments. For derivative instruments not designated as hedging instruments, the Company recognizes changes in the fair value in earnings in the period of change. Losses on the interest rate swaps associated with the Cassiopea project debt were included in "Income from discontinued operations, net of taxes" in the Company's Consolidated Statement of Operations. Losses on the interest rate swaps associated with the Centauro project debt were included in "Interest expense" in the Company's Consolidated Statement of Operations. As of January 2, 2011, the Company had no outstanding interest rate swap contracts.

Piraeus Bank Loan

On March 26, 2010, the Company closed its acquisition of SunRay and its subsidiaries, including Energy Ray Anonymi Energeiaki Etaireia ("Energy Ray"). On October 22, 2008, Energy Ray entered into a current account overdraft agreement with Piraeus Bank to obtain the funds necessary for pre-construction activities in Greece. In connection with the agreement, Energy Ray and its subsidiaries executed various account pledge agreements in favor of Piraeus Bank, granting them a security interest in cash deposit accounts where the proceeds of the loan were on deposit. The agreement's obligations were those of Energy Ray and its subsidiaries only and were non-recourse to the Company. On August 12, 2010, Energy Ray repaid its current account overdraft balance of Euro 26.7 million (or $33.6 million) in full with Piraeus Bank which eliminated the need to provide cash collateral.

Mortgage Loan Agreement with IFC

On May 6, 2010, SPML and SPML Land, Inc. ("SPML Land"), both subsidiaries of the Company, entered into a mortgage loan agreement with IFC. Under the loan agreement, SPML may borrow u p to $75.0 million from IFC, after satisfying certain conditions to disbursement, and SPML and SPML Land pledged certain assets as collateral supporting SPML's repayment obligations. The Company guaranteed SPML's obligations to IFC.

As of January 2, 2011, SPML had outstanding $50.0 million under the mortgage loan agreement which is classified as "Long-term debt" in the Company's Consolidated Balance Sheet. A total of $25.0 million remains available for borrowing under the mortgage loan agreement. Under the loan agreement, SPML may borrow up to $75.0 million during the first two ye ars, and SPML shall repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. SPML shall pay interest of LIBOR plus 3% per annum on outstanding borrowings, and a front-end fee of 1% on the principal amount of borrowings at the time of borrowing, and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed. SPML may prepay all or a part of the outstanding principal, subject to a 1% prepayment premium. The loan agreement includes conditions to disbursements, representations, covenants, and events of default customary for financing transactions of this type. Covenants in the loan agreement include, but are not limited to, restrictions on SPML's ability to issue dividends, incur indebtedness, create or incur liens on assets, and make loans to or investments in third parties.

Loan Agreement with CEDA

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

Concurrently with the execution o f the loan agreement and the issuance of the Bonds by CEDA, the Company entered into a reimbursement agreement with Barclays pursuant to which the Company caused Barclays to deliver to Wells Fargo a direct-pay irrevocable letter of credit in the amount of $30.4 million (an amount equal to the principal amount of the Bonds

plus 38 days' interest thereon). The letter of credit wil l permit Wells Fargo to draw funds to pay the Company's obligations to pay principal and interest on the Bonds and, in the event the Bonds are redeemed or tendered for purchase, the redemption price or purchase price thereof. Under the reimbursement agreement, the Company deposited $31.8 million in a sequestered account with Barclays, subject to an account control agreement, which funds collateralized the letter of credit pursuant to a cash collateral account pledge agreement entered into by the Company and Barclays on December 29, 2010. The letter of credit will expire on June 29, 2011. On June 22, 2011, if the Company has not previously converted the Bonds into fixed-rate bonds or extended the life of the letter of credit, the letter of credit will be drawn upon to pay off the Bonds, with the deposit used to reimburse Barclays. Any excess amount in the deposit account would be delivered to the Company. On December 28 and 29, 2010, the Company entered into additional agreements ancillary to the loan agreeme nt, promissory note and reimbursement agreement pursuant to terms customary for financing transactions of this type.

Term Loan with Union Bank

On April 17, 2009, the Company entered into a loan agreement with Union Bank under which the Company borrowed $30.0 million for a term of three years at an interest rate of LIBOR plus 2%. As of January 3, 2010, the outstanding loan balance was $30.0 million of which $11.3 million and $18.7 million had been classified as "current portion of long-term debt" and "Long-term debt," respectively, in the Company's Consolidated Balance Sheet, based on projected quarterly installments commencing June 30, 2010. On April 9, 2010, the Company repaid all principal and interest outstanding under the term loan with Union Bank.

Revolving Credit Facility with Union Bank

On October 29, 2010, th e Company entered into a revolving credit facility with Union Bank. Until the maturity date of October 28, 2011, the Company may borrow up to $70.0 million under the revolving credit facility. Amounts borrowed may be repaid and reborrowed until October 28, 2011. The revolving credit facility may be increased up to $100.0 million at the option of the Company and upon receipt of additional commitments from lenders. As security under the revolving credit facility, the Company pledged its holding of 19.4 million shares of common stock of Woongjin Energy to Union Bank (see Note 9). On October 29, 2010, the Company drew down $70.0 million under the revolving credit facility which is classified as "Short-term debt" in the Company's Consolidated Balance Sheet as of January 2, 2011.

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

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

The obligations of the Company under the revolving credit facility are guaranteed by its subsidiaries SunPower North America, LLC and SunPower Corporation, Systems. The revolving credit facility is subject to continuing and customary representations and warranties, and events of default customary for financing transactions of this type, including a material adverse effect clause. On January 11, 2011, the Company repaid $65.0 million plus interest to date under the revolving credit facility with Union Bank.

Revolving Credit Facility with Société Générale, Milan Branch ("Société Générale")

On November 23, 2010, the Company entered into a revolving credit facility with Société Générale under which the Company may borrow up to Euro 75.0 million from Société Générale until April 23, 2011. Amounts borrowed may be repaid and reborrowed until April 23, 2011. Interest periods are monthly. All amounts borrowed are due on May 23, 2011. On November 26, 2010 the Company drew down Euro 75.0 million ($98.0 million based on the exchange rates as of January 2, 2011) under the revolving credit facility and as of January 2, 2011 is classified as "Short-term debt" in the Company's Consolidated Balance Sheet. Borrowings under the revolving credit facility are not secured. The Company is required to pay interest on outstanding borrowings of (1) EURIBOR plus 2.20% per annum until and including February 23, 2011, and (2) EURIBOR plus 3.25% per annum after February 23, 2011; a front-end fee of 0.50% on the available borrowing; and a

commitment fee of 1% per annum on funds available for borrowing and not borrowed. The revolving credit facility is subject to continuing and customary representations and warranties, and events of de fault customary for financing transactions of this type, including a material adverse effect clause. On January 25, 2011 the Company repaid Euro 70.0 million ($91.5 million based on the exchange rates as of January 2, 2011) on the borrowings plus interest to date under the revolving credit facility with Société Générale.

Letter of Credit Facility with Deutsche Bank

On April 12, 2010, subsequently amended on December 22, 2010, the Company and certain subsidiaries of the Company entered into a letter of credit facility with Deutsche Bank, as issuing bank and as administrative agent, and certain financial institutions. The letter of credit facility provides for the issuance, upon request by the Company, of letters of credit by the issuing bank in order to support obligations of the Company, in an aggregate amount not to exceed $375.0 million (or up to $400.0 million upon the agreement of the parties). Each letter of credit issued under the letter of credit facility must have an expiration date no later than the earlier of the second anniversary of the issuance of that letter of credit and April 12, 2013, except that: (i) a letter of credit may provide for automatic renewal in one-year periods, not to extend later than April 12, 2013; and (ii) up to $100.0 million in aggregate amount of letters of credit, if cash-collateralized, may have expiration dates no later than the fifth anniversary of the closing of the letter of credit facility. For outstanding letters of credit under the le tter of credit facility the Company pays a fee of 0.50% plus any applicable issuance fees charged by its issuing and correspondent banks. The Company also pays a commitment fee of 0.20% on the unused portion of the facility.

In connection with the entry into the letter of credit facility, the Company entered into a cash security agreement with Deutsche Bank, granting a security interest in a collateral account to collateralize its obligations in connection with any letters of credit that might be issued under the letter of credit facility. The Company is required to maintain in the collateral account cash and securities equal to at least 50% of the dollar-denominated obligations under the issued letters of credit, and 55% of the non-dollar-denominated obli gations under the issued letters of credit. The obligations of the Company are also guaranteed by certain subsidiaries of the Company, who, together with the Company, have granted a security interest in certain of their accounts receivable and inventory to Deutsche Bank to collateralize the Company's obligations. The letter of credit facility includes representations, covenants, and events of default customary for financing transactions of this type.

As of January 2, 2011, letters of credit issued under the letter of credit facility totaled $326.9 million and were collateralized by short-term and long-term res tricted cash of $55.7 million and $118.3 million, respectively, on the Consolidated Balance Sheet.

Amended Credit Agreement with Wells Fargo

On April 12, 2010, the Company entered into an amendment of its credit agreement with Wells Fargo. On April 26, 2010 and November 29, 2010, letters of credit under the uncollateralized letter of credit subfeature and collateralized letter of credit facility, respectively, expired and as of January 2, 2011 all outstanding letters of credit had been moved to the Deutsche Bank letter of credit facility. Letters of credit totaling $150.7 million were issued by Wells Fargo under the collateralized letter of credit facility as of January 3, 2010 and were fully collateralized by short-term and long-term restricted cash of $61.9 million and $99.7 million, respectively, on the Consolidated Balance Sheet. The Company paid a fee of 0.2% to 0.4% depending on maturity for outstanding letters of credit under the collateralized letter of credit facility.

In connection with the amended credit agreement, the Company entered into a security agreement with Wells Fargo, granting a security interest in a securities account and a deposit account to collateralize its obligations in connection with any letters of credit that might be issued under the collateralized letter of credit facility. Certain subsidiaries of the Company also entered into an associated continuing guaranty with Wells Fargo. The terms of the amended credit agreement include certain conditions to borrowings, representations and covenants, and events of default customary for financing transactions of this type.

Note 11. FOREIGN CURRENCY DERIVATIVES

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

The Company is required to recognize derivative instruments as either assets or liabilities at fair value in its Consolidated Balance Sheets. The Company utilizes the income approach and mid-market pricing to calculate the fair value of its option and forward contracts based on market volatilities, spot rates, interest differentials and credit default swaps rates from published sources. The following table presents information about the Company's hedge instruments measured at fair value on a recurring basis as of January 2, 2011 and January 3, 2010, all of which utilize Level 2 inputs under the fair value hierarchy:

(In thousands)	Balance Sheet Classification	January 2, 2011	January 3, 2010
Assets	Prepaid expenses and other current assets		
Derivatives designated as hedging instruments:			
Foreign currency option contracts		$ 16,432	$ —
Foreign currency forward exchange contracts		16,314	—
		$ 32,746	$ —
Derivatives not designated as hedging instruments:			
Foreign currency option contracts		$ —	$ 4,936
Foreign currency forward exchange contracts		3,208	64
		$ 3,208	$ 5,000
Liabilities	Accrued liabilities		
Derivatives designated as hedging instruments:			
Foreign currency option contracts		$ 2,909	$ —
Foreign currency forward exchange contracts		3,295	—
		$ 6,204	$ —
Derivatives not designated as hedging instruments:			
Foreign currency option contracts		$ —	$ —
Foreign currency forward exchange contracts		4,060	27,354
		$ 4,060	$ 27,354

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

The following tables summarize the amount of unrealized gain (loss) recognized in "Accumulated other comprehensive income (loss)" ("OCI") in "Stockholders' equity" in the Consolidated Balance Shee ts:

	Year Ended	
(In thousands)	January 2, 2011	January 3, 2010
Derivatives designated as cash flow hedges:		
Unrealized gain (loss) recognized in OCI (effective portion)	$ 56,755	$ (14,497)
Less: Gain reclassified from OCI to revenue (effective portion)	(46,109)	—
Add: Loss reclassified from OCI to cost of revenue (effective portion)	12,478	29,425
Net gain on derivatives as reflected in the Consolidated Statements of Stockholders' Equity and Comprehensive Income	$ 23,124	$ 14,928

The following table summarizes the amount of gain (loss) recognized in "Other, net" in the Consolidated Statements of Operations in fiscal 2010 and 2009:

(In thousands)	Year Ended January 2, 2011	Year Ended January 3, 2010
Derivatives designated as cash flow hedges:		
Loss recognized in "Other, net" on derivatives (ineffective portion and amount excluded from effectiveness testing) (1)	$ (25,659)	$ (3,964)
Derivatives not designated as hedging instruments:		
Gain (loss) recognized in "Other, net"	$ 36,607	$ (24,073)

(1) The amount of loss recognized related to the ineffective portion of derivatives was insignificant.

Foreign Currency Exchange Risk

Designated Derivatives Hedging Cash Flow Exposure

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

As of January 2, 2011, the Company had designated outstanding hedge option contracts and forward contracts with an aggregate notional value of $358.9 million and $534.7 million, respectively. The maturity dates of the outstanding contracts as of January 2, 2011 range from January to December 2011. During the fourth quarter of fiscal 2010, the Company entered into additional designated cash flow hedges to protect certain portions of its anticipated non-functional currency cash flows related to foreign denominated revenues. The Company designates either gross external or intercompany revenue up to its net economic exposure. These derivatives have a maturity of one year or less and consist of foreign currency option and forward contracts. The effective portion of these cash flow hedges are reclassified into revenue when third party revenue is recognized in the Consolidated Statements of Operations.

The Company expects to reclassify substantially all of its net gains related to these option and forward contracts that are included in accumulated other comprehensive income as of January 2, 2011 to revenue in fiscal 2011. Cash flow hedges are tested for effectiveness each period based on changes in the spot rate applicable to the hedge contracts against the present value period to period change in spot rates applicable to the hedged item using regression analysis. The change in the time value of the options as well as the cost of forward points (the difference between forward and spot rates at inception) on forward exchange contracts are excluded from the Company's assessment of hedge effectiveness. The premium paid or time value of an option whose strike price is equal to or greater than the market price on the date of purchas e is recorded as an asset in the Consolidated Balance Sheets. Thereafter, any change to this time value and the cost of forward points is included in "Other, net" in the Consolidated Statements of Operations.

Non-Designated Derivatives Hedging Cash Flow Exposure

As of January 3, 2010, the Company had non-designated outstanding cash flow hedge option contracts and forward contracts with an aggregate notional value of $228.1 million and $23.8 million, respectively. These non-designated derivatives were initially established as effective hedges. Effective November 20, 2009, these hedges were de-designated when they had aggregate notional values of $132.1 million. As of January 2, 2011, the Company had no non-designated outstanding hedge option contracts and forward contracts that were hedging the cash flow exposure.

Non-Designated Derivatives Hedging Transaction Exposure

Other derivatives not designated as hedging instruments consist of forward contracts used to hedge remeasurement of foreign currency denominated monetary assets and liabilities primarily for intercompany transactions, receivables from customers, prepayments to suppliers and advances received from customers, and payables to third parties. Changes in exchange rates between the Company's subsidiaries' functional currencies and the currencies in which these assets and liabilities are denominated can create fluctuations in the Company's reported consolidated financial position, results of operations and cash flows. The Company enters into forward contracts, which are originally designated as cash flow hedges, and de-designates

them upon recognition of the anticipated transaction to protect resulting non-functional currency monetary assets. These forward contracts as well as additional forward contracts are entered into to hedge foreign currency denominated monetary assets and liabilities against the short-term effects of currency exchange rate fluctuations. The Company records its derivative contracts that are not designated as hedging instruments at fair value with the related gai ns or losses recorded in "Other, net" in the Consolidated Statements of Operations. The gains or losses on these contracts are substantially offset by transaction gains or losses on the underlying balances being hedged. As of January 2, 2011 and January 3, 2010, the Company held forward contracts with an aggregate notional value of $934.8 million and $442.6 million, respectively, to hedge balance sheet exposure. These forward contracts have maturities of three month or less.

Credit Risk

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

Note 12. INCOME TAXES

The geographic distribution of income (loss) from continuing operations before income taxes and equity in earnings of unconsolidated investees and the components of provision for income taxes are summarized below:

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	Year Ended		
(In thousands)	January 2, 2011	January 3, 2010	December 28, 2008
Geographic distribution of income (loss) from continuing operations before income taxes and equity in earnings of unconsolidated investees:			
U.S. loss	$ (33,795)	$ (38,684)	< div style="overflow:hidden;font-size:10pt;"> $ (215,241)
Non-U.S. income	217,208	82,304	117,337
Income (loss) from continuing operations before income taxes and equity in earnings of unconsolidated investees	$ 183,413	$ 43,620	$ (97,904)
Provision for income taxes:			
Current tax benefit (expense)			
Federal	$ (1,490)	$ (14,263)	$ (40,244)
State	2,683	(37)	(9,944)
Foreign	(25,067)	(7,188)	(16,121)
Total current tax expense	(23,874)	(21,488)	(66,309)
Deferred tax benefit			
Federal	—	—	22,751
State	—	—	2,600
Foreign	499	460	340
Total deferred tax benefit	499	< 460/font>	25,691
Provision for income taxes	$ (23,375)	$ (21,028)	$ (40,618)

The provision for income taxes differs from the amounts obtained by applying the statutory U.S. federal tax rate to income before taxes as shown below:

(In thousands)	Year Ended January 2, 2011		Year Ended January 3, 2010		Year Ended December 28, 2008	
Statutory rate	35	%	35	%	35	%
Tax benefit (expense) at U.S. statutory rate	$ (64,195)		$ (15,267)		$ 34,266	
Foreign rate differential	48,051		16,295		19,252	
State income taxes, net of benefit	3,349		(929)		(7,344)	
Share lending arrangement	8,400		—		(74,680)	
Tax credits (research and development/investment tax credit)	642		5,266		9,584	
Deferred taxes not benefitted	(19,184)		(25,973)		(21,184)	
Other, net	(438)		(420)		(512)	
Total	$ (23,375)		$ (21,028)		$ (40,618)	

(In thousands)	As of January 2, 2011	As of January 3, 2010
Deferred tax assets:		
Net operating loss carryforwards	$ 983	$ 983
Research and development credit and California manufacturing credit carryforwards	2,891	1,865
Reserves and accruals	33,951	33,268
Foreign currency derivatives unrealized losses	—	1,145
Stock-based compensation stock deductions	66,850	46,284
Total deferred tax asset	104,675	83,545
Valuation allowance	(49,877)	(42,163)
Total deferred tax asset, net of valuation allowance	54,798	41,382
Deferred tax liabilities:		
Foreign currency derivatives unrealized gains	(2,235)	—
Other intangible assets and accruals	(49,693)	(35,971)
Equity interest in Woongjin Energy	(5,600)	(5,600)
Total deferred tax liabilities	(57,528)	(41,571)
Net deferred tax liability	$ (2,730)	$ (189)

As of January 2, 2011, the Company had California state net operating loss carryforwards of approximately $27.6 million for tax purposes, of which $10.5 million relate to stock deductions that when realized will benefit equity. These California net operating loss carryforwards will expire at various dates from 2011 to 2017. The Company also had research and development credit carryforwards of approximately $4.0 million for federal tax purposes and $4.3 million for state tax purposes. The Company's ability to utilize a portion of the net operating loss carryforwards is dependent upon the Company being able to generate taxable income in future periods and may be limited due to restrictions imposed on utilization of net operating loss and credit carryforwards under federal and state laws upon a change in ownership, such as the transaction with Cypress.

The Company is subject to tax holidays in the Philippines where it manufactures its solar power products. Th e tax holidays are scheduled to expire within the next several years beginning in 2011, and the Company has applied for tax extensions. Tax holidays in the Philippines reduce the Company's tax rate to 0% from 30%. Tax savings associated with the Philippines tax holidays were approximately $11.8 million, $11.1 million and $10.2 million in fiscal 2010, 2009 and 2008, respectively, which provided a diluted net income (loss) per share benefit of $0.11, $0.12 and $0.13, respectively.

The Company has a tax ruling in Switzerland where it sells its solar power products. The ruling in Switzerland reduces the Company's tax rate to 11.5% from approximately 24.2%. Tax savings associated with this ruling was approximately $1.6 million, $0.4 million an d zero in fiscal 2010, 2009 and 2008, respectively, which provided a diluted net income (loss) per share benefit of $0.02 in fiscal 2010 and zero in both fiscal 2008 and 2009. This current tax ruling expires at the end of 2015.

As of January 2, 2011, the Company&rs quo;s foreign subsidiaries have accumulated undistributed earnings of approximately $445.5 million that are intended to be indefinitely reinvested outside the United States and, accordingly, no provision for U.S. federal and state tax has been made for the distribution of these earnings. At January 2, 2011, the amount of the unrecognized deferred tax liability on the indefinitely reinvested earnings was $84.6 million.

Unreco gnized Tax Benefits

Current accounting guidance contains a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon ultimate settlement.

A reconciliation of the beginning and ending amounts of unrecognized tax benefits during fiscal 2010, 2009 and 2008 is as follows:

	Year Ended		
(In thousands)	**January 2, 2011**	**January 3, 2010**	**December 28, 2008**
Balance, beginning of year	$ 13,660	$ 13,470	$ 4,698
Additions for tax positions related to the current year	5,319	3,692	8,772
Additions for tax positions from prior years	5,092	—	—
Reductions for tax positions from prior years/statute of limitations expirations	(422)	(3,502)	—
Balance at the end of the period	$ 23,649	$ 13,660	$< /td> 13,470

Management believes that events that could occur in the next 12 months and cause a change in unrecognized tax benefits include, but are not limited to, the following:

- commencement, continuation or completion of examinations of the Company’s tax returns by the U.S. or foreign taxing authorities; and
- expiration of statutes of limitation on the Company’s tax returns.

The calculation of unrecognized tax benefits involves dealing with uncertainties in the application of complex global tax regulations. Uncertainties include, but are not limited to, the impact of legislative, regulatory and judicial developments, transfer pricing and the application of withholding taxes. Management regularly assesses the Company’s tax positions in light of legislative, bilateral tax treaty, regulatory and judicial developments in the countries in which the Company does business. Management determined that an estimate of the range of reasonably possible change in the amounts of unrecognized tax benefits within the next 12 months cannot be made.

The Company’s valuation allowance is related to deferred tax assets in the United States, and was determined by assessing both positive and negative evidence. When determining whether it is more likely than not that deferred assets are recoverable, with such assessment being required on a jurisdiction by jurisdiction basis, management believes that sufficient uncertainty exists with regard to the realizability of these assets such that a valuation allowance is necessary. Factors considered in providing a valuation allowance include the lack of a significant history of consistent profits, the lack of consistent profitability in the solar industry, and the lack of carryback capacity to realize these assets, and other factors. Based on the absence of sufficient positive objective evidence, management is unable to assert that it is more like ly than not that the Company will generate sufficient taxable income to realize these remaining net deferred tax assets. Should the Company achieve a certain level of profitability in the future, it may be in a position to reverse the valuation allowance which would result in a non-cash income statement benefit. Additionally, the change in valuation allowance for fiscal 2010, 2009 and 2008 was $7.7 million, $32.2 million and $3.9 million, respectively.

Classification of Interest and Penalties

The Company accrues interest and penalties on tax contingencies which are classified as “Provision for income taxes” in the Consolidated Statements of Operations. Accrued interest as of January 2, 2011 and January 3, 2010 was approximately $1.2 million and $0.8 million, respectively. Accrued penalties were not material for any of the periods presented.

Tax Years and Examination

The Company files tax returns in each jurisdiction in which it is registered to do business. In the U.S. and many of the state jurisdictions, and in many foreign countries in which the Company files tax returns, a statute of limitations peri od exists. After a statute of limitations period expires, the respective tax authorities may no longer assess additional income tax for the expired period. Similarly, the Company is no longer eligible to file claims for refund for any tax that it may have overpaid. The following table summarizes the Company's major tax jurisdictions and the tax years that remain subject to examination by these jurisdictions as of January 2, 2011:

Tax Jurisdictions	Tax Years
United States	2006 and onward
California	2005 and onward
Switzerland	2005 and onward
Philippines	2005 and onward

Additionally, the 2005 U.S. corporate tax return and 2004 and prior California tax returns are not open for assessment. The tax authorities can adjust net operating loss and research and development carryovers that were generated.

In January 2010, Cypress was notified by the IRS that it intends to examine Cypress's corporate income tax filings for the tax years ended in 2006, 2007 and 2008. SunPower was included as part of Cypress's federal consolidated group in 2006 and part of 2007. As of January 2, 2011, Cypress has not notified the Company of any adjustments to the tax liabilities that have been proposed by the IRS. However, the IRS has not completed its examination and there can be no assurance that there will be no material adjustments upon completion of their review. Additionally, while years prior to fiscal 2006 for Cypress's U.S. corporate tax return are not open for assessment, the IRS can adjust net operating loss and research and development carryovers that were generated in prior years and carried forward to fiscal 2006 and subsequent years. If the IRS sustains tax assessments against Cypress fo r years in which SunPower was included in Cypress's consolidated federal tax return, SunPower may be obligated to indemnify Cypress under the terms of the tax sharing agreement.

The Swiss federal authorities are currently examining the Company's 2009 and 2008 federal income tax returns. The Company does not expect the examination to result in a material assessment outside of existing reserves. If a material assessment in excess of current reserves results, the amount that the assessment exceeds current reserves will be a current period change to earnings.

Note 13. PREFERRED STOCK AND COMMON STOCK

Preferred Stock

At January 2, 2011, the Company was authorized to issue approximately 10.0 million shares of $0.001 par value preferred stock. As of January 2, 2011 and January 3, 2010, the Company had no preferred stock issued and outstanding.

The Company has a rights agreement (the "Rights Agreement") with Computershare Trust Company, N.A., as rights agents (the "Rights Agent"), which was entered into on August 12, 2008. In circumstances defined in the Rights Agreement, the Rights Agreement provides for the issuance of shares of Series A Junior Participating Preferred Stock to holders of the Company's class A common stock, and the issuance of shares of Series B Junior Participating Preferred Stock to holders of its class B common stock.

Common Stock

The Company has two classes of common stock, including class A and class B. The classes of common stock have substantially similar rights except as to voting rights.

In November 2005, the Company raised net proceeds of $145.6 million in an IPO of 8.8 million shares of its class A common stock at a price of $18.00 per share. In June 2006, the Company completed a public offering of 7.0 million shares of its class A common stock, at a per share price of $2 9.50, and received net proceeds of $197.4 million. In July 2007, the Company completed a public offering of 2.7 million shares of its class A common stock, at a per share price of $64.50, and received net proceeds of $167.4 million. In May 2009, the Company completed a public offering of 10.35 million shares of its

class A common stock, at a per share price of $22.00, and receiv ed net proceeds of $218.8 million.

On May 4, 2007 and August 18, 2008, Cypress completed the sale of 7.5 million shares and 2.5 million shares, respectively, of the Company's class B common stock in offerings pursuant to Rule 144 of the Securities Act. Such shares converted to 10.0 million shares of class A common stock upon the sale.

In anticipation of Cypress's plan to pursue the spin-off of all of its shares of the Company's class B common stock to Cypress's stockholders, the Company amended and restated its certificate of incorporation on September 25, 2008. Under the amended and restated certificate of incorporation, the Company is authorized to issue up to 217.5 million shares of $0.001 par value class A common stock and 150.0 million shares of $0.001 par value class B common stock.

After the close of trading on the NYSE on September 29, 2008, Cypress distributed to its shareholders all of its shares of the Company's class B common stock, in the form of a pro rata dividend to the holders of record as of September 17, 2008 of Cypress common stock. As a result, the Company's class B common stock trades publicly and is listed on the Nasdaq Global Select Market, along with the Company's class A com mon stock, and the Company discontinued being a subsidiary of Cypress.

Common stock consisted of the following:

(In thousands, except share data)	January 2, 2011	January 3, 2010
Class A common stock, $0.001 par value; 217,500,000 shares authorized; 56,664,413* and 55,394,612* shares issued; 56,073,083* and 55,039,193* shares outstanding, at January 2, 2011 and January 3, 2010, respectively	$ 56	$ 55
Class B common stock, $0.001 par value; 150,000,000 shares authorized; 42,033,287 shares issued and outstanding, at January 2, 2011 and January 3, 2010	42	< 42/font>
	98	
	$< /td>	$ 97

** Includes approximately 0.1 million shares and 0.3 million shares of unvested restricted stock awards as of January 2, 2011 and January 3, 2010, respectively, and a total of 4.7 million shares of class A common stock lent to LBIE and CSI.*

Shares Reserved for Future Issuance

The Company had shares of class A common stock reserved for future issuance as follows:

(In thousands)	January 2, 2011	January 3, 2010
Stock option plans	504	2,351

As of January 2, 2011, the voting and dividend rights of the common stock were as follows:

Voting Rights—Common Stock

The class A common stock is entitled to one vote per share while the class B common stock is entitled to eight votes per share on all matters to be voted on by the Company's stockholders. In addition, the voting power of a holder of more than 15% of the Company's outstanding shares of class B common stock with respect to the election or removal of directors is restricted to 15% of the outstanding shares of class B common stock, unless such holder of class B common stock has an equivalent percentage of the Company's outstanding class A common stock.

In addition, the Rights Agreement contains specific features designed to address the potential for an acquirer or significant investor to take advantage of the Company's capital structure and unfairly discriminate between classes of the Company's common stock. Specifically, the Rights Agreement is designed to address the inequities that could result if an investor, by acquiring 20% or more of the outstanding shares of class B common stock, were able to gain significant voting influence over the Company without making a correspondingly significant economic investment. The Rights Agreement, commonly referred to as a "poison pill," could delay or discourage takeover attempts that stockholders may consider favorable.

Dividends—Common Stock

The holders of class A and class B common stock are entitled to receive equal per share dividends when and if declared

by the Board of Directors, and subject to the preferences applicable to any preferred stock outstanding. In the case of a dividend or distribution payable in the form of common stock, each holder of class A and class B is only entitled to receive the class of stock that they hold. The Company's credit facilities place restrictions on the Company and its subsidiaries' ability to pay cash dividends. Additionally, the 1.25% debentures and 0.75% debentures allow the holders to convert their bonds into the Company's class A common stock if the Company declares a dividend that on a per share basis exceeds 10% of its class A common stock's market price.

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

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

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

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

	Year Ended		
(In thousands)	**January 2, 2011**	**January 3, 2010**	**December 28, 2008**
Stock options	309	394	279
Restricted stock units	2,803	1,116	330
4.75% debentures	N/A	8,712	— < /td>
1.25% debentures	*	*	783
0.75% debentures	*	*	15

** The Company's average stock price during fiscal 2010 and 2009 did not exceed the conversion price for the 1.25% debentures and were thus non-dilutive in both years.*

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

(In thousands, except per share amounts)	January 2, 2011	January 3, 2010	December 28, 2008
Basic net income (loss) per share:			
Income (loss) from continuing operations	$ 166,883	$ 32,521	$ (124,445)
Less: undistributed earnings allocated to unvested restricted stock awards (1)	(258)	(117)	—
Income (loss) from continuing operations available to common stockholders	$ 166,625	$ 32,404	$ (124,445)
Basic weighted-avera ge common shares	95,660	91,050	80,522
Basic income (loss) per share from continuing operation	$ 1.74	$ 0.36	$ (1.55)
Basic income per share from discontinued operations	0.13	—	—
Basic net income (loss) per share	$ 1.87	$ 0.36	$ (1.55)
<			
Diluted net income (loss) per share: /div>			
Income (loss) from continuing operations	$ 166,883	$ 32,521	$ (124,445)
Add: interest expense incurred on 4.75% debentures, net of tax	6,664	—	—
Less: undistributed earnings allocated to unvested restricted stock awards (1)	(242)	(115)	—
Income (loss) from continuing operations available to common stockholders	$ 173,305	$ 32,406	$ (124,445)
Basic wei ghted-average common shares	95,660	91,050	80,522
Effect of dilutive securities:			
Stock options	990< /td>	1,531	—
Restricted stock units	336	165	—
4.75% debentures	8,712< /div>	—	—
Diluted weighted-average common shares	105,698	92,746	80,522
Diluted income (loss) per share from continuing operation	$ 1.64	$ 0.35	$ (1.55)
Diluted income per share from discontinued operations	0.11	—	—
Diluted net income (loss) per share	$ 1.75	$ 0.35	$ (1.55)

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

In February 2007, in connection with the sale of its 1.25% debentures, the Company lent 2.9 million shares of its class A common stock to LBIE. After reviewing the circumstances of the LBIE administration proceedings regarding the Lehman bankruptcy, the Company recorded approximately 2.9 million shares of class A common stock lent to LBIE in connection with the 1.25% debentures as issued and outs tanding starting on September 15, 2008, the date on which LBIE commenced administration proceedings, for the purpose of computing and reporting the Company's basic weighted average common shares.

Holders of the Company's 4.75% debentures may convert the debentures into shares of the Company's class A common stock, at the applicable conversion rate, at any time on or prior to maturity (see Note 10). The 4.75% debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the if-converted method. In fiscal 2010 and 2009, there were 8.7 million and zero, respectively, diluti ve potential common shares under the 4.75% debentures.

If the holders of the Company's 4.75% debentures convert the debentures into shares of the Company's class A common stock then, assuming full performance by affiliates of certain of the 4.75% debenture underwriters, the Company will exercise its Purchased Options under the CSO2014 to purchase the shares at an exercise price of $26.40. The Company also entered into certain warrant transactions whereby the Company agreed to sell to affiliates of certain of the 4.75% debenture underwriters warrants to acquire up to 8.7 million shares of the Company's class A common stock at an exercise price of $38.50 through 2014. In the event the holders of the Company's 4.75% debentures convert the deb entures into shares of the Company's class A common stock, and the Company exercises its Purchased Options, the 4.75% debentures will no longer be included in the calculation of diluted net income per share and the outstanding warrant transactions will have a dilutive impact on net income per share using the treasury-stock-type method if the Company's average stock price for the period exceeds the conversion price for the warrant transactions.

Holders of the Company's 1.25% debentures and 0.75% debentures may, under certain circumstances at their option, convert the debentures into cash and, if applicable, shares of the Company's class A common stock at the applicable conversion rate, at any time on or prior to maturity (see Note 10). The 1.25% debentures and 0.75% debentures are included in the

calculation of diluted net income per share if their inclusion is dilutive under the treasury-stock-type method. The Company's average stock price during fiscal 2010 and 2009 did not exceed the conversion price for the 1.25% debentures and 0.75% debentures. In fiscal 2008, anti-dilutive potential common shares included ap proximately 0.8 million shares for the impact of the 1.25% debentures, and approximately 15,000 shares for the impact of the 0.75% debentures, as the Company had experienced a substantial increase in its common stock price during the first three quarters of fiscal 2008 as compared to the market price conversion trigger pursuant to the terms of the 1.25% and 0.75% debentures (see Note 10). Under the treasury-stock-type method, the Company's 1.25% debentures and 0.75% debentures will generally have a dilutive impact on net income per share if the Company's average stock price for the period exceeds the conversion price for the debentures.

On December 23, 2010, the Company amended and restated the original Warrants under the CS O2015 so that the holders would, upon exercise of the Warrants, no longer receive cash but instead would acquire up to 11.1 million shares of the Company's class A common stock (see Note 10). If the market price per share of the Company's class A common stock exceeds the strike price of $27.03 per share, the Warrants will have a dilutive effect on its diluted net income per share using the treasury-stock-type method.

Note 15. STOCK-BASED COMPENSATION AND OTHER EMPLOYEE BENEFIT PLANS

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

(In thousands)	January 2, 2011	January 3, 2010	December 28, 2008
Cost of UPP revenue	$ 7,608	$ 5,808	$ 8,690
Cost of R&C revenue	8,121	8,190	10,199
Research and development	7,555	6,296	3,988
Sales, general and administrative	31,088	26,700	47,343
	$ 54,372	$ 46,994	< font style="font-family:inherit;font- $ size:10pt;">70,220

Consolidated net cash proceeds from the issuance of shares in connection with exercises of stock options under the Company's employee stock plans were $0.9 million, $1.5 million and $5.1 million for fiscal 2010, 2009 and 2008, respectively. The Company recognized an income tax benefit from stock option exercises of $0.2 million, $20.1 million and $40.7 million for fiscal 2010, 2009 and 2008, respectively. As required, the Company presents excess tax benefits from stock-based award activity, if any, as financing cash flows rather than operating cash flows.

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

(In thousands)	January 2, 2011	January 3, 2010	December 28, 2008
Employee stock options	$ 1,960	$ 4,376	$ 4,256
Restricted stock awards and units	52,481	42,148	38,032
Shares and options released from re-vesting restrictions	—	168	28,888
Change in stock-based compensation capitalized in inventory	(69)	302	(956)
Total	$ 54,372	$ 46,994	$ 70,220

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

The following table summarizes the unrecognized stock-based compensation cost by type of awards:

(In thousands, except years)	January 2, 2011	Weighted-Average Amortization Period (in years)
Stock options	$ 2,647	1.42
Restricted stock awards and units	273,002	4.14
	$ 275,649	4.12

For stock options issued prior to fiscal 2006 and for certain performance based awards, the Company recognizes its stock-based compensation cost using the graded amortization method. For all other awards, stock-based compensation cost is recogni zed on a straight-line basis. Additionally, the Company always issues new shares, not treasury shares, upon exercises of options by employees.

Valuation Assumptions

The determination of fair value of each stock option award on the date of grant using the Black-Scholes valuation model is affected by the stock price as well as assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, expected stock price volatil ity over the term of the awards, and actual and projected employee stock option exercise behaviors. The table below shows the weighted average assumptions used for fiscal 2008. There were no stock options granted in fiscal 2010 and 2009.

	Year Ended December 28, 2008	
Expected term	6.5 years	
Risk-free interest rate	2.69 - 3.46%	
Volatility	60	%
Dividend yield	—	%

Expected Term, Risk-Free Interest Rate and Dividend Yield:

The Company utilized the simplified method for estimating expected term, instead of its historical exercise data. The interest rate is based on the U.S. Treasury yield curve in effect at the time of grant. Since the Company does not pay and does not expect to pay dividends, the expected dividend yield is zero.

Volatility:

In fiscal 2008, the Company computed the expected volatility for its equity awards based on its historical volatility from traded options with a term of 6.5 years and class A common stock.

Equity Incentive Programs

Stock Incentive Plans:

The Company has three stock incentive plans: the 1996 Stock Plan ("1996 Plan"), the Second Amended and Restated 2005 SunPower Corporation Stock Incentive Plan ("2005 Plan") and the PowerLight Corporation Common Stock Option and Common Stock Purchase Plan ("PowerLight Plan"). The PowerLight Plan was assumed by the Company by way of the acquisition of PowerLight on January 10, 2007. Under the terms of all three plans, the Company may issue incentive or non-statutory stock options or stock purchase rights to directors, employees and consultants to purchase common stock. The 2005 Plan was adopted by the Company's Board of Directors in August 2005, and was approved by shareholders in November 2005. The 2005 Plan replaced the 1996 Plan and allows not only for the grant of options, but also for the grant of stock appreciation rights, restricted stock grants, restricted stock units and other equity rights. The 2005 Plan also allows for tax withholding obligations related to stock option exercises or restricted stock awards to be satisfied through the retention of shares otherwise released upon vesting. The PowerLight Plan was adopted by PowerLight's Board of Directors in October 2000.

In May 2008, the Company's stockholders approved an increase of 1.7 million shares and, beginning in fiscal 2009 through 2015, an automatic annual increase in the number of shares available for grant under the 2005 Plan. The automatic

annual increase is equal to the lower of three percent of the outstanding shares of all classes of the Company's common stock measured on the last day of the immediately preceding fiscal quarter, 6.0 million shares, or such other number of shares as determined by the Company's Board of Directors. As of January 2, 2011, approximately 0.5 million shares were available for grant under the 2005 Plan. As of January 3, 2011, approximately 3.4 million shares were available for grant under the 2005 Plan after including the automatic annual increase of approximately 2.9 million shares available for grant during fiscal 2011. No new awards are being granted under the 1996 Plan or the PowerLight Plan.

Incentive stock options may be granted at no less than the fair value of the common stock on the date of grant. Non-statutory stock options and stock purchase rights may be granted at no less than 85% of the fair value of the common stock at the date of grant. The options and rights become exercisable when and as determined by the Company's Board of Directors, although these terms generally do not exceed ten years for stock options. Under the 1996 and 2005 Plans, the options typically vest over five years with a one-year cliff and monthly vesting thereafter. Under the PowerLight Plan, the options typically vest over five years with yearly cliff vesting. Under the 2005 Plan, the restricted stock grants and restricted stock units typically vest in three equal installments annually over three years.

The majority of shares issued are net of the minimum statutory withholding requirements that the Company pays on behalf of its employees. During fiscal 2010, 2009 and 2008, the Company withheld 235,911 shares, 149,341 shares and 93,316 shares, respectively, to satisfy $3.7 million, $4.3 million and $6.7 million, respectively, of empl oyees' tax obligations. The Company paid this amount in cash to the appropriate taxing authorities. Shares withheld are treated as common stock repurchases for accounting and disclosure purposes and reduce the number of shares outstanding upon vesting.

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

	Outstanding Stock Options			
	Shares (in thousands)	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding as of December 30, 2007	3,701	$ 5.44		
Granted	170	48.10		
Exercised	(1,129)	3.60		< /div>
Forfeited	(197)	7.28		
Outstanding as of December 28, 2008	2,545	8.96		
Exercised	(587)	2.60		
Forfeited	(59)	18.65		
Outstanding as of January 3, 2010	1,899	10.62		
Exercised	(303)	2.86	;	
Forfeited	(101)	17.76		
Outstanding as of January 2, 2011	1,495	$ 11.71	4.54	$ 10,660
Exercisable as of January 2, 2011	1,384	$ 9.05	4.33	$ 10,659
Expected to vest after January 2, 2011	103	$ 44.85	7.25	$ 1

The Company's weighted-average grant date fair value of options granted in fiscal 2008 was $29.00. The intrinsic value of options exercised in fiscal 2010, 2009 and 2008 were $3.0 million, $15.1 million and $83.7 million, respectively.

The aggregate intrinsic value in the preceding table represents the total pre-tax intrinsic value, based on the Company's closing stock price of $12.83 at December 31, 2010, which would have been received by the option holders had all option holders exercised their options as of that date.

As of January 2, 2011, stock options vested and expected to vest totaled approximately 1.5 million shares, with a weighted-average remaining contractual life of 4.54 years and a weighted-average exercise price of $11.71 per share and an aggregate intrinsic value of approximately $10.7 million. The total number of in-the-money options exercisable was 1.2 million shares as of January 2, 2011.

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

	Stock Options		Restricted Stock Awards and Units	
	Shares (in thousands)	Weighted-Average Exercise Price Per Share	Shares (in thousands)	Weighted-Average Grant Date Fair Value Per Share
Outstanding as of December 30, 2007	2,454	$ 6.29	1,174	$< /div> 68.74
Granted	170	48.10	911	70.02
Vested (1)	(1,314)	4.32	(357)	84.73
Forfeited	(197)	7.28	(124)	73.18
Outstanding as of December 28, 2008	1,113	14.82	1,604	69.71
Granted	—	—	2,013	28.34
Vested (1)	(711)	7.89	(547)	66.06
Forfeited	(59)	18.65	(334)	65.95
Outstanding as of January 3, 2010	343	28.52	2,736	40.33
Granted	—	—	5,251	13.43
Vested (1)	(131)	23.05	(734)	33.53
Forfeited	(101)	17.76	(1,141)	38.60
Outstanding as of January 2, 2011	111	$ 44.85	6,112	$ 18.36

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

Other Employee Benefit Plans:

The Company has a statutory pension plan covering its employees in the Philippines. The Company accrues for the unfunded portion of the obligation of which the outstanding liability of this pension plan was $1.1 million and $0.7 million as of January 2, 2011 and January 3, 2010, respectively.

The Company maintains a 401(k) Savings Plan covering eligible domestic employees. During fiscal 2010, 2009 and 2008, the Company contributed $0.6 million, $0.5 million and $0.2 million, respectively, to the plan.

Note 16. SEGMENT AND GEOGRAPHICAL INFORMATION

In the second quarter of fiscal 2010, the Company changed its segment reporting from the Components Segment and Systems Segment to the UPP Segment and R&C Segment. The CODM assesses the performance of the UPP Segment and R&C Segment using information about their revenue and gross margin after adding back certain non-cash expenses such as amortization of other intangible assets, stock-based compensation expense, interest expense and impairment of long-lived assets. In addition, the CODM assesses the performance of the UPP Segment and R&C Segment after adding back the results of discontinued operations to revenue and gross margin. The following tables present revenue by segment, cost of revenue by segment and gross margin by segment, revenue by geography and revenue by significant customer. Revenue is based on the destination of t he shipments. Historical results have been recast under the new segmentation.

(As a percentage of total revenue)	Year Ended January 2, 2011	Year Ended January 3, 2010	Year Ended December 28, 2008
Revenue by geography:			
United States	29 %	43 %	36 %
Europe:			
Germany	11	21	10
Italy	40	22	5
Spain	5	3	35
Other	9	7	7
Rest of world	6	4	7
	100 %	100 %	100 %
Revenue by segment (in thousands):			
UPP (as reviewed by CODM)	$ 1,197,135	$ 653,531	$ 742,432
Revenue earned by discontinued operations	(11,081)	—	—
UPP	$ 1,186,054	$ 653,531	$ 742,432
R&C < /td>	$ 1,033,176	$ 870,752	$ 695,162
Cost of reve nue by segment (in thousands):			
UPP (as reviewed by CODM)	$ 892,544	$ 517,079	$ 520,424
Amortization of intangible assets	2,762	2,732	2,728
Stock-based compensation expense	7,608	5,808	8,690
Non-cash interest expense	5,412	1,231	329
Impairment of long-lived assets	—	—	2,203
UPP	$ 908,326	$ 526,850	$ 534,374
R&am p;C (as reviewed by CODM)	$ 783,751	$ 695,550	$ 533,667
Amortization of intangible assets	7,644	8,465	9,268
Stock-based compensation expense	8,121	8,190	10,199
Non-cash interest expense	1,495	1,508	465
R&C	$ 801,011	$ 713,713	$ 553,599
Gross margin percentage by segment:			
UPP (as reviewed by CODM)	25 %	21 %	30 %
UPP	23 %	19 %	28 %
R&C (as reviewed by CODM)	24 %	20 %	23 %
R&C	22 %	18 %	20 %
Depreciation by segment (in thousands):			
Cost of UPP revenue	$ 45,306	$ 34,597	$ 21,572
Cost of R&C revenue	47,431	44,221	27,199
	$ 92,737	$ 78,818	$ 48,771

(As a percentage of total revenue)		Year Ended January 2, 2011	Year Ended January 3, 2010	Year Ended December 28, 2008
Significant Customers:	**Business Segment**			
Customer A	UPP	12 %	*	*
Customer B	UPP	*	12 % /div>	*
Customer C	UPP	*	*	18 %
Customer D	UPP	*	* /font>	11 %

**** denotes less than 10% during the period***

SELECTED UNAUDITED QUARTERLY FINANCIAL DATA

Consolidated Statements of Operations

(In thousands, except per share data)	Three Months Ended			
	January 2, 2011	October 3, 2010 (1)	July 4, 2010	April 4, 2010
Fiscal 2010:				
Revenue	$ 937,073	$ 550,645	$ 384,238	$ 347,274
Gross margin	237,714	112,585	87,851	71,743
Net income (loss)	152,251	20,116	(6,216)	12,573
Net income (loss) per share of class A and class B common stock:				
Basic	$ 1.58	$ 0.21	$ (0.07)	$ 0.13
Diluted	$ 1.44	$ 0.21	$ (0.07)	$ 0.13

(In thousands, except per share data)	Three Months Ended (2)			
	January 3, 2010	September 27, 2009	June 28, 2009	March 29, 2009
Fiscal 2009:				
Revenue	$ 547,938	$ 465,361	$ 299,341	$ 211,643
Gross margin	110,977	99,830	40,678	32,235
Net income (loss)	8,543	19,506	14,324	(9,852)
Net income (loss) per share of class A and class B common stock:				
Basic	$ 0.09	$ 0.21	$ 0.16	$ (0.12)
Diluted	$ 0.09	$ 0.20	$ 0.15	$ (0.12)

(1) During the three months ended October 3, 2010, the Company identified certain immaterial out-of-period adjustments that had the net effect of incremental pre-tax expense of $3.2 million. The adjustments for the three months ended October 3, 2010 primarily represented adjustments which originated in the first, second and fourth quarters of fiscal 2010 and related to inventory, derivative instruments, accounts payable and deferred compensation. The effect of these adjustments, which resulted principally from the Company's continued efforts to remediate internal controls in its Philippines operations, is not material to current and prior period results of operations.

(2) As adjusted to reflect the adoption of new accounting guidance for share lending arrangements that were executed in connection with the Company's convertible debt offerings in fiscal 2007. Previously filed Quarterly Reports on Form 10-Q as of April 4, 2010, July 4, 2010 and October 3, 2010 reflected the retrospective application of such new accounting guidance. For additional details see Note 1 of Notes to the Consolidated Financial Statements.

ITEM 9: CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURES

None.

ITEM 9A: CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain "disclosure controls and procedures," as defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act, that are designed to provide reasonable assurance that information required to be disclosed in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and

forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding requir ed disclosure. In designing and evaluating our disclosure controls and procedures, management recognizes that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Additionally, in designing disclosure controls and procedures, our management is required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure control and procedure also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Based on their evaluation as of the end of the period covered by this Annual Report on Form 10-K, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of January 2, 2011 at a reasonable assurance level.

Remedial Efforts to Address Prior Material Weaknesses

As previously disclosed under Item 9A, "Controls and Procedures" in our Annual Report on Form 10-K for the fiscal year end ed January 3, 2010, we concluded that our disclosure controls and procedures were not effective at that time based on the following material weaknesses identified in our Philippines operations:

- There was not an effective control environment in our Philippines operations. Specifically, certain of the Company's employees in the Philippines violated the Company's code of business conduct and ethics. Individuals in the Company's Philippines finance organization intentionally proposed and/or approved journal entries that were not substantiated by actual transactions or costs.

- We did not maintain a sufficient complement of personnel with an appropriate level of accounting knowledge, experience and training in the Philippines operations to ensure that our controls, and specifically our controls over inventory variance capitalization, were effec tive.

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis.

On November 16, 2009, we announced that our Audit Committee commenced an independent investigation into certain accounting and financial reporting matters a t our Philippines operations ("SPML"). The Audit Committee retained independent counsel, forensic accountants and other experts to assist it in conducting the investigation.

As a result of the investigation, the Audit Committee concluded that certain unsubstantiated accounting entries were made at the direction of the Philippines-based finance personnel in order to report results for manufacturing operations that would be consistent with internal expense projections. The entries generally resulted in an understatement of our cost of goods sold (referred to as "cost of revenue" in our Statements of Operations).

The Audit Committee concluded that the efforts were not directed at achieving our overall financial results or financial analysts' projections of our financial results. The Audit Committee also determined that these accounting issues were confined to the accounting function in the Philippines. Finally, the Audit Committee concluded that executive management neither directed nor encouraged, nor was aware of, these activities and was not provided with accurate information concerning the unsubstantiated entries. In addition to the unsubstantiated entries, during the Audit Committee investigation various accounting errors were discovered by the investigation and by management. As a result, we restated our consolidated financial statements as of and for the year ended December 28, 2008 and consolidated financial data for each of the quarterly period s for the year then ended as well as for the first three quarterly periods in the year ended January 3, 2010.

To address the two material weaknesses described above, subsequent to January 3, 2010, the following remedial actions were previously disclosed under Item 4, "Controls and Procedures" in our Quarterly Report on Form 10-Q for the fiscal quarters ended April 4, 2010, July 4, 2010 and October 3, 2010, and were each completed during the year ended January 2, 2011:

Reinforcement of the Company's Code of Business Conduct and Ethics

- We re-emphasized management's expectations to all accounting and finance employees in our Philippines operations regarding adherence to our policies and ethical business standards;

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- We developed and implemented additional training programs to increase awareness of our code o f business conduct and ethics and “whistle-blower” policies;
- We mandated related training as part of the new employee orientation process for the Philippines accounting and finance staff;
- We mandated testing of our ethics training for all accounting and finance employees in our Philippines operations; and
- We continued to reinforce corporate policies as part of the all-hands meetings and month-end close meetings held with employees of our Philippines operations.

Resources, Employee Actions and Reporting Relationships

- &nbs p; We appointed a new vice president and controller - Asia region;
- We added resources to our corporate finance team to support enhancements for enterprise resource planning systems;
- We terminated employees in the Philippines due to their involvement in unethical activities or insufficient qualifications to perform assigned activities;
- We reorganized reporting structures so that accounting employees in the Philippines report directly on a centralized basis to the chief financial officer's organization;
- We added corporate management presence in the Philippines;
- We hired additional qualified employees in our Philippines finance organization for key leadership positions; and
- We segregated duties between the financial planning and accounting functions and added additional layers of accounting review.

Process Improvements in Philippines

- We standardized and documented our process for capitalizing manufacturing variances;
- We added specific reviews fo r required manual journal entries;
- We established a formal process for certifications and sub-certifications of financial reports;
- We trained responsible employees on the proper method to capitalize manufacturing variances;
- We standardized and do cumented key accounting policies and job descriptions for all accounting employees; and
- We improved our monthly and quarterly closing processes by enabling functions within our enterprise resource planning system, standardizing reports generated from the system and providing implementation training.

Our management is committed to maintaining a strong control environment, high ethical standards, and financial reporting integrity throughout the Company, including our Philippines operations. During the second half of fiscal 2010, management tested the design and operating effectiveness of the newly implemented controls and concluded that the material weaknesses described above have been remediated as of January 2, 2011. Although management believes that these efforts have improved our internal control over financial reporting and remediated the material weaknesses, any system of controls, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the system of controls are or will be met, and no evaluation of controls can provide absolute assurance that all control issues within a company have been detected or will be detected under all potential future conditions.

Management's Report on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Exchange Act Rule 13a-15(f). Management conducted an evaluation of the effectiveness of our internal control over

financial reporting using the criteria described in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based on this evaluation, management concluded that our internal control over financial reporting was effective as of January 2, 2011 based on the criteria described in Internal Control-Integrated Framework issued by COSO. Management reviewed the results of its assessment with our Audit Committee .

The effectiveness of the Company's internal control over financial reporting as of January 2, 2011 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which is included in Item 8 of this Annual Report on Form 10-K.

The Company's evaluation of the effectiveness of its internal control over financial reporting as of January 2, 2011 excluded the internal controls of SunRay Malta Holdin gs Limited ("SunRay") because SunRay was acquired by the Company in a business combination during fiscal 2010. SunRay is a subsidiary whose total assets and total revenues represent 8% and 21%, respectively, of the related consolidated financial statement amounts as of and for the year ended January 2, 2011. In accordance with guidance issued by the SEC, companies may exclude acquisitions from their assessment of internal control over financial reporting during the first year subsequent to the acquisition while integrating the acquired operations.

Changes in Internal Control over Financial Rep orting

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

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

ITEM 9B: OTHER INFORMATION

None.

PART III

Certain information required by Part III is omitted from this Annual Report on Form 10-K. We intend to file a definitive Proxy Statement pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K, and certain information included therein is incorporated herein by reference.

ITEM 10: DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2011 annual meeting of stockholders.

We have adopted a code of ethics, entitled Code of Business Conduct and Ethics, that applies to all of our directors, officers and employees, including our principal executive officer, principal financial officer, and principal accounting officer. We have made it available, free of charge, on our website at www.sunpowercorp.com, and if we amend it or grant any waiver under it that applies to our principal executive officer, principal financial officer, or principal accounting officer, we will promptly post that amendment or waive r on our website as well.

ITEM 11: EXECUTIVE COMPENSATION

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2011 annual meeting of stockholders.

ITEM 12: SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2011 annual meeting of stockholders.

ITEM 13: CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2011 annual meeting of stockholders.

ITEM 14: PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2011 annual meeting of stockholders.

PART IV

ITEM 15: EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as a part of this Annual Report on Form 10-K:

1. Financial Statements:

2. Financial Statement Schedule:

SCHEDULE II
VALUATION AND QUALIFYING ACCOUNTS

< td colspan="2" style="vertical-align:bottom;padding-left:2px;padding-top:2px;padding-bottom:2px;">

(In thousands)	Balance at Beginning of Period	Charges (Releases) to Expenses/ Revenues	Deductions	Balance at End of Period
Allowance for doubtful accounts:				
Year ended January 2, 2011	$ 2,298	$ 11,405	$ (7,736)	$ 5,967
Year ended January 3, 2010	1,8 63	1,444	(1,009)	2,298
Year ended December 28, 2008	1,373	2,182	(1,692)	1,863
Allowance for sales returns:				
Year ended January 2, 2011	$ 1,908	$ 2,160	$ (1,681)	$ 2,387
Year ended January 3, 2010	231	1,677	—	1,908
Year ended December 28, 2008	368	63	(200)	231
Valuation allowance for deferred tax asset:				
Year ended January 2, 2011	$ 42,163	$ 7,715	$ —	$ 49,878
Year ended January 3, 2010	9,985	32,178	—	42,163
Year ended December 28, 2008	13,924	—	(3,939)	9,985

Note: All other financial statement schedules are omitted as the required information is inapplicable or the information is presented in the Consolidated Financial Statements or Notes to Consolidated Financial Statements under Item 8 of this Annual Report on Form 10-K.

3. Exhibits:

EXHIBIT INDEX

Exhibit Number	Description
2.1	Share Purchase Agreement, dated February 11, 2010, by and among S unPower Corporation, SunRay Malta Holdings Limited and the shareholders of SunRay Malta Holdings Limited named therein (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 16, 2010).
3.1	Form of Restated Certificate of Incorporation of SunPower Corporation (incorporated by reference to Exhibit 99.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 12, 2008).
3.2	By-Laws of SunPower Corporation as Amended and Restated on November 7, 2008 (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 7, 2008).
4.1	Specimen Class A Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on November 14, 2005).
4.2	Specimen Class B Stock Certificate (incorporated by reference to Exhibit 4.6 to the Registrant's Registration Statement on Form S-3ASR filed with the Securities and Exchange Commission on September 10, 2008).
4.3	Indenture, dated February 7, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association, as Trustee (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 8, 2007).
4.4	First Supplemental Indenture, dated February 7, 2007, by and between SunPower Corporation and Wells Farg o Bank, National Association (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 8, 2007).
4.5	Form of Second Supplemental Indenture, by and between SunPower Corporation and Wells Fargo Bank, National Association (incorporated by reference to Exhibit 4.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 26, 2007).
4.6	Third Supplemental Indenture, dated May 4, 2009, by and between SunPower Corporation and Wells Fargo Bank, N.A., as Trustee (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed by SunPower Corporation on May 6, 2009).
4.7	Fourth Supplemental Indenture, dated April 1, 2010, by and between SunPower Corporation and Wells Fargo, National Association as Trustee (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 6, 2010).
4.8	Rights Agreement, dated August 12, 2008, by and between SunPower Corporation and Computershare Trust Company, N.A., as Rights Agent, including the form of Certificate of Designation of Series A Junior Participating Preferred Stock, the form of Certificate of Designation of Series B Junior Participating Preferred Stock and the forms of Right Certificates, Assignm ent and Election to Purchase and the Summary of Rights attached thereto as Exhibits A, B, C and D, respectively (incorporated by reference to Exhibit 4.1 to the Registrant's current report on Form 8-K filed with the Securities and Exchange Commission on August 12, 2008).
10.1	Convertible Debenture Hedge Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Wachovia Bank, National Association (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009).
10.2	Convertible Debenture Hedge Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009).
10.3	Convertible Debenture Hedge Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009).
10.4	Convertible Debenture Hedge Transaction Confirmation, dated March 25, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 29, 2010).
10.5	Convertible Debenture Hedge Transaction Confirmation, dated March 25, 2010, by and between SunPower Corporation and Barclays Bank PLC (inc orporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 29, 2010).
10.6	Convertible Debenture Hedge Transaction Confirmation, dated March 25, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 29, 2010).

10.7		Convertible Debenture Hedge Transaction Confirmation, dated March 25, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 29, 2010).
10.8		Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.9		Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.10		Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.3 t o the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.11		Convertible Debenture Hedge T ransaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.12		Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Wachovia Bank, National Association (incorporated by reference to Exhibit 10.4 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009).
10.13		Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.5 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009).
10.14		Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.6 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009).
10.15		Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.16		Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.17		Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.18		Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.19		Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.6 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.20		Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.7 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.21		Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.8 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.22		Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.23		Share Lending Agreement, dated July 25, 2007, by and among SunPower Corporation and Credit Suisse International, through Credit Suisse Securities (USA) LLC (incorporated by reference to Exhibit 10.1 of Registrant’s Current Report on Form 8-K filed with the Securities and Exchange Commission on July 26, 2007).
10.24		Amended and Restated Share Lending Agreement, dated July 25, 2007, by and among SunPower Corporation and Lehman Brothers International (Europe) Limited, through Lehman Brothers Inc. (incorporated by reference to Exhibit 10.2 of Registrant’s Current Report on Form 8-K filed with the Securities and Exchange Commission on July 26, 2007).
10.25	^	SunPower Corporation 1996 Stock Plan and form of agreements there under (incorporated by reference to Exhibit 10.3 to the Registrant’s Registration Statement on Form S-1 filed with the Securities and Exchange Commission on August 25, 2005).

10.26	^	SunPower Corporation 2005 Stock Unit Plan (incorporated by reference to Exhibit 10.28 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 31, 2005).
10.27	^	Second Amended and Restated SunPower Corporation 2005 Stock Incentive Plan and forms of agreements there under (incorporated by reference to Exhibit 4.3 to the Registrant's Registration Statement on Form S-8 file d with the Securities and Exchange Commission on May 9, 2008).
10.28	^	Amendment to Second Amended and Restated SunPower Corporation 2005 Stock Incentive Plan dated March 12, 2009 (incorporated by reference to Exhibit 10.6 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 8, 2009).
10.29	^	PowerLight Corporation Common Stock Option and Common Stock Purchase Plan (incorporated by reference to Exhibit 4.3 to the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 25, 2007).
10.30	^	Form of PowerLight Corporation Incentive/Non-Qualified Stock Option, Market Standoff and Stock Restriction Agreement (Employees) (incorporated by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 25, 2007).
10.31	^	Outside Director Compensation Policy (incorporated by reference to Exhibit 10.11 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 14, 2010).
10.32	^	Form of Employment Agreement for Executive Officers (incorporated by reference to Exhibit 10.16 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 19, 2010).
10.33	^	SunPower Corporation Management Career Transition Plan (incorporated by reference to Exhibit 10.17 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 19, 2010).
10.34	^*	SunPower Corporation Executive Quarterly Key Initiative Bonus Plan.
10.35	^	SunPower Corporation Annual Executive Bonus Plan.
10.36		Form of Indemnification Agreement for Directors and Officers (incorporated by reference to Exhibit 10.8 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 7, 2008).
10.37	†	Letter of Credit Facility Agreement, dated April 12, 2010, by and among SunPower Corporation, the Subsidiary Guarantors, the Subsidiary Applicants parties thereto from time to time, the Banks thereto from time to time, Bank of America, N.A., as Syndication Agent and Deutsche Bank AG New York Branch, as Issuing Bank and Administrative Agent, and Deutsche Bank Securities Inc., as Sole Bookrunner and Arranger (incorporated by reference to Exhibit 10.10 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 13, 2010).
10.38		Security Agreement, dated April 12, 2010, by and among SunPower Corporation, SunPower North America LLC, SunPower Corporation, Systems, and Deutsche Bank AG New York Branch, as Administrative Agent (incorporated by reference to Exhibit 10.11 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 13, 2010).
10.39	*	New Bank Joinder Agreement, dated December 22, 2010, by and among Deutsche Bank AG New York Branch, as Administrative Agent, and Goldman Sachs Bank USA.
10.40	†	Mortgage Loan Agreement, dated May 6, 2010, by and among SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation (incorporated by reference to Exhibit 10.13 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 13, 2010).
10.41		Guarantee Agreement, dated May 6, 2010, by and betwee n SunPower Corporation and International Finance Corporation (incorporated by reference to Exhibit 10.14 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 13, 2010).
10.42	*	Amendment No. 1 to Loan Agreement, dated November 2, 2010, by and between SunPower Philippines Manufacturing Ltd. and International Finance Corporation.
10.43	*†	Credit Agreement, dated October 29, 2010, by and among SunPower Corporation, the Guarantors party thereto, Union Bank, N.A. as Administrative Agent, Sole Lead Arranger and a Lender, and the other Lenders party thereto.
10.44	*	Pledge Agreement, dated October 29, 2010, by and between SunPower Corporation and Union Bank, N.A., as Administrative Agent for the Lenders.
10.45	*	Share Kun-Pledge Agreement, dated October 29, 2010, by and among SunPower Corporation, the Financial Institutions named therein as Pledgees, and Union Bank, N.A., as Administrative Agent.
10.46	*†	Euro 75,000,000 Revolving Credit Agreement, dated November 23, 2010, by and among SunPower Corporation, SunPower Corporation Malta Holdings Limited and Société Générale, Milan Branch.

10.47	*	Guaranty, dated November 23, 2010, by and between SunPower Corporation and Société Générale, Milan Branch.
10.48	*	Project Loan Facility Agreement, dated November 26, 2010, by and among Andromeda PV S.r.l., BNP Paribas, Milan Branch, Société Générale, Milan Branch and Deutsche Bank AG, London Branch.
10.49 < /td>	*†	Common Terms Agreement, dated November 26, 2010, by and among Andromeda PV S.r.l., BNP Paribas, Milan Branch, Société Générale, Milan Branch and Deutsche Bank AG, London Branch.
10.50	*	Loan Agreement, dated December 1, 2010, by and among California Enterprise Development Authority and SunPower Corporation, relating to $30,000,000 California Enterprise Development Authority Tax Exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010.
10.51	†	Joint Venture Agreement, dated May 27, 2010, by and among SunPower Technology, L td., AU Optronics Singapore Pte. Ltd., AU Optronics Corporation and AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.) (incorporated by reference to Exhibit 10.15 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 13, 2010).
10.52	& nbsp;	Amendment No. 1 to Joint Venture Agreement, dated June 29, 2010, by and among SunPower Technology, Ltd., AU Optronics Singapore Pte. Ltd., AU Optronics Corporation and AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.) (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 12, 2010).
10.53		Amendment No. 2 to Joint Venture Agreement, dated July 5, 2010, by and among SunPower Technology, Ltd., AU Optronics Singapore Pte. Ltd., AU Optronics Corporation and AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.) (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 12, 2010.
10.54	†	Supply Agreement, dated July 5, 2010, by and among AUO SunPower Sdn. Bhd. (formerly known as SunPow er Malaysia Manufacturing Sdn. Bhd.), SunPower Systems, Sarl and AU Optronics Singapore Pte. Ltd. (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 12, 2010).
10.55		License and Technology Agreement, dated July 5, 2010, by and among SunPower Technology, Ltd., AU Optronics Singapore Pte. Ltd. and AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.) (incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 12, 2010).
10.56	†	Ingot Supply Agreement, dated December 22, 2006, by and between SunPower Corporation and Woongjin Energy Co., Ltd. (incorporated by reference to Exhibit 10.62 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 2, 2007).
10.57	†	Amendment No. 1 to Ingot Supply Agreement, dated August 4, 2008, by and between SunPower Corporation and Woongjin Energy Co., Ltd. (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 7, 2008).
10.58	†	Amendment No. 2 to Ingot Supply Agreement, dated August 1, 2009, by and between SunPower Corporation and Woongjin Energy Co., Ltd. (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 2, 2009).
10.59	†	Wafering Supply and Sa les Agreement, dated October 1, 2007, by and between SunPower Philippines Manufacturing Ltd. and First Philec Solar Corp. (incorporated by reference to Exhibit 10.12 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 9, 2007).
10.60	†	Polysilicon Supply Agreement, dated December 22, 2006, by and between SunPower Philippines Manufacturing, Ltd. and Woongjin Energy Co., Ltd. (incorporated by reference to Exhibit 10.61 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 2, 2007).
10.61	†	Amendment to Polysilicon Supply Agreement, dated January 8, 2008, by and between SunPower Philippines Manufacturing, Ltd. and Woongjin Energy Co., Ltd. (incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 9, 2008).
10.62	†	Amendment No. 2 to Polysilicon Supply Agreement, dated August 4, 2008, by and between SunPower Philippines Manufacturing, Ltd. and Woongjin Energy Co., Ltd. (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 7, 2008).
10.63	†	Amendment No. 3 to Polysilicon Supply Agreement, dated August 1, 2009, by and between SunPower Philippines Manufacturing, Ltd. and Woongjin Energy Co., Ltd. (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 2, 2009).

10.64		Tax Sharing Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.16 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.65		Amendment No. 1 to Tax Sharing Agreement, dated August 12, 2008, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 12, 2008).
21.1	*	List of Subsidiaries.
23.1	*	Consent of Independent Registered Public Accounting Firm.
24.1	*	Power of Attorney.
31.1	*	Certification by Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a).
31.2	*< /font>	Certification by Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a).
32.1	*	Certification Furnished Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	*+	XBRL Instance Document.
101.SCH	*+	XBRL Taxonomy Schema Document.
101.CAL	*+	XBRL Taxonomy Calculation Linkbase Document.
101.LAB	*+	XBRL Taxonomy Label Linkbase Document.
101.PRE	*+	XBRL Taxonomy Presentation Linkbase Document.
101.DEF	*+	XBRL Taxonomy Definition Linkbase Document.

Exhibits marked with a carrot (^) are director and officer compensatory arrangements.

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

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

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

SIGNATURES

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

SUNPOWER CORPORATION

Dated: February 25, 2011

By: /S/ DENNIS V. ARRIOLA

Dennis V. Arriola
Executive Vice President and
Chief Financial Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/S/ THOMAS H. WERNER Thomas H. Werner	President, Chief Executive Officer and Director (Principal Executive Officer)	February 25, 2011
/S/ DENNIS V. ARRIOLA Dennis V. Arriola	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	February 25, 2011
* T.J. Rodgers	Chairman of the Board of Directors	February 25, 2011
* W. Steve Albrecht	Director	February 25, 2011
* Betsy S. Atkins	Director	February 25, 2011
* Uwe-Ernst Bufe	Director	February 25, 2011
* Thomas R. McDaniel	< div style="text-align:left;font-size:10pt;"> Director< /font>	February 25, 2011
* Patrick Wood III	< /td> Director	February 25, 2011

By: /S/ DENNIS V. ARRIOLA
Dennis V. Arriola
Power of Attorney

EXHIBIT INDEX

Exhibit Number		Description
10.34	^*	SunPower Corporation Executive Quarterly Key Initiative Bonus Plan.
10.39	*	New Bank Joinder Agreement, dated December 22, 2010, by and among Deutsche Bank AG New York Branch, as Administrative Agent, and Goldman Sachs Bank USA.
10.42	*	Amendment No. 1 to Loan Agreement, dated November 2, 2010, by and between SunPower Philippines Manufacturing Ltd. and International Finance Corporation.
10.43	*†	Credit Agreement, dated October 29, 2010, by and among SunPower Corporation, the Guarantors party thereto, Union Bank, N.A. as Administrative Agent, Sole Lead Arranger and a Lender, and the other Lenders party thereto.
10.44	*	Pledge Agreement, dated October 29, 2010, by and between SunPower Corporation and Union Bank, N.A., as Administrative Agent for the Lenders.
10.45	*	Share Kun-Pledge Agreement, dated October 29, 2010, by and among SunPower Corporation, the Financial Institutions named therein as Pledgees, and Union Bank, N.A., as Administrative Agent.
10.46	*†	Euro 75,000,000 Revolving Credit Agreement, dated November 23, 2010, by and among SunPower Corporation, SunPower Corporation Malta Hold ings Limited and Société Générale, Milan Branch.
10.47	*	Guaranty, dated November 23, 2010, by and between SunPower Corp oration and Société Générale, Milan Branch.
10.48	*	Project Loan Facility Agreement, dated November 26, 2010, by and among Andromeda PV S.r.l., BNP Paribas, Milan Branch, Société Générale, Milan Branch and Deutsche Bank AG, London Branch.
10.49	*†	Common Terms Agreement, dated November 26, 2010, by and among Andromeda PV S.r.l., BNP Paribas, Milan Branch, Société Générale, Milan Branch and Deutsche Bank AG, London Branch.
10.50	*	Loan Agreement, dated December 1, 2010, by and among California Enterprise Development Authority and SunPower Corporation, relating to $30,000,000 California Enterprise Development Authority Tax Exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010.
21.1	*	List of Subsidiaries.
23.1	*	Consent of Independent Registered Public Accounting Firm.
24.1	*	Power of Attorney.
31.1	*	Certification by Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a).
31.2	*	Certification by Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a).
32.1	*	Certification Furnished Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	*+	XBRL Instance Document.
101.SCH	*+< /font>	XBRL Taxonomy Schema Document.
101.CAL	*+	XBRL Taxonomy Calculation Linkbase Document.
101.LAB	*+	XBRL Taxonomy Label Linkbase Document.
101.PRE	*+	XBRL Taxonomy Presentation Linkbase Document.
101.DEF	*+	XBRL Taxonomy Definition Linkbase Document.

Exhibits marked with a carrot (^) are director and officer compensatory arrangements.

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

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

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

SUNPOWER CORPORATION
EXECUTIVE QUARTERLY
KEY INITIATIVE BONUS PLAN
(Amended and Restated January 31, 2011)

Article 1 - Exec KI Plan Objective

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

Article 2 - Effective Date

2.1 This quarterly program will be effective as of January 1, 2010. "Plan Periods" under the Exec KI Plan will correspond to the fiscal quarters of the Company.

Article 3 - Eligibility for Exec KI Plan Participation

3.1 All executive officers of the Company, as well as any other key employees approved by the Compensation Committee of the Board of Directors, shall participate in the Exec KI Plan. Participation will generally be limited to the CEO and executive direct reports.

Article 4 - Target Bonus Percentages and Calculations

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

4.2 Exec KI Plan Components.

(i) Quarterly KI Score. At the start of each quarter the participant will formulate with his or her supervisor a list of key initiatives for such quarter. Each initiative will be allocated a certain number of points, and the quarterly scorecard shall total 100 points. Following each quarter the participant's supervisor will score the participant's achievement of key initiatives (expressed as a percentage).

(ii) Company Milestone Score. With respect to each quarter the Board of Directors will establish quarterly company milestones for such quarter.

Each company milestone will be allocated a certain number of points. Following each quarter, the executive officers of the Company will score the achievement of company milestones (expressed as a percentage).

(iii) PBT Score. At the start of each quarter the executive officers will establish an internal profit before tax financial target for the Company ("Plan PBT"). Following each quarter the actual profit before tax for such quarter will be determined ("Actual PBT").

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

(i) If the Actual PBT is less than 80% of the Plan PBT (or if Actual PBT is less than Plan PBT if plan PBT is zero or less), no KI bonus payout will be made for the quarter.

(ii) If the Actual PBT is equal to or greater than 80% of the Plan PBT, but the company milestone score is equal to or less than 60%, no KI bonus payout will be made for the quarter.

(iii) If both the Actual PBT is equal to or greater than 80% AND the company milestone score is greater than 60%, the quarterly KI bonus will be paid as follows:

a. Company Milestone Score greater than 80%: Full KI score payout. For example, if an individual has a $100,000 base salary, 20% KI target bonus and a KI score of 80%, s/he would receive a quarterly bonus of 100,000 x .20 x .80 = $16,000. If the Actual PBT is equal to or greater than 100%, the quarterly KI bonus will be prorated and paid above 100%, subject to a maximum cap of 125%. For example, if the Actual PBT is 115% of the Plan PBT, in the example above the payment would be $16,000 x 115% = $18,400.

b. Company Milestone Score less than or equal to 80%: One-half KI score payout.

(iv) If both the Company Milestone score is equal to or greater than 80% and the Actual PBT is greater than 100%, the quarterly KI bonus may be prorated and paid above 100%, subject to a maximum cap of 125%. The Board reserves the right to reduce payments above 100% of target, should the sum of payments above target for all eligible employees become a material portion of the Actual PBT achieved by the Company.

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

5.1 Payout calculations under the Exec KI Plan will be based on the plan participant's base salary at the end of the quarter being measured.

5.2 In the event a participant's KI target bonus percentage is changed during the quarter, the participant's KI payout for the quarter shall be based on the KI target bonus in effect at the end of that quarter.

Article 6 - KI Achievement

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

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

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

Article 7 - Eligibility for Payment

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

7.2 New Hires: New Hires shall be eligible to participate in the bonus program starting the first complete month of work, i.e. if they start the first business day of the month, they will be eligible to participate that month; otherwise, they will begin participation the following month.

7.3 Disability: If a participant is unable to perform the essential functions of his or her job with or without a reasonable accommodation and is eligible to receive disability benefits under the standards used by the Company's disability benefit plan, the participant will receive a bonus calculated as follows: the quarter in which the disability begins will be considered a completed quarter and the KI bonus for that quarter will be paid as though KI attainment was 100%. If/when the participant returns from disability leave, participation will be handled as outlined in section 7.2 above.

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

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

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

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

7.8 All qualified bonus payments including future scheduled payments pursuant to Sections 7.3, 7.4, 7.5,and 7.6 will be paid in a lump-sum.

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

Article 8 - Miscellaneous

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

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

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

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

8.5 This Exec KI Plan is unfunded and the Company does not intend to set up a sinking fund. Consequently, payments arising out of bonus earned shall be paid out of the Company's general assets. Accounts recognized by the Company for book purposes are not an indication of funds set aside for payment. Exec KI Plan participants are considered as general creditors of the Company and the obligation of the Company is purely contractual and is not secured by any particular Company asset.

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

NEW BANK JOINDER AGREEMENT

NEW BANK JOINDER AGREEMENT, dated as of December 22, 2010 (as it may be amended, supplemented or otherwise modified from time to time, this "Agreement"), among SUNPOWER CORPORATION, a Delaware corporation (the "Company"), DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent and as Issuing Bank (in such capacities, respectively, the "Administrative Agent" and the "Issuing Bank"), and Goldman Sachs Bank USA, as a new Bank (the "New Bank").

Reference is made to the Letter of Credit Facility Agreement dated as of April 12, 2010 among the Company, the Subsidiary Guarantors, the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, the Issuing Bank, and the Administrative Agent (as it may be amended, supplemented or otherwise modified from time to time, the "Facility Agreement"). Unless the context requires otherwise, terms used herein as defined terms and not otherwise defined herein shall have the meanings given thereto in the Facility Agreement.

Pursuant to Section 2.04(b) of the Facility Agreement, (a) the Company desires to add the New Bank as a "Bank" under the Facility Agreement with a Commitment Amount of $25,000,000, (b) the New Bank desires to become a "Bank" under the Facility Agreement with a Commitment Amount of $25,000,000, and (c) each of the Administrative Agent and the Issuing Bank desires to approve the New Bank as a "Bank" under the Facility Agreement with a Commitment Amount of $25,000,000.

Accordingly, and for other good and lawful consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. In accordance with Section 2.04(b) of the Facility Agreement, the New Bank, the Company, the Issuing Bank, and the Administrative Agent hereby agree that, effective as of the date hereof, the New Bank shall be a "Bank" under the Facility Agreement with a Commitment Amount of $25,000,000.

2. The New Bank (a) represents and warrants to the Company and each of the Secured Parties that (i) it has full power and authority to execute and deliver this Agreement and that this Agreement has been duly authorized, executed and delivered by it and constitutes a valid and legally binding agreement, enforceable in accordance with its terms, and (ii) there is no provision of law, statute, regulation, rule, order, injunction, decree, writ or judgment, no provision of its organizational documents and no provision of any mortgage, indenture, contract or agreement binding on it or affecting its properties, which would prohibit, conflict with or in any way prevent its execution, delivery, or performance of the terms of this Agreement; (b) confirms that it has received a copy of the Facility Agreement and t he other Loan Documents and such other documents and information as it has deemed appropriate to make its own decision to enter into this Agreement and become a party to the Facility Agreement; and (c) agrees that it will be bound by the provisions of and will perform in accordance with their terms all of the obligations which by the terms of the Facility Agreement or any other Loan Document are required to be performed by it as a Bank.

3. The Company represents and warrants to each of the Secured Parties that (a) it has full power and authority to execute and deliver this Agreement and that this Agreement has been duly authorized, executed and delivered by it and constitutes a valid and legally binding agreement, enforceable in accordance with its terms, and (b) there is no provision of law, statute, regulation, rule, order, injunction, decree, writ or judgment, no provision of its organizational documents and no provision of any mortgage, indenture, contract or agreement binding on it or affecting its properties, which would prohibit, conflict with or in any way prevent its execution, delivery, or performance of the terms of this Agreement.

4. The Company represents and warrants to the New Bank and each of the Secured Parties that no Default or Event of Default has occurred and is continuing immediately after giving effect to the execution and delivery of this Agreement.

5. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which, when taken together, shall constitute but one agreement. This Agreement shall become effective when the Administrative Agent shall have received counterparts of this Agreement that bear the signatures of the New Bank, the Company, the Issuing Bank, and the Administrative Agent. Delivery of an executed counterpart of a signature page of this Agreement by electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

6. Each of the New Bank and the Company, respectively, agrees to furnish to the Administrative Agent and the Issuing Bank such information as the Administrative Agent or the Issuing Bank shall reasonably request in connection with the New Bank or the Company, respectively.

7. Except as expressly supplemented hereby, the Facility Agreement shall remain in full force and effect.

8. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

9. If any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in any other Loan Document shall not in any way be affected or impaired.

10. All communications and notices hereunder shall be in writing and given as provided in Section 9.02 of the Facility Agreement. All communications and notices hereunder to the New Bank shall be given to it at the address set forth opposite its signature hereto.

11. Neither this Agreement nor any provision hereof may be waived, amended, or modified except as provided in Section 9.01 of the Facility Agreement.

12. The Company agrees to reimburse the Administrative Agent and the Issuing Bank for their reasonable expenses incurred in connection with this Agreement, including the reasonable fees, disbursements, and other charges of counsel.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the undersigned has duly executed and delivered this New Bank Joinder Agreement as of December 22, 2010.

Address:
Goldman Sachs Bank USA
200 West Street
New York, New York 10282

GOLDMAN SACHS BANK USA

By: /s/ Peter Bove
Name: Peter Bove
Title: Authorized Signatory

SUNPOWER CORPORATION

By: /s/ Dennis Arriola
Name: Dennis Arriola
Title: Executive Vice President and Chief Financial Officer

DEUTSCHE BANK AG NEW YORK
BRANCH, as Administrative Agent and as Issuing Bank

By: /s/ Ross Levitsky
Name: Ross Levitsky
Title: Managing Director

By: /s/ Oliver Schwarz
Name: Oliver Schwarz
Title: Director

AMENDMENT NO. 1 TO LOAN AGREEMENT

This AMENDMENT NO. 1 TO LOAN AGREEMENT (this "Amendment"), dated as of November 2, 2010, is made by and between SUNPOWER PHILIPPINES MANUFACTURING LTD., a company organized and existing under the laws of the Cayman Islands, (the "Borrower") and INTERNATIONAL FINANCE CORPORATION, an international organization established by Articles of Agreement among its member countries ("IFC").

RECITALS:

WHEREAS, the Borrower and IFC have entered into that certain Loan Agreement, dated May 6, 2010, which constitutes Part 2 of the Mortgage Loan Agreement dated May 6, 2010 among the Borrower, SPML Land, Inc. and IFC, (such Loan Agreement, as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"). Capitalized terms not otherwise defined in this Amendment shall have the respective meanings ascribed to such terms in the Loan Agreement.

WHEREAS, the Borrower has requested IFC to agree to certain amendments to the Loan Agreement described in Section 1 below.

WHEREAS, IFC, on the terms and conditions stated below, is willing to amend the Loan Agreement as hereinafter set forth.

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

SECTION 1. Amendment. The Loan Agreement is, subject to the satisfaction of the conditions precedent set forth in Section 3 hereof, hereby amended as follows:

(a) Section 2.16(b)(viii) of the Loan Agreement is hereby amended and restated to read as follows:

"(viii) IFC has received evidence satisfactory to IFC that, prior to such Disbursement, the Current Ratio of the Borrower is not less than 1.1 and, after giving effect to such Disbursement, the Prospective Debt Service Coverage Ratio of the Borrower would not be less than 1.5;"

(b) Annex I of the Loan Agreement is hereby deleted and replaced by Annex I attached hereto.

(c) Section 2.16(a) of the Loan Agreement is hereby amended by adding the following new subclause (xx) at the end thereof:

"(xx) IFC shall have received documentary evidence satisfactory to IFC that the action items set forth in Stage 1 of the SPML Land Action Plan have been completed."

(d) Section 2.16(b) of the Loan Agreement is hereby amended by adding the following new subclauses (xi) and (xii) at the end thereof:

"(xi) Prior to and only with respect to the second Disbursement of the Loan, IFC shall have received documentary evidence satisfactory to IFC that the action items set forth in Stage 2 and Stage 3 of the SPML Land Action Plan have been completed.

(xii) Prior to the second Disbursement of the Loan, IFC shall have received the Certificate of Good Standing of the Borrower issued by the Philippine Securities and Exchange Commission."

SECTION 2. Disbursement Amount. The Borrower and IFC hereby agree that the first Disbursement of the Loan, after satisfaction of all of the conditions of disbursement set forth in Section 2.16 of the Loan Agreement, as amended hereby but excluding the requirement to deliver the Certificate of Good Standing of the Borrower issued by the Philippine Securities and Exchange Commission, shall be up to a principal amount of fifty million Dollars ($50,000,000).

SECTION 3. Conditions to Effectiveness. This Amendment shall become effective on and as of the date hereof (the "Amendment No. 1 Effective Date") when all of the following conditions precedent have been satisfied:

(a) The representations and warranties set forth in Section 4 below shall be true and correct in all material respects on and as of the Amendment No. 1 Effective Date.

(b) Before and after giving effect to this Amendment, the representations and warranties set forth in Article III of the Loan Agreement shall be true and correct in all material respects on and as of the Amendment No. 1 Effective Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date.

(c) On the Amendment No. 1 Effective Date, after giving effect to this Amendment, no Potential Event of Default or Event of Default shall have occurred and be continuing.

(d) This Amendment shall have been duly executed and delivered by the Borrower and IFC, and all legal matters incident to this Amendment, and the amendment of the Loan Agreement by this Amendment, shall be reasonably satisfactory to IFC.

SECTION 4. Representations and Warranties of the Borrower. The Borrower hereby represents and warrants as follows:

(a) The execution and delivery by the Borrower of this Amendment, and the

performance of the transactions contemplated by this Amendment and by the Loan Agreement, as amended by this Amendment, are within its corporate powers, have been duly authorized by all necessary applicable corporate action, and will not conflict with or result in a breach of any of the material terms, conditions or provisions of, or constitute a default or require any consent that has not been obtained under, any indenture, mortgage, agreement or other instrument or arrangement to which it is a party or by which it is bound, or violate any of the terms or provisions of its organizational documents or any Authorization, judgment, decree or order or any statute, rule or regulation applicable to it;

(b) No Authorization or approval or other action by, and no notice to or filing with, any Authority is required for the due execution, delivery and performance by the Borrower of this Amendment, or for the performance by the Borrower of the Loan Agreement, as amended hereby, other than Authorizations that are of a routine nature and are obtained in the ordinary course of business and the Authorizations specified in Annex C of the Loan Agreement and those Authorizations have all been obtained and are in full force and effect.

(c) This Amendment has been duly executed and delivered by the Borrower, and this Amendment and the Loan Agreement, as amended hereby, each constitute the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with the terms hereof and thereof, respectively.

(d) Both before and after giving effect to this Amendment, each of the representations and warranties set forth in Article III of the Loan Agreement is true and correct in all material respects on and as of the Amendment No. 1 Effective Date, with the same effect as though made on and as of such date, except to the extent that such representation or warranty expressly relates to an earlier date.

SECTION 5. Reference to and Effect on the Transaction Documents.

(a) On and after the Amendment No. 1 Effective Date, each reference in the Mortgage Loan Agreement or the Loan Agreement to "this Agreement", "hereunder", "hereof" or words of like import referring to the Loan Agreement, and each reference in each of the other Transaction Documents to "the Loan Agreement", "thereunder", "thereof" or words of like import referring to the Loan Agreement, shall mean and be a reference to the Loan Agreement, as amended by this Amendment.

(b) The Mortgage Loan Agreement and the Loan Agreement, as specifically amended by this Amendment, is and shall continue to be in full force and effect and is hereby in all respects ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of IFC under the Loan Agreement, the Mortgage Loan Agreement or any other Transaction Document, nor shall it constitute a waiver of any provision of the Loan Agreement, the Mortgage Loan Agreement or any other Transaction Document.

(d) The Borrower agrees to execute and deliver to IFC such further instruments, documents and agreements, and to take such further actions, as IFC may from time to time request in order to carry out and implement the intent and purpose of this Amendment and the amendment to the Loan Agreement hereby.

SECTION 6. Execution in Counterparts. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 7 hereof. Delivery of an executed signature page to this Amendment by facsimile transmission, or by "pdf", "tiff" or similar electronic graphic file transmission shall be as effective as delivery of a manually signed counterpart of this Amendment.

SECTION 7. Binding Effect. This Amendment shall become effective on the Amendment No. 1 Effective Date when counterparts hereof which, when taken together, bear the signatures of each of the parties hereto, have been duly executed and delivered to IFC. The parties hereto hereby agree that this Amendment shall constitute a Transaction Document under the Mortgage Loan Agreement, the Loan Agreement and the other Transaction Documents, and for all purposes thereunder and in respect thereof.

SECTION 8. Applicable Law. (a) This Amendment shall be governed by and construed in accordance with the laws of the State of New York, United States of America.

(b) For the exclusive benefit of IFC, the Borrower irrevocably agrees that any legal action, suit or proceeding arising out of or relating to this Amendment may be brought in any federal or state court located in the City and State of New York. By the execution of this Amendment, the Borrower irrevocably submits to the non-exclusive jurisdiction of any such court (and of the appropriate appellate courts therefrom) in any such action, suit or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any action, suit or proceeding in any such court or that such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.< /div>

(c) The Borrower hereby irrevocably designates, appoints and empowers C T Corporation System, with offices currently located at 111 Eighth Avenue, New York, New York 10011, as its authorized agent solely to receive for and on its behalf service of any summons, complaint or other legal process in any action, suit or proceeding IFC may bring in the State of New York in respect of this Amendment. The Borrower also irrevocably consents to the service of process of summons, complaint and other legal process in any action, suit or proceeding being made out of federal and state courts located in the State of New York by mailing copies of the papers by registered United States air mail, postage prepaid, or by any other method of delivery specified in Section 6.02 (Notices) of the Loan Agreement, to the Borrower at its address specified pursuant to such Section, whether within or without the jurisdiction of any court, and the Borrower agrees that service of process on it as so specified shall be deemed effective service of process.

(d) THE BORROWER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(e) The Borrower hereby explicitly and irrevocably waives any immunity it may have in respect of its obligations under this Amendment or its assets, under the laws of any jurisdiction, including laws purporting to grant sovereign immunity, to the fullest extent permitted now or in the future by the laws of such jurisdiction.

(f) The Borrower hereby irrevocably waives, to the fullest extent now or in the future permitted under the laws of the jurisdiction in which the relevant court is located, the benefit of any provision of law requiring IFC in any action, suit or proceeding arising out of or in connection with this Amendment to which the Borrower is a party to post security for the costs of the Borrower, or to post a bond or to take similar action.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to Loan Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

SUNPOWER PHILIPPINES MANUFACTURING LTD., as Borrower

By:	/s/ Dennis Arriola
Name:	Dennis Arriola
Title:	Senior Vice President and Chief Financial Officer

INTERNATIONAL FINANCE CORPORATION

By:	/s/ Atup Mehta
Name:	Atup Mehta
Title:	Director, Global Manufacturing, Agribusiness and Services Department

[Signature Page]

ANNEX I

SPML LAND ACTION PLAN

Stage	Action	Deadline
1	Definitive Capital Restructuring Stage: a. Revision of the capital and ownership structure of SPML Land to increase its equity capitalization level based on a total debt-to-equity ratio of 4:1; and increase Filipino stake in the equity capitalization, not only in terms of number of shares but also in par value of shares, based on a Filipino-to-foreigner-shareholder ratio of 60:40; b. Organization of the SPML retirement fund as a Philippine national and subscription by the trustee to the increase in equity capitalization of SPML Land earmarked to be held by a Filipino shareholder; c. Approval of the increase and amendment of the capital structure of SPML Land by its board of directors and shareholders; d. Filing of the application for the increase in capital stock and amendment of the charter documents of SPML Land with the Philippine Securities and Exchange Commission (SEC) for pre-processing; and e. Issuance by the SEC of the official receipt following acceptance for processing of the application and payment of the filing fee.	Prior to the first Disbursement
2	Sale of the SPML Land shares held by the 3 individual Filipinos to the trustee of the retirement fund, and registration of the sale in the stock and transfer book of SPML Land following issuance of the proper tax clearance.	Within 45 days after the first Disbursement and prior to the second Disbursement
3	Approval by the SEC of the increase in capital stock and amendment in charter documents of SPML Land	Within 105 days after the first Disbursement and prior to the second Disbursement

4	Grant of tax-exempt status for the retirement fund by the Bureau of Internal Revenue (BIR)	30 June 2011

Exhibit 10.43

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

CREDIT AGREEMENT

Dated as of October 29, 2010

among

SUNPOWER CORPORATION,
as the Borrower,

THE GUARANTORS PARTY HERETO,

UNION BANK, N.A.,
as Administrative Agent, Sole Lead Arranger and a Lender,

and

THE OTHER LENDERS PARTY HERETO

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SCHEDULES

EXHIBITS

CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of October 29, 2010 among SUNPOWER CORPORATION, a Delaware corporation (the "Borrower"), the Guarantors (defined herein), the Lenders (defined herein) and UNION BANK, N.A., as Administrative Agent.

RECITALS

The Borrower has requested that the Lenders provide a revolving credit facility to the Borrower, for itself, and for the direct and indirect benefit of each Guarantor, and the Lenders are willing to do so on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following words and phrases, whether used in their singular or plural form, shall have the meanings set forth below:

"Acceding Lender" has the meaning set forth in Section 2.04(b).

"Accession Agreement" has the meaning set forth in Section 2.04(b).

"Acquisition", by any Person, means the acquisition by such Person, in a single transaction or in a series of related transactions, of either (a) all or any substantial portion of the property of, or a line of business or division of, another Person or (b) at least a majority of the Voting Stock of another Person, in each case whether or not involving a merger or consolidation with such other Person.

"Administrative Agent" means Union Bank in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 11.02 or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, however, (a) for purposes of Section 7.07(a), a Person shall not be deemed to be an Affiliate of the Borrower due exclusively to the fact that such Person possesses, directly or indirectly, power to vote 10% or more of the Voting Stock of the Borrower, so long as such Person does not possess the direct or indirect power to vote more than 20% of the Vot ing Stock of the Borrower, and (b) for purposes of Section 8.09, a Person shall not be deemed to be an Affiliate of the Borrower due exclusively to the fact that such Person possesses, directly or indirectly, power to vote 10% or more of the Voting Stock of the Borrower.

"Aggregate Revolving Commitments" means the Revolving Commitments of all the Lenders. The initial amount of the Aggregate Revolving Commitments in effect on the Closing Date is $70,000,000.

"Agreement" means this Credit Agreement.

"Alternate Currency" means any currency (other than Dollars) that is freely tradable and exchangeable into dollars in the London market and approved in writing as an Alternate Currency by the Borrower and the Administrative Agent, in their sole discretion; provided however, the South Korean won (KRW) shall be deemed to be an Alternate Currency.

"Applicable Percentage" means with respect to any Lender at any time, with respect to such Lender's Revolving Commitment at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Revolving Commitments represented by such Lender's Revolving Commitment at such time; provided that if the commitment of each Lender to make Revolving Loans has been terminated pursuant to Section 9.02 or if the Aggregate Revolving Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption or Accession Agreement pursuant to which such Lender becomes a party hereto, as applicable. The Applicable Percentages shall be subject to adjustment as provided in Section 2.13.

"Applicable Rate" means (a) with respect to LIBOR Rate Loans, 2.75% per annum and (b) with respect to Base Rate Loans, 1.75% per annum.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit 11.06(b) or any other form approved by the Administrative Agent and the Borrower.

"Attributable Indebtedness" means, with respect to any Person on any date, in respect of any Capital Lease, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"Audited Financial Statements" means the audited consolidated balance sheet of Borrower and its Subsidiaries for the fiscal year ended January 3, 2010, and the related consolidated statements of income or operations, shareholders' equity and cash flows of Borrower and its Subsidiaries for such fiscal year, including the notes thereto.

"Availability Period" means, with respect to the Revolving Commitments, the period from and including the Closing Date to the earliest of (a) the Maturity Date, and (b) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.04.

"Bankruptcy Code" means Title 11 of the United States Code (11 U.S.C. §§ 101 et seq.), as now and hereafter in effect, or any successor statute.

"Base Rate" means, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1.50%, (b) the rate of interest in effect for such day as most recently publicly announced from time to time by Union Bank at its corporate headquarters as the "Union Bank, N.A. reference rate" and (c) the LIBOR Rate plus 1.00%. It is understood and agreed that the "Union Bank, N.A. Reference Rate" is one of Union Bank's index rates and merely serves as a basis upon which effective rates of interest are calculated for loans mak ing reference thereto and may not be the lowest or best rate at which Union Bank calculates interest or extends credit. The "Union Bank, N.A. reference rate" is a rate set by Union Bank based upon various factors including Union Bank's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such "Union Bank, N.A. reference rate" announced by Union Bank shall take effect at the opening of business on the day specified in the public announcement of such change. The Base Rate, as adjusted, shall constitute the Base Rate on the date when such adjustment is made and shall continue as the applicable Base Rate until further adjustment.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Borrower" has the meaning specified in the introductory paragraph hereto.

"Borrowing" means a borrowing consisting of simultaneous Loans of the same Type and, in the case of LIBOR Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

"Borrowing Base" means, as of any time of determination, an amount equal to thirty percent (30%) of the Dollar Equivalent of the WJE Stock Value at such time, as determined by the Administrative Agent, minus the aggregate amount of reserves, if any, established under Section 2.01(b).

"Borrowing Base Certificate" means a certificate substantially in the form of Exhibit 7.02(c).

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located and, if such day relates to any LIBOR Rate Loan or any Base Rate Loan bearing interest at a rate based on the LIBOR Rate, means any such day that is also a London Banking Day.

"Capital Lease" means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a capital lease on the balance sheet of that Person.

"Capitalized Lease Obligation" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on, or disclosed in a footnote to, a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Change in Law" means the occurrence, after the date of this Agreement (or with respect to any Lender, if later, the date on which such Lender becomes a Lender), of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided however, for purposes of this

Agreement, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, guidelines or directives in connection therewith are deemed to have gone into effect and adopted after the date of this Agreement.

"Change in Control" means the occurrence of any of the following:

(a) if the Borrower is a publicly held Person, (i) any Person or two or more Persons acting in concert shall have acquired beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act), directly or indirectly, of Voting Stock of the Borrower (or other securities convertible into or exchangeable for such Voting Stock) representing forty percent (40%) or more of the combined voting power of all Voting Stock of the Borrower (on a fully diluted basis), (ii) during any period of up to twenty-four (24) consecutive months, commencing on or after the date of this Agreement, a majority of the members of the board of directors of the Borrower shall not be Continuing Directors, or (iii) any Person or two or more Persons acting in concert shall have acquired, by contract or otherwise, or shall have entered into a contract or arrangement that upon consummation will result in its or their acquisition of power to exercise, directly or indirectly, a controlling influence over the management or policies of the Borrower;

(b) if the Borrower is not a publicly held Person, (i) a sale (whether of stock or other assets), merger or other transaction or series of related transactions involving the Borrower, as a result of which those Persons who held 100% of the Voting Stock of the Borrower immediately prior to such transaction do not hold (either directly or indirectly) more than fifty percent (50%) of the Voting Stock of the Borrower (or the surviving or resulting entity thereof) after giving effect to such transaction, or (ii) the sale of all or substantially all of the assets of the Borrower in a transaction or series of related transactions;

(c) the failure of the Borrower to own and control, directly or indirectly at least 100% of the Equity Interests of each Guarantor; and

(d) a "Fundamental Change" (as that term is defined in the Indenture).

"Closing Date" means October 29, 2010.

"Collateral" means a collective reference to all property with respect to which Liens in favor of the Administrative Agent, for the benefit of itself and the Lenders, or in favor of the Lenders are purported to be granted pursuant to and in accordance with the terms of the Collateral Documents.

"Collateral Documents" means a collective reference to the Security Agreement, the Korean Share Pledge and other security agreements, debentures, pledge agreements, mortgages, deeds of trust, deeds to secure debt, collateral assignments or other security documents as may be executed and delivered by any of the Loan Parties to secure the Obligations.

"Commitment" means, as to each Lender, the Revolving Commitment of such Lender.

"Compliance Certificate" means a certificate substantially in the form of Exhibit 7.02(b).

"Consolidated EBITDA" means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for such period plus, without duplication, the following to the extent deducted in calculating such Consolidated Net Income: (a) any deduction for (or less any gain from) income or franchise taxes; plus (b) interest expense; plus (c) amortization and depreciation expense; plus (d) any non-recurring and non-cash charges resulting from

application of GAAP that requires a charge against earnings for the impairment of goodwill; plus (e) any non-cash expenses that arose in connection with the grant of stock options to officers, directors and employees of the Borrower and its Subsidiaries; plus (f) non-cash restructuring charges; plus (g) non-cash charges related to mark-to-market valuation adjustments as may be required by GAAP from time to time; plus (h) non-cash charges arising from changes in GAAP occurring after the date hereof; less (i) any extra ordinary gains and non-cash items of income. As used in this definition, "non-cash charge" shall mean a charge in respect of which no cash is paid during the applicable period (whether or not cash is paid with respect to such charge in a subsequent period) and "non-cash item of income" shall mean an item of income in respect of which no cash is received during the applicable period (whether or not cash is received with respect to such item of income in a subsequent period).

"Consolidated Interest Charges" means, for any period, for Borrower and its Subsidiaries on a consolidated basis, an amount equal to the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, plus (b) the portion of rent expense with respect to such period under Capital Leases that is treated as interest in accordance with GAAP.

"Consolidated Net Income" means, for any period, for Borrower and its Subsidiaries on a consolidated basis, the net income from operations determined in accordance with GAAP.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

"Credit Extension" means a Borrowing.

"DB Available Amount" means, at any time with respect to any DB LOC, the maximum amount available to be drawn under such DB LOC under any circumstance at such time or thereafter, giving effect to any scheduled increases in accordance with the terms of such DB LOC, including any amount that has been the subject of a drawing by the applicable beneficiary prior to the expiration or termination of such DB LOC but has not yet been paid or refused by the issuing bank.

"DB Calculation Date" means (a) each date on which an Alternate Currency LOC is issued or is increased, renewed, or extended by amendment and (b) the first Business Day of each calendar month.

"DB Credit Exposure" means, at any time, the Dollar Equivalent of the sum (without duplication) at such time of (a) the aggregate outstanding amount of all DB LOC Disbursements, (b) the aggregate Available Amounts of all DB LOCs, and (c) the aggregate DB Available Amounts of all DB LOCs that have been requested to be issued under the DB Facility but have not yet been so issued.

"DB Facility" means any letter of credit facility or sub-facility provided pursuant to or in connection with that certain Letter of Credit Facility Agreement, dated as of April 12, 2010 by and among the Loan Parties, Bank of America, N.A., as syndication agent, Deutsche Bank AG New York Branch, as issuing bank and as administrative agent, and the other parties thereto from time to time, as the same may be amended, modified, supplemented, extended or restated from time to time.

"DB LOC" means each letter of credit issued under or in connection with the DB Facility.

"DB LOC Disbursement" means the making of any payment by an issuing bank under a DB LOC in the amount of such payment, and the making of any payment by a bank for the account of the issuing bank under the DB Facility on account of an unreimbursed drawing on an LOC.

"Debtor Relief Laws" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means when used with respect to Obligations, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 5% per annum; provided, however, that with respect to a LIBOR Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 5% per annum, in each case to the fullest extent permitted by applicable Laws.

"Defaulting Lender" means, subject to Section 2.13(b), any Lender that, as determined by the Administrative Agent, (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans, within three Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to th e Administrative Agent that it will comply with its funding obligations, or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition of any property by any Loan Party or any Subsidiary, including any Sale and Leaseback Transaction and any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, but excluding any Involuntary Disposition.

"Dollar" "dollar" and "$" mean lawful money of the United States.

"Dollar Equivalent" means, on any date of determination, (a) with respect to any amount in Dollars, such amount, and (b) with respect to any amount in an Alternate Currency, the equivalent in Dollars of such amount, determined by the Administrative Agent using the Exchange Rate with respect to such Alternate Currency at the time in effect.

"Domestic Subsidiary" means, with respect to any Person, any Subsidiary of such Person that is organized under the laws of any state of the United States or the District of Columbia.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Sections 11.06(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

"Environmental Laws" means any and all federal, state, local, foreign and other applicable statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any hazardous materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Loan Party or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not s uch shares, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Internal Revenue Code (and Sections 414(m) and (o) of the Internal Revenue Code for purposes of provisions relating to Section 412 of the Internal Revenue Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Internal Revenue Code or Sections 303, 304 and 305 of ERISA or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

"Event of Default" has the meaning specified in Section 9.01.

"Exchange Act" means the United States Securities Exchange Act of 1934, as amended from time to time, and any successor statute or statutes.

"Exchange Rate" means on any day, with respect to any Alternate Currency, the rate at which such Alternate Currency may be exchanged into dollars, for the most recent reported date published by the Wall Street Journal on its website at http://online.wsj.com on the "Exchange Rates: New York Closing Snapshot" page (or such other page as may replace such page on such service for the purpose of displaying the New York Closing (in late New York trading or similar designation) foreign-exchange rate for the conversion of Alternate Currency into dollars). In the event that such rate does not appear on such website, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upo n in writing by the Administrative Agent and the Borrower, or, in the absence of such agreement, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its Alternate Currency exchange operations in respect of such Alternate Currency are then being conducted, at or about 11:00 a.m., local time, on such date for the purchase of dollars for delivery two (2) Business Days later; provided that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent, after consultation with the Borrower, may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located (c) any backup withholding tax that is required by t he Internal Revenue Code to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 3.01(e)(ii) and (d) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 11.13), any United States withholding tax that (i) is required to be imposed on amounts payable to such Foreign Lender pursuant to the Laws in force at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or (ii) is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with clause (B) of Section 3.01(e)(ii), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receiv e additional amounts from the Borrower with respect to such withholding tax pursuant to Section 3.01(a)(ii) or 3.01(c).

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Union Bank on such day on such transactions as determined by the Administrative Agent.

"Fee Letter" means the letter agreement, dated September 30, 2010 by and between the Borrower, and the Administrative Agent.

"Financial Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind (other than amounts excluded from the restriction on Indebtedness pursuant to Section 8.03(g)), (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person (other than up to $25,000,000 in the aggregate of obligations arising under agreements with Jabil Circuit, Inc. re lating to sales by the Borrower or any of its Subsidiaries to Jabil Circuit, Inc. of used equipment and other than amounts excluded from the restriction on Indebtedness pursuant to Section 8.03(p)), (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business as conducted from time to time and current intercompany liabilities maturing within 365 days of the incurrence thereof), (f) all guarantees by such Person of Financial Indebtedness of others (including, for the avoidance of doubt, any Indebtedness described in Section 8.03(o)), and (g) all Capital Lease Obligations of such Person; provided that "Financial Indebtedness" of such Person shall exclude non-recourse indebtedness, other than non-recourse indebtedness with a primary purpose of financing the operations of such Person.

"Foreign Lender" means any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, consistently applied and as in effect from time to time.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the

obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantors" means (a) each Domestic Subsidiary of the Borrower identified as a "Guarantor" on the signature pages hereto, and (b) each other Person that joins as a Guarantor, together with their successors and permitted assigns.

"Guaranty" means the Guaranty made by the Guarantors in favor of the Administrative Agent and the Lenders pursuant to Article IV.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law because of their hazardous, dangerous or deleterious properties or characteristics.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind;

(b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(c) all obligations of such Person upon which interest charges are customarily paid;

(d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person;

(e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business as conducted from time to time and current intercompany liabilities maturing within 365 days of the incurrence thereof);

(f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed;

(g) all Guarantees of such Person in respect of any Indebtedness of others;

(h) all Capitalized Lease Obligations of such Person;

(i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit (including standby and commercial) and letters of guaranty, or in respect of bankers' acceptances; and

(j) all net payment obligations, contingent or otherwise, of such Person under Swap Contracts.

The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitees" has the meaning specified in Section 11.04(b).

"Information" has the meaning specified in Section 11.07.

"Interest Payment Date" means (a) as to any LIBOR Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a LIBOR Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period until the last day of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each calendar month.

"Interest Period" means, as to each LIBOR Rate Loan, the period commencing on the date such LIBOR Rate Loan is disbursed or converted to or continued as a LIBOR Rate Loan and ending on the date one, two or three months thereafter, as selected by the Borrower in its Loan Notice, during which the LIBOR Rate applicable to such LIBOR Rate Loan shall remain unchanged; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

"Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended from time to time, and any successor statute or statutes.

"Investment" means, as to any Person, any acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, a Guarantee, an assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"Involuntary Disposition" means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Loan Party or any Subsidiary.

"IRS" means the United States Internal Revenue Service.

"Korean Share Pledge" means that certain Share Kun-Pledge Agreement, dated as of the Closing Date, by and among the Borrower, the Administrative Agent and the Lenders, as the same may be amended, modified, supplemented, restated or renewed from time to time.

"Laws" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lenders" means each of the Persons identified as a "Lender" on the signature pages hereto, each other Person that becomes a "Lender" in accordance with this Agreement and their successors and assigns.

"Lending Office" means, as to any Lender, the office or offices of such Lender described on Schedule 2.01, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"LIBOR Base Rate" means,

(a) for any Interest Period with respect to a LIBOR Rate Loan, the rate determined by the Administrative Agent to be the per annum rate (rounded upward to the nearest one-hundredth of one percent (1/100%)) at which deposits in Dollars, for delivery on the first day of such Interest Period, in same day funds, in the approximate amount of the LIBOR Rate Loan being made, continued or converted and with a term equal to such Interest Period would be offered to the Administrative Agent, on behalf of Lenders, outside of the United States at approximately 11:00 a.m. (London time) three (3) London Banking Days before the first day of such Interest Period.

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars, for delivery on the date of determination, in same day funds, in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered to the Administrative Agent, on behalf of Lenders, outside of the United States at approximately 11:00 a.m. (London time) before at its request at the date and time of determination.

"LIBOR Rate" means (a) for any Interest Period with respect to any LIBOR Rate Loan, a rate per annum determined by the Administrative Agent to be equal to the quotient obtained by dividing (i) the LIBOR Base Rate for such LIBOR Rate Loan for such Interest Period by (ii) one minus the LIBOR Reserve Percentage for such LIBOR Rate Loan for such Interest Period, stated as a decimal and (b) for any day with respect to any Base Rate Loan the interest rate on which is determined by reference to the LIBOR Rate, a rate per annum determined by the Administrative Agent to be equal to the quotient obtained by dividing (i) the LIBOR Base Rate for such Base Rate Loan for such day by (ii) one minus the LIBOR Reserve Percentage for such Base Rate Loan for such day. The LIBOR Rate shall be rounded upward to the nearest 1/100 of 1%) and, once determined, shall remain unchanged during the applicable Interest Period, except for changes to reflect adjustments in the LIBOR Reserve Percentage.

"LIBOR Rate Loan" means a Loan that bears interest at a rate based on clause (a) of the definition of "LIBOR Rate."

"LIBOR Reserve Percentage" means, for any day, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as "Eurocurrency liabilities"). The LIBOR Rate for each outstanding LIBOR Rate Loan and for each outstanding Base Rate Loan the interest rate on which is determined by reference to the LIBOR Rate shall be adjusted automatically as of the effective date of any change in the LIBOR Reserve Percentage.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien (statutory or other), pledge, hypothecation, collateral assignment, encumbrance, deposit arrangement, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan" means an extension of credit by a Lender to the Borrower under Article II in the form of a Revolving Loan.

"Loan Documents" means, collectively, this Agreement, each Note, each Collateral Document, the Fee Letter, and any and all other agreements, documents, or instruments (including financing statements) entered into in connection with the transactions contemplated by this Agreement, together with all alterations, amendments, changes, extensions, modifications, refinancings, refundings, renewals, replacements, restatements, or supplements, of or to any of the foregoing.

"Loan Notice" means a notice of (a) a Borrowing of Revolving Loans, (b) a conversion of Loans from one Type to the other, or (c) a continuation of LIBOR Rate Loans, in each case pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit 2.02.

"Loan Parties" means, collectively, the Borrower and each Guarantor.

"London Banking Day" means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect on, the operations, business, properties, liabilities (actual or contingent) or financial condition of the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party or a material adverse effect on the rights and remedies of the Administrative Agent or any Lender under any Loan Document; or (c) a material adverse effect on the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"Maturity Date" means October 28, 2011; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

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

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Note" has the meaning specified in Section 2.09.

"Obligations" means all advances to, and all debts, liabilities, obligations, covenants and duties of every kind of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, liquidated or unliquidated, legal or equitable, due or to become due, now existing or hereafter arising, voluntary or involuntary and however arising, whether such Loan Party is liable individually or jointly or with others, whether incurred before, during or after any proceeding under any Debtor Relief Laws, and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Outstanding Amount" means, with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of any Loans occurring on such date.

"Participant" has the meaning specified in Section 11.06(d).

"Patriot Act" means the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) and the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109-177). USA PATRIOT Act).

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the Internal Revenue Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Internal Revenue Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Internal Revenue Code and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Internal Revenue Code.

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, Japan or the European Union (or by any agency of any thereof to the extent such obligations are backed by the full faith and credit of such jurisdiction), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, a credit rating of at least A-1 from S&P or P-1 from Moody's;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than $500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAAm by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $1,000,000,000;

(f) loans, advances, or investments existing on the Closing Date and listed on Schedule 8.02;

(g) additional loans or advances by the Borrower or a Subsidiary to employees and officers in the ordinary course of business and in amounts not to exceed an aggregate of $20,000,000 outstanding at any time;

(h) investments which constitute Specified Transactions expressly permitted under Section 8.03(d);

(i) loans, advances, or investments which constitute Indebtedness permitted under Section 8.03;

(j) advances to, or investments in, a Subsidiary, in WJE, or in Philippine Electric Corp. by the Borrower or any Subsidiary in the ordinary course of business as conducted from time to time;

(k) transactions in connection with factoring of the accounts receivable of any Loan Party or Subsidiary pursuant to the Tech Credit Agreement; and

(l) prepayments of obligations to vendors and suppliers in the ordinary course of business as conducted from time to time in an amount not to exceed $450,000,000.

"Permitted Liens" means, at any time, the following Liens in respect of property of any Loan Party:

(a) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 7.04;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 7.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof), including those incurred pursuant to any law primarily concerning the environment, preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters, in each case in the ordinary course of business as conducted from time to time;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under Section 9.01(h);

(f) easements, zoning restrictions, rights-of-way, and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary;

(g) Liens on property or assets of the Borrower or any Subsidiary existing on the Closing Date and listed on Schedule 8.01; provided that such Liens shall secure only those obligations that they secure on the Closing Date (and permitted extensions, renewals, and refinancings of such obligations) and shall not subsequently apply to any other property or assets of the Borrower or any Subsidiary;

(h) purchase money security interests in equipment or other property or improvements thereto hereafter acquired (or, in the case of improvements, constructed) by the Borrower or any Subsidiary (including the interests of vendors and lessors under conditional sale and title retention agreements and similar arrangements for the sale of goods entered into by the Borrower or any Subsidiary in the ordinary course of business as conducted from time to time);

(i) Liens arising out of Capitalized Lease Obligations, so long as such Liens attach only to the property sold and being leased in such transaction and any accessions thereto or proceeds thereof and related property;

(j) any interest or title of a lessor under any leases or subleases entered into by the Borrower or any Subsidiary in the ordinary course of business as conducted from time to time;

(k) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance or incurrence of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business;

(l) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(m) licenses of intellectual property granted in the ordinary course of business;

(n) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(o) Liens solely on any cash earnest money deposits made by the Borrower or any Subsidiary in connection with any letter of intent or purchase agreement permitted hereunder;

(p) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(q) agreements to subordinate any interest of the Borrower or any Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Borrower or any of its Subsidiaries pursuant to an agreement entered into in the ordinary course of business;

(r) Liens arising from precautionary UCC financing statements regarding operating leases;

(s) Liens on equity interests in joint ventures, other than equity interests included in the Collateral, held by the Borrower or a Subsidiary securing obligations of such joint venture;

(t) Liens on securities (other than securities included in the Collateral) that are the subject of repurchase agreements constituting Permitted Investments under subsection (d) of the definition thereof;

(u) Liens on accounts receivable, inventory and cash collateral securing Permitted Indebtedness under the DB Facility granted pursuant to the documents, instruments and agreements governing the DB Facility as in effect on the Closing Date; provided that such Liens do not attach to any Collateral under any of the Loan Documents;

(v) Liens in favor of customers or suppliers of the Borrower or any Subsidiary on equipment, supplies and inventory purchased with the proceeds of advances made by such customers or suppliers under, and securing obligations in connection with, supply agreements;

(w) Liens that arise by operation of law for amounts not yet due;

(x) existing and future Liens related to or arising from the sale, transfer, or other disposition of rights to solar power rebates in the ordinary course of business as conducted from time to time;

(y) existing and future Liens in favor of the Borrower's bonding company covering materials, contracts, receivables, and other assets which are related to, or arise out of, contracts which are bonded by that bonding company in the ordinary course of the Borrower's business as conducted from time to time;

(z) Liens in connection with the sale-leaseback arrangement, pursuant to the Master Lease Agreement dated as of June 26, 2009 by and among WF-SPWR I Solar Statutory Trust, Whippletree Solar, LLC, and the other Persons party thereto of certain solar power production projects and the related escrow of funds supporting the obligations of certain Subsidiaries thereunder; provided that such Liens do not attach to any Collateral under any of the Loan Documents;

(aa) Liens in connection with an escrow by the Borrower in the amount of $2,400,000 in respect of the performance obligations of Greater Sandhill I, LLC ("GS"), an unaffiliated customer of the Borrower, under a Solar Energy Purchase Agreement between GS and Public Service Company of Colorado and related documentation;

(bb) Liens on Equity Interest in project finance Subsidiaries of the Borrower or Subsidiaries of the Borrower to secure project finance related Indebtedness;

(cc) customary Liens on securities accounts of a Loan Party in favor of the securities broker with whom such accounts are maintained, provided that (i) such Liens arise in the ordinary course of business of the applicable Loan Party and such broker pursuant to such broker's standard form of brokerage agreement; (ii) such securities accounts are not subject to restrictions against access by any Loan Party; (iii) such Liens secure only the payment of standard fees for brokerage services charged by, but not financing made available by, such broker and such Liens do not secure Indebtedness for borrowed money; and (iv) such Liens are not intended by any Loan Party to provide collateral to such broker; and

(dd) other Liens so long as the outstanding principal amount of the obligations secured thereby does not exceed (as to the Loan Parties in the aggregate) $5,000,000 at any one time; provided that such Liens do not attach to any Collateral under any of the Loan Documents.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any Subsidiary or any such Plan to which the Borrower or any Subsidiary is required to contribute on behalf of any of its employees.

"Rating Agency" means Moody's, S&P, Fitch Ratings Ltd. or any other nationally recognized rating agency or service.

"Register" has the meaning specified in Section 11.06(c).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person's

Affiliates; provided, however, that neither the Borrower, WJE nor any of their Subsidiaries shall be treated as a Related Party of the Administrative Agent or any Lender.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty-day notice period has been waived.

"Request for Credit Extension" means with respect to a Borrowing, conversion or continuation of Loans, a Loan Notice.

"Required Lenders" means, at any time, Lenders holding in the aggregate more than 50% of (a) the unfunded Commitments and the outstanding Loans, and participations therein or (b) if the Commitments have been terminated, the outstanding Loans, and participations therein; provided, however, if at any time of determination there are fewer than three Lenders hereunder, then the term "Required Lenders" shall mean all Lenders at such time. The unfunded Commitments of, and the outstanding Loans, and participations therein held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Responsible Officer" means, (a) in the case of the Borrower or any other Loan Party, its president, chief executive officer, chief financial officer, principal accounting officer, treasurer or controller (and, in any case where two Responsible Officers are acting on behalf of such Person the second such Responsible Officer may also be its Secretary or an Assistant Secretary), and (b) in the case of any other Person, its manager, general partner, or a senior or executive officer of such other Person or of its managing member or general partner, as applicable. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests of any Person, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interests or on account of any return of capital to such Person's stockholders, partners or members (or the equivalent Person thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment; provided, however, that repurchases of Equity Interests of the Borrower from employees, officers, directors, and consultants pursuant to the Borrower's equity compensation plans shall not constitute "Restricted Payments" hereunder.

"Revolving Commitment" means, as to each Lender, its obligation to make Revolving Loans to the Borrower pursuant to Section 2.01, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 or in the Assignment and Assumption or Accession Agreement pursuant to which such Lender becomes a party hereto, as applicable as such amount may be adjusted from time to time in accordance with this Agreement.

"Revolving Loan" has the meaning specified in Section 2.01(a).

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Security Agreement" means the Pledge Agreement, dated as of the Closing Date executed in favor of the Administrative Agent by the Borrower.

"Solvent" and "Solvency" mean, when used with respect to any Person, as of any date of determination, (a) the amount of the then "present fair saleable value" of the assets of such Person, as of such date, exceeds the amount of all "liabilities of such Person, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable requirements of law governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person, as of such date, is greater than the amount that will be required to pay the anticipated liability of such Person on its debts as such debts become absolute and matured, (c) such Person does not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person is able to pay its debts as they mature. For purposes of this definition, (i) "debt" means liability on a "claim," and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"Specified Transaction" means any of the following:

(a) the acquisition by a Loan Party of all or substantially all of the assets of another Person or division of such Person;

(b) the merger or consolidation of any Loan Party with or into any other entity, provided that the surviving entity shall be a Loan Party, and provided further that, in any transaction involving the Borrower, the Borrower shall be the surviving Person;

(c) the acquisition by a Loan Party of a controlling or majority interest in any other Person; and

(d) investments in other Persons, including joint ventures, by a Loan Party.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governe d by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Tech Credit Agreement" means that certain Purchase Agreement dated May 15, 2006 (as amended on October 19, 2006, October 13, 2008, and December 29, 2008), by and between the Borrower and Technology Credit Corporation, as transferred and assigned to SUNPOWER NORTH AMERICA, LLC, by the Borrower.

"Threshold Amount" means $500,000.

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

"Total Revolving Outstandings" means the aggregate Outstanding Amount of all Revolving Loans.

"Total Stock Consideration" means all consideration consisting of Equity Interests in the Borrower or any Subsidiary.

"Type" means, with respect to any Loan, its character as a Base Rate Loan or a LIBOR Rate Loan.

"UCC" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of California, provided, if the context relates to the perfection or effect of perfection of any security interest, "UCC" shall refer to the Uniform Commercial Code of the jurisdiction governing such matter.

"Union Bank" means Union Bank, N.A. and its successors.

"United States" and "U.S." mean the United States of America.

"Voting Stock" means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

"WJE" means WOONGJIN ENERGY CO., LTD., a company organized under the laws of the Republic of Korea.

"WJE Material Adverse Change" means a material adverse change in, or a material adverse effect on, the operations, business, properties, liabilities (actual or contingent) or financial condition of WJE and its Subsidiaries taken as a whole.

"WJE Prepayment Event" means the occurrence any event or circumstance, which the Administrative Agent has determined, in its sole and absolute discretion, has had (or could reasonably be expected to have) a material adverse effect on, or has resulted in (or could reasonably be expected to result in) a material adverse change to any of the following: (a) the Administrative Agent's and/or the Lenders' right or ability to promptly exercise rights and remedies with respect to any Lien covering the WJE Stock (including its right to sell or dispose of such stock on the Korea Stock Exchange) as contemplated by the Loan Documents, or to promptly realize the value of such Lien; (b) the ability of the Administrative Agent to determine the WJE Stock Closing Price; or (c) the liquidity of the WJE Stock or the trading volume thereof on the Korea Stock Exchange. Without limiting the generality of the foregoing, each of the following shall constitute a "WJE Prepayment Event": (i) the WJE Stock ceases to be listed for trading on the Korea Stock Exchange; (ii) the trading of WJE Stock on the Korea Stock Exchange is suspended, or material limitations are imposed on such trading (by reason of movements in price exceeding limits permitted by such exchange or otherwise); and (iii) any closure or suspension of the Korea Stock Exchange (other than for weekends and regularly observed holidays) lasting for more than one trading day. For the sake of clarity, the inability of the Administrative Agent to sell or dispose of the WJE Stock as a result of the lock-up period that expires on December 31, 2010 provided under the Shareholders Agreement, dated May 17, 2010 by and between Woongjin Holdings Co., Ltd. and the Borrower, as in effect on the Closing Date, shall no t, independently, constitute a WJE Prepayment Event.

"WJE Stock" means the common stock of WJE.

"WJE Stock Closing Price" means, on any date, the closing sale price per share of the WJE Stock (or, if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date as reported in composite transactions for the Korea Stock Exchange. The "WJE Stock Closing Price" shall be determined without reference to after-hours or extended market trading. For any date on which the WJE Stock is not listed for trading, or has been suspended from trading, on the Korea Stock Exchange, the "WJE Stock Closing Price" shall be zero.

"WJE Stock Value" means, on any date, the product of (x) number of shares of WJE Stock owned by the Borrower that are subject to the valid and enforceable, first-priority Lien of the Administrative Agent, times (y) the WJE Stock Closing Price on such date.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Do cument,

shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall b e construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including. 221;

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms.

(a) Generally. Except as otherwise specifically prescribed herein, all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Loan Parties and thei r Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Calculations. Notwithstanding the above, the parties hereto acknowledge and agree that all calculations of the financial covenants in Section 8.11 shall be made on a pro forma basis with respect to any disposition or acquisition occurring during the applicable period.

1.04 Exchange Rates; WJE Stock Price. Without limiting the Loan Parties' obligations under Article VII, the Administrative Agent shall from time to time calculate and determine the Exchange Rate as of any given date with respect to each Alternate Currency, the WJE Stock Closing Price for the most recent trading day, and the WJE Stock Value for any given date. Such calculations and determinations shall be binding on the Loan Parties absent manifest error.

1.05 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

ARTICLE II

THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Revolving Loans.

(a) Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a "Revolving Loan") to the Borrower in Dollars from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Revolving Commitment; provided, however, that after giving effect to any Borrowing of Revolving Loans, (i) the Total Revolving Outstandings shall not exceed the lesser of (A) the Aggregate Revolving Commitments, and (B) the Borrowing Base, and (ii) the aggregate Outstanding Amount of the Revolving Loans of any Lender shall not exceed such Lender's Revolving Commitment. Within the limits of each Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.03, and reborrow under this Section 2.01. Revolving Loans may be Base Rate Loans or LIBOR Rate Loans, as further provided herein.

(b) Anything to the contrary in this Section 2.01 notwithstanding, the Administrative Agent shall have the right to establish reserves in such amounts, and with respect to such matters, as the Administrative Agent in its reasonable credit judgment shall deem necessary or appropriate, against the Borrowing Base, including reserves with respect to the valuation or marketability of the WJE Stock. So long as no Default or Event of Default has occurred and is continuing, the Administrative Agent shall first notify and attempt to discuss with Borrower any such reserve that the Administrative Agent proposes to establish unless the Administrative Agent, in its reasonable credit judgment, believes that exigent circumstances justify the immediate establishment of such reserve.

(c) Obligations related to the Revolving Loans constitute one general obligation of the Borrower and shall be secured by the Liens granted upon all of the Collateral, and by all other Liens previously, now or at any time in the future granted by the Borrower to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, or directly to the Lenders, to the extent provided in the Collateral Documents.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of LIBOR Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) on the date that is three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of, LIBOR Rate Loans or of any conversion of LIBOR Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be

confirmed promptly by delivery to the Administrative Agent of a written Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of LIBOR Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of LIBOR Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be b orrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of a Loan in a Loan Notice, then the applicable Loans shall be made as Base Rate Loans. If the Borrower fails to provide a notice as to conversion or continuation, then the applicable Loan shall be continued with the same election as to Type and as to Interest Period as previously applied to the Loan. If the Borrower requests a Borrowing of, conversion to, or continuation of LIBOR Rate Loans in any Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans as described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 5.02 (and, if such Borrowing is the initial Credit Extension, Section 5.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Union Bank with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably satisfactory to) the Administrative Agent by the Borrower.

(c) Except as otherwise provided herein, a LIBOR Rate Loan may be continued or converted only on the last day of the Interest Period for such LIBOR Rate Loan. During the existence of an Event of Default, no Loans may be requested as, converted to or continued as LIBOR Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBOR Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Union Bank's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten Interest Periods in effect with respect to all Loans.

2.03 Prepayments.

(a) Voluntary Prepayments.

(i) Revolving Loans. The Borrower may, upon notice from the Borrower to the Administrative Agent, at any time or from time to time voluntarily prepay Revolving Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Administrative Agent not later than 12:00 p.m. (1) on the date that is three Business Days prior to any date of prepayment of LIBOR Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any such prepayment of LIBOR Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof (or, if less, the entire principal am ount thereof then outstanding); and (C) any prepayment of Base Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding). Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if LIBOR Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a LIBOR Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3. 05. Subject to Section 2.13, each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages. Unless otherwise instructed by the Borrower, prepayments of the Revolving Loans pursuant to this Section 2.03(a) shall not reduce the total Revolving Commitments.

(b) Mandatory Prepayments.

(i) Revolving Commitment Overadvances. If for any reason the Total Revolving Outstandings at any time exceed (as a result of fluctuations in exchange rates, stock values or for any other reason) the lesser of the Aggregate Revolving Commitments and the Borrowing Base, then in effect, the Borrower shall make a mandatory prepayment in respect of Revolving Loans in an aggregate amount equal to such excess within two (2) Business Days of the date on which such excess first existed. Notwithstanding anything to the contrary set forth herein or in any other Loan Document, neither the Borrower's failure to comply with the requirements of Sectio n 7.12(c) nor its failure to deliver any the notices required under Section 7.03, shall limit or result in a waiver or suspension of the Borrower's absolute and unconditional obligation to make the payments required in this Section 2.03(b)(i); and, for the sake of clarity, such payment obligation is not subject to remedy or cure.

(ii) Prepayment on WJE Prepayment Event. If for any reason, a WJE Prepayment Event shall occur, the Borrower shall, within five (5) Business Days of the first occurrence of such occurrence or event, make a mandatory prepayment in respect of the Loans in an amount equal to the full amount of all outstanding Obligations at which time the Commitments shall terminate.

(iii) Application of Mandatory Prepayments. All amounts required to be paid pursuant to this Section 2.03(b) shall be applied first to Base Rate Loans and then to LIBOR Rate Loans in direct order of Interest Period maturities. All prepayments under this Section 2.03(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

2.04 Termination, Reduction or Increase of Aggregate Revolving Commitments.

(a) Termination or Reduction. The Borrower may, upon notice to the Administrative Agent, terminate, in whole or in part, the Aggregate Revolving Commitments, or from time to time permanently reduce the Aggregate Revolving Commitments to an amount not less than the Total Revolving Outstandings; provided that (i) any such notice shall be received by the Administrative Agent not later than 12:00 noon three Business Days prior to the date of termination or reduction, and (ii) any such partial reduction shall be in an aggregate amount of $25,000,000 or any whole multiple of $1,000,000 in excess thereof. The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Revolving Commitments. Any reduction of the Aggregate Revolving Commitments shall be applied to the Revolving Commitment of each Lender according to its Applicable Percentage. All fees accrued with respect thereto until the effective date of any termination of the Aggregate Revolving Commitments shall be paid on the effective date of such termination. Each notice delivered pursuant to this Section by the Borrower shall be irrevocable

(b) Increase. Provided there exists no Default or Event of Default that is continuing, the Borrower may request, one time, that: (a) any one or more existing Lenders increase, in their sole and absolute discretion, their respective Revolving Commitments, or (b) other financial institutions first approved by the Administrative Agent, in its reasonable credit judgment, agree to a Revolving Commitment (each such existing Lender who has agreed to increase its Revolving Commitment or such other financial institution who has agreed to provide a new Revolving Commitment, an "Acceding Lender"), so that the Aggregate Revolving Commitm ents may be increased by no more than $30,000,000 in the aggregate (for a maximum of total Aggregate Revolving Commitments of $100,000,000). Each such increase shall be subject to the prior satisfaction of the following conditions, as determined by the Administrative Agent:

(i) the Borrower shall have requested the increase in writing to the Administrative Agent not less than ten (10) days prior to the effective date of the proposed new or increased Revolving Commitment;

(ii) the applicable Acceding Lender shall have underwritten and approved by its credit committees the proposed new or increased Revolving Commitment;

(iii) the Administrative Agent shall have received payment of any fees due and payable to it on or prior to the effective date of such increase pursuant to any written agreement with one or more of the Loan Parties relating to such increase;

(iv) the increased portion of the Commitments shall be on the same terms and conditions as the other Commitments hereunder;

(v) there shall exist no Default or Event of Default that is continuing both at the time of the request for the increase and at the time at which the increase becomes effective;

(vi) the Borrower and the other Loan Parties shall deliver to the Administrative Agent all documents (including, without limitation, new Notes and Loan Document modifications as the Administrative Agent may reasonably request), legal opinions, certificates and instruments as the Administrative Agent may require in its reasonable discretion in connection with such new Revolving Commitment or increase in the Revolving Commitments;

(vii) no event, circumstance or condition shall exist which reasonably could be expected to have a Material Adverse Effect or a WJE Material Adverse Change;

(viii) as of the date of such increase, the representations and warranties contained in the Loan Documents shall be true and correct in all material respects, with the same force and effect as if made on and as of such date (except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty was true and correct in all material respects as of such earlier date);

(ix) no Change in Law shall have occurred, no order, judgment or decree of any Governmental Authority shall have been issued, and no litigation shall be pending or threatened, which enjoins, prohibits, or restrains (or with respect to any litigation seeks to enjoin, prohibit, or restrain), the funding or repayment of any Loans, the granting or perfection of Liens in the Collateral, the consummation of any of the other transactions contemplated hereby, or the use of proceeds hereof; and

(x) each Acceding Lender shall have delivered to the Administrative Agent, an Accession Agreement in substantially the form of Exhibit 2.04(b) hereto or any other form approved by the Administrative Agent and the Borrower (an "Accession Agreement") with the Borrower and the Administrative Agent and assuming thereunder an increased Revolving Commitment or a new Revolving Commitment in an amount to be agreed upon by the Borrower, such Acceding Lender and the Administrative Agent, in their sole discretion, to make Loans pursuant to the terms hereof.

A new Acceding Lender shall become party to this Agreement by entering into an Accession Agreement. Upon the due execution and delivery of each Accession Agreement and satisfaction of each of the foregoing conditions, the Aggregate Revolving Commitments shall thereupon be increased by the amount of such Acceding Lender's Revolving Commitment. No Lender is obligated to increase its Revolving Commitment under any circumstances whatsoever, and no Lender's Revolving Commitment may be increased except by its execution and delivery of an Accession Agreement. On the effective date specified in any duly executed and delivered Accession Agreement: (1) the Acceding Lender, to the extent not already a Lender, shall be a "Lender" hereunder and a party hereto, entitled to the rights and benefits, and subject to the duties, of a Lender under the Loan Documents, (2) Schedule 2.01 hereto shall be deemed to be amended to reflect (a) the name, address, Revolving Commitment, and Applicable Percentage of such Acceding Lender, (b) the Aggregate Revolving Commitments as increased by such Acceding Lender's Revolving Commitment, and (c) the changes to the other Lenders' respective Applicable Percentages and any changes to the other Lenders' respective Revolving Commitments (in the event such Lender is also the Acceding Lender) resulting from such assumption and such increased Aggregate Revolving Commitments, and (3) such Acceding Lender's wire transfer instructions shall be as specified in its Accession Agreement. Each Lender's Applicable Percentage shall be recalculated to reflect the new proportionate share of the revised total Revolving Commitments and increased Aggregate Revolving Commitments. Upon request of any Acceding Lender, Borrower s hall issue a Note to evidence the principal amount of such Lender's Revolving Commitment. All new Loans occurring after an increase of the Aggregate Revolving Commitments shall be funded in accordance with each Lender's revised Applicable Percentage.

2.05 Repayment of Loans. The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of all Revolving Loans outstanding on such date.

2.06 Interest.

(a) Subject to the provisions of subsection (b) below, (i) each LIBOR Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the sum of the LIBOR Rate for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (after giving effect to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (after giving effect to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists and is continuing, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.07 Fees. In addition to the other fees described in the Loan Documents:

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent, for the account of each Lender in accordance with its Applicable Percentage, a commitment fee equal to the sum of the products of (i) 0.25% divided by 360 times (ii) for each day during the period of calculation, the actual daily amount by which the Aggregate Revolving Commitments exceed the Outstanding Amount of Revolving Loans, subject to adjustment as provided in Section 2.13. The commitment fee shall accrue at all times during the Avai lability Period, including at any time during which one or more of the conditions in Article V is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The commitment fee shall be calculated quarterly in arrears.

(b) Fee Letter. The Borrower shall pay to the Administrative Agent for its own account, and for the account of Lenders (if applicable), fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.08 Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the LIBOR Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.10(a), bear interest for one day.

Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.09 Evidence of Debt. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. Regardless of whether a Note is issued with respect to such Credit Extensions, the Borrower absolutely and unconditionally promises to pay to the order of each Lender, in lawful money of the United States of America, the aggregate unpaid principal amount owed to such Lender, together with interest thereon, and fees and other Obligations in accordance with the terms hereof. The accounts or records maintained by the Administrative Agent a nd each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a promissory note, which shall evidence such Lender's Loans in addition to such accounts or records. Each such promissory note shall be in the form of Exhibit 2.0 9 (a "Note"). Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

2.10 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower or any other Loan Party shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire t ransfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of LIBOR Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowin g of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate

determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any c laim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand th e amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article V are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such pa rties.

2.11 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.12 Reserved.

2.13 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 11.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article IX or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 11.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owi ng by that Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders, as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement;

and sixth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made at a time when the conditions set forth in Section 5.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender shall not be entitled to receive any commitment fee pursuant to Section 2.07(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages, whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require any Loan Party or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by such Loan Party or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If the Loan Parties or the Administrative Agent shall be required by the Internal Revenue Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in

accordance with the Internal Revenue Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the Loan Parties shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or any Lender, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Laws.

(c) Tax Indemnification.

(i) Without limiting the provisions of subsection (a) or (b) above, the Loan Parties shall, and do hereby, indemnify the Administrative Agent and each Lender, and shall make payment in respect thereof within ten days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Loan Parties or the Administrative Agent or paid by the Administrative Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The Loan Parties shall also, and do hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within ten days after demand therefor, for any amount which a Lender for any reason fails to pay indefeasibly to the Administrative Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender shall, and does hereby, indemnify the Loan Parties and the Administrative Agent, and shall make payment in respect thereof within ten days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrower or the Administrative Agent) incurred by or asserted against the Borrower or the Administrative Agent by any Governmental Authority as a result of the failure by such Lender, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any docum entation required to be delivered by such Lender, as the case may be, to the Borrower or the Administrative Agent pursuant to subsection (e). Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. Upon request by any Loan Party or the Administrative Agent, as the case may be, after any payment of Taxes by such Loan Party or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, such Loan Party shall deliver to the Administrative Agent or the Administrative Agent shall deliver to such Loan Party, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Law to report such payment or other evidence of such payment reasonably satisfactory to such Loan Party or the Adminis trative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Each Lender shall deliver to the Borrower and to the Administrative Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Borrower pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction.

(ii) Without limiting the generality of the foregoing, if the Borrower is resident for tax purposes in the United States,

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Internal Revenue Code shall deliver to the Borrower and the Administrative Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Internal Revenue Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) executed originals of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) executed originals of Internal Revenue Service Form W-8ECI,

(III) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,

(IV) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Internal Revenue Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Internal Revenue Code, (B) a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Internal Revenue Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Internal Revenue Code and (y) executed originals of Internal Revenue Service Form W-8BEN, or

(V) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States Federal withholding tax together with such supplementary documentation as may be prescribed by applicable

Laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(iii) Each Lender shall promptly (A) notify the Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that the Borrower or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

(iv) The Borrower shall promptly deliver to the Administrative Agent or any Lender, as the Administrative Agent or such Lender shall reasonably request, on or prior to the Closing Date, and in a timely fashion thereafter, such documents and forms required by any relevant taxing authorities under the Laws of any jurisdiction, duly executed and completed by the Borrower, as are required to be furnished by such Lender or the Administrative Agent under such Laws in connection with any payment by the Administrative Agent or any Lender of Taxes or Other Taxes, or otherwise in connection with the Loan Documents, with respect to such jurisdiction.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender, as the case may be. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section, it shall pay to such Loan Party an amount equal to such refund (but only to the exte nt of indemnity payments made, or additional amounts paid, by such Loan Party under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses incurred by the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of the Administrative Agent or such Lender (as applicable), agrees to repay the amount paid over to such Loan Party to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

3.02 Illegality. If any Lender determines that (a) any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the LIBOR Rate, or to determine or charge interest rates based upon the LIBOR Rate, or (b) any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation o f such Lender to make or continue LIBOR Rate Loans or to convert Base Rate Loans to LIBOR Rate Loans shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the LIBOR Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender, shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist; provided, that, with respect to clause (b), such Lender is treating other similarly situated

borrowers in the same manner. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all of such Lender's LIBOR Rate Loans to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBOR Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the LIBOR Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBOR Rate. Notwithstanding the foregoing, and despite the illegality for such a Lender to make, maintain or fund LIBOR Rate Loans or Base Rate Loans as to which the interest rate determined by reference to the LIBOR Rate, that Lender shall remain committed to make Base Rate Loans (the interest rate on which is determined without reference to the LIBOR Rate component of the Base Rate) and shall be entitled to recover interest at the Base Rate (as determined without reference to the LIBOR Rate component of the Base Rate). Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a LIBOR Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such LIBOR Rate Loan, (b) adequate and reasonable means do not exist for determining the LIBOR Base Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan or in connection with an existing or proposed Base Rate Loan, or (c) the LIBOR Base Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan or in connection with a LIBOR Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Rate Loans shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the LIBOR Rate component of the Base Rate, the utilization of the LIBOR Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBOR Rate);

(ii) subject any Lender to any tax of any kind whatsoever with respect to this Agreement or any LIBOR Rate Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or LIBOR Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to the LIBOR Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company wit h respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any actual and direct loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any LIBOR Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any LIBOR Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a LIBOR Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.13;

excluding any loss of anticipated profits but including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each LIBOR Rate Loan made by it at the LIBOR Base Rate used in determining the LIBOR Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such LIBOR Rate Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 11.13.

3.07 Survival. All of the Loan Parties' obligations under this Article III shall survive termination of the Aggregate Revolving Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

ARTICLE IV

GUARANTY

4.01 The Guaranty. For consideration, the adequacy and sufficiency of which is acknowledged, each of the Guarantors, for the purpose of seeking to induce the Administrative Agent and the Lenders to enter into this Agreement and extend credit or otherwise provide financial accommodations to the Borrower, hereby jointly and severally guarantees to each Lender and the Administrative Agent as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordanc e with the terms thereof. Without limiting the generality of the foregoing, each Guarantor hereby unconditionally promises (a) to pay to the Administrative Agent and the Lenders on demand, in Dollars, all Obligations of

the Borrower to the Administrative Agent and/or the Lenders, and (b) to perform all undertakings of the Borrower in connection with the Obligations. The Guarantors hereby further agree that if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal. Each Guarantor acknowledges and agrees that the extensions of credit and provision of financial accommodations to or for the benefit of the Borrower will be to the direct and indirect interest, advantage and benefit of each Guarantor.

4.02 Limitation on Liability. Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents, the obligations of each Guarantor under Section 4.01 shall not exceed an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under applicable Debtor Relief Laws.

4.03 Obligations Unconditional. The obligations of the Guarantors under Section 4.01 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents or other documents relating to the Obligations, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable Law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defe nse of a surety or guarantor, it being the intent of this Section 4.03 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Guarantor for amounts paid under this Article IV until such time as the Obligations have been indefeasibly paid in full, in cash, and the Commitments have expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by Law, the occurrence of any one or more of the following (each of which is hereby specifically authorized by each Guarantor without notice to any Guarantor) shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived (including acceptance of delinquent or partial payments on the Obligations);

(b) any of the acts mentioned in any of the provisions of any of the Loan Documents or other documents relating to the Obligations shall be done or omitted;

(c) the maturity of any of the Obligations shall be accelerated or extended; or any of the Obligations (or the terms and conditions of the all or any part of the Obligations, including without limitation, interest rates, times or places for payment) shall be renewed, compromised, modified, extended, released, subordinated, waived, supplemented, amended or restated in any respect; or any right under any of the Loan Documents or other documents relating to the Obligations shall be waived; or any other guarantee of any of the Obligations or any security therefor shall be released, enforced, waived, released, subordinated, terminated, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, the Administrative Agent, any Lender or any other holder of the Obligations as security for any of the Obligations shall fail to attach or be perfected, shall fail to be enforced, or shall be sold, assigned or otherwise disposed of;

(e) the proceeds of any such Lien, security or credit support for the Obligations and the order or manner of its sale or enforcement shall be applied, effected and directed as the Administrative Agent or the Lenders, at their sole discretion, may determine;

(f) the Borrower or any other guarantor or other person or entity liable on the Obligations shall be released or substituted; or

(g) any of the Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, protest demand of payment, demand for performance, notices of non-performance, notices of dishonor, notices of acceptance, protest and all other notices whatsoever, and any requirement that the Administrative Agent or any other holder of the Obligations exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents or any other document relating to the Obligations, or against any other Person under any other guarantee of, or security for, any of the Obligations.

*4.04 **Reinstatement**. The obligations and liabilities of the Guarantors under this **Article IV**, and all of the Administrative Agent's and the Lenders' respective rights, shall be automatically reinstated and revived, notwithstanding any surrender, termination or cancellation of this guaranty, if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise returned or restored by any Lender or other holder of any of the Obligations, whether as a result of any Debtor Relief Law or otherwise, a ll as though such amounts had not been paid to the recipient thereof. The Administrative Agent and each Lender, at its sole discretion, may determine whether any amount paid to it must be restored or returned. Guarantor agrees that it will indemnify the Administrative Agent, each Lender and each other holder of the Obligations on demand for all reasonable costs and expenses (including, without limitation, the fees, charges and disbursements of counsel) incurred by the Administrative Agent or such Lender or holder of the Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law. If any proceeding under any Debtor Relief Law is commenced by or against the Borrower or any other Guarantor, at the Administrative Agent's election, each Guarantor's obligations under this Article IV shall immediately and without notice or demand become due and payable, whether or not then otherwise due and payable.*

*4.05 **Waivers**. To the maximum extent permitted by Law, each Guarantor waives (a) all rights to require the Administrative Agent or any Lender to proceed against the Borrower, or any other guarantor, or proceed against, enforce or exhaust any security for the Obligations or to marshal assets or to pursue any other remedy in the Administrative Agent's or any Lender's power whatsoever; (b) all defenses arising by reason of any disability or other defense of the Borrower, the cessation for any reason of the liability of the Borrower, any defense that any other indemnity, guaranty or security was to be obtained, any claim that the Administ rative Agent or any Lender has made any Guarantor's obligations more burdensome or more burdensome than the Borrower's obligations, and the use of any proceeds of the Obligations other than as intended or understood by the Administrative Agent, any Lender or the Guarantors; (c) all conditions precedent to the effectiveness of the obligations of Guarantor hereunder; (d) all rights to file a claim in connection with the Obligations in any proceeding under any Debtor Relief Law filed by or against the Borrower or another Guarantor; (e) all rights to require the Administrative Agent or any Lender to enforce any of its remedies; (f) any setoff, defense or counterclaim against the Administrative Agent or any Lender, (g) the benefit of any act or omission by the Administrative Agent*

or any Lender which directly or indirectly results in or aids the discharge of the Borrower or any other Person from any of the Obligations by operation of law or otherwise; (h) the benefit of California Civil Code Section 2815 permitting the revocation of this guaranty as to future transactions and the benefit of California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2848, 2849, 2850, 2899 and 1432 with respect to certain suretyship defenses; and (i) until the Obligations are fully and indefeasibly satisfied and paid, in cash, with such payment not subject to return, and all Commitments have been released and terminated: (1) all rights of subrogation, contribution, indemnification or reimbursement, (2) all rights of recourse to any assets or property of the Borrower, or to any collateral or credit support for the Obligations, (3) all rights to participate in or benefit from any security or credit support the Administrative Agent or any Lender may have or acquire, and (4) all rights, remedies and defenses any Guarantor may have or acquire against Borrower.

4.06 Certain Additional Waivers. Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 4.03 and through the exercise of rights of contribution pursuant to Section 4.08.

4.07 Remedies. The Guarantors agree that, to the fullest extent permitted by law, as between the Guarantors, on the one hand, and the Administrative Agent, the Lenders and the other holders of the Obligations, on the other hand, the Obligations may be declared to be forthwith due and payable as specified in Section 9.02 (and shall be deemed to have become automatically due and payable in the circumstances specified in said Section 9.02) for purposes of Section 4.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 4.01. The Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the holders of the Obligations may exercise their remedies thereunder in accordance with the terms thereof.

4.08 Rights of Contribution. The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable Law. Such contribution rights shall be subordinate and subject in right of payment to the obligations of such Guarantors under the Loan Documents, and no Guarantor shall exercise such rights of contribution until all Obligations have been paid in full and the Commitments have terminated.

4.09 Guarantee of Payment; Continuing Guarantee. The guarantee in this Article IV is an absolute guaranty of payment and performance and not of collection, is in addition to any other guaranties of the Obligations, is a continuing guarantee, and shall cover and apply to all Obligations whenever arising, including those arising under successive transactions which continue or increase the Obligations from time to time, renew all or part of the Obligations after they have been satisfied, or create new Obligations. Revocation by one or more Guarantors or any other guarantors of the Obl igations shall not (a) affect the obligations of any other Guarantor hereunder, (b) apply to Obligations outstanding when the Administrative Agent receives written notice of revocation, or to any extensions, renewals, readvances, modifications, amendments or replacements of such Obligations, or (c) apply to Obligations, arising after the Administrative Agent receives such notice of revocation, which are created pursuant to a commitment existing at the time of the revocation, whether or not there exists an unsatisfied condition to such commitment or the Administrative Agent or any Lender has another defense to its performance.

4.10 Guarantors to Keep Informed. Each Guarantor represents and warrants having established with the Borrower adequate means of obtaining, on an ongoing basis, such information as

such Guarantor may require concerning all matters bearing on the risk of nonpayment or nonperformance of the Obligations. Each Guarantor assumes sole, continuing responsibility for obtaining such information from sources other than from the Administrative Agent or any Lender. Neither the Administrative Agent nor any Lender shall have any duty to provide any information relating to the Borrower to any Guarantor.

4.11 Subordination.

(a) All obligations of the Borrower to each Guarantor which presently or in the future may exist ("Guarantor's Claims") are hereby subordinated to the prior indefeasible payment in full, in cash, of the Obligations. At the Administrative Agent's request, each Guarantor's Claim will be enforced and performance thereon received by such Guarantor only as a trustee for the Administrative Agent and the Lenders, and each Guarantor will promptly pay over to the Administrative Agent all proceeds recovered for application to the Obligations in accordance with the terms hereof, without reducing or affecting such Guarantor's liability under other provisions of this Article IV. Any Lien on the property securing the obligations, and on the revenue and income to be realized therefrom, which any Guarantor may have or obtain shall be, and such Lien hereby is, subordinated to the Liens in favor of the Administrative Agent and the Lenders, if any, securing the Obligations on such property. Each Guarantor agrees that it shall file any and all claims against the Borrower in any proceeding under any Debtor Relief Law in which the filing of claims is required by law on any indebtedness of the Borrower to such Guarantor, and will assign to the Administrative Agent, for itself and the Lenders, all rights of such Guarantor. If a Guarantor does not file such claim, the Administrative Agent, as attorney-in-fact for such Guarantor, is authorized to do so in the name of Guarantor or, in the Administrative Agent's sole discretion, to assign the claim and to file a proof of claim in the name of the Administrative Agent or the Adm inistrative Agent's nominee. In all such cases, whether in bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to the Administrative Agent, for itself and the Lenders, the full amount of any such claim, and, to the full extent necessary for that purpose, each Guarantor assigns to the Administrative Agent, for itself and the Lenders, all of such Guarantor's rights to any such payments or distributions to which such Guarantor would otherwise be entitled. Each Guarantor also agrees that the Administrative Agent's books and records showing the account between the Lenders and the Borrower or any other guarantor shall be admissible in any action or proceeding and shall be binding upon each Guarantor for the purpose of establishing the terms set forth therein and shall constitute conclusive proof thereof, absent manifest error.

(b) The Guarantors shall cause the obligations of each Guarantor to any other Loan Party or Subsidiary to be subordinated to the prior payment in full in cash of the Obligations so that no payment thereof is made or received if any Event of Default exists or would exist after giving effect thereto, and each Guarantor hereby agrees not to make any such payment that would be so subordinated; provided that so long as no Event of Default has occurred and is continuing or would exist after giving effect thereto, the obligations of any Guarantor to any Loan Party or Subsidiary may be paid in accordance with the provisions of the agreements governing such obligations; provided, further, that no such obligations shall be evidenced by a promissory note or any other negotiable instrument.

ARTICLE V

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

5.01 Conditions of Effectiveness. The occurrence of the Closing Date, and the obligation of the Lenders to make the initial Extension of Credit hereunder, is subject to the satisfaction of each of the following:

(a) Loan Documents. Receipt by the Administrative Agent of executed counterparts of this Agreement and the other Loan Documents, each properly executed by a Responsible Officer of the signing Loan Party and, in the case of this Agreement and the Korean Share Pledge, by each Lender.

(b) Opinions of Counsel. Receipt by the Administrative Agent of favorable opinions of U.S. and Korean legal counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, dated as of the Closing Date, and in form and substance satisfactory to the Administrative Agent.

(c) No Material Adverse Change. There shall not have occurred (i) a material adverse change since January 3, 2010 in the business, assets, liabilities (actual or contingent), operations, financial condition of Borrower and its Subsidiaries, taken as a whole, or (ii) a WJE Material Adverse Change, or (iii) a WJE Prepayment Event.

(d) Organization Documents, Resolutions, Etc. Receipt by the Administrative Agent of the following, in form and substance satisfactory to the Administrative Agent:

(i) copies of the Organization Documents of each Loan Party certified to be true and complete within thirty (30) days of the Closing Date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of such Loan Party to be true and correct as of the Closing Date;

(ii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party; and

(iii) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and is validly existing, in good standing and qualified to engage in business in its state of organization or formation, the state of its principal place of business and each other jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

(e) Personal Property Collateral. Receipt by the Administrative Agent of the following:

(i) written advice relating to such Lien searches as the Administrative Agent shall have requested, and such termination statements or other documents as may be necessary to confirm that the assets and properties of the Borrower and the Guarantors are subject to no other Liens in favor of any Persons (other than Permitted Liens);

(ii) UCC financing statements for each appropriate jurisdiction as is necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral; and

(iii) all certificates evidencing any certificated Equity Interests pledged to the Administrative Agent pursuant to the Security Agreement, together with duly executed in blank, undated stock powers attached thereto (unless, with respect to the pledged Equity Interests of any foreign issuer, such stock powers are deemed unnecessary by the Administrative Agent in its sole discretion under the law of the jurisdiction of organization of such Person).

(f) Consents. Receipt by the Administrative Agent of the following:

(i) Such written waivers, consents and amendments, as the Administrative Agent may require with respect to the DB Facility;

(ii) Such written waivers and consents, as the Administrative Agent may require with respect to Wells Fargo Bank, N.A.; and

(iii) Such written waivers, consents and amendments as the Administrative Agent may require with respect to the Shareholders Agreement, dated May 17, 2010 by and between Woongjin Holdings Co., Ltd. and the Borrower, including waivers and consents with respect to the pledge of the Collateral and the exercise of rights and remedies with respect thereto.

(g) Evidence of Insurance. Receipt by the Administrative Agent of copies of insurance policies or certificates of insurance of the Loan Parties evidencing liability and casualty insurance meeting the requirements set forth in the Loan Documents, including, but not limited to, naming the Administrative Agent as additional insured (in the case of liability insurance) or loss payee (in the case of hazard insurance) on behalf of the Lenders.

(h) Closing Certificates. Receipt by the Administrative Agent of (i) a certificate signed by a Responsible Officer of the Borrower certifying the conditions specified in Section 5.01(c) and Sections 5.02(a) and (b) have been satisfied; (ii) a Borrowing Base Certificate signed by a Responsible Officer of the Borrower as of the Closing Date; and (iii) a Compliance Certificate signed by a Responsible Officer of the Borrower as of the Closing Date.

(i) Fees. Receipt by the Administrative Agent and the Lenders of any fees required to be paid on or before the Closing Date.

(j) Due Diligence. The Administrative Agent and each Lender shall have completed their business and legal due diligence, including an evaluation of the Collateral, with results satisfactory to the Administrative Agent and the Lenders.

(k) Attorney Costs. The Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

Without limiting the generality of the provisions of the last paragraph of Section 10.03, for purposes of determining compliance with the conditions specified in this Section 5.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

5.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension, including the obligation of the Lenders to make the initial Extension of Credit hereunder, is subject to the following conditions precedent:

(a) The representations and warranties of each Loan Party contained in Article VI or any other Loan Document, shall be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) At the time any disbursement is to be made and immediately thereafter, there shall have been no event or circumstance that has (i) had a Material Adverse Effect, or (ii) resulted in a WJE Material Adverse Change, or (iii) resulted in a WJE Prepayment Event, in each case, as determined by the Administrative Agent in the exercise of its reasonable business judgment.

(d) The Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof together with a completed current Borrowing Base Certificate signed by a Responsible Officer of the Borrower.

(e) The Administrative Agent shall have received each of the following, in form and substance satisfactory to the Administrative Agent; provided that items (i) through (iv) shall be required only for the initial Extension of Credit hereunder:

(i) a comfort letter issued by the Korean legal counsel of the Borrower confirming the due endorsement of the share certificates representing the WJE Stock pledged to the Lenders under the Korean Share Pledge with the names of the Lenders as pledgees;

(ii) a copy of the shareholders registry of WJE on which the names and addresses of the Lenders are recorded as pledges of the pledge established on the WJE Stock pursuant to the Korean Share Pledge;

(iii) a notice of Security Assignment (as defined in the Korean Share Pledge) issued by the Borrower to Daishin Securities Co., Ltd. and the acknowledgment by Daishin Securities Co., Ltd. of the receipt of such notice;

(iv) an undated power of attorney duly executed by the Borrower; and

(v) such documents and/or certifications as the Administrative Agent may reasonably require to evidence that the security interest purported to be created under the Korean Share Pledge has been validly created, registered and perfected.

Each Request for Credit Extension submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 5.02(a), (b), and (c) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

The Loan Parties represent and warrant to the Administrative Agent and the Lenders that:

6.01 Existence, Qualification and Power. Each Loan Party and each Subsidiary (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the

jurisdiction of its incorporation, organization, or formation, except, in the case of the good standing of any Subsidiary, where the failure to do so could not reasonably be expected to have a Material Adverse Effect, (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business as now conducted and as proposed to be conducted, and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.02 Authorization; No Contravention. The execution, delivery, and performance by each Loan Party of each Loan Document to which such Loan Party is party, and the consummation of the transactions contemplated thereby, are within the organizational powers of such Loan Party, have been duly authorized by all necessary organizational action, and do not (i) contravene the Organization Documents of such Loan Party, (ii) violate any applicable Law, rule, regulation (including Regulation X of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination or award, (iii) conflict with or result in the bre ach of, or constitute a default under, any contract, loan agreement, indenture, mortgage, deed of trust, lease or other instrument binding on or affecting such Loan Party or its properties, or (iv) result in or require the creation or imposition of any Lien upon or with respect to any of the properties of such Loan Party other than in favor of the Administrative Agent and/or the Lenders pursuant to the Loan Documents, which, in the case of any violation, conflict, breach or default under clause (ii), (iii), or (iv) could reasonably be expected to have a Material Adverse Effect. No Loan Party is in violation of any such Law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or in breach of any such contract, loan agreement, indenture, mortgage, deed of trust, lease or other instrument, the violation or breach of which could reasonably be expected to have a Material Adverse Effect.

6.03 Approvals. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the due execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document other than (i) those that have already been obtained and are in full force and effect, (ii) authorizations, approvals, actions, notices and filings contemplated by the Collateral Documents, (iii) notices and filings which customarily are required in connection with the exercise of remedies in respect of the Collater al and (iv) those approvals, consents, exemptions, authorizations, actions, notices or filings the failure of which to obtain, take, give or make could not be reasonably expected to have a Material Adverse Effect.

6.04 Enforceability. This Agreement has been, and each other Loan Document to which a Loan Party is a party, has been or when delivered hereunder will have been, duly executed and delivered by such Loan Party. This Agreement is, and each other Loan Document to which a Loan Party is a party, is or when delivered hereunder will be, the legal, valid, and binding obligation of such Loan Party, enforceable against it in accordance with the terms thereof, subject to bankruptcy, insolvency, and similar laws of general application relating to creditors' rights and to general principles of equity relating to enforceability.

6.05 Litigation. Except as disclosed in the Borrower's filings with the SEC from time to time, there is no action, suit, investigation, litigation, claim, dispute or proceeding affecting any Loan Party pending or, to the knowledge of any Loan Party, threatened in writing before any Governmental Authority that (i) could reasonably be expected to have a Material Adverse Effect or (ii) could reasonably

be expected to affect the legality, validity, or enforceability of any Loan Document or the transactions contemplated by the Loan Documents.

6.06 Financial Statements; No Material Adverse Effect. The Borrower has heretofore furnished to the Lenders and the Administrative Agent its consolidated balance sheet and statements of income, partners' or shareholders' equity (as the case may be) and cash flows as of and for the fiscal year ended January 3, 2010 and December 28, 2008, reported on by PricewaterhouseCoopers LLP, independent public accountants. Such financial materials present fairly, in all material respects, the financial position and results of operations, partners' or shareholders' equity (as the case may be) and cash flows of the Company and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP. Since January 3, 2010, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

6.07 Properties.

(a) Each Loan Party and its Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Each Loan Party owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by such Loan Party does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

6.08 Accuracy of Information; Disclosure. No report, financial statement, certificate or other information furnished in writing by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished), taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time and the Administrative Agent and the Lenders recognize and acknowledge that such projected financial information is not to be viewed as facts and that actual results during the period or periods covered by such projections may differ from the projected results and such differences may be material.

6.09 Margin Stock. Following the application of the proceeds of each Borrowing, not more than 25% of the value of the assets of the Borrower and its Subsidiaries on a consolidated basis will be margin stock (within the meaning of Regulation U issued by the FRB). No Loan Party is engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or extending credit for the purpose of purchasing or carrying margin stock.

6.10 Compliance with Laws and Agreements. Each Loan Party is in compliance with all requirements of Laws and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Loan Party is in default in any material respect

beyond any applicable grace period under or with respect to any of its Organization Documents or any indenture, agreement, instrument or undertaking to which it is a party or by which it or any of its property is bound, the existence of which default has not been waived in writing and which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

6.11 Compliance with Certain Acts. Each Loan Party is in compliance with the (a) Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto, and (b) Patriot Act. No part of any Credit Extension will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper ad vantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended from time to time, and any successor statute or statutes. None of the Loan Parties or any of their respective directors, officers, managers or principal employees (i) is a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (iii) is a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") regulation or executive order.

6.12 Investment Company Act. No Loan Party is (or is required to be registered as) an "investment company", or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company", as such terms are defined in the United States Investment Company Act of 1940, as amended from time to time, and any successor statute or statutes. Neither the making of any Credit Extensions, nor the use of the proceeds thereof, nor the consummation of the other transactions contemplated by the Loan Documents, will violate any provision of such Act or any rule, regulation, or orde r of the SEC thereunder, including without limitation, Regulation U issued by the FRB.

6.13 Solvency. Each Loan Party, is, individually and together with its Subsidiaries, Solvent.

6.14 No Immunity. Each Loan Party's execution, delivery, and performance of this Agreement and the other Loan Documents constitute private rather than public or government acts and neither it nor any of its property has any sovereign immunity from jurisdiction of any court or from set-off or any legal process under the laws of the United States of America or the State of California or the laws of its jurisdiction of organization.

6.15 Taxes. Each Loan Party and its Subsidiaries have filed all federal and state income and other material tax returns and reports required to be filed, and have paid all federal and state income and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP.

6.16 No Default. No Default has occurred and is continuing.

6.17 Subsidiaries. Each Loan Party other than the Borrower is a Subsidiary of the Borrower.

6.18 Disclosure. Each Loan Party has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is

subject, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No reports, financial statements, certificates, or other information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

6.19 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state Laws except in such instances in which the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Internal Revenue Code, or an application for such a letter is currently being processed by the IRS, or such Plan has time remaining in which to apply to the IRS for such a letter prior to the expiration of the requisite period under appl icable Treasury regulations or Internal Revenue Service pronouncements in which to apply for such letter and to make any amendments necessary to obtain a favorable determination or has been established under a standardized prototype plan for which an Internal Revenue Service opinion letter has been obtained by the plan sponsor and is valid as to the adopting employer. To the knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan maintained by the Loan Parties or any ERISA Affiliate that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as could not reasonably be expected to result in a Material Adverse Effect, (i) no ERISA Event has occurred, and no Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Internal Revenue Code) is 60% or higher and no Loan P arty nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

6.20 Perfection of Security Interests in the Collateral.

(a) The Collateral Documents create in favor of the Administrative Agent, for the benefit of the Lenders, valid security interests in, and Liens on, the Collateral purported to be covered thereby and described therein, which security interests and Liens will be, upon the timely and proper filings, deliveries, notations and other actions contemplated in the Collateral Documents, perfected security interests and Liens (to the extent that such security interests and Liens can be perfected by such filings, deliveries, notations and other actions), prior to all other Liens other than Permitted Liens.

(b) As of the Closing Date, the Borrower owns and controls 19,398,510 shares of WJE Stock. Other than such shares, neither the Borrower nor any of its Subsidiaries owns or controls, directly or indirectly, any other shares of WJE Stock.

(c) The Korean Share Pledge will create in favor of the Pledgees (as defined therein) a valid, perfected, first priority security interest in the Pledged Shares (as defined therein) upon the endorsement of such security interest in the share certificates such shares and the recordation of such security interest in the shareholders registry of WJE in accordance with Section 4.2 of the Korean Share Pledge.

6.21 Pari Passu Ranking. Without derogating from the secured nature of the Loan Parties' Obligations, each Loan Party's obligations under or in respect of each Loan Document rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for claims that are preferred by any bankruptcy, insolvency, liquidation, or other similar laws of general application.

6.22 Burdensome Agreements. To the Loan Parties' knowledge, neither any Loan Party nor any of its Subsidiaries is a party to or bound by, nor are any of the properties or assets owned by any Loan Party or any of its Subsidiaries used in the conduct of their respective businesses affected by, any agreement, resolution, bond, note, or indenture that could reasonably be expected to result in a Material Adverse Effect.

6.23 WJE Stock. Neither the WJE Stock nor any American Depository Receipts related thereto are traded on a United States national securities exchange or quoted on an established automated over-the-counter trading market in the United States.

ARTICLE VII

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations not yet due and payable), each Loan Party covenants and agrees that each Loan Party shall:

7.01 Financial Statements. Deliver to the Administrative Agent and the Lenders, in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available and in any event within ninety (90) days after the end of each fiscal year of the Borrower (commencing with the fiscal year ending on or about December 31, 2010), audited financial statements of the Borrower (with supporting schedules in form satisfactory to the Administrative Agent), including a consolidated balance sheet of the Borrower and its consolidated Subsidiaries as of the end of such fiscal year and the related consolidated statements of operations, shareholders' or partners' equity, as applicable, and cash flows for such fiscal year, setting forth in each

case in comparative form (commencing with the first fiscal year for which the Borrower had a corresponding prior fiscal period) the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, and accompanied by a report and opinion of PricewaterhouseCoopers LLC or other independent public accountants of recognized national standing reasonably acceptable to the Required Lenders (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the fiscal quarters of each fiscal year of the Borrower, an unaudited consolidated balance sheet of Borrower and its Subsidiaries as of the end of such fiscal quarter, the related unaudited consolidated statements of income or operations for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, and the related consolidated statements of changes in shareholders' equity, and cash flows for such fiscal quarter and the portion of the Borrower's fiscal year then ended, in each case setting forth in comparative form (commencing with the first fiscal quarter for which the Borrower had a corresponding quarter in the prior fiscal year), as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, together with supporting schedules in form satisfactory to the Administrative Agent, all in reasonable detail and certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) concurrently with any delivery under Sections 7.01(a) and 7.01(b), a management discussion and analysis describing any differences in the reported financial results as between the periods covered and the same periods during the immediately preceding fiscal year, and as between such periods and the same periods included in any budget delivered to the Administrative Agent or the Lenders pursuant hereto.

7.02 Certificates; Other Information. Deliver to the Administrative Agent, in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) upon the request of the Administrative Agent, concurrently with the delivery of the financial statements referred to in Section 7.01(a), a certificate of its independent certified public accountants certifying such financial statements and stating that in making the examination necessary therefor no knowledge was obtained of any Default under the financial covenants set forth herein or, if any such Default shall exist, stating the nature and status of such event;

(b) concurrently with the delivery of the financial statements referred to in Sections 7.01(a) or (b): (i) a certificate of the chief financial officer or the chief accounting officer of the Borrower, certifying (A) that such financial statements fairly present in all material respects the financial condition and the results of operations, shareholders' or partners' equity, as applicable, and cash flows of the Borrower and its consolidated Subsidiaries on the dates and for the periods indicated, in accordance with GAAP consistently applied, subject, in the case of interim financial statements, to normally recurring year-end a djustments and the absence of footnotes, and (B) that such officer has reviewed the terms of the Loan Documents and has made, or caused to be made under his or her supervision, a review in reasonable detail of the business and condition of the Borrower during the period beginning on the date through which the last such review was made pursuant to this Section 7.02(b) (or, in the case of the first certification pursuant to this Section 7.02(b), the Closing Date) and ending on a date that is not more than

10 Business Days before the date of such delivery and that on the basis of such review of the Loan Documents, the use of the proceeds of the Loans, and the business and condition of the Loan Parties, to the actual knowledge of such officer, no WJE Prepayment Event has occurred, no Default has occurred or, if any such Default has occurred, specifying the nature and extent thereof and, if continuing, the action the Loan Parties are taking or propose to take in respect thereof; and (ii) a duly completed Compliance Certificate signed by the chief executive officer or chief financial officer of the Borrower;

(c) as soon as available, but in any event within five (5) days after the end of each of each fiscal month of the Borrower (commencing with the fiscal month ending October 31, 2010): (i) a Borrowing Base Certificate duly executed by the chief financial officer of the Borrower detailing the calculation of the Borrowing Base and demonstrating the Borrower's compliance therewith to the satisfaction of the Administrative Agent, and (ii) a statement, in reasonable detail, of the Borrower's unrestricted and restricted consolidated cash and cash equivalents as of the last day of such fiscal month and if requested by the Administrative Agent, copies of all deposit account, securities account and brokerage account statements, provided however that such statement s shall be provided as soon as they become commercially available, and further, such statements may include downloads from internet-based bank balance reporting and information systems;

(d) to the extent that any Loan Party is a public company, promptly after the same are available (and in any event within ten (10) days thereof), copies of each annual report, proxy or financial statement sent to equityholders of any Loan Party or any Subsidiary, and copies of all annual, regular, periodic and special reports and registration statements which a Loan Party or any Subsidiary may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, and not otherwise required to be delivered to the Administrative Agent pursuant hereto; and

(e) promptly, such additional information regarding the business or financial condition of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 7.01(a), (b) or (c) or Section 7.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 11.02 or on which such reports are filed with the SEC and become pub licly available; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligat ion to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

7.03 Notices.

(a) Immediately provide the Administrative Agent with written notice of the occurrence of any WJE Prepayment Event.

(b) Promptly, and in any event within twenty-four (24) hours of any determination that, at any time, the Total Revolver Outstandings exceed the Borrowing Base, deliver written notice to the Administrative Agent of such determination and the extent of the excess together with supporting calculations and documentation.

(c) Promptly, and in any event within two (2) Business Days of the occurrence thereof, deliver written notice to the Administrative Agent of the occurrence of any Default.

(d) Promptly and in any event within five (5) calendar days after any Responsible Officer obtains notice or knowledge thereof, written notice of:

(i) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect or a WJE Material Adverse Change;

(ii) any action, suit, proceeding, claim or dispute threatened in writing at law, in equity, in arbitration or before any Governmental Authority, affecting any Loan Party or any Subsidiary as to which there is a reasonable possibility of an adverse determination and which, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (unless the Borrower has reasonably determined that an adverse determination would not, individually or in the aggregate, result in a Material Adverse Effect); and

(iii) any monetary default in excess of $25,000,000 or other material default that is then continuing under any Indebtedness.

(e) Within fifteen (15) calendar days after any Responsible Officer obtains notice or knowledge thereof, written notice of the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of any Loan Party and its Subsidiaries in an aggregate amount exceeding $25,000,000.

(f) Within three (3) Business Days, notify the Administrative Agent of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary.

(g) Promptly, and in any event within three (3) Business Days, written notice of any default under the DB Facility and written notice of any and all amendments, renewals, extensions, modifications, supplements, restatements or replacements to the DB Facility, together with copies of all related documentation;

(h) No later than 4:00 p.m. on each DB Calculation Date, the Borrower shall provide written notice to the Administrative Agent of any adjustments to the Dollar Equivalent of the DB Credit Exposure as calculated pursuant to the terms and conditions of the DB Facility.

Each notice pursuant to this Section 7.03 shall be accompanied by a certificate of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 7.03(g) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

7.04 Payment of Obligations. Pay and discharge, and cause each of its Subsidiaries to pay and discharge, at or before maturity, all of its respective material obligations and liabilities, including any obligation pursuant to any agreement by which it or any of its properties is bound and any Tax liabilities, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings diligently pursued, (b) such Loan Party or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (c) the failure to make such payment pending such contest could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

7.05 Preservation of Existence, Etc. Do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization and the rights, licenses, permits, privileges, authorizations, qualifications and accreditations material to the conduct of its business, in each case if the failure to do so, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation or other transaction expressly permitted hereunder.

7.06 Maintenance of Properties. Keep, maintain, preserve and protect, and cause each of its Subsidiaries to keep, maintain, preserve and protect, all property necessary in its business in good working order and condition, ordinary wear and tear excepted, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

7.07 Maintenance of Insurance.

(a) Maintain in full force and effect insurance (including worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated companies engaged in the same or similar businesses as the Borrower and the Subsidiaries), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Party or such Subsidiary operates.

(b) Cause the Administrative Agent to be named as loss payee or mortgagee, as its interest may appear, and/or additional insured with respect to any such insurance providing liability coverage or coverage in respect of any Collateral, and cause each provider of any such insurance to agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent, that it will give the Administrative Agent thirty days prior written notice before any such policy or policies shall be materially altered or canceled.

(c) Furnish to the Administrative Agent from time to time, upon written request, copies of certificates of insurance under which such insurance is issued and such other information relating to such insurance as the Administrative Agent or any Lender may reasonably request.

7.08 Compliance with Laws. Comply with the requirements of all Laws, all orders, writs, injunctions and decrees applicable to it or to its business or property and all requirements of Governmental Authorities (including ERISA), except in such instances in which the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

7.09 Inspections; Books and Records. Keep, and cause each of its Subsidiaries to keep, adequate books of record and account in which entries, in accordance with GAAP consistently applied, shall be made of all material financial matters and transactions in relation to its business and activities; and permit representatives of the Administrative Agent or any Lender to visit and inspect (upon one (1)

Business Day's notice, so long as no Event of Default then exists and is continuing) any of its properties, to examine and make abstracts from any of its books and records and to discuss its affairs, finances and accounts with its officers, employees and independent public accountants, all during regular business hours and as often as reasonably requested (provided, however, that unless an Event of Default shall have occurred and be continuing, such inspection right shall be limited to one occurrence per Lender in any 12-month period).

7.10 Use of Proceeds. Use the proceeds of the Credit Extensions to finance working capital, capital expenditures and other lawful corporate purposes, provided that in no event shall the proceeds of the Credit Extensions be used to purchase or carry margin stock (within the meaning of Regulation U issued by the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund, repay or refinance indebtedness originally incurred for such purpose, or, otherwise, in contravention of any Law or of any Loan Document.

7.11 ERISA Compliance. Do, and cause each of its ERISA Affiliates to do, each of the following: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state law; (b) cause each Plan that is qualified under Section 401(a) of the Internal Revenue Code to maintain such qualification; and (c) make, and verify that all ERISA Affiliates make, all required contributions to any Plan subject to Section 412, Section 430 or Section 431 of the Internal Revenue Code, except as could not reasonably be expected to result in material liability.

7.12 Pledged Assets.

(a) Cause 100% of the issued and outstanding Equity Interests of WJE held directly or indirectly by the Borrower or any of its Subsidiaries to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent pursuant to the terms and conditions of the Collateral Documents, together with opinions of counsel and any filings and deliveries required by the Administrative Agent in connection therewith, whether to perfect the security interests therein under the UCC or any other Laws (including the laws of the Republic of Korea), to comply with any applicable Law that may govern the effect of perfection of any Lien on the Collateral, to enable or expedite the Administrative Agent's or any Lender's ability to exercise rights and remedies with respect to the Collateral, or otherwise, all in form and substance reasonably satisfactory to the Administrative Agent.

(b) Deliver opinions of counsel, filings and such other deliveries and documentation as the Administrative Agent may reasonably request in connection with the foregoing, including, without limitation, appropriate UCC-1 financing statements, certified resolutions and other organizational and authorizing documents, favorable opinions of counsel (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to above and the perfection of the Administrative Agent's Liens and the Lenders' Liens thereunder), all in form, content and scope reasonably satisfactory to the Administrative Agent. The Loan Parties shall also execute and deliver such other pledge agreements or similar documents as may r equired to create or evidence such pledge by the local law of the jurisdiction of organization of WJE, together with reasonably satisfactory legal opinions and related documentation.

(c) The Borrower shall use its reasonable best efforts to monitor and calculate each of the following on a daily basis, and, to the extent required, provide the notices described in Section 7.03: (i) the Exchange Rate in effect on such day, (ii) the WJE Stock Closing Price for the most recent trading day, and (iii) the WJE Stock Value on such day. The obligation of the Loan Parties to monitor and, if necessary, report such calculations on a daily basis is not and should not be construed to vest in

any Loan Parties, the exclusive right to calculate or determine such amounts, and in no event shall such calculations performed by any Loan Party be binding on the Administrative Agent or any Lender.

(d) Perform and discharge each of the covenants, undertakings and obligations set forth in the Korean Share Pledge, including those set forth in Section 4 thereof, and in the Security Agreement, as and when required thereunder.

7.13 Deposit Accounts, Etc. (i) Open and maintain with Union Bank a deposit account that the Administrative Agent is authorized to charge for any amounts then due from Borrower or any other Loan Party under this Agreement, the Note or any other Loan Documents, including interest, principal, fees, costs, expenses or other amounts due hereunder or thereunder, and (ii) ensure that such account has immediately available funds sufficient to pay any such amounts payable to the Administrative Agent and the Lenders as and when they become due and payable. The Borrower agrees that each payment of any amounts owing pursuant to this Agreement or the other Loan Documents may be made by automatic deduction from the Borrower's designated deposit account with Union Bank and that such debits shall not constitute a set-off.

7.14 Further Assurances. Execute, deliver, and acknowledge such Collateral Documents, and take such further actions from time to time, as the Administrative Agent acting on behalf of the Lenders may reasonably request from time to time for the purpose of granting to, maintaining or perfecting in favor of, the Administrative Agent for the benefit of the Lenders, or enforcing, first priority and exclusive security interests in the Collateral, including providing such reasonable assurances as to the enforceability and priority of the Liens and security interests of the Lenders and assurances of due recording of the Collateral Documents as the Admin istrative Agent may reasonably require.

7.15 Annual Budget. During the continuance of a Default or an Event of Default, at the request of any Lender, the Borrower will furnish to the Administrative Agent and each Lender, within ten (10) Business Days after such request, a copy of the Borrower's annual budget for the then current fiscal year.

ARTICLE VIII

NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations not yet due and payable), each Loan Party covenants and agrees that no Loan Party shall:

8.01 Liens. Create, incur, assume or suffer to exist any Lien, other than Permitted Liens, upon any of its property, assets or revenues, whether now owned or hereafter acquired, unless, each of the following conditions are satisfied prior to or concurrent with the creation or attachment of such other Lien: (a) an identical Lien is granted to the Administrative Agent, for itself and the Lenders (or if required by the Administrative Agent, to each Lender on a pari passu basis) pursuant to such documents, instruments and agreements as are satisfactory to the Administrative Agent in its sole discretion, (b) the Lien granted to the Administrative Agent and/or the Lenders shall at all times be, and remain, perfected under applicable Law, and (c) such other Lien is at all times junior and subordinate or equal to the priority of the Lien in favor of the Administrative Agent and/or the Lenders (as applicable) pursuant to an intercreditor agreement in form and substance satisfactory to the Administrative Agent, including without limiting the generality of the foregoing, satisfactory prohibitions relating to the exercise of any rights or remedies of the holder of such other Lien against the Loan Parties and their property. Notwithstanding the foregoing, in no event shall any Loan Party create, incur, assume or suffer to exist any Lien on any of

the Collateral, other than Liens of the type described in clause (a) of the definition of Permitted Liens. In addition, no Loan Party shall agree or consent to any restriction on such Loan Party's ability to create, assume or suffer to exist any Lien on any of its property to secure its obligations under this Agreement, except (i) agreements set forth in the Loan Documents or (ii) prohibitions or conditions under (A) purchase money debt or Capital Leases solely to the extent that the agreement or instrument governing such purchase money debt or capital lease obligation prohibits a Lien on the property acquired with the proceeds of such purchase money debt or capital lease, and (B) the DB Facility documents as in effect on the date hereof.

8.02 Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly-owned Subsidiary prior to such merger) any Equity Interests, capital stock, evidences of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any Investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit, exc ept:

(a) Permitted Investments;

(b) loans or advances made to any Subsidiary (or any special-purpose entity created or sponsored by the Borrower or a Subsidiary) or made by any Subsidiary (or any special-purpose entity created or sponsored by the Borrower or a Subsidiary) to the Borrower or any other Subsidiary (or any special-purpose entity created or sponsored by the Borrower or a Subsidiary);

(c) Guarantees constituting Permitted Indebtedness;

(d) Specified Transactions, other than:

(i) Specified Transactions with respect to which the Total Non-Stock Consideration paid or payable by the Loan Parties exceeds (i) $50,000,000 in the aggregate in respect of Specified Transactions that occur during the period from the date hereof until the end of fiscal year 2010 and (ii) $200,000,000 in the aggregate per fiscal year in respect of Specified Transactions that occur during any fiscal year after fiscal year 2010; provided, however, that a Loan Party may enter into a Specified Transaction regardless of the value of Total Non-Stock Consideration so long as such Specified Transaction involves no unaffiliated third parties an d involves only such Loan Party and one or more Subsidiaries; and

(ii) Specified Transactions with respect to which the Total Stock Consideration paid or payable by such Guarantor exceeds $750,000,000 in the aggregate per fiscal year; and

(e) in accordance with and pursuant to the terms of the indentures governing the Indenture Indebtedness (such as a conversion of debt to equity securities or cash settlement thereof by way of repaying, prepaying, or purchasing Indebtedness thereunder).

8.03 Indebtedness. Create, incur, assume, guarantee or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness that is non-recourse to such Loan Party (including Indebtedness containing customary recourse carve-outs, including those for environmental indemnities); provided that such Indebtedness shall not be permitted under this clause (b) if in connection therewith a personal recourse claim is established by judgment, decree or award by any court of competent jurisdiction or arbitrator of competent jurisdiction and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken to attach or levy upon any assets such Guarantor to enforce any such judgment, decree or award,

(c) Indebtedness existing on the date hereof and listed on Schedule 8.03,

(d) Indebtedness arising from the endorsement of instruments for collection in the ordinary course of business,

(e) Indebtedness of any Loan Party (on the one hand) to the Borrower or any Subsidiary (on the other hand) in the ordinary course of business as conducted from time to time, which Indebtedness shall be subordinated to the prior payment in full in cash of the Obligations in accordance with Article IV;

(f) Guarantees by any Loan Party in the ordinary course of business as conducted from time to time of any Loan Party or any Subsidiary, for any obligation other than Financial Indebtedness;

(g) Indebtedness in favor of customers and suppliers of the Borrower and the Subsidiaries in connection with supply and purchase agreements in an aggregate principal amount not to exceed Two Hundred Million Dollars ($200,000,000) at any one time and any refinancings, refundings, renewals or extensions thereof (without shortening the maturity thereof or increasing the principal amount thereof);

(h) Indebtedness in respect of (i) the Borrower's 1.25% Senior Convertible Debentures due 2027 issued under that certain Indenture (the "Indenture"), dated as of February 7, 2007 by and among the Borrower and Wells Fargo Bank, National Association (the "Trustee"), that certain First Supplemental Indenture, dated as of February 7, 2007 by and among the Borrower and the Trustee with respect to the Borrower's 1.25% Senior Convertible Debentures due 2027, each as in effect on the date hereof, in the maximum aggregate principal amount not to exceed $200,000,000 plus accrued interest thereon, (ii) the Borrow er's 0.75% Senior Convertible Debentures issued under the Indenture and that certain Second Supplemental Indenture, dated as of July 25, 2007, by and between the Borrower and the Trustee with respect to the Borrower's 0.75% Senior Convertible Debentures due 2027, each as in effect on the date hereof, in the maximum aggregate principal amount of $225,000,000 plus accrued interest thereon, (iii) the Borrower's 4.75% Senior Convertible Debentures due 2014 issued under the Indenture and that certain Third Supplemental Indenture, dated May 4, 2009 by and between the Borrower and the Trustee, in the maximum aggregate principal amount of $230,000,000, and refinancings thereof, and (iv) the Borrower's 4.5% Senior Convertible Debentures due 2015 issued under the Indenture and that certain Fourth Supplemental Indenture, dated April 1, 2010 by and between the Borrower and the Trustee, in the maximum aggregate principal amount of $250,000,000, and refinancings thereof;

(i) Indebtedness owed to bonding companies in connection with obligations under bonding contracts (however titled) entered into in the ordinary course of business, pursuant to which such bonding companies issue bonds or otherwise secure performance of the Borrower and the Subsidiaries for the benefit of their customers and contract counterparties;

(j) Indebtedness of the Borrower owing to International Finance Corporation, in an aggregate principal amount not to exceed, at any time, $75,000,000 (plus interest accruing thereon and costs, fees and expenses incurred in connection therewith);

(k) Indebtedness of the Borrower, in an aggregate principal amount not to exceed $250,000,000, with a bank counterparty which is guarantied by the Export-Import Bank of the U.S.;

(l) Indebtedness of any Loan Party pursuant to the DB Facility in an aggregate outstanding amount not to exceed $400,000,000;

(m) liabilities of the Loan Parties under Swap Contracts, with nationally recognized financial institutions reasonably satisfactory to the Administrative Agent pursuant to bona fide hedging transactions and not for speculation;

(n) Indebtedness in connection with the factoring of the accounts receivable of any Loan Party in respect of rebates from U.S. Governmental Authorities pursuant to the Tech Credit Agreement in the ordinary course of business, which Indebtedness shall not exceed an aggregate amount equal to the face amount of such accounts receivable plus any accrued interest thereon;

(o) Indebtedness consisting of guarantees by one or more Loan Parties of payment obligations of customers under purchase agreements entered into by such customers with the Borrower or any of its Subsidiaries, in an aggregate amount for all the Loan Parties combined not to exceed $50,000,000; and

(p) other Indebtedness in an aggregate amount for all Loan Parties not in excess of $25,000,000.

8.04 Pari Passu Ranking. Without derogating from the Loan Parties' obligations under the Loan Documents to, among other things, maintain a perfected first-priority security interest in the Collateral, each Loan Party will ensure that at all times the claims of the Lenders and the Administrative Agent against it under the Loan Documents will rank at least pari passu with the claims of all of its other unsecured and unsubordinated creditors, except for claims that are preferred by any bankruptcy, insolvency, liquidation or other similar laws of general application.

8.05 Consolidation, Merger and Sale of Assets.

(a) Enter into any merger or consolidation with any Person, liquidate, wind-up or dissolve (or suffer any liquidation, winding up or dissolution), terminate or discontinue its business, or sell, assign, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of its business or property, or permit any Subsidiary to do so, except that so long as no Default or Event of Default exists or would result therefrom (i) any Loan Party may merge with or into any other Loan Party; provided that if such transaction involves the Borrower, the Borrower is the continuing or surviving Person, (ii) any Subsidiary of the Borrower may merge or consolidate with any other Subsi diary of the Borrower provided that if a Loan Party is a party to such transaction, the continuing or surviving Person is a Loan Party, (iii) the Borrower or any Subsidiary may merge with any other Person in connection with a Specified Transaction expressly permitted under Section 8.02(d) provided that if a Loan Party is party to transaction, such Loan Party shall be the surviving Person and (d) any Subsidiary may dissolve, liquidate or wind up its affairs at any time provided that such dissolution, liquidation or winding up, as applicable, could not reasonably be expected to have a Material Adverse Effect and all of its assets and business is transferred to a Loan Party.

(b) Without at least ten Business Days' prior written notice to the Administrative Agent Sell, assign, lease, pledge, transfer or otherwise dispose of any of the WJE Stock now held or hereafter acquired; provided however, in no event shall any Loan Party assign, lease, pledge, transfer or otherwise dispose of any WJE Stock if a Default or Event of Default then exists or would exist immediately after giving effect thereto.

8.06 Swap Contracts. Enter into any Swap Contract, except Swap Contracts entered into in the ordinary course of business (not for purposes of speculation) to hedge or mitigate risks related to interest rates, currency exchange rates, or credit risk to which such Loan Party is exposed in the conduct of its business as conducted from time to time or the management of its liabilities, or for commodities hedges in the ordinary course of business as conducted from time to time, or hedges entered into in connection with Indebtedness of the Borrower convertible into equity securities of the Borrower (or cash settled, with settlement calculated with ref erence to the price of the Borrower's equity securities) for the benefit of the holders of the Borrower's equity securities.

8.07 Fiscal Year; Fiscal Quarters. Change the method of identifying its fiscal periods without the Administrative Agent's written consent (not to be unreasonably withheld).

8.08 Use of Proceeds; Margin Stock. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock (within the meaning of Regulation U of the FRB), (b) in a manner that will violate or be inconsistent with Regulation T, U, or X of the Board of Governors of the Federal Reserve System, (c) to extend credit to others for the purpose of purchasing or carrying margin stock or to refund, repay or refinance indebtedness originally incurred for such purpose, or (d) to acquire any security in any transaction that is subject to Section 13 or 14 of the Exc hange Act.

8.09 Transactions with Affiliates. Sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favorable to such Loan Party than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and its wholly owned Subsidiaries, (c) any dividends or distributions permitted by Section 8.12 , (d) transactions constituting the incurrence of Indebtedness permitted under Section 8.03, (e) transactions constituting Permitted Investments, (f) Specified Transactions expressly permitted hereunder, (g) the payment of reasonable fees, compensation, or employee benefit arrangements to, and any indemnity provided for the benefit of, officers, employees, and directors, and (h) loans or advances to employees in the ordinary course of business in compliance with applicable law.

8.10 Conduct of Business. Engage to any material extent in any business other than businesses of the type conducted by such Loan Party on the date of execution of this Agreement and any businesses reasonably related thereto from time to time.

8.11 Collateral Coverage. Subject to the Borrower's grace period for payment pursuant to Section 2.05(b), permit or suffer the Total Revolving Outstandings to exceed an amount equal to the Dollar Equivalent value of Collateral in which the Administrative Agent holds a valid and perfected first-priority Lien.

8.12 Restricted Payments. Declare or pay any Restricted Payments (a) except as permitted under its Organization Documents, (b) which, after giving effect thereto, would result in the occurrence of any Default, (c) during the continuance of any Event of Default, regardless of whether the Administrative Agent has given the Borrower notice of such Event of Default, or (d) from and after notice from the

Administrative Agent of the occurrence of any Default, until such time as such Default has been cured or waived in accordance with the terms hereof. Without limiting the foregoing, the Borrower shall not declare or pay any Restricted Payments to its stockholders which, in the aggregate, exceed $200,000,000 in any fiscal year.

8.13 [Reserved].

8.14 Financial Covenants.

(a) Minimum Consolidated Liquidity. Permit or allow, at any time during the first three fiscal quarters of the Borrower during fiscal year 2010, the Borrower's unrestricted cash and cash equivalents, on a consolidated basis, to be less than $100,000,000. At any time thereafter, permit or allow the Borrower's unrestricted cash and cash equivalents, on a consolidated basis, to be less than the lesser of (i) $225,000,000 or (ii) an amount equal to the sum of (A) $50,000,000 plus (B) an amount equal fifty percent (50%) of the Dollar Equivalent of the DB Credit Exposure at such time.

(b) Capitalization Ratio. Permit or suffer the ratio of (i) the aggregate Financial Indebtedness of the Borrower and its consolidated Subsidiaries at any time (other than Indebtedness of any consolidated Subsidiary that is non-recourse to such Subsidiary except for customary carve-outs (including environmental liability, gross negligence or willful misconduct, and similar matters)) to (ii) the sum of (A) the aggregate Financial Indebtedness of the Borrower and its consolidated Subsidiaries at such time (other than Indebtedness of any consolidated Subsidiary that is non-recourse to such Subsidiary except for customary carve-outs (including environmental liability, gross negligence or willful misconduct , and similar matters)) plus (B) the stockholder's equity of the Borrower and its consolidated Subsidiaries at such time, to exceed fifty-five percent (55%).

(c) Consolidated Interest Coverage Ratio. Permit or allow the interest coverage ratio, calculated on a rolling four quarters basis, of Consolidated EBITDA to Consolidated Interest Charges (including all fees and charges with respect to DB LOCs) to be less than 3.0 to 1.0 at the end of any fiscal quarter of the Borrower.

(d) Maximum Net Leverage Ratio. Permit or allow the ratio of net consolidated Financial Indebtedness to Consolidated EBITDA for the four immediately preceding completed fiscal quarters of the Borrower to be more than 5.5 to 1.0 at the end of any of the first three fiscal quarters of the Borrower ending during fiscal year 2010. As used herein, "net consolidated Financial Indebtedness" means at any time an amount equal to (i) the aggregate Financial Indebtedness of the Borrower and its consolidated Subsidiaries at such time (other than Indebtedness of any consolidated Subsidiary that is non-recourse to such Subsidiary except fo r customary carve-outs (including environmental liability, gross negligence or willful misconduct, and similar matters)) minus (ii) the amount, if any, by which (A) the aggregate amount of unrestricted cash and cash equivalents of the Borrower and its consolidated Subsidiaries at such time exceeds (B) the aggregate amount of unrestricted cash and cash equivalents required to be maintained by the Borrower and its consolidated Subsidiaries at such time pursuant to paragraph (a) of this Section 8.14.

(e) Maximum Leverage Ratio. Permit or allow, at any time from and after the fourth fiscal quarter of the Borrower during fiscal year 2010, the ratio of gross Financial Indebtedness to Consolidated EBITDA for the four immediately preceding completed fiscal quarters of the Borrower to be more than 4.0 to 1.0 at the end of any fiscal quarter of the Borrower. As used herein, the term "gross Financial Indebtedness" means at any time the aggregate Financial Indebtedness of the Borrower and its consolidated Subsidiaries at such time (other than Indebtedness of any consolidated Subsidiary that is

non-recourse to such Subsidiary except for customary carve-outs (including environmental liability, gross negligence or willful misconduct, and similar matters).

8.15 Organization Documents; Fiscal Year; Legal Name, State of Formation and Form of Entity.

(a) Amend, modify or change its Organization Documents in a manner materially adverse to the Lenders.

(b) Change its fiscal year.

(c) Without providing ten days prior written notice to the Administrative Agent, change its name, state of formation or form of organization.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

9.01 Events of Default. The occurrence and continuance of any of the following shall constitute an Event of Default:

(a) Non-Payment. Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within three Business Days after the same becomes due, any interest on any Loan, or any fee due hereunder, or (iii) within five Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in Section 7.01, 7.02, 7.03, 7.05 (with respect to any Loan Party's existence), 7.10, 7.12, 7.13 or Article VIII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty days after the earlier of (i) a Responsible Officer of any Loan Party becoming aware of such failure or (ii) notice thereof to any Loan Party by the Administrative Agent; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $25,000,000 or the equivalent amount of foreign currency, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relatin g thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or

beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; provided, that an Event of Default under this clause shall continue only so long as the applicable event or condition constituting such Event of Default is not waived or rescinded by the holders of such Indebtedness; or (ii) any such Indebtedness shall be declared to be due and payable or required to be prepaid or redeemed (other than by a regularly scheduled required payment or r edemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case prior to the stated maturity thereof; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary shall for any reason cease to be Solvent or otherwise become unable, or admit in writing its inability, or fail generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary one or more judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding $25,000,000, and (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of ten consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA.

(i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or

(ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason or the indefeasible satisfaction in full, in cash, of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or

further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document (including any purported revocation of the guaranty under Article IV hereof); or

(k) Guaranty Called. The Borrower is called upon to satisfy any Guarantee obligation or simultaneous Guarantee obligations with an aggregate liability in excess of $10,000,000, where the Borrower's performance of such obligations, as substantiated by the beneficiary thereof, is not contingent on any additional condition, including the passage of time; or

(l) Change of Control. There occurs any Change of Control.

9.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(c) exercise on behalf of itself, the Lenders all rights and remedies available to it, the Lenders under the Loan Documents or applicable Law;

provided, however, that upon the occurrence of an actual or, in the case of a voluntary proceeding, deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, without further act of the Administrative Agent or any Lender.

9.03 Application of Funds. After the exercise of remedies provided for in Section 9.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and fees, premiums and scheduled periodic payments, ratably among the Lenders in proportion to the respective amounts described in this clause Third held by them;

Fourth, to (a) payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them; and

***Last**, the balance, if any, after all of the Obligations have been indefeasibly paid in full, in cash, to the Borrower or as otherwise required by Law.*

ARTICLE X

ADMINISTRATIVE AGENT

*10.01 **Appointment and Authority**.*

(a) Each of the Lenders hereby irrevocably appoints Union Bank to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and, except as set forth in Section 10.06, no Loan Party shall have rights as a third party beneficiary of any of such provisions.

(b) Each Lender agrees that it shall not have any right individually to realize upon the Collateral granted to the Administrative Agent or directly to the Lenders pursuant to any Loan Document, it being understood and agreed that such rights and remedies may be exercised by the Administrative Agent for the benefit of the Lenders upon the terms thereof. Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender to release any Lien in any Collateral if such release is consented to in accordance with Section 11.01.

*10.02 **Rights as a Lender**. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with an y Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.*

*10.03 **Exculpatory Provisions**. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:*

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

*(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), **provided** that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and*

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 9.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the sat isfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

10.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compli ance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit f acilities provided for herein as well as activities as Administrative Agent.

10.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower if no Event of Default has occurred and is continuing, to appoint a successor, which shall be a bank with an office in the United

States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged theref rom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

10.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not tak ing action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

10.08 No Other Duties; Etc. Anything herein to the contrary notwithstanding, none of the bookrunners, arrangers, syndication agents, documentation agents or co-agents shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

10.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations arising under the Loan Documents that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the

claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.07 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies 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 Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.07 and 11.04.

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

10.10 Collateral and Guaranty Matters. The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Revolving Commitments and payment in full of all Obligations (other than contingent indemnification obligations), (ii) that is transferred or to be transferred as part of or in connection with any Disposition permitted hereunder or under any other Loan Document or any Involuntary Disposition, or (iii) as approved in accordance with Section 11.01;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 8.01(i); and

(c) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty, pursuant to this Section 10.10.

10.11 Indemnification. Each Lender severally agrees to indemnify the Administrative Agent and each of its officers, directors, employees, agents, advisors and Affiliates (to the extent not promptly reimbursed by each Applicant or paid by the Loan Parties pursuant to Section 11.04 and without limitation of each of those parties' obligation to do so) from and against such Lenders Applicable Percentage of all claims, liabilities, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature (including the reasonable and documented fees and disbursem ents of counsel) whatsoever that may be imposed on, incurred by, or asserted against the Administrative Agent or any such other Person in any way relating to or arising out of the Loan Documents, any action taken or omitted by the Administrative Agent under the Loan Documents, any transaction from time to time

contemplated by any Loan Document, or any transaction financed in whole or in part or directly or indirectly with the proceeds of any Extension of Credit; provided that no Lender shall be liable to any such indemnified Person for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Person's gross negligence or willful misconduct. Without limitation of the foregoing, each Lender severally agrees to reimburse the Administrative Agent promptly upon demand for its Applicable Percentage of any costs and expenses (including the reasonable and documented fees and expenses of counsel) payable by the Loan Parties under Section 11.04, to the extent that the Administrative Agen t is not promptly reimbursed for such costs and expenses by the Loan Parties. The failure of any Lender to reimburse the Administrative Agent promptly upon demand for its Applicable Percentage of any amount required to be paid by the Lenders to the Administrative Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Administrative Agent for its Applicable Percentage of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Administrative Agent for such other Lender 's Applicable Percentage of such amount. Without prejudice to the survival of any other agreement of any Lender hereunder, the agreement and obligations of each Lender contained in this Section shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the other Loan Documents.

ARTICLE XI

MISCELLANEOUS

11.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, further, that

(a) no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of a Lender (or reinstate any Commitment terminated pursuant to Section 9.02) without the written consent of such Lender whose Commitment is being extended or increased (it being understood and agreed that amendment, modification or a waiver of any condition precedent set forth in Section 5.02 or of any Default or a mandatory reduction in Commitments is not considered an extension or increase in Commitments of any Lender);

(ii) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) or any scheduled reduction of the Commitments hereunder or under any other Loan Document without the written consent of each Lender entitled to receive such payment or whose Commitments are to be reduced;

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (i) of the final proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to receive such amount; provided, however, that only the consent of the Required Lenders shall be necessary to (A) amend the definition of "Default Rate" or waive any obligation of the Borrower to pay interest at the Default Rate or (B) to amend any financial covenant hereunder (or any d efined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or to reduce any fee payable hereunder;

(iv) change Section 9.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly affected thereby;

(v) change any provision of this Section 11.01(g) or the definition of "Required Lenders" without the written consent of each Lender directly affected thereby;

(vi) release all or substantially all of the Collateral without the written consent of each Lender whose Obligations are secured by such Collateral;

(vii) release the Borrower without the consent of each Lender, or, except in connection with a transaction permitted under Section 8.04 or Section 8.05, all or substantially all of the value of the Guaranty without the written consent of each Lender whose Obligations are guarantied thereby, except to the extent such release is permitted pursuant to Section 10.10 (in which case such release may be made by the Administrative Agent acting alone); or

(b) prior to the termination of the Revolving Commitments, unless also signed by Lenders (other than Defaulting Lenders) holding in the aggregate at least a majority of the Revolving Commitments, no such amendment, waiver or consent shall, (i) waive any Default for purposes of Section 5.02(b), (ii) amend, change, waive, discharge or terminate Sections 5.02 or 9.01 in a manner adverse to such Lenders or (iii) amend, change, waive, discharge or terminate Section 8.11 (or any defined term used therein) or this Section 11.01(b); or

(c) unless also signed by the Administrative Agent, no amendment, waiver or consent shall affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document;

provided, however, that notwithstanding anything to the contrary herein, (i) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto, (ii) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein; (iii) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders; and (iv) with res pect to any increase in the Revolving Commitments pursuant to Section 2.04 such increase may be effected by an Accession Agreement executed only by Borrower, the Administrative Agent and the applicable Acceding Lender.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

11.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or

overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Loan Party or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified on Schedule 2.01.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agr ee to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as des cribed in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) [Reserved].

(d) Change of Address, Etc. Each of the Loan Parties and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accur ate wire instructions for such Lender.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Loan Notices)

purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges pro vided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 9.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.11), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.02 and (ii) in addition to the matters set for th in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.11, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.04 Expenses; Indemnity; and Damage Waiver.

(a) Costs and Expenses. The Loan Parties shall pay (i) all reasonable expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable expenses incurred by the Administrative Agent or any Lender (including the fees, charge s and disbursements of any counsel for the Administrative Agent or any Lender) in connection with the enforcement or protection of its rights (A) in connection with this Agreement or any of the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Administrative Agent (and any sub-agent thereof) and each Lender, and each Related Party of any of the

foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrat ive Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability, in each case related in any way to a Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee (or such Indemnitee's officers, directors employees or agents) or (y) result from a claim brought by any Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by them to the Administrative Agent (or any sub-agent thereof) or any Related Party, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liabilit y or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.10(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or oth er materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than twenty (20) Business Days after written demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Payments Set Aside. To the extent that any payment by or on behalf of any Loan Party is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obli gation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder or thereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of t his Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the related Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning

Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 in the case of an assignment of a Revolving Commitment (and the related Revolving Loans thereunder) unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments fro m members of an Assignee Group to a single assignee (or to an assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's Loans and Commitments, and rights and obligations with respect thereto, assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Revolving Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the Commitment subject to such assignment, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Administrative Agent such information regarding such assignee as the Administrative Agent may reasonably request.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of its Affiliates or Subsidiaries, (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) a natural person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby

irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is re corded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (i) through (vii) of Section 11.01(a) that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to

subsection (b) of this Section. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender, provided such Participant agrees to be subject to Sections 2.11 and 2.13 as though it were a Lender.

(e) Limitation on Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Lender Securitization. In addition to any other assignment permitted pursuant to this Section 11.06, the Loan Parties hereby acknowledge that (x) the Lenders, their Affiliates and Approved Funds (the "Lender Parties") may sell or securitize the Loans (a "Lender Securitization") through the pledge of the Loans as collateral security for loans to a Lender Party or the assignment or issuance of direct or indirect interests in the Loans (such as, for instance, collateralized loan obliga tions), and (y) such Lender Securitization may be rated by a Rating Agency. The Loan Parties shall reasonably cooperate with the Lender Parties to effect the Lender Securitization including by providing such information as may be reasonably requested by the Lenders or Rating Agencies in connection with the rating of the Loans or the Lender Securitization.

11.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees, severally as to itself only to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential) or to Rating Agencies, (b) to the extent requested by any regulatory a uthority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, provided that such Person disclosing such Information shall use reasonable efforts (but without liability for failure to do so) to provide the Loan Parties with advance notice of such disclosure to the extent practical and not prohibited by Law, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to a Loan Party and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, "Information" means all information received from a Loan Party relating to the Loan Parties or any of their respective businesses, designated as confidential, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by such Loan Party or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

11.08 Set-off. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party now or herea fter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Sections 2.11 and 2.13 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Adm inistrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an

original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

11.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in fu ll force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

11.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provis ion in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Lenders. If (i) any Lender requests compensation under Section 3.04, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (iii) a Lender (a "Non-Consenting Lender") does not consent to a proposed change, waiver, discharge or termination with respect to any Loan Document that has been approved by the Required Lenders as provided in Section 11.01 but requires unanimous consent of all Lenders or all Lenders directly affected thereby (as applicable) or (iv) any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 11.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of any such assignment resulting from a Non-Consenting Lender's failure to consent to a proposed change, waiver, discharge or termination with respect to any Loan Document, the applicable replacement bank, financial institution or Fund consents to the proposed change, waiver, discharge or termination; provided that the failure by such Non-Consenting Lender to execute and deliver an Assignment and Assumption shall not impair the validity of the removal of such Non-Consenting Lender and the mandatory assignment of such Non-Consenting Lender's Commitments and outstanding Loans pursuant to this Section 11.13 shall nevertheless be effective without the execution by such Non-Consenting Lender of an Assignment and Assumption.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

11.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, UNLESS EXPRESSLY STATED OTHERWISE THEREIN, SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

(b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF CALIFORNIA SITTING IN SANTA CLARA COUNTY, CALIFORNIA AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF CALIFORNIA, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH CALIFORNIA STATE COURT OR, TO THE FU LLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF

VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINTS AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.15 Disputes; Waiver of Right to Trial by Jury. TO THE EXTENT PERMITTED BY LAW, IN CONNECTION WITH ANY CLAIM, CAUSE OF ACTION, PROCEEDING OR OTHER DISPUTE CONCERNING THE LOAN DOCUMENTS (EACH A "CLAIM"), THE PARTIES TO THIS AGREEMENT EXPRESSLY, INTENTIONALLY, AND DELIBERATELY WAIVE ANY RIGHT EACH MAY OTHERWISE HAVE TO TRIAL BY JURY. IN THE EVENT THAT THE WAIVER OF JURY TRIAL SET FORTH IN THE PREVIOUS SENTENCE IS NOT ENFORCEABLE UNDER THE LAW APPLICABLE TO THIS AGREEMENT, THE PARTIES TO THIS AGREEMENT AGREE THAT ANY CLAIM, INCLUDING ANY QUESTION OF LAW OR FACT RELATING THERETO, SHALL, AT THE WRITTEN REQUEST OF ANY PARTY, BE DETERMINED BY JUDICIAL REFE RENCE PURSUANT TO THE STATE LAW APPLICABLE TO THIS AGREEMENT. THE PARTIES SHALL SELECT A SINGLE NEUTRAL REFEREE, WHO SHALL BE A RETIRED STATE OR FEDERAL JUDGE. IN THE EVENT THAT THE PARTIES CANNOT AGREE UPON A REFEREE, THE COURT SHALL APPOINT THE REFEREE. THE REFEREE SHALL REPORT A STATEMENT OF DECISION TO THE COURT. NOTHING IN THIS PARAGRAPH SHALL LIMIT THE RIGHT OF ANY PARTY AT ANY TIME TO EXERCISE SELF-HELP REMEDIES, FORECLOSE AGAINST COLLATERAL OR OBTAIN PROVISIONAL REMEDIES. THE REFEREE SHALL ALSO DETERMINE ALL ISSUES RELATING TO THE APPLICABILITY, INTERPRETATION, AND ENFORCEABILITY OF THIS PARAGRAPH. THE PARTIES ACKNOWLEDGE THAT IF A REFEREE IS SELECTED TO DETERMINE THE CLAIMS, THEN THE CLAIMS WILL NOT BE DECIDED BY A JURY. WITHOUT LIMITING THE GENERALITY OF SECTION 11.04, THE BORROWER SHALL BE SOLELY RESPONSIBLE TO PAY ALL FEES AND EXPENSES OF ANY REFEREE APPOINTED IN SUCH ACTION OR PROCEEDING.

11.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Loan Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent, on the other hand, (B) each of the Loan Parties has consulted its own legal , accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (B) the Administrative Agent has no obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations

expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and its respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and the Administrative Agent has no obligation to disclose any of such interests to the Loan Parties and their respective Affiliates. To the fullest extent permitted by Law, each of the Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent and its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.17 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act or any other similar state laws based on the Uniform Electronic Transactions Act.

11.18 USA PATRIOT Act Notice. Each Lender that is subject to the Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower and the other Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower and the other Loan Parties, which information includes the name and address of the Borrower and the other Loan Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and the other Loan Parties in accordance with the Patriot Act. The Borrower and ea ch other Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

[SIGNATURE PAGES FOLLOW]

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

BORROWER:

SUNPOWER CORPORATION,
a Delaware corporation

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

GUARANTORS:

SUNPOWER CORPORATION, SYSTEMS,
a Delaware corporation

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

SUNPOWER NORTH AMERICA, LLC,
a Delaware limited liability company

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

[Signature Page to Credit Agreement]

ADMINISTRATIVE
AGENT:

UNION BANK, N.A.,
as Administrative Agent

By: /s/ James B. Goudy
Name: James B. Goudy
Title: Vice President

LENDERS:

UNION BANK, N.A.,
as a Lender

By: /s/ James B. Goudy
Name: James B. Goudy
Title: Vice President

[Signature Page to Credit Agreement]

HSBC BANK USA, NATIONAL ASSOCIATION,
as a Lender

By: /s/ Jason Alexander Huck
Name: Jason Alexander Huck
Title: Vice President, Relationship Manager

[Signature Page to Credit Agreement]

SCHEDULE 2.01

LENDERS AND REVOLVING LOAN COMMITMENTS
(As of Closing Date)

LENDER NAME AND ADDRESS	REVOLVING COMMITMENT	APPLICABLE PERCENTAGE
UNION BANK, N.A. Attention: J. William Bloore and James B. Goudy 99 Almaden Boulevard, Suite 200 San Jose, California 95113 Facsimile: (408) 280-7163	$ 40,000,000.00	57.142857143%
HSBC BANK USA, N.A. Attention: Jason Alexander Huck 601 Montgomery Street 10th Floor San Francisco, CA 94111 Facsimile: (415) 678-3860	$ 30,000,000.00	42.857142857%
TOTAL COMMITMENT:	$ 70,000,000.00	100%

AGENT'S AND LENDERS' WIRE TRANSFER INFORMATION FOR PAYMENTS

Party	*Wire Transfer Instructions (or address) for Payments*	
UNION BANK, N.A.	Bank Name: Address: Account No.: ABA No.: Reference:	Union Bank, N.A. 1980 Saturn Street Monterey Park, CA 91754-7417 *** 122000496 SUNPOWER CORPORATION
HSBC BANK USA, N.A.	Bank Name: Address: Account No.: ABA No.: Reference:	HSBC Bank USA, N.A. New York, NY *** 021001088 SUNPOWER CORP

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

SCHEDULE 8.01

EXISTING LIENS

1. Liens on accounts receivable, inventory, and specific cash collateral specifically described in that certain financing statement filed with the Delaware Secretary of State on April 13, 2010, as Filing Number 2010 1269319, identifying SunPower Corporation as debtor, and Deutsche Bank AG New York Branch, as administrative agent, as secured party, as amended on or about the Closing Date to restate the collateral description therein to exclude the Collateral.

2. Liens on deposit account number *** maintained in the name of Borrower with Wells Fargo Bank, N.A., investment account number *** maintained in the name of Borrower with Wells Fargo Bank, N.A., and multi-currency account numbers *** and *** maintained in the name of Borrower with Wells Fargo Bank, N.A.'s Cayman Islands branch, securing the Wells Fargo Indebtedness (as defined in Schedule 8.03).

***

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

SCHEDULE 8.02

EXISTING LOANS, ADVANCES, AND INVESTMENTS

1. Investment in *** (approximately $3,000,000).
2. Investment in *** (approximately $1,500,000).
3. Investment in Woongjin Energy Co. Ltd. (approximately $34,000,000).
4. Put/Call option to invest in ***.
5. Investment in *** (approximately $10,000,000).
6. 1% member interest in SPWR Galaxy Holdco 2007 LLC.
7. Investment in a privately-held company accepted in connection with ***, with a current value that does not exceed $***.

***

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

SCHEDULE 8.03

EXISTING INDEBTEDNESS

1. Indebtedness of the Borrower in connection with the Borrower's guarantee of leasing arrangements, pursuant to a Term Leasing Master Agreement between the Borrower's former Malaysian subsidiary, now a joint venture, AUO SunPower Sdn. Bhd., as lessee and IBM Malaysia Sdn. Bhd. as lessor. [Desktop and laptop computers for use by the Borrower's Malaysian Subsidiary]

2. Indebtedness of the Borrower in connection with the Borrower's guarantee of leasing arrangements, pursuant to a Corporate Guarantee by the Borrower of obligations of SunPower Philippines Mfg. Ltd. as lessee in favor of IBM Philippines, Inc. as lessor [Desktop and laptop computers for use by the Borrower's Philippines subsidiary]

3. Indebtedness of the Borrower under the Borrower's Master Agreement with Cisco Systems Capital Corporation as lessor and any schedules appurtenant thereto (the "Cisco Leasing Indebtedness"). [Routers and other IT equipment for use by the Borrower and its Subsidiaries]

4. Indebtedness of the Borrower in connection with leasing arrangements with US Bancorp (the "US Bancorp Leasing Indebtedness"). [Office copiers and printers for use by the Borrower and its Subsidiaries]

5. Indebtedness of the Borrower in connection with a leasing arrangement with Well Fargo Bank, N.A. as lessor (the "Wells Fargo Leasing Indebtedness"). [Cleaning equipment for use of the Borrower and its Subsidiaries]

6. Indebtedness of the Borrower pursuant to the following promissory notes, each dated March 26, 2010, issued to certain officers and employees of SunRay Renewable Energy ("SunRay"), in lieu of cash payment to such persons for their SunRay shares in connection with the Borrower's acquisition of SunRay:

    a. *** in the amount of $***;
    b. *** in the amount of $***;
    c. *** in the amount of $***;
    d. *** in the amount of $***;
    e. *** in the amount of $***;
    f. *** in the amount of $***;
    g. *** in the amount of $***; and
    h. *** in the amount of $***.

7. Indebtedness in an aggregate outstanding amount not exceeding _____ of the Borrower, and Guarantees of the Borrower's obligations by the Guarantors, in connection with the Amended and Restated Credit Agreement, dated March 20, 2009, between the Borrower and Wells Fargo Bank, National Association as amended and in effect as of the Closing Date (the "Wells Fargo Indebtedness").

***

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

SCHEDULE 11.02

CERTAIN ADDRESSES FOR NOTICES

Administrative Agent:

Notices (other than Requests for Extensions of Credit after the Closing Date):

UNION BANK, N.A., as Agent
Attention: J. William Bloore and
James B. Goudy
99 Almaden Boulevard, Suite 200
San Jose, California 95113
Facsimile: (408) 280-7163

For Payments and Requests for Extensions of Credit after the Closing Date:

UNION BANK, N.A., as Agent
Commercial Loan Operations
601 East Potrero Grande Drive
Monterey Park, CA 91754
Facsimile: (323) 720-2252

With a copy to:

UNION BANK, N.A., as Agent
Attention: J. William Bloore and
James B. Goudy
99 Almaden Boulevard, Suite 200
San Jose, California 95113
Facsimile: (408) 280-7163

Payments:

Bank Name:	Union Bank, N.A.
Address:	1980 Saturn Street
	Monterey Park, CA 91754-7417
Account No.:	***
ABA No.:	122000496
Reference:	SUNPOWER CORPORATION

Loan Parties:

SUNPOWER CORPORATION
3939 North First Street
San Jose, CA 95134
Attn: Dennis V. Arriola, Senior Vice President
and Chief Financial Officer
Telephone: 408-240-5500
Facsimile: 408-240-5404
Electronic Mail: dennis.arriola@sunpower.com

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

EXHIBIT 2.02

[FORM OF] LOAN NOTICE

Date:_____

To: Union Bank, N.A., as Agent
Commercial Loan Operations
601 East Potrero Grande Drive
Monterey Park, CA 91754
Facsimile: (323) 720-2252

with a copy to:

Union Bank, N.A., as Agent
Attention: J. William Bloore and
James B. Goudy
Northern California Commercial Banking Group
99 Almaden Boulevard, Suite 200
San Jose, CA 95113

Ladies and Gentlemen:

SUNPOWER CORPORATION, a Delaware corporation (the "Borrower") submits this Loan Notice pursuant to Section 2.02 of the Credit Agreement, dated as of October 29, 2010 (as amended, modified, supplemented, restated or renewed from time to time, the "Credit Agreement") by and among Borrower, SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation ("SCS"), SUNPOWER NORTH AMERICA, LLC, a Delaware limited liability company (together with SCS and the other guarantors from time to time party to the Credit Agreement, the "Guarantors"), the several financial institutions from time to time party thereto (the "Lenders"), and UNION BANK, N.A., as a Lender and Sole Lead Arranger and as administrative agent for the Lenders (in such capacity, the "Agent"). All capitalized terms used in this Loan Notice shall have the meanings specified in the Credit Agreement unless otherwise defined herein.

The undersigned hereby certifies that (a) [he][she] is the acting and incumbent [President] [Chief Executive Officer] [Vice President- Finance] [Chief Financial Officer] of the Borrower, and (b) in such capacity, [he][she] is authorized to execute this Loan Notice and request credit hereunder for and on behalf of the Borrower in connection with the Credit Agreement.

We hereby represent, warrant and certify to you that (a) the proceeds specified herein shall be used in strict accordance with the provisions of the Credit Agreement, (b) the representations and warranties of the Borrower and the other Loan Parties contained in the Credit Agreement or otherwise made by the Borrower or any other Loan Party in connection with the transactions contemplated thereby were true and correct in all material respects when made, and are true and correct in all material respects on and as of the date hereof with the same effect as if made herein (except to the extent that such representations and warranties relate expressly to an earlier date); provided, however, the foregoing material ity qualification does not apply to those representations and warranties that already are qualified or modified by materiality in the text thereof, (c) each Loan Parties has performed and complied with all of the terms and conditions contained in the Credit Agreement required to be performed or complied with by such Loan Party prior to or at the time of this notice and request, (d) at and as of the date of hereof, neither Borrower nor any Loan Party is in default of any of its obligations under the Credit Agreement,

and no Default or Event of Default exists and (e) the execution and delivery of this Loan Notice has been authorized by all necessary corporate action/proceedings on behalf of the Borrower.

1. The Borrower requests (select one):

a. ____ a Borrowing of Revolving Loans.

b. ____ a continuation or conversion of Revolving Loans.

2. [Use if 1.a. is selected] The Borrower requests that the Lenders make a [Base Rate] [LIBOR Rate] Loan on [proposed drawdown date][1] for the Interest Period commencing on [proposed drawdown date] and ending on [_____][2] in the principal amount of [$_____][3].

2. [Use if 1.b. is selected] The Borrower requests on , 20 a LIBOR Rate Loan as follows:

(a) (i) ____ A rate conversion of an existing Base Rate Loan to a LIBOR Rate Loan; or

(ii) ____ A continuation of an existing LIBOR Rate Loan as a LIBOR Rate Loan.

[Check (i) or (ii) above]

(b) The date on which the LIBOR Rate Loan is to be made is _____, 20___

(c) The amount of the LIBOR Rate Loan is to be _____ ($_____), for an LIBOR Loan Period of _____ month(s).

Very Truly Yours,

SUNPOWER CORPORATION

By: _____

Print Name: _____

Title: _____

For Internal Bank Use Only

LIBOR Pricing Date	LIBOR Rate	LIBOR Rate Variance	Maturity Date
		___%	

1 Loan Notice must be made at least 1 Business Day prior to the proposed drawdown date of any Base Rate Loan and 3 Business Days prior to the proposed drawdown date of any LIBOR Rate Loan.
2 For Base Rate Loans, the last day of the calendar quarter following the proposed drawdown date; for LIBOR Rate Loans, 1, 2, or 3 months after the proposed drawdown date.
3 Each Loan Notice relating to a LIBOR Rate Loan shall be in a minimum aggregate amount of $5,000,000.

EXHIBIT 2.04(b)

[FORM OF] ACCESSION AGREEMENT

Dated as of [_____, 20__]

Reference is hereby made to the Credit Agreement, dated as of October 29, 2010 (as amended, modified, supplemented, restated or renewed from time to time, the "Credit Agreement") by and among SUNPOWER CORPORATION, a Delaware corporation (the "Borrower"), SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation ("SCS"), SUNPOWER NORTH AMERICA, LLC, a Delaware limited liability company (together with SCS and the other guarantors from time to time party to the Credit Agreement, the "Guarantors"), the several financial institutions from ti me to time party thereto (the "Lenders"), and UNION BANK, N.A., as a Lender and Sole Lead Arranger and as administrative agent for the Lenders (in such capacity, the "Agent"). Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

Pursuant to Section 2.04(b) of the Credit Agreement, Borrower, Agent and [_____] (the "Acceding Lender") hereby agree as follows:

1. Accession. Subject to the terms and conditions of this accession agreement, the acceding lender hereby agrees to assume, without recourse to agent or any lender, on the effective date (as defined below), a commitment to make loans in the amount of [$_____] (the "assumption amount"), in accordance with the terms and conditions set forth in the credit agreement [, which amount is in addition to the acceding lender's existing commitment of [$_____]]. On the effective date, borrower shall pay to the acceding lender an upfront fee in the amount of [$_____] which fee shall be nonrefundable when paid. Upon such assumption, the aggregate revolving commitments shall be automatically increased by the assumption amount. The acceding lender hereby agrees to be bound by, and hereby requests the agreement of borrower and agent that the acceding lender shall be entitled to the benefits of, all of the terms, conditions and provisions of the credit agreement as if the acceding lender had been one of the lending institutions originally executing the credit agreement as a lender; provided, that nothing herein shall be construed as making the acceding lender liable to borrower or the lenders in respect of any acts or omissions of any party to the credit agreement or in respect of any other event occurring prior to the effective date (as defined below) of this accession agreement [unless the acceding lender was a lender prior to the effective date].

2. Representations, Warranties and Agreements of Acceding Lender. The Acceding Lender (a) represents and warrants that (i) it is duly and legally authorized to enter into this Accession Agreement, (ii) the execution, delivery and performance of this Accession Agreement do not conflict with any provision of law or of the charter or by-laws of the Acceding Lender, or of any agreement binding on the Acceding Lender, (iii) all acts, conditions and things required to be done and performed and to have occurred prior to the execution, delivery and performance of this Accession Agreement, and to render the same the legal, valid and binding obligation of the Acceding Lender, enforceable against it in accordan ce with its terms, have been done and performed and have occurred in due and strict compliance with all applicable laws; (b) confirms that it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant thereto and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Accession Agreement; (c) agrees that it will, independently and without reliance upon the Lenders or Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (d) represents and warrants that it is eligible to become a party to this Accession Agreement under the terms and conditions

of the Credit Agreement; (e) appoints and authorizes Agent to take such action as Agent on its behalf and to exercise such powers under the Credit Agreement and the other Loan Documents as are delegated to the Agent by the terms thereof, together with such powers as are reasonably incidental thereto; and (f) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

3. Effect of Accession. The effective date for this Accession Agreement shall be [_____ __, 20__] (the "Effective Date"). Following the execution of this Accession Agreement by Borrower, and the Acceding Lender, it will be delivered to the Agent for acceptance. Upon acceptance by the Agent, Schedule 2.01 to the Credit Agreement shall thereupon be replaced as of the Effective Date by Schedule 2.01 annexed hereto. Agent shall thereafter notify the other Lenders of the revised Schedule 2.01 and th e arrangements proposed to ensure that the outstanding amount of Loans made by each Lender will correspond to its respective Applicable Percentages after giving affect to the accession contemplated hereby.

4. Payments. Upon such acceptance, from and after the Effective Date, Borrower shall make all payments in respect of the Acceding Lender's Commitment (including payments of principal, interest, fees and other amounts).

5. Governing Law; Venue; etc. THIS ACCESSION AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF CALIFORNIA SITTING IN SANTA CLARA COUNTY, CALIFORNIA AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF CALIFORNIA, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AC CESSION AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH CALIFORNIA STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH PARTY AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS REVOLVING LOAN NOTE SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS ACCESSION AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS ACCESSION AGREEMENT IN ANY COURT REFERRED TO HEREIN. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. EACH PARTY HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINTS AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT. EACH PARTY IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02 OF THE CREDIT AGREEMENT. NOTHING IN

THIS ACCESSION AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THE CREDIT AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

6. DISPUTES. TO THE EXTENT PERMITTED BY LAW, IN CONNECTION WITH ANY CLAIM, CAUSE OF ACTION, PROCEEDING OR OTHER DISPUTE CONCERNING THIS ACCESSION AGREEMENT (EACH A "CLAIM"), THE PARTIES EXPRESSLY, INTENTIONALLY, AND DELIBERATELY WAIVE ANY RIGHT EACH MAY OTHERWISE HAVE TO TRIAL BY JURY. IN THE EVENT THAT THE WAIVER OF JURY TRIAL SET FORTH IN THE PREVIOUS SENTENCE IS NOT ENFORCEABLE UNDER THE LAW APPLICABLE TO THIS ACCESSION AGREEMENT, THE PARTIES TO THIS ACCESSION AGREEMENT AGREE THAT ANY CLAIM, INCLUDING ANY QUESTION OF LAW OR FACT RELATING THERETO, SHALL, AT THE WRITTEN REQUEST OF ANY PARTY, BE DETERMINED BY JUDICIAL REFERENCE PURSUANT TO THE STATE LAW APPLICABLE TO THIS ACCESSION AGREEM ENT. THE PARTIES SHALL SELECT A SINGLE NEUTRAL REFEREE, WHO SHALL BE A RETIRED STATE OR FEDERAL JUDGE. IN THE EVENT THAT THE PARTIES CANNOT AGREE UPON A REFEREE, THE COURT SHALL APPOINT THE REFEREE. THE REFEREE SHALL REPORT A STATEMENT OF DECISION TO THE COURT. NOTHING IN THIS PARAGRAPH SHALL LIMIT THE RIGHT OF ANY PARTY AT ANY TIME TO EXERCISE SELF-HELP REMEDIES, FORECLOSE AGAINST COLLATERAL OR OBTAIN PROVISIONAL REMEDIES. THE PARTIES SHALL BEAR THE FEES AND EXPENSES OF THE REFEREE EQUALLY, UNLESS THE REFEREE ORDERS OTHERWISE. THE REFEREE SHALL ALSO DETERMINE ALL ISSUES RELATING TO THE APPLICABILITY, INTERPRETATION, AND ENFORCEABILITY OF THIS PARAGRAPH. THE PARTIES ACKNOWLEDGE THAT IF A REFEREE IS SELECTED TO DETERMINE THE CLAIMS, THEN THE CLAIMS WILL NOT BE DECIDED BY A JURY.

7. Counterparts. This Accession Agreement may be executed in any number of counterparts which shall together constitute but one and the same agreement.

IN WITNESS WHEREOF, intending to be legally bound, each of the undersigned has caused this Accession Agreement to be executed on its behalf by its officer thereunto duly authorized, to take effect as of the date first above written.

BORROWER:

SUNPOWER CORPORATION

By: _____
Print Name: _____
Title: _____

ACCEDING LENDER:
[_____]

By: _____
Print Name: _____
Title: _____

AGENT:
UNION BANK, N.A.,
AS ADMINISTRATIVE AGENT

By: _____
Print Name: _____
Title: _____

EXHIBIT 2.09

[FORM OF] REVOLVING LOAN NOTE

[$_____] **_____ ___, 20__**

FOR VALUE RECEIVED, the undersigned SUNPOWER CORPORATION, a Delaware corporation ("Borrower"), hereby absolutely and unconditionally promises to pay to the order of _____ (the "Lender") at the Lender's Lending Office (as defined in the Credit Agreement referred to below):

(a) the principal amount of _____ Dollars ($_____) or, if less, the aggregate unpaid principal amount of Loans advanced by the Lender to the Borrower pursuant to the Credit Agreement, dated as of October 29, 2010 (as amended, modified, supplemented, restated or renewed from time to time, the "Credit Agreement") by and among Borrower, SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation ("SCS"), SUNPOWER NORTH AMERICA, LLC, a Delaware limited liability company (together with SCS and the other guarantors from time to time party to the Credit Agreement, the "Guarantors"), the several financial institutions from time to time party thereto (the "Lenders"), and UNION BANK, N.A., as a Lender and Sole Lead Arranger and as administrative agent for the Lenders (in such capacity, the "Agent"), in the amounts and at the times specified in the Credit Agreement with a final payment on the Maturity Date of all Loans made by the Lender which are outstanding on such date; and

(b) interest on the principal balance hereof from time to time outstanding from the date hereof through and including the date on which such principal amount is paid in full, at the times and at the rates provided in the Credit Agreement.

This Revolving Loan Note evidences borrowings under and is subject to the terms of the Credit Agreement and is secured pursuant to the Credit Agreement and the documents referred to therein. This Revolving Loan Note has been issued by the Borrower in accordance with the terms of the Credit Agreement. The Lender and any holder hereof are entitled to the benefits of the Credit Agreement and the Loan Documents and may enforce the agreements of the Borrower contained therein, and any holder may exercise the respective remedies provided for thereby or otherwise available in respect thereof, all in accordance with the respective terms thereof. All capitalized terms which are used in this Revolving Loan Note and not otherwise defined herein and which are defined in the Credit Agreement shall have the same meanings herein as in the Credit Agr eement.

Borrower irrevocably authorizes the Lender to make or cause to be made, at or about the time of the drawdown date of any Loan or at or about the time of receipt of any payment of principal of this Revolving Loan Note, an appropriate notation on the grid attached to this Revolving Loan Note, or the continuation of such grid, or any other similar record, including computer records, reflecting the making of such Loan or (as the case may be) the receipt of such payment. The outstanding amount of the Loans set forth on such grid, or the continuation of such grid, or any other similar record, including computer records, maintained by the Lender with respect to any Loans shall be prima facie evidence of the princi pal amount thereof owing and unpaid to the Lender, but the failure to record, or any error in so recording, any such amount on any such grid, continuation or other record shall not limit or otherwise affect the obligation of the Borrower hereunder or under the Credit Agreement to make payments of principal of and interest on this Revolving Loan Note when due.

The Borrower has the right in certain circumstances and the obligation under certain other circumstances to prepay the whole or part of the principal of this Revolving Loan Note on the terms and conditions specified in the Credit Agreement.

If any one or more Events of Default shall occur, the entire unpaid principal amount of this Revolving Loan Note and all of the unpaid interest accrued thereon may become or be declared due and payable in the manner and with the effect provided in the Credit Agreement.

Borrower and every endorser and guarantor of this Revolving Loan Note or the obligation represented hereby waive presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Revolving Loan Note, assent to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral and to the addition or release of any other party or person primarily or secondarily liable.

THIS REVOLVING LOAN NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF CALIFORNIA SITTING IN SANTA CLARA COUNTY, CALIFORNIA AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF CALIFORNIA, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS REVOLVING LOAN NOTE, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND THE BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND D ETERMINED IN SUCH CALIFORNIA STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. THE BORROWER AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS REVOLVING LOAN NOTE SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS REVOLVING LOAN NOTE OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS REVOLVING LOAN NOTE IN ANY COURT REFERRED TO HEREIN. THE BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVEN IENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. THE BORROWER HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINTS AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT. THE BORROWER IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02 OF THE CREDIT AGREEMENT. NOTHING IN THIS REVOLVING LOAN NOTE WILL AFFECT THE RIGHT OF ANY PARTY TO THE CREDIT AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW. THE BORROWER CONSENTS TO THE DISPUTE RESOLUTION PROVISIONS OF SECTION 11.15 OF THE CREDIT AGREEMENT.

IN WITNESS WHEREOF, the undersigned has caused this Revolving Loan Note to be signed as an instrument under seal by its duly authorized officer as of the day and year first above written.

SUNPOWER CORPORATION

By: _____

Print Name: _____

Title: _____

Date	Amount of Revolving Credit Loan	Amount of Principal Paid or Prepaid	Balance of Principal Unpaid	Notation Made By:

EXHIBIT 7.02(b)

[FORM OF] COMPLIANCE CERTIFICATE

To: Union Bank, N.A., as Agent
Commercial Loan Operations
601 East Potrero Grande Drive
Monterey Park, CA 91754
Facsimile: (323) 720-2252

with a copy to:

Union Bank, N.A., as Agent
Attention: J. William Bloore and
James B. Goudy
Northern California Commercial Banking Group
99 Almaden Boulevard, Suite 200
San Jose, CA 95113

Re: Compliance Certificate as of and for period ending: _____ __, 20__

Ladies and Gentlemen:

This certificate (this "Compliance Certificate") is submitted pursuant to the Credit Agreement, dated as of October 29, 2010 (as amended, modified, supplemented, restated or renewed from time to time, the "Credit Agreement") by and among Borrower, SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation ("SCS"), SUNPOWER NORTH AMERICA, LLC, a Delaware limited liability company (together with SCS and the other guarantors from time to time party to the Credit Agreement, the "Guarantors"), the several financial institutions from time to t ime party thereto (the "Lenders"), and UNION BANK, N.A., as a Lender and Sole Lead Arranger and as administrative agent for the Lenders (in such capacity, the "Agent"). All capitalized terms used herein shall have the meanings specified in the Credit Agreement unless otherwise defined herein.

The undersigned hereby certifies that: (a) [he][she] is the acting and incumbent [Chief Executive Officer] [Chief Financial Officer] of the Borrower, and (b) in such capacity, [he][she] is authorized to execute this Compliance Certificate on behalf of the Borrower in connection with the Credit Agreement.

The undersigned has reviewed the terms and conditions of the Credit Agreement and the definitions and provisions contained in the Credit Agreement, and, has made, or have caused to be made under the supervision of the undersigned, such examination or investigation as is necessary to enable the undersigned to express an informed opinion, and to provide a certification, as to the matters referred to herein.

The undersigned hereby further represents, warrants and certifies that:

1. Each of the Borrower and the other Loan Parties are in complete and strict compliance, as of, and for the period ending, _____ __, 20__ (the "Compliance Date"), with all agreements, conditions and covenants contained in the Credit Agreement and the other Loan Documents, except as noted below.

2. The representations and warranties of each Loan Party contained in the Credit Agreement and the other Loan Documents are true and correct in all material respects as of the Compliance Date as if made on such date (or, in the case of representations and warranties stated as having been made only as of the Closing Date, such representations and warranties remain true and correct in all material respects as of the Closing Date); provided, however, the foregoing materiality qualification does not apply to those representations and warranties that already are qualified or modified by materiality in the text thereof.

3. There exists no Default or Event of Default under the Credit Agreement or any of the other Loan Documents.

4. Each Loan Party is in compliance with each of the covenants in Section 8.14 of the Credit Agreement, as of, and for the period ending on, the Compliance Date, and attached hereto as Schedule 1 is a true and correct copy of the calculation of such financial covenants, prepared by the undersigned.

5. Attached to such Schedule 1 are true, correct and complete copies of the documents and work sheets supporting the above certifications.

6. Since October 29, 2010 (a) there has been no Material Adverse Effect as to any Loan Party, (b) except as set forth on Schedule 3 hereto, there has been no WJE Material Adverse Change, and (c) there has been no WJE Prepayment Event.

7. Each of Loan Party is in compliance with each of the reporting and notice covenants in Sections 7.01, 7.02, and 7.03 of the Credit Agreement, as of, and for the period ending on the Compliance Date, and attached hereto as Schedule 2 are the quarterly and annual (as applicable) financial statements required under Section 7.01 of the Credit Agreement and the other reports, letters, opinions, notices and other required under the Credit Agreement ;

8. The financial statements furnished on Schedule 2 attached hereto are complete and correct and have been prepared in accordance with GAAP (except for the lack of footnotes required by GAAP and changes resulting for normal year end adjustments, in the case of financial statements other than those as of a Fiscal Year end), consistently applied from one period to the next, and fairly present the financial condition of the Loan Parties and their Subsidiaries.

9. Each Loan Party is Solvent.

10. There is no litigation, action, suit, investigation, or other arbitral, administrative, or judicial proceeding pending or, to the best of the knowledge of the undersigned, threatened which could reasonably be expected to (x) result in a Material Adverse Effect or (y) restrain or enjoin, impose materially burdensome conditions on, or otherwise materially and adversely affect the ability of any Loan Party to fulfill its obligations under the Loan Documents; or (z) materially and adversely affect the rights and remedies of Agent or any Lender under the Loan Documents.

11. No Liens have arisen, been granted or otherwise exist with respect to any assets or properties of any Loan Party other than Permitted Liens.

THIS COMPLIANCE CERTIFICATE IS EXECUTED AND DELIVERED THIS _____ DAY OF _____, 20__.

Very Truly Yours,

SUNPOWER CORPORATION

By: _____

Print Name: _____

Title: _____

SCHEDULE 1
TO
COMPLIANCE CERTIFICATE

7.02(b)-4

SCHEDULE 2
TO
COMPLIANCE CERTIFICATE

REQUIRED FINANCIAL STATEMENTS

7.02(b)-5

SCHEDULE 3
TO
COMPLIANCE CERTIFICATE

WJE MATERIAL ADVERSE CHANGES

7.02(b)-6

EXHIBIT 7.02(c)

[FORM OF] BORROWING BASE CERTIFICATE

To: Union Bank, N.A., as Agent
Commercial Loan Operations
601 East Potrero Grande Drive
Monterey Park, CA 91754
Facsimile: (323) 720-2252

with a copy to:

Union Bank, N.A., as Agent
Attention: J. William Bloore and
James B. Goudy
Northern California Commercial Banking Group
99 Almaden Boulevard, Suite 200
San Jose, CA 95113

Ladies and Gentlemen:

This certificate (this "Borrowing Base Certificate") is submitted pursuant to the Credit Agreement, dated as of October 29, 2010 (as amended, modified, supplemented, restated or renewed from time to time, the "Credit Agreement") by and among Borrower, SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation ("SCS"), SUNPOWER NORTH AMERICA, LLC, a Delaware limited liability company (together with SCS and the other guarantors from time to time party to the Credit Agreement, the "Guarantors"), the several financial institutions from time to time party thereto (the "Lenders"), and UNION BANK, N.A., as a Lender and Sole Lead Arranger and as administrative agent for the Lenders (in such capacity, the "Agent"). All capitalized terms used herein shall have the meanings specified in the Credit Agreement unless otherwise defined herein.

The undersigned hereby certifies that (a) [he][she] is the acting and incumbent Chief Financial Officer of the Borrower, and (b) in such capacity, [he][she] is authorized to execute this certificate on behalf of Borrower in connection with the Credit Agreement. The undersigned submits this Borrowing Base Certificate for the purpose of inducing Agent and the Lenders to make a Revolving Loan to the Borrower.

The undersigned hereby represents, warrants and certifies that the calculation of the Borrowing Base, on the attached Schedule 1, is true, complete and correct, and that the information reflected in this Borrowing Base Certificate complies with the representations and warranties and definitions set forth in the Credit Agreement.

THIS BORROWING BASE CERTIFICATE IS EXECUTED AND DELIVERED THIS _____ DAY OF _____, 20__.

Very Truly Yours,

SUNPOWER CORPORATION

By: _____

Print Name: _____

Title: _____

SCHEDULE 1
TO
BORROWING BASE CERTIFICATE

Calculation Date:		_____ __, 20__
A.	**Exchange Rate** (prior day; rounded to closest 1/1000 of 1%):	_____%
B.	**Most Recent KSE Trading Day:**	_____ __, 20__
C.	**WJE Stock Closing Price** (on date specified in B; in KRW)**:**	_____
D.	**Number of Shares of WJE Stock pledged:**	_____
E.	**WJE Stock Value** (C times D)**:**	_____
F.	**Dollar Equivalent WJE Stock Value** (A times E):	_____
G.	**Borrowing Base** (30% of F)**:**	_____
H.	**Aggregate Outstanding Commitments**:	$70,000,000.00
I.	**Maximum amount permitted to be outstanding** (lesser of G and H):	$_____
J.	**Revolving Outstandings**:	$_____
K.	**Availability** (I minus J):	$_____

EXHIBIT 11.06(b)

[FORM OF] ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [the][each] Assignor identified in item 1 below ([the][each, an] "Assignor") and [the][each] Assignee identified in item 2 below ([the][each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees] hereunder are several and not joint.][1] Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement id entified below (as amended, modified, supplemented or restated, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor's][the respective Assignors'] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest"). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: _____

   _____

2. Assignee[s]: _____

   _____

   [for each Assignee, indicate [Affiliate][Approved Fund] of [identify Lender]

3. Borrower: SUNPOWER CORPORATION

4. Administrative Agent: UNION BANK, N.A., as the administrative agent under the Credit Agreement

[1] Include bracketed language if there are either multiple Assignors or multiple Assignees.

5. Credit Agreement: The Credit Agreement, dated as of October 29, 2010 among SunPower Corporation, the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Union Bank, N.A., as Administrative Agent.

6. Assigned Interest[s]:

Assignor[s]	Assignee[s]	Facility Assigned[2]	Aggregate Amount of Commitment/Loans for all Lenders[3]	Amount of Commitment/ Loans Assigned[8]	Percentage Assigned of Commitment/ Loans[4]
			$	$	%
			$	$	%
			$	$	%

[7. Trade Date: _____][5]

Effective Date: _____ ___, 20___ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR[S][6]
[NAME OF ASSIGNOR]

By: _____
Title:

ASSIGNEE[S][7]
[NAME OF ASSIGNEE]

By: _____
Title:

---

[2] Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment
[3] Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.
[4] Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.
[5] To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.
[6] Add additional signature blocks as needed.
[7] Add additional signature blocks as needed.

[Consented to and][8] Accepted:

UNION BANK, N.A., as
Administrative Agent

By _____
Title:

[Consented to:][9]

[NAME OF RELEVANT PARTY]

By _____
Title:

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8 To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.
9 To be added only if the consent of the Borrower and/or other parties is required by the terms of the Credit Agreement.

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 11.06(b)(iii), (iv), (v) and (vi) of the Credit Agreement (subject to such consents, if any, as may be required under Section 11.06(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 7.01 thereof, as applicable, and such other documents and i nformation as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and

other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of California.

PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT (this "Agreement"), dated as of October 29, 2010, is entered into by and between SUNPOWER CORPORATION, a Delaware corporation (the "Grantor"), and UNION BANK, N.A., as administrative agent for the Lenders (as defined below) (in such capacity, the "Administrative Agent").

Pursuant to that certain Credit Agreement, dated as of the date hereof, by and among Grantor, the guarantors from time to time party thereto, the Administrative Agent, and the lenders from time to time party thereto (the "Lenders") (including all annexes, exhibits and schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "Credit Agreement"), the Lenders have agreed to make the Loans to or for the benefit of the Grantor on an subject to the terms and conditions set forth therein. It is a condition precedent to the borrowings under the Credit Agreement that the Grantor enter into this Agreement and pledge to the Administrative Agent, for the ratable benefit of the Lenders, all Equity Interests owned by the Grantor from time to time, directly or indirectly, in those Persons listed on Schedule 2 hereto (as amended from time to time) (each, a "Company" and together, the "Companies"), to secure the obligations of the Grantor described below.

Accordingly, in consideration of the premises and mutual covenants herein contained, and to induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make extensions of credit to Grantor thereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1 Definitions; Interpretation.

(a) Terms Defined in Credit Agreement. All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

(b) Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Additional Collateral" means any and all (i) additional capital stock or other equity securities issued by, or interests in, the Companies, whether certificated or uncertificated, (ii) warrants, options or other rights entitling the Grantor to acquire any interest in capital stock or other equity securities of or other equity interests in the Companies, (iii) securities, property, interest, dividends and other payments and distributions issued or issuable as an addition to, in redemption of, in renewal or exchange for, in substitution or upon conversion of, or otherwise on account of, the Pledged Shares or such additional capital stock or other equity securities or other interests in the Companies, including, but not limited to, those arising from a stock divid end, stock split, reclassification, reorganization, merger, consolidation, sale of assets or other exchange of securities or any dividends or other distributions of any kind upon or with respect to the Pledged Shares or any other Pledged Collateral, and (iv) cash and non-cash proceeds, substitutions and products of the Pledged Shares or any other Pledged Collateral, and all supporting obligations, of any or all of the foregoing, in each case from time to time received or receivable by, or otherwise paid or distributed to or acquired by, the Grantor.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock

of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Korean Share Pledge" means that certain Share Kun-Pledge Agreement, dated as of the Closing Date, by and among the Grantor, the Administrative Agent and the Lenders, as the same may be amended, modified, supplemented, restated or renewed from time to time.

"Pledged Collateral" has the meaning set forth in Section 2(a).

"Pledged Shares" means all of the issued and outstanding Equity Interests of the Companies, whether certificated or uncertificated, now existing or hereafter arising, including those certificated interests specifically described in Schedule 1 (as amended from time to time).

"Secured Obligations" means the "Obligations", as defined in the Credit Agreement, including, without limitation, all of Grantor's obligations hereunder and under the other Loan Documents.

"UCC" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of California, provided, if the context relates to the perfection or effect of perfection of any security interest, "UCC" shall refer to the Uniform Commercial Code of the jurisdiction governing such matter.

(c) Terms Defined in UCC. Where applicable and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the UCC.

(d) Interpretation. The rules of interpretation set forth in Sections 1.02 to 1.06 of the Credit Agreement shall be applicable to this Agreement and are incorporated herein by this reference.

SECTION 2 Security Interest.

(a) Grant of Security Interest. As security for the payment and performance of the Secured Obligations, the Grantor hereby pledges to the Administrative Agent, for itself and the Lenders, and hereby grants to the Administrative Agent, for itself and the Lenders, a security interest in, all of the Grantor's right, title and interest in, to and under (i) the Pledged Shares and the Additional Collateral and any certificates and instruments now or hereafter representing the Pledged Shares and the Additional Collateral, (ii) all rights, remedies, interests, benefits and claims with respect to the Pledged Shares and Additional Collateral, including under any and all related agreements, instrum ents and other documents and also including the right to demand the return, delivery or transfer of share certificates for any of the Pledged Collateral from the Korean Securities Depository (the "KSD"), and (iii) all books, records and other documentation of the Grantor related to the Pledged Shares and Additional Collateral, in each case, whether tangible or intangible, presently existing or owned or subsequently acquired, created or coming into existence and wherever located (collectively, the "Pledged Collateral").

(b) Delivery of Pledged Shares. The Grantor hereby agrees, upon the request of the Administrative Agent, to deliver to or for the account of the Administrative Agent, at the address and to the Person to be designated by the Administrative Agent, the certificates representing the Pledged Shares, if any, which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Administrative Agent.

(c) Delivery of Additional Collateral. If the Grantor shall become entitled to receive or shall receive any Additional Collateral, the Grantor shall accept any such Additional Collateral as the agent for the Administrative Agent, shall hold it in trust for the Administrative Agent, shall segregate it from other property or funds of the Grantor, and, upon the request of the Administrative Agent, shall deliver all Additional Collateral and all certificates, instruments and other writings representing such Additional Collateral forthwith to or for the account of the Administrative Agent, at the address and to the Person to be designated by the Administrative Agent, which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Administrative Agent, as the Administrative Agent shall request, to be held by the Administrative Agent subject to the terms hereof, as part of the Pledged Collateral. Upon accepting any such Additional Collateral hereunder, the Administrative Agent may send a notification to the Grantor describing the Additional Collateral accepted and held as part of the Pledged Collateral hereunder, which notification shall be deemed to be a Schedule to this Agreement and may be attached hereto.

(d) Transfer of Security Interest Other Than by Delivery. If for any reason Pledged Collateral cannot be delivered to or for the account of the Administrative Agent as provided in subsections (b) and (c), the Grantor shall promptly take such other steps as shall be requested from time to time by the Administrative Agent to effect a transfer of a perfected first priority security interest in and pledge of the Pledged Collateral to the Administrative Agent pursuant to the UCC and all other applicable Laws. To the extent practicable, the Grantor shall thereafter deliver the Pledged Collateral to or for the account of the Administrative Agent as provided in subsections (b) and (c). ; Grantor shall cause the books of the applicable Company to reflect the pledge of the Pledged Collateral. With respect to the Pledged Collateral in uncertificated form, Grantor shall cause the Lien of the Administrative Agent to be appropriately recorded on the securities register of the issuer thereof, and will execute any document necessary to perfect the Lien of the Administrative Agent, including notation of such pledge on any share register relating to the Pledged Collateral.

(e) Financing Statements and Other Action. The Grantor shall execute and deliver to the Administrative Agent concurrently with the execution of this Agreement (and from time to time hereafter), and the Grantor hereby authorizes the Administrative Agent to file (with or without the Grantor's signature), at any time and from time to time thereafter, all financing statements, assignments, continuation financing statements, termination statements, instructions to brokers regarding share registrations and other documents and instruments, in form reasonably satisfactory to the Administrative Agent, and take all other action, as the Administrative Agent may reasonably request, to effect a trans fer of a perfected first priority security interest in and pledge of the Pledged Collateral to the Administrative Agent pursuant to the UCC and to continue perfected, maintain the priority of or provide notice of the security interest of the Administrative Agent in the Pledged Collateral and to accomplish the purposes of this Agreement. Without limiting the generality of the foregoing, the Grantor ratifies and authorizes the filing by the Administrative Agent of any financing statements filed prior to the date hereof. The Grantor will cooperate with the Administrative Agent in obtaining control (as defined in the UCC) of Pledged Collateral consisting of investment property. The Grantor will join with the Administrative Agent in notifying any third party who has possession of any Pledged Collateral of the Administrative Agent's security interest therein and obtaining an acknowledgment from the third party that it is holding the Pledged Collateral for the benefit of the A dministrative Agent.

(f) Continuing Security Interest. The Grantor agrees that this Agreement shall create a continuing security interest in and pledge of the Pledged Collateral which shall remain in effect until terminated in accordance with Section 22.

SECTION 3 Representations and Warranties. The Grantor represents and warrants to the Administrative Agent that:

(a) Valid Issuance of Pledged Collateral. All the Pledged Shares have been, and upon issuance any Additional Collateral will be, duly and validly issued, and are and will be fully paid and non-assessable.

(b) Ownership of Pledged Collateral. With respect to the Pledged Shares the Grantor is, and with respect to any Additional Collateral the Grantor will be, the legal record and beneficial owner thereof, and has and will have good and marketable title thereto, subject to no Lien except for the pledge and security interest created by this Agreement, Liens created under the Korean Share Pledge, and Liens of the type described in clause (cc) of the definition of "Permitted Liens" in the Credit Agreement, on the brokerage account in which the Pledged Shares are maintained.

(c) Capitalization of the Companies. As of the Closing Date, except as provided in Schedule 1 hereto, the Pledged Shares constitute 100% of the issued and outstanding shares of capital stock of the Companies.

(d) Transfer Restrictions. Except as specified on Schedule 4 hereto, there are no restrictions on the transferability of the Pledged Collateral to the Administrative Agent or with respect to the foreclosure, transfer or disposition thereof by the Administrative Agent.

(e) Shareholders Agreements. Except as specified in Schedule 4 hereto, there are no shareholders agreements, voting trusts, proxy agreements or other agreements or understandings which affect or relate to the voting or giving of written consents with respect to any of the Pledged Collateral.

(f) No Violation of Securities Laws. None of the Pledged Shares has been transferred in violation of the securities registration, securities disclosure or similar Laws of any jurisdiction to which such transfer may be subject.

(g) Location of Chief Executive Office. The Grantor's chief executive office and principal place of business, mailing address, and all books and records concerning the Pledged Collateral, are located at its address set forth in Schedule 3, attached hereto; the Grantor's jurisdiction of organization and its exact legal name each is as set forth in the first paragraph of this Agreement; and the Grantor's tax identification number and state organizational number are as set forth on Schedule 3.

(h) Other Financing Statements. Other than (i) financing statements disclosed in the Credit Agreement, and (ii) financing statements in favor of the Administrative Agent, no effective financing statement naming the Grantor as debtor, assignor, grantor, mortgagor, pledgor or the like and covering all or any part of the Pledged Collateral is on file in any filing or recording office in any jurisdiction.

(i) Control Agreements. No control agreements exist with respect to any Pledged Collateral other than control agreements in favor of the Administrative Agent.

(j) Enforceability; Priority of Security Interest. This Agreement (i) creates an enforceable, perfected first-priority security interest in and pledge of the Pledged Collateral upon delivery thereof or other actions required pursuant to Section 2, and (ii) will create an enforceable, perfected first-priority security interest in and pledge of the Additional Collateral upon delivery thereof pursuant to Section 2(c) (or upon the taking of such other action with respect thereto as may be requested by the

Administrative Agent pursuant to Section 2(d), in each case securing the payment and performance of the Secured Obligations.

The Grantor agrees that the foregoing representations and warranties shall be deemed to have been made by it on the date of each delivery of Pledged Collateral hereunder.

SECTION 4 Covenants. In addition to the covenants of the Grantor set forth in the Credit Agreement, which are incorporated herein by this reference, so long as any of the Secured Obligations remain unsatisfied or the Lenders shall have any Commitment, the Grantor agrees that:

(a) Defense of Pledged Collateral. The Grantor will, at its own expense, appear in and defend any action, suit or proceeding which purports to affect its title to, or right or interest in, the Pledged Collateral or the security interest of the Administrative Agent therein and the pledge to the Administrative Agent thereof.

(b) Preservation of Collateral. The Grantor will do and perform all reasonable acts that may be necessary and appropriate to maintain, preserve and protect the Pledged Collateral.

(c) Compliance with Laws, Etc. The Grantor will comply with all Laws, regulations and ordinances relating in a material way to the possession, maintenance and control of the Pledged Collateral.

(d) Location of Books and Chief Executive Office. The Grantor will: (i) keep all books and records pertaining to the Pledged Collateral at the location set forth in Schedule 3, and (ii) give at least 30 days' prior written notice to the Administrative Agent of (A) any changes in any such location where books and records pertaining to the Pledged Collateral are kept, or (B) any change in the location of the Grantor's chief executive office or principal place of business.

(e) Change in Name, Identity or Structure. The Grantor will give at least 30 days' prior written notice to the Administrative Agent of: (i) any change in its name; (ii) any changes in its identity or structure in any manner which might make any financing statement filed hereunder incorrect or misleading; (iii) any change in its registration as an organization (or any new such registration); and (iv) any change in its jurisdiction of organization. The Grantor shall not change its jurisdiction of organization to a jurisdiction outside of the United States.

(f) Disposition of Pledged Collateral. Except to the extent permitted under Section 8.05(b) of the Credit Agreement, the Grantor will not surrender or lose possession of (other than to the Administrative Agent or, with the prior consent of the Administrative Agent, to a depositary or financial intermediary), exchange, sell, convey, assign or otherwise dispose of or transfer the Pledged Collateral or any right, title or interest therein.

(g) Liens. The Grantor will not create, incur or permit to exist any Liens upon or with respect to the Pledged Collateral, other than the security interest of and pledge to the Administrative Agent created by this Agreement and Liens created under the Korean Share Pledge.

(h) Shareholders Agreements. The Grantor will not enter into any shareholders agreement, voting trust, proxy agreement or other agreement or understanding which affects or relates to the voting or giving of written consents with respect to any of the Pledged Collateral, other than that certain Shareholders Agreement, dated as of May 17, 2010 by and between Grantor and WOONGJIN HOLDINGS CO. LTD., in the form delivered to the Administrative Agent prior to the date hereof.

(i) Issuance of Additional Shares. The Grantor will not consent to or approve the issuance to any Person of any additional shares of any class of capital stock of the Companies, or of any securities convertible into or exchangeable for any such shares, or any warrants, options or other rights to purchase or otherwise acquire any such shares, except (a) as permitted under the Credit Agreement or (b) in connection with customary grants of stock options, restricted stock, or similar rights, or plans with respect thereto, in either case to employees, officer, directors, consultants, or similarly situated persons solely for compensatory purposes.

(j) Notices. The Grantor will deliver promptly to the Administrative Agent all reports and notices received by the Grantor from the Companies in respect of any of the Pledged Collateral.

(k) Securities Accounts. The Grantor will give the Administrative Agent immediate notice of the establishment of (or any change in or to) any securities account pertaining to any Pledged Collateral.

(l) Further Assurances. The Grantor will promptly, upon the written request from time to time of the Administrative Agent, execute, acknowledge and deliver, and file and record, all such financing statements and other documents and instruments, and take all such action, as shall be reasonably necessary to carry out the purposes of this Agreement.

SECTION 5 Administration of the Pledged Collateral.

Distributions and Voting Prior to an Event of Default. Unless and until (i) an Event of Default shall have occurred, and (ii) written notice shall have been given by the Administrative Agent: (i) the Grantor shall be entitled to receive and retain for its own account any cash dividend on or other cash distribution, if any, in respect of the Pledged Collateral to the extent consistent with Article VIII of the Credit Agreement; and (ii) the Grantor shall have the right to vote the Pledged Collateral and to retain the power to control the direction, management and policies of the Companies to the same extent as the Grantor would if the Pledged Collateral were not pledged to the Administrative Agent pursuant to this Agreement; provided, however, that the Grantor shall not be entitled to receive (A) cash paid, payable or otherwise distributed in redemption of, or in exchange for or in substitution of, any Pledged Collateral, or (B) dividends and other distributions paid or payable in cash in respect of any Pledged Collateral in connection with a partial or total liquidation or dissolution of any Company or in connection with a reduction of capital, capital surplus or paid-in-surplus or any other type of recapitalization involving any Company; and provided further, however, that no vote shall be cast or consent, waiver or ratification given or action taken which would have the effect of impairing the position or interest of the Administrative Agent in r espect of the Pledged Collateral or which would alter the voting rights with respect to the stock of any Company or be inconsistent with or violate any provision of this Agreement, the Credit Agreement or any other Loan Documents. If applicable, the Grantor shall be deemed the beneficial owner of all Pledged Collateral for purposes of Sections 13 and 16 of the Exchange Act and agrees to file all reports required to be filed by beneficial owners of securities thereunder. The Administrative Agent shall execute and deliver (or cause to be executed and delivered) to the Grantor all such proxies and other instruments as the Grantor may reasonably request for the purpose of enabling the Grantor to exercise the voting and other rights which it is entitled to exercise pursuant to this subsection and to receive the distributions which it is authorized to receive and retain pursuant to this subsection.

SECTION 6 Remedies in Case of an Event of Default.

(a) Protection and Enforcement of Rights. If there shall have occurred and be continuing an Event of Default, then and in every such case, the Administrative Agent shall be entitled to

exercise all of the rights, powers and remedies (whether vested in it by this Agreement, any other Loan Document or by Law) for the protection and enforcement of its rights in respect of the Pledged Collateral, and the Administrative Agent shall be entitled to exercise all the rights and remedies of a secured party under the UCC as in effect in any relevant jurisdiction and also shall be entitled, without limitation, to exercise the following rights, which the Grantor hereby agrees to be commercially reasonable:

(i) to receive all amounts payable in respect of the Pledged Collateral otherwise payable under Section 5 to the Grantor;

(ii) to transfer all or any part of the Pledged Collateral into the Administrative Agent's name of its nominee or nominees;

(iii) to accelerate any indebtedness which may be accelerated in accordance with its terms, and take any other lawful action to collect upon any indebtedness relating to the Pledged Shares (including to make any demand for payment thereon);

(iv) to vote (and exercise all rights and powers in respect of voting) all or any part of the Pledged Shares (whether or not transferred into the name of the Administrative Agent) and give all consents, waivers and ratifications in respect of the Pledged Shares and otherwise act with respect thereto as though it were the outright owner thereof (the Grantor hereby irrevocably constituting and appointing the Administrative Agent the proxy and attorney-in-fact of such Grantor, with full power of substitution to do so);

(v) subject to the requirements of applicable Law, at any time and from time to time to sell, assign and deliver, or grant options to purchase, all or any part of the Pledged Shares, or any interest therein, at any public or private sale, without demand of performance, advertisement or notice of intention to sell or of the time or place of sale or adjournment thereof or to redeem or otherwise purchase or dispose (all of which are hereby waived by the Grantor), for cash, on credit or for other property, for immediate or future delivery without any assumption of credit risk, and for such price or prices and on such terms as the Administrative Agent in its absolute discretion may deem appropriate, provided at least 10 days' written notice of the time and place of any such sale shall be given to the respective Grantor. The Grantor shall not be obligated to make any such sale of Pledged Shares regardless of whether any such notice of sale has theretofore been given. The Grantor hereby waives and releases to the fullest extent permitted by Law any right or equity of redemption with respect to the Pledged Shares, whether before or after sale hereunder, and all rights, if any, of marshalling the Pledged Shares and any other security for the Secured Obligations or otherwise. At any such sale, unless prohibited by applicable Law, the Administrative Agent may bid for and purchase all or any part of the Pledged Shares so sold free from any such right or equity of redemption. The Administrative Agent shall not be liable for failure to collect or realize upon any or all of the Pledged Shares or for any delay in so doing nor shall the Administrative Agent be under any obligation to take any action whatso ever with regard thereto; and

(vi) to set off any and all Pledged Shares against any and all Secured Obligations, and to apply such Pledged Shares to the payment of any and all Secured Obligations.

(b) Voting of Pledged Shares. If (i) there shall have occurred and be continuing an Event of Default, and (ii) notice shall have been given by the Administrative Agent terminating or suspending such rights, then and in every such case, the Administrative Agent shall be entitled (x) to vote (and exercise all rights and powers in respect of voting) all or any part of the Pledged Shares (whether or not transferred into the name of the Administrative Agent) and give all consents, waivers and ratifications in respect of the Pledged Shares and otherwise act with respect thereto as though it were the outright owner thereof (the Grantor hereby irrevocably constituting and appointing the Administrative Agent the

proxy and attorney-in-fact of the Grantor, with full power of substitution to do so); and (y) receive all amounts payable in respect of the Pledged Collateral otherwise payable under Section 5 to the Grantor.

(c) Pledged Shares Distributions. Distributions and other payments which are received by the Grantor but which it is not entitled to retain as a result of the operation of subsection (a) or (b) shall be held in trust for the benefit of the Administrative Agent, be segregated from the other property or funds of the Grantor, and be forthwith paid over or delivered to the Administrative Agent in the same form as so received.

(d) Exchange of Equity Interests. The Administrative Agent shall at all times have the right to exchange uncertificated Equity Interests for certificated Pledged Shares, to the extent permitted under applicable Laws, and, during the continuance of an Event of Default, to exchange certificated Pledged Shares for certificates of larger or smaller denominations, for any purpose consistent with this Agreement.

(e) Appointment of Administrative Agent as Attorney-in-Fact. For the purpose of enabling the Administrative Agent to exercise its rights under this Section 6 or otherwise in connection with this Agreement, the Grantor hereby (i) constitutes and appoints the Administrative Agent (and any of the Administrative Agent's officers, employees or agents designated by the Administrative Agent) its true and lawful attorney-in-fact, with full power and authority to execute any notice, assignment, endorsement or other instrument or document, and to do any and all acts and things for and on behalf of the Grantor, which the Administrativ e Agent may deem necessary or desirable to protect and (provided there exists an Event of Default) collect and realize upon, and to preserve the Pledged Collateral, to enforce the Administrative Agent's rights with respect to the Pledged Collateral and to accomplish the purposes hereof, and (ii) revokes all previous proxies with regard to the Pledged Collateral and appoints the Administrative Agent as its proxyholder with respect to the Pledged Collateral to attend and vote at any and all meetings of the shareholders of the Companies held on or after the date of this proxy and prior to the termination hereof (in accordance with the terms of Section 6(b) hereof), with full power of substitution to do so and agrees, if so requested, to execute or cause to be executed appropriate proxies therefor. Each such appointment is coupled with an interest and irrevocable so long as the Administrative Agent has any Commitments or the Secure d Obligations have not been paid and performed in full. The Grantor hereby ratifies, to the extent permitted by Law, all that the Administrative Agent shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this Section 6.

(f) Proceeds Account. To the extent that any of the Secured Obligations may be contingent, unmatured or unliquidated at such time as there may exist an Event of Default, the Administrative Agent may, at its election, (i) retain the proceeds of any sale, collection, disposition or other realization upon the Pledged Collateral (or any portion thereof) in a special purpose non-interest-bearing restricted deposit account (the "Proceeds Account") created and maintained by the Administrative Agent for such purpose (as to which the Grantor hereby grants a security interest and which shall constitute part of the Pledged Coll ateral hereunder) until such time as the Administrative Agent may elect to apply such proceeds to the Secured Obligations, and the Grantor agrees that such retention of such proceeds by the Administrative Agent shall not be deemed strict foreclosure with respect thereto; (ii) in any manner elected by the Administrative Agent, estimate the liquidated amount of any such contingent, unmatured or unliquidated claims and apply the proceeds of the Pledged Collateral against such amount; or (iii) otherwise proceed in any manner permitted by applicable Law. The Grantor agrees that the Proceeds Account shall be a blocked account and that upon the irrevocable deposit of funds into the Proceeds Account, the Grantor shall not have any right of withdrawal with respect to such funds. Accordingly, the Grantor irrevocably waives, until the termination of this Agreement in accordance with Section 22, the right to make any withdrawal from t he Proceeds Account and the right to instruct the Administrative Agent to honor drafts against the Proceeds Account.

(g) Application of Proceeds. Subject to subsection (f) above, the cash proceeds actually received from the sale or other disposition or collection of Pledged Collateral, and any other amounts of the Pledged Collateral (including any cash contained in the Pledged Collateral) the application of which is not otherwise provided for herein, shall be applied in the order specified in Section 9.03 of the Credit Agreement. Any surplus thereof which exists after payment and performance in full of the Secured Obligations shall be promptly paid over to the Grantor or otherwise disposed of in accordance with the UCC or other appli cable Law. The Grantor shall remain liable to the Administrative Agent for any deficiency which exists after any sale or other disposition or collection of Pledged Collateral.

SECTION 7 Remedies Cumulative. Each and every right, power and remedy hereby specifically given to the Administrative Agent shall be in addition to every other right, power and remedy specifically given to the Administrative Agent under this Agreement, now or hereafter existing at Law, in equity or by statute and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by the Administrative Agent. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of the exercise of one shall not be deemed a waive r of the right to exercise any other or others. No delay or omission of the Administrative Agent in the exercise of any such right, power or remedy and no renewal or extension of any of the Secured Obligations shall impair any such right, power or remedy or shall be construed to be a waiver of any Default or Event of Default or an acquiescence thereof. No notice to or demand on the Grantor in any case shall entitle it to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Administrative Agent or further action in any circumstances without notice or demand. In the event that the Administrative Agent shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Administrative Agent may recover reasonable expenses, including reasonable attorneys' fees, and the amounts thereof shall be included in such judgment. The Lien granted hereunder and the rights and remedies of the Administrative Agent with respect to the Liens granted hereunder are granted in conjunction with the pledge granted under the Korean Pledge, and are in addition and supplemental to, and in no way limit or should be construed to limit, those set forth in the Korean Share Pledge or the other Loan Documents or those which are now or hereafter available to the Administrative Agent or any Lender as a matter of law or equity. The exercise by the Administrative Agent of any one or more of the rights, powers or remedies provided for in this Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise of any or all other rights, powers or remedies.

SECTION 8 Administrative Agent Performance of Grantor Obligations. The Administrative Agent may perform or pay any obligation which the Grantor has agreed to perform or pay under or in connection with this Agreement, and the Grantor shall reimburse the Administrative Agent on demand for any amounts paid by the Administrative Agent pursuant to this Section 8.

SECTION 9 Administrative Agent's Duties. Notwithstanding any provision contained in this Agreement, the Administrative Agent shall have no duty to exercise any of the rights, privileges or powers afforded to it and shall not be responsible to the Grantor or any other Person for any failure to do so or delay in doing so. Beyond the exercise of reasonable care to assure the safe custody of the Pledged Collateral while held hereunder and the accounting for moneys actually received by the Administrative Agent hereunder, the Administrative Agent shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Pledged Collateral.

SECTION 10 Reserved.

SECTION 11 Certain Waivers.

(a) The Grantor waives, to the fullest extent permitted by Law, (i) any right of redemption with respect to the Pledged Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling of the Secured Obligations, the Pledged Collateral, or other collateral or security for the Secured Obligations; (ii) any right to require the Administrative Agent (A) to proceed against any Person, (B) to exhaust any other collateral or security for any of the Secured Obligations, (C) to pursue any remedy in the Administrative Agent's power, or (D) to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any of the Pledged Collateral; and (iii) all claims , damages, and demands against the Administrative Agent arising out of the repossession, retention, sale or application of the proceeds of any sale of the Pledged Collateral.

(b) The Grantor waives any right it may have to require the Administrative Agent to pursue any third person for any of the Secured Obligations. The Administrative Agent may comply with any applicable state or federal Law requirements in connection with a disposition of the Pledged Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Pledged Collateral. The Administrative Agent may sell the Pledged Collateral without giving any warranties as to the Pledged Collateral. The Administrative Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Pl edged Collateral. If the Administrative Agent sells any of the Pledged Collateral upon credit, the Grantor will be credited only with payments actually made by the purchaser, received by the Administrative Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Pledged Collateral, the Administrative Agent may resell the Pledged Collateral and the Grantor shall be credited with the proceeds of the sale.

SECTION 12 Notices. All notices, requests or other communications hereunder shall be given in the manner and to the addresses specified in the Credit Agreement.

SECTION 13 No Waiver; Cumulative Remedies. No failure on the part of the Administrative Agent to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement or in any other Loan Document are cumulative and concurrent and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Administrative Agent or any Lender.

SECTION 14 Costs and Expenses; Other Charges.

(a) Costs and Expenses. The Grantor agrees to pay on demand:

(i) the out-of-pocket costs and expenses of the Administrative Agent and any of its Affiliates, and the Administrative Agent's legal expenses, in connection with the negotiation, preparation, execution, delivery and administration of this Agreement, and any amendments, modifications or waivers of the terms thereof, and the custody of the Pledged Collateral;

(ii) all title, appraisal (including the allocated cost of internal appraisal services), survey, audit, consulting, search, recording, filing and similar costs, fees and expenses incurred or sustained by the Administrative Agent or any of its Affiliates in connection with this Agreement or the Pledged Collateral; and

(iii) all costs and expenses of the Administrative Agent and any of its Affiliates, including legal expenses, in connection with the enforcement or attempted enforcement of, and preservation of any rights or interest under, this Agreement, any out-of-court workout or other refinancing or restructuring or in any bankruptcy case, and the protection, sale or collection of, or other realization upon, any of the Pledged Collateral, including any and all losses, costs and expenses sustained by the Administrative Agent as a result of any failure by the Grantor to perform or observe its obligations contained herein.

(b) Interest. Any amounts payable to the Administrative Agent under this Section 14 or otherwise under this Agreement if not paid upon demand shall bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate applicable to Base Rate Loans to the fullest extent permitted by applicable Law. Any such interest shall be due and payable upon demand and shall be calculated on the basis of a year of 365 or 366 days, as the case may be, and the actual number of days elapsed.

(c) Payment. Any and all amounts due under this Section 14 shall be payable within ten Business Days after written demand therefor.

(d) Survival. The agreements in this Section 14 shall survive the termination of the Commitments and repayment of all Secured Obligations.

SECTION 15 Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the Grantor, the Administrative Agent and their respective successors and assigns and shall bind any Person who becomes bound as a debtor to this Agreement.

SECTION 16 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA, EXCEPT AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND TO THE EXTENT THE VALIDITY OR PERFECTION OF THE SECURITY INTERESTS HEREUNDER, OR THE REMEDIES HEREUNDER, IN RESPECT OF ANY COLLATERAL ARE GOVERNED BY THE LAW OF A JURISDICTION OTHER THAN CALIFORNIA.

SECTION 17 Entire Agreement; Amendment. This Agreement, together with the other Loan Documents, including the Korean Share Pledge, contains the entire agreement of the parties with respect to the subject matter hereof and shall not be amended except by the written agreement of the parties as provided in the Credit Agreement.

SECTION 18 Severability. If any provision of this Agreements or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 19 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*SECTION 20 **Incorporation of Provisions of the Credit Agreement**. To the extent the Credit Agreement contains provisions of general applicability to the Loan Documents, including any such provisions contained in **Article XI** thereof, such provisions are incorporated herein by this reference.*

*SECTION 21 **No Inconsistent Requirements**. The Grantor acknowledges that this Agreement and the other Loan Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms.*

*SECTION 22 **Termination**. Upon final termination of the Commitments of the Lenders, and payment and performance in full, in cash, of all Secured Obligations, the Administrative Agent shall terminate the security interests created under this Agreement and the Administrative Agent shall promptly, at Grantor's sole cost and expense, redeliver to the Grantor any of the Pledged Collateral in the Administrative Agent's possession, if any, and shall, at Grantor's sole cost and expense, execute and deliver to the Grantor such documents and instruments reasonably requested by the Grantor as shall be necessary to evidence termination of such security interests granted by the Grantor to the Administr ative Agent hereunder.*

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the date first above written.

GRANTOR:

SUNPOWER CORPORATION

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

(Signature Page to Pledge Agreement)

ADMINISTRATIVE AGENT:

UNION BANK, N.A., as Administrative Agent

By: /s/ James B. Goudy
Name: James B. Goudy
Title: Vice President

(Signature Page to Pledge Agreement)

SCHEDULE 1

PLEDGED SHARES

Entity Type	Issuer Name	Jurisdiction of Organization	Certificate No.	Certificate Date	No. of Shares/ Type of Shares
Company	WOONGJIN ENERGY CO., LTD.	South Korea	[various]	[TBD]	19,398,510 shares of common stock; representing (as of October 29, 2010) 31.29% of all issued and outstanding shares of the Issuer

SCHEDULE 2

COMPANIES

WOONGJIN ENERGY CO., LTD., a company organized under the laws of the Republic of Korea, having its principal office at 1316 Gwanpyeong-dong, Yoosung-ku, Daejeon, Korea.

SCHEDULE 3

GRANTOR INFORMATION AND
LOCATION OF CHIEF EXECUTIVE OFFICE

Grantor's legal name: SUNPOWER CORPORATION

Grantor's address: 3939 North First Street
San Jose, California 95134
Telephone: (408) 240-5500
Facsimile: (408) 240-5400

Grantor's type of organization: Corporation

Grantor's jurisdiction of organization: Delaware

Grantor's Tax ID No.: 94-3008969

Grantor's State Organizational ID No.: 3808702

SCHEDULE 4

TRANSFER RESTRICTIONS and
SHAREHOLDERS AGREEMENTS

Shareholders Agreement, dated May 17, 2010 by and between Woongjin Holdings Co., Ltd. and SunPower Corporation, as amended by the letter agreement regarding "Request for Consent for Pledge of Shares" dated as of October __, 2010, each in the form delivered to the Administrative Agent prior to the Closing Date.

SHARE KUN-PLEDGE AGREEMENT

dated as of October 29, 2010

among

SUNPOWER CORPORATOIN
as Pledgor

THE FINANCIAL INSTITUTIONS
named herein as Pledgees

UNION BANK, N.A.
as Administrative Agent

relating to

CREDIT AGREEMENT DATED AS OF OCTOBER 29, 2010

CONTENTS

SHARE KUN-PLEDGE AGREEMENT

THIS SHARE KUN-PLEDGE AGREEMENT (this "Pledge Agreement") is entered into as of October 29, 2010, by and among:

(1) **SUNPOWER CORPORATION**, a Delaware corporation (the **"Pledgor"**);

(2) **THE FINANCIAL INSTITUTIONS** listed in Schedule I hereto (individually a **"Pledgee"** and collectively, the **"Pledgees"**, which term shall include their respective successors, transferees and assigns); and

(3) **UNION BANK, N.A.,** as administrative agent for the Lenders (as defined below) (in such capacity, the **"Administrative Agent"**, which term shall include its successors, transferees and assigns).

RECITALS

WHEREAS:

(A) Pursuant to that certain Credit Agreement, dated as of the date hereof, by and among the Pledgor, the guarantors from time to time party thereto, the Administrative Agent, and the Pledgees, as lenders (including all annexes, exhibits and schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the **"Credit Agreement"**), the Pledgees have agreed to make the Loan to or for the benefit of the Pledgor on and subject to the terms and conditions set forth therein.

(B) The Pledgor is the legal and beneficial owner of shares of Woongjin Energy Co., Ltd., a company organized under the laws of the Republic of Korea (**"Korea"**), having its principal office at 1316 Gwanpyeong-dong, Yoosung-ku, Daejeon, Korea (the **"Company"**), the details of which are specified in Schedule II hereto (together with any Additional Shares (as defined below), the **"Pledged Shares"**).

(C) It is a condition precedent to the borrowings under the Credit Agreement that the Pledgor enter into this Pledge Agreement and grant a kun-pledge (*Kun-Jil-Kwon*) to the Pledgees and the Administrative Agent of all Pledged Shares owned by the Pledgor pursuant to the terms and conditions herein.

(D) This Pledge Agreement is the Korean Share Pledge referred to in the Credit Agreement.

NOW, THEREFORE, it is agreed as follows:

Section 1. Interpretation

1.1 Words and expressions defined in the Credit Agreement shall, unless otherwise defined herein or the context otherwise requires, have the same meaning when used in this Pledge Agreement. References to any agreement or document shall be construed as references to

such agreement or document as varied, amended, novated or supplemented from time to time. In addition, as used in this Pledge Agreement:

1.2 **"Additional Shares"** means any and all Equity Interests in the Company in which the Pledgor acquires any beneficial interest at any time after the date of this Pledge Agreement (including, without limitation, any newly issued shares subscribed for by the Pledgor in the Company).

1.3 **"KSD"** means the Korean Securities Depository.

1.4 **"Lock-up Period"** means the period from May 11, 2010 to December 29, 2010.

1.5 **"Secured Obligations"** shall mean the Obligations, as defined in the Credit Agreement, including, without limitation, all of the Pledgor's obligations hereunder and under the other Loan Documents.

1.6 **"Securities Company"** means the securities company in Korea to which the Pledged shares will be credited upon the expiry of the Lock-up Period.

1.7 **"Standing Agent"** means Daishin Securities Co., Ltd., as standing agent of the Pledgor.

1.8 **"Transfer Agent"** means the KSD as transfer agent of the Company.

Section 2. Establishment of Kun-Pledge

2.1 The Pledgor hereby pledges to the Pledgees by way of first priority kun-pledge (the **"Kun-Pledge"**, *kun-jilkwon* in Korean), all of its right, title and interest in the Pledged Shares, and the Pledgees hereby accept such Kun-Pledge of the Pledged Shares, as collateral security for the due and punctual payment, performance and discharge in full of the Secured Obligations.

2.2 The Pledgor hereby agrees to provide a Kun-Pledge in favor of the Pledgees over all of its rights, title and interests in the Additional Shares, substantially simultaneously with the acquisition of such Additional Shares, and the Pledgees accept such Kun-Pledge over such Additional Shares pursuant to the terms and conditions contained herein, as collateral security for the due and punctual payment, performance and discharge in full of the Secured Obligations. For the avoidance of doubt, the Pledgor and the Pledgees hereby agree that, following the acquisition of or subscription for any Additional Shares by the Pledgor, the Pledgor and the Pledgees need not enter into a separate agreement in respect of such Additional Shares or express any intention to provide the Kun-Pledge contemplated in this Section 2.2 (other than the Supplemental Agreement pursuant to Section 4.1(d)).

2.3 As security for the due and punctual payment, performance and discharge in full of the Secured Obligations, the Pledgor hereby assigns to the Pledgees all of its rights, title, interest, benefits and claims with respect to the Pledged Shares, including the right to

demand the return, delivery or transfer of the share certificates representing the Pledged Shares from KSD (the "Security Assignment").

Section 3. Pledgor's Representations and Warranties

The Pledgor, on the date hereof and throughout the term of this Pledge Agreement, represents and warrants to the Administrative Agent and the Pledgees that as of the date hereof:

(a) it owns the shares identified in Schedule II hereto, and such shares were duly authorized and issued and are fully paid-in and non-assessable;

(b) it has full rights, titles and interests in the Pledged Shares free and clear of all Liens (save for the Kun-Pledge created hereunder);

(c) it has not pledged, assigned or otherwise transferred to any third party any interest in the Pledged Shares (other than the Kun-Pledge pursuant to this Pledge Agreement), including the right to demand the return, delivery or transfer of the share certificates representing the Pledged Shares from KSD;

(d) it is duly organized, validly existing under the laws of the jurisdiction of its organization and has all necessary corporate power, authority and legal right to execute, deliver, and perform its obligations under, this Pledge Agreement;

(e) it has taken all steps necessary to authorize its execution, delivery and performance of this Pledge Agreement;

(f) it has obtained all authorizations from Governmental Authorities in any jurisdiction and any third parties necessary in order to execute, deliver and perform this Pledge Agreement;

(g) its execution, delivery and performance of this Pledge Agreement are not in conflict with any applicable Law, its Organization Documents, or any indenture, deed, agreement or undertaking entered into by it or by which it is bound;

(h) this Pledge Agreement constitutes the legal, valid and binding obligations of the Pledgor enforceable in accordance with its terms; and

(j) this Pledge Agreement is in proper legal form under the law of Korea for the enforcement thereof against the Pledgor under such law, and all formalities required in Korea to be taken by the Pledgor for the validity and enforceability of the Pledge Agreement have been or will be accomplished.

Section 4. Pledgor's Obligations

The Pledgor hereby agrees and undertakes to the Administrative Agent and the Pledgees that:

4.1 At any time before the Obligations of the Company under the Loan Documents have been unconditionally and irrevocably paid and discharged in full:

(a) it shall not initiate or concur in: (i) the appointment of any receiver, manager, liquidator, trustee or similar officer for the Company or any of its assets, properties or revenues; or (ii) any proceeding for the winding up or voluntary or involuntary reorganization, composition or bankruptcy of the Company;

(b) it shall do all such acts as may be necessary to preserve the Kun-Pledge of the Pledged Shares, including causing the Company and the Transfer Agent to indicate in its shareholder's registry that all of the Pledged Shares have been pledged to the Administrative Agent and the Pledgees and to ensure that such indication is not removed, except with the prior written consent of the Administrative Agent on behalf of the Pledgees;

(c) it shall not assign, transfer, sell, further pledge or otherwise encumber any of the Pledged Shares; and

(d) it shall from time to time promptly, but in any event no later than seven Business Days, upon the acquisition of or the subscription for (as applicable) any Additional Shares:

A. execute and deliver a supplemental agreement (the **"Supplemental Agreement"**, which shall form part of this Pledge Agreement), together with the Administrative Agent on behalf of the Pledgees, substantially in the form of Exhibit B hereto (or such other form reasonably satisfactory to the Administrative Agent) to the Administrative Agent; and

B. cause the Company (i) to record the name of each of the Pledgees in all share certificates representing such Additional Shares as pledgees of such Additional Shares and deliver the same to the Administrative Agent and (ii) to record the name and address of each of the Pledgees in the shareholders registry of the Company as the pledgees of such Additional Shares and deliver the copy of such shareholders registry to the Administrative Agent or if the Additional Shares are deposited in KSD, ensure that such Additional Shares are held through the Securities Account and undertake the procedures set forth in Section 4.4 below.

4.2 Upon the execution of this Pledge Agreement, the Pledgor shall deliver to the Standing Agent a notice of the Security Assignment in the form attached as Exhibit C hereto, with a fixed date stamp affixed thereto, and (i) obtain an acknowledgement of such notice by the Standing Agent with a fixed date stamp affixed thereto and (ii) deliver (or ensure delivery) to the Administrative Agent such notice and acknowledgement.

4.3 On or prior to the execution of this Pledge Agreement, it shall (i) cause the Standing

Agent to withdraw the share certificates representing the Pledged Shares from KSD, (ii) cause the Transfer Agent to endorse each share certificate with the name of each of the Pledgees (or to the Administrative Agent on behalf of the Pledgees, as the case may be), deliver the same back to KSD and deliver a comfort letter issued by the Pledgor's legal counsel confirming such due endorsement to the Administrative Agent, and (iii) cause the Transfer Agent to record the name and address of each of the Pledgees in the shareholders registry of the Company as the pledgees of the Pledged Shares and deliver a copy of such shareholders registry to the Administrative Agent.

4.4 Upon the expiry of the Lock-up Period, the Pledgor shall (i) cause the Standing Agent to ensure that the Pledged Shares are credited to and held by the Pledgor in the securities account of the Pledgor (the "**Securities Account**") held with a Securities Company satisfactory to the Administrative Agent (and for that purpose, if necessary, to cause the recordation of the Kun-Pledge on share certificates and the shareholders registry of the Company to be deleted), (ii) cause such Securities Company to register the name and address of each Pledgee in the registry of client account of the Securities Company for the Securities Account (the "**Securities Account Registry**") and to deliver to the Administrative Agent a copy of the Securities Account Registry, (iii) do all such acts as may be necessary in order for the Administrative Agent to be able to enforce the pledge over the Pledged Shares in the Securities Account without any further consent, authorization or action by the Pledgor, including, but not limited to, executing and delivering to the Administrative Agent a Consent to Disposal of Pledged Shares in the form acceptable to the Securities Company, and (iv) do all such acts as may be necessary in order for the Administrative Agent to be able to update the Securities Account Registry, including the names and addresses of Pledgees, without any further consent, authorization or action by the Pledgor.

Section 5. Dividends and Voting Rights

Prior to the Administrative Agent's issuance of a notice following the occurrence and during the continuance of an Event of Default as defined in the Credit Agreement, the Pledgor shall be entitled to exercise in its sole discretion, with respect to the Pledged Shares, all rights and powers, conferred by statute or otherwise, upon an absolute owner of such Pledged Shares and, subject to the terms of the Credit Agreement, to receive all dividends, interest, principal or other payments of money declared or made with respect to the Pledged Shares, provided, that after the receipt by the Pledgor of such notice from the Administrative Agent, and during the continuance of such Event of Default, the Administrative Agent may, subject to the terms of the Loan Documents and in accord ance with applicable Law, exercise or cause to be exercised in respect of any Pledged Shares any voting rights and rights to receive dividends, interest, principal or other payments of money, as the case may be, forming a part of the Pledged Shares and rights conferred on or exercisable by the bearer or holder thereof in its capacity as such.

Section 6. Enforcement by Administrative Agent and Pledges

6.1 If an Event of Default under the Credit Agreement has occurred and is continuing, and the Pledgor has received notice of the same from the Administrative Agent, the

Administrative Agent on its own behalf and on behalf of the Pledgees shall become forthwith entitled to put into force and to exercise all or any of the rights and power possessed by the Pledgees as pledgees of the Pledged Shares, including without limitation, the power to:

(a) during the Lock-up Period, give such notices or instructions, in the name of the Administrative Agent or in the name of the Pledgor, to the Standing Agent to effect the delivery of the Pledged Shares to the Administrative Agent (on behalf of the Pledgees) or its designees, to the extent permitted by applicable Law;

(b) after the expiry of the Lock-up Period, transfer any or all of the Pledged Shares from the Securities Account to a Pledgee's or the Administrative Agent's securities account by executing a Consent to Disposal of Pledged Shares and providing the same to the Securities Company;

(c) exercise, to the extent permitted by applicable Law, all voting, consensual and other powers of ownership pertaining to the Pledged Shares as if the Pledgees were the sole and absolute owners thereof (and the Pledgor agrees that at such time and upon the Administrative Agent's request it will take all such actions as may be necessary to give effect to such right);

(d) demand, sue for, collect or receive, in the name of the Administrative Agent or in the name of the Pledgor, any money or property at any time payable or receivable on account of or in exchange for any of the Pledged Shares, but shall be under no obligation to do so; and

(e) to the extent permitted by and in accordance with applicable Law, assign, sell or otherwise dispose of the Pledged Shares to such person, at a public or a private sale, and upon such terms as the Administrative Agent may reasonably determine, and the Administrative Agent or any Pledgee or anyone else may be the purchaser, pledgee or recipient of any or all of the Pledged Shares and thereafter hold the same absolutely, free from any claims or rights whatsoever, including any rights of redemption, of the Pledgor.

6.2 If the proceeds (as defined below) of such sale, collection or other realization of all or any part of the Pledged Shares pursuant to Section 6.1 hereof are insufficient to cover the costs and expenses of such realization and the payment in full of the Secured Obligations, the Pledgor shall remain liable for such deficiency.

6.3 The Administrative Agent and the Pledgees shall incur no liability as a result of the sale of the Pledged Shares or any part thereof, at any public or private sale pursuant to Section 6.1 hereof and otherwise. The Pledgor hereby waives any claims against the Administrative Agent or any Pledgee arising by reason of the fact that the price at which the Pledged Shares have been sold at such private sale may be less than the price at which it could have been sold otherwise

6.4 The proceeds (as defined below) of any sale or other realization of all or any part of the Pledged Shares shall be applied by the Administrative Agent in accordance with the Credit Agreement. As used in this Section 6, the **"proceeds"** shall mean cash, securities and other property realized in respect of, and distributions in kind of, the Pledged Shares, including any thereof received under any reorganization, liquidation or adjustment of debt of the Pledgor.

Section 7. Attorney-in-fact

The Pledgor hereby irrevocably appoints the Administrative Agent its true and lawful attorney-in-fact with full power to require, demand and receive any and all moneys and claims for money due and to become due under or with respect to its Shares and to take any action or execute any instrument which the Administrative Agent may deem necessary to accomplish the purpose hereof; provided, that the Administrative Agent shall not exercise the authority conferred above unless and until the Administrative Agent on behalf of the Pledgees is permitted to exercise any of the rights pursuant to Section 6.1. The Pledgor shall execute the Power of Attorney attached hereto as Exhibit A on the date of this Pledge Agreement and th e date on which the Pledgor acquires any and all Additional Shares (if any), and hereby authorizes the Administrative Agent to fill in the date on the executed Power of Attorney at its discretion. The Administrative Agent agrees not to exercise its rights under such power of attorney except in connection with the exercise of remedies under Section 6.

Section 8. Assignment

This Pledge Agreement and the Kun-Pledge created hereunder shall be binding upon and inure to the benefit of the Pledgor, the Administrative Agent and the Pledgees and their respective successors and permitted assigns. The Administrative Agent and any Pledgee may, to the extent permitted by and in accordance with the Credit Agreement and applicable Law, at any time assign all or any part (to the extent permitted by the Credit Agreement) of its rights or obligations hereunder to any party (each an "Assignee"). The parties hereto agree that to the extent of any assignment, the Assignee shall be deemed to have the same rights and benefits under this Pledge Agreement as it would have had if it were a signatory Pledgee hereunder, and the Pledgor shall ensure that procedures set forth in Section 4.3 or Section 4.4, as applicable, are promptly completed with respect to the Assignee. The Pledgor may not assign any of its rights or obligations hereunder without the prior written consent of the Administrative Agent.

Section 9. Further Assurance

The Pledgor agrees that at any time and from time to time upon the written request of the Administrative Agent, it shall promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Administrative Agent may reasonably request in order to perfect and/or protect any Lien granted or purported to be granted hereby or to enable the Administrative Agent and the Pledgees to exercise and enforce their rights and remedies hereunder with respect to the Pledged Shares pledged by this Pledge Agreement.

Section 10. Termination and Release of Securities

The term of this Pledge Agreement shall begin on the signing date of this Pledge Agreement and end on the date on which all Secured Obligations shall have been unconditionally and irrevocably paid and discharged in full and none of the Pledgees shall be under any further actual or contingent obligation to make any advance or provide other financial accommodation to any obligor or any other person under any of the Loan Documents. Upon termination of this Pledge Agreement, the Administrative Agent and the Pledgees shall at the request and cost of the Pledgor promptly release and discharge this Pledge Agreement and the Kun-Pledge created hereunder

Section 11. Miscellaneous

11.1 **Notices.** All notices, requests and other communications hereunder shall be given in the manner and to the addresses specified in the Credit Agreement.

11.2 **Severability**. If any of the provisions of this Pledge Agreement shall contravene any Law or be held invalid, this Pledge Agreement shall be construed as if not containing those provisions, and the rights and obligations of the parties hereto shall be construed and enforced accordingly.

11.3 **Amendments, Changes and Modifications**. This Pledge Agreement shall not be amended, changed, modified, altered or terminated, unless the prior written approval of the Pledgor and the Administrative Agent is obtained. This Pledge Agreement shall not be amended by an oral agreement.

11.4 **Counterparts**. This Pledge Agreement may be executed in multiple counterparts, each of which, when executed, shall constitute an original but all of which together shall constitute one and the same instrument.

11.5 **Heading**. Headings and titles herein are for convenience only and shall not affect the construction or interpretation of this Pledge Agreement.

11.6 **Entire Agreement.** This Pledge Agreement, together with other Loan Documents, is intended by the parties as the written final expression of each party's obligations and rights in connection with the Kun-Pledge of the Pledged Shares and the Security Assignment and supersedes all prior and contemporaneous understandings or agreements concerning the subject matter hereof. The Kun-Pledge is made in conjunction with the security interest granted to the Agent under the Pledge Agreement dated October 29, 2010 by and between the Pledgor as grantor and the Administrative Agent as administrative agent for the Lenders governed by the laws of the State of California (the **"U.S. Pledge Agreement"**). Th e rights, powers and remedies of the Administrative Agent and the Pledgees with respect to the Kun-Pledge are in addition to those set forth in the Credit Agreement, the U.S. Pledge Agreement and the other Loan Documents, and those which are now or hereafter available to the Administrative Agent or any Pledgee as a matter of law or equity. Each right, power and remedy of the Administrative

Agent and/or the Pledgees provided for herein or in the Credit Agreement, the U.S. Pledge Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity, shall be cumulative and concurrent and shall be in addition to every right, power or remedy provided for herein, and the exercise by the Administrative Agent or any Pledgee of any one or more of the rights, powers or remedies provided for in this Pledge Agreement, the Credit Agreement, the U.S. Pledge Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise by any person, including the Administrative Agent, of any or all other rights, powers or remedies.

11.7 **Conflict.** In the case of a conflict between the provisions of this Pledge Agreement and the provisions of Credit Agreement, the provisions of the Credit Agreement shall prevail. In the case of a conflict between the provisions of this Pledge Agreement and the provisions of the pledge agreement dated October 29, 2010 between the Pledgor and the Administrative Agent, which pledge agreement is governed by the laws of the State of California, the provisions of this Pledge Agreement shall prevail.

11.8 **No Waiver.** Neither the Administrative Agent nor any Pledgee shall, by any act, delay, indulgence, omission or otherwise, except by an express written instrument clearly indicating an intention to waive, be deemed to have waived any right or remedy hereunder or to have acquiesced in any Event of Default. No failure to exercise, nor any delay in exercising on the part of the Administrative Agent and the Pledgees, any rights, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power, privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11.9 **Remedies Cumulative.** The rights and remedies provided herein are cumulative and may be exercised individually or concurrently, and are not exclusive of any other rights or remedies provided by Law.

11.10 **Action by Pledgees**. To the extent permitted by Law, all notices which may be given to the Pledgees hereunder, and all rights and remedies which may be exercised by the Pledgees hereunder, shall be given or exercised by and through the Administrative Agent and not by any one or more Pledgees directly.

11.11 **Governing Law and Jurisdiction**. This Pledge Agreement and the security created pursuant hereto shall be governed by the laws of Korea in all respects, including matters of construction, validity and performance. The parties hereto agree that any legal action or proceeding arising out of or relating to this Pledge Agreement may be brought in the Seoul Central District Court in Seoul, Korea and the Pledgor hereby irrevocably submits to the non-exclusive jurisdiction of such court.

(Signature pages to follow)

IN WITNESS WHEREOF, the parties hereto have caused this Share Kun-Pledge Agreement to be duly executed as of the day and year first above written.

PLEDGOR

SUNPOWER CORPORATION

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

ADMINISTRATIVE AGENT

UNION BANK, N.A., *as administrative agent*

By /s/ James B. Goudy
Name: James B. Goudy
Title: Vice President

PLEDGEES

UNION BANK, N.A.,
as pledgee

By /s/ James B. Goudy
Name: James B. Goudy
Title: Vice President

HSBC BANK USA, NATIONAL ASSOCIATION,
as pledgee

By /s/ Jason A. Huck
Name: Jason A. Huck
Title: Vice President, Relationship Manager

LIST OF PLEDGEES

UNION BANK, N.A.

HSBC BANK USA, NATIONAL ASSOCIATION

DETAILS OF PLEDGED SHARES

WOONGJIN ENERGY CO., LTD.

Shareholder	Type of Shares	Number of Shares
Sunpower Corporation	Ordinary	19,398,510 shares of common stock; representing 31.29% of all issued and outstanding shares of the Company

FORM OF POWER OF ATTORNEY

KNOW ALL BY THESE PRESENT that we, Sunpower Corporation (the "Shareholder"), do hereby constitute and appoint Union Bank, N.A. (the "Bank") as the true and lawful attorney-in-fact with full power and authority on behalf and in the name of the Shareholder to exercise all or any of the rights and power conferred on the Shareholder in respect of the shares of Woongjin Energy Co., Ltd. (listed in the Appendix attached hereto) (the "Pledged Shares"), including without limitation, the right and power to:

(a) exercise, to the extent permitted by applicable Law, all voting, consensual and other powers of ownership pertaining to the Pledged Shares as if the Bank were the sole and absolute owners thereof (and the Shareholder agrees that at such time and upon the Bank's request it will take all such actions as may be necessary to give effect to such right);

(b) demand, sue for, collect or receive, in the name of the Bank or in the name of the Shareholder, any money or property at any time payable or receivable on account of or in exchange for any of the Pledged Shares, but shall be under no obligation to do so; and

(c) to the extent permitted by and in accordance with applicable Law, assign, sell or otherwise dispose of the Pledged Shares to such person, at a public or a private sale, and upon such terms as the Bank may reasonably determine, and the Bank or any Pledgee or anyone else may be the purchaser, pledgee or recipient of any or all of the Pledged Shares and thereafter hold the same absolutely, free from any claims or rights whatsoever, including any rights of redemption, of the Pledgor.

Words and expressions defined in the Share Kun-Pledge Agreement dated as of October 29, 2010 by and among, inter alios, the Shareholder as pledgor, the financial institutions listed in Schedule I thereto as pledgees and the Bank as Administrative Agent (as amended and supplemented) shall, unless otherwise defined herein or the context otherwise requires, have the same meaning when used in this Power of Attorney.

The undersigned hereby confirms, and undertakes to confirm, all actions to be taken by the attorney-in-fact duly appointed hereunder.

IN WITNESS WHEREOF, the undersigned hereunto affixed his name and signature as of _____ ___ 20__.

SUNPOWER CORPORATION

By: _____

Name:
Title:

Appendix

Details of Pledged Shares

WOONGJIN ENERGY CO., LTD.

Shareholder	Type of Shares	Number of Shares
Sunpower Corporation	Ordinary	19,398,510 shares of common stock; representing 31.29% of all issued and outstanding shares of the Company

FORM OF SUPPLEMENTAL AGREEMENT

1. We make reference to the Share Kun-Pledge Agreement (as amended and supplemented, the "Pledge Agreement") dated October 29, 2010 entered into by and among Sunpower Corporation as pledgor (the "Pledgor"), the financial institutions listed in Schedule I thereto as pledgees (individually, a "Pledgee" and collectively, the "Pledgees" which term shall include their respective successors in title, permitted assigns and permitted transfer ees from time to time) and Union Bank, N.A., acting individually for itself and for the benefit of the Pledgees as Administrative Agent (the "Administrative Agent", which term shall include its successors in title, permitted assigns and permitted transferees from time to time). This Pledge agreement shall constitute a "Supplemental Agreement" for the purposes of Section 4.1(d) of the Pledge Agreement.

2. Words and expressions defined or referred to in the Pledge Agreement shall, unless otherwise defined herein or the context otherwise requires, have the same meaning when used in this Supplemental Agreement.

3. Pursuant to Section 4.1(d) of the Pledge Agreement, and in order to secure the payment, performance and discharge in full of the Secured Obligations, the Pledgor hereby pledges by way of first priority kun-pledge in favour of the Pledgees all of its rights, title and interests in Additional Shares as listed in the Annex 1 attached hereto.

4. By execution of this Supplemental Agreement, it shall be deemed that this Supplemental Agreement constitutes a part of the Pledge Agreement and that this Supplemental Agreement, taken together with the Pledge Agreement, shall constitute one and the same agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be executed as of _____, [**].

PLEDGOR

SUNPOWER CORPORATION

By _____
Name:
Title:

ADMINISTRATIVE AGENT ON BEHALF OF ITSELF AND ALL THE PLEDGEES

UNION BANK, N.A.

By _____
Name: James B. Goudy
Title: Vice President

Annex 1. to the Supplemental Agreement

DETAILS OF ADDITIONAL SHARES

WOONGJIN ENERGY CO., LTD.

Shareholder	Type of Shares	Number of Shares
Sunpower Corporation		

FORM OF NOTICE OF ASSIGNMENT

___, 20[**]

To: Daishin Securities Co., Ltd.

With copy to: Woongjin Energy Co., Ltd.

Re: Security Assignment

We, SUNPOWER CORPORATION (the "Assignor"), do hereby give notice that that we have assigned by way of security to UNION BANK N.A. and HSBC BANK, USA, NATIONAL ASSOCIATION (collectively, the "Assignees", which expressions shall include their respective successors in title, permitted assigns and permitted transferees from time to time) pursuant to the terms and conditions provided in a certain Share Kun-Pledge Agreement entered into by and among the Assignor, the Assignees and UNION BANK N.A. acting as administrative agent on behalf of the Assignees (the "Administrative Agent") dated as of October 29, 2010, all of our rights, title, interest, benefits and claims with respect to the Pledged Shares (identified below), including the right to demand the return, delivery or transfer of the share certificate s representing the Pledged Shares from the Korea Securities Depository. Please acknowledge receipt of this notice and the Assignor's assignment referred to in above without any objection by signing below and returning such acknowledgement to the Administrative Agent.

Pledged Shares:

WOONGJIN ENERGY CO., LTD.

Shareholder	Type of Shares	Number of Shares
Sunpower Corporation	Ordinary	19,398,510 shares of common stock; representing 31.29% of all issued and outstanding shares of the Company

SUNPOWER CORPORATION

By _____
Name:
Title:

[fixed date stamp]

Acknowledged by:

DAISHIN SECURITIES CO., LTD.

By _____
Name:
Title:

[fixed date stamp]

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

Exhibit 10.46

EUR 75,000,000

REVOLVING CREDIT AGREEMENT

Dated as of November 23, 2010

among

SUNPOWER CORPORATION

as Parent

and

SUNPOWER CORPORATION MALTA HOLDINGS LIMITED

as Borrower

and

SOCIÉTÉ GÉNÉRALE, MILAN BRANCH

as Lender

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REVOLVING CREDIT AGREEMENT

Dated as of November 23, 2010

SUNPOWER CORPORATION, a Delaware corporation (the "Parent"), SUNPOWER CORPORATION MALTA HOLDINGS LIMITED, a limited liability company registered under the laws of Malta (registration number C41439) with registered office at Suite 1, Level 2, Forni Complex, Valletta Waterfront, Pinto Wharf, Floriana FRN 1913, Malta (the "Borrower") and Société Générale, Milan Branch ("SG"), a company incorporated as a société anonyme under the laws of France, having its registered office at Boulevard Haussmann 29, 75009 Paris, with a fully paid-up corporate capital of Euro 933,027,038.75 (nine hu ndred and thirty-three million twenty-seven thousand and thirty-eight/75), which acts for the purposes hereof through its Italian branch, whose offices are located in Via Olona 2, Milan, tax code and registration number at the Companies Registry of Milan No. 80112150158, enrolled in the register of the banks held by Bank of Italy under No. 4858 as Lender (as hereinafter defined), agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. Certain Defined Terms. As used in this credit agreement (this "Agreement"), the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Advance" means an advance in Euros by the Lender to the Borrower pursuant to Article II.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term "control" (including the terms "controlling", "controlled by" and "under common control with") of a Person means the possession, direct or indirect, of the power to vote 5% or more of the Voting Stock of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

"Applicable Margin" means a per annum rate equal to (a) 2.20% for any Advance or portion of any Advance outstanding on or before February 23, 2011, and (b) 3.25% for any Advance or portion of any Advance outstanding thereafter.

"Arrangement Fee" has the meaning specified in Section 2.03.

"Assignment and Acceptance" means an assignment and acceptance entered into by the Lender and an assignee of the Lender in substantially the form of Exhibit B hereto.

"Borrower" has the meaning set forth in the preamble hereto.

"Borrowing" means a borrowing consisting of an Advance made by the Lender.

"Business Day" means a day of the year on which banks are not required or authorized by law to close in Milan and Malta and, if the applicable Business Day relates to any Advance, on which dealings are carried on in the European interbank market.

"Capital Stock" means the capital stock of or other equity interests (including partnership interests in a general or limited partnership and membership interests in a limited liability company) in a Person.

"Capitalized Leases" means, as applied to any person, any lease of any property by that person as lessee which, in accordance with GAAP, is required to be accounted for as a capital lease on the balance sheet of that person.

"Cash Collateral Account" has the meaning given to it in the L/C Facility Agreement.

"Cash Collateral Agreement" has the meaning given to it in the L/C Facility Agreement.

"Change of Control" means the occurrence of any of the following, in a series of one or more transactions: (i) the acquisition of ownership, directly or indirectly, beneficially or of record, by any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), representing more than 50% of the aggregate Voting Stock of the Parent, (ii) the Parent shall fail to own, directly or indirectly, beneficially and of record, shares representing more than 50% of the aggregate Voting Stock of the Borrower at any point in time or (iii) during any period of up to six (6) consecutive months, commencing on or after the date of this Agreement, a majority of the members of the board of directors of the Borrow er shall not be Continuing Directors.

"Commitment" means the commitment of the Lender to make Advances to the Borrower in an aggregate principal amount not to exceed EUR 75,000,000 outstanding at any time.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C.

"Confidential Information" means information that a Loan Party furnishes to the Lender, but does not include any such information that is or becomes generally available to the public or that is or becomes available to the Lender from a source other than a Loan Party, unless, to the actual knowledge of the recipient of such information, such source breached an obligation of confidentiality in providing such information to such recipient.

"Consolidated" refers to the consolidation of accounts in accordance with GAAP.

"Constituent Documents" means with respect to any Person, (i) if such Person is a corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (ii) if such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating agreement (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction, including but not limited to a certificate of registration and the memorandum and articles of association under the laws of Malta), and (iii) if such Person is a partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable governmental or regulatory authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such Person.

"Continuing Directors" means for any period, an individual who is a member of the board of directors of the Borrower on the first day of such period or whose election to the board of directors of the Borrower is recommended by a majority of the other Continuing Directors prior to such election.

"Debt" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person for the deferred purchase price of property or services (other than current accounts payable incurred in the ordinary course of such Person's business as conducted from time to time and current intercompany liabilities maturing within 365 days of the incurrence thereof), (c) all obligations of such Person evidenced by notes, bonds, debentures, or other similar instruments, (d) all obligations of such Person created or arising under any conditional sale or other title

retention agreement with respect to property acquired by such Person, (e) all obligations of such Person as lessee under Capitalized Leases, (f) all obligations, contingent or otherwise, of such Person as an account party in respect of banker's acceptances, letters of guaranty or letters of credit, (g) all net payment obligations of such Person due in respect of Hedge Agreements, (h) all Debt of others referred to in clauses (a) through (g) above or clause (i) below and other payment obligations (collectively, "Guaranteed Debt") guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (1) to pay or purchase such Guaranteed Debt or to advance or supply funds for the payment or purchase of such Guaranteed Debt, (2) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Guaranteed Debt or to assure the holder of such Guaranteed Debt against loss, (3) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (4) otherwise to assure a creditor against loss, and (i) all Debt referred to in clauses (a) through (h) above (including Guaranteed Debt) secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Debt.

"Default" means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

"Default Interest" has the meaning specified in Section 2.05(b).

"Dollars" or "US$" mean United States Dollars.

"EBITDA" means, for any period, the total of the following calculated for Parent and its Subsidiaries without duplication on a consolidated basis in accordance with GAAP consistently applied for such period: (a) consolidated net income from operations; plus (b) any deduction for (or less any gain from) income or franchise taxes included in determining such consolidated net income; plus (c) interest expense deducted in determining such consolidated net income; plus (d) amortization and depreciation expense deducted in determining such consolidated net income; plus (e) any non-recurring and non-cash charges resulting from application of GAAP that requires a charge against earnings for the impairment of goodwill to the extent deducted in determining such consoli dated net income and not added back pursuant to another clause of this definition; plus (f) any non-cash expenses that arose in connection with the grant of stock options to officers, directors and employees of the Parent and its Subsidiaries and were deducted in determining such consolidated net income; plus (g) non-cash restructuring charges; plus (h) non-cash charges related to mark-to-market valuation adjustments as may be required by GAAP from time to time; plus (i) non-cash charges arising from changes in GAAP occurring after the date hereof; less (j) any extraordinary gains and non-cash items of income. As used in this definition, "non-cash charge" shall mean a charge in respect of which no cash is paid during the applicable period (whether or not cash is paid with respect to such charge in a subsequent period) and "non-cash item of income" shall mean an item of income in respect of which no cash is received during the applicable period (whether or not cash is received with respect to such item of income in a subsequent period).

"Effective Date" has the meaning specified in Section 3.01.

"Environmental Action" means any action, suit, demand, demand letter, directive (conditional or otherwise) claim, notice (including notice of non-compliance or violation or notice of liability or potential liability), investigation, proceeding, consent order or consent agreement relating in any way to any Environmental Law, Environmental Permit or Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment, including, without limitation, (a) by any governmental or regulatory authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any governmental or

regulatory authority or any third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

"Environmental Law" means any federal, state, local, national, regional or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, health, safety or natural resources, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

"Environmental Permit" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"EURIBOR" means, in relation to any Advance, (a) the applicable Screen Rate, or (b) (if no Screen Rate is available for the Interest Period of that Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Lender at its request by the Reference Banks as the rate at which the relevant Reference Bank could borrow funds in the European interbank market in Euros and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

"Euro" or "€" means the lawful currency of the European Union.

"Events of Default" has the meaning specified in Section 6.01.

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

"Existing Debt" has the meaning specified in Section 5.02(b).

"Financial Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person (other than up to US$25,000,000 in the aggregate of obligations arising under agreements with Jabil Circuit, Inc. relating to sales by the Parent or any of its Subsidiaries to Jabil Circuit, Inc. of used equipment), (e) all obligations of such Person in respect of the deferred purchas e price of property or services (excluding current accounts payable incurred in the ordinary course of business as conducted from time to time and current intercompany liabilities maturing within 365 days of the incurrence thereof), (f) all guarantees by such Person of Financial Indebtedness of others, and (g) all obligations of such Person under a Capitalized Lease; provided that "Financial Indebtedness" of such Person shall exclude non-recourse indebtedness, other than non-recourse indebtedness with a primary purpose of financing the operations of such Person.

"GAAP" has the meaning specified in Section 1.03.

"Guaranteed Debt" has the meaning specified in the definition of "Debt" in Section 1.01.

"Guaranty" means that certain Guaranty, dated as of the date hereof, by the Parent in favor of the Lender, as amended, supplemented or otherwise modified from time to time.

"Hazardous Materials" means (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated,

classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

"Hazardous Materials Activity" means the use, manufacture, possession, storage, holding, release, threatened release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials and any corrective action or response action with respect to the foregoing.

"Hedge Agreements" means interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts and other similar agreements.

"Indemnified Party" has the meaning specified in Section 7.04(b).

"Indenture Indebtedness" means all Debt referred to in Section 5.02(k).

"Interest Period" means for each Advance the period commencing on the date of such Advance and ending on the one-month anniversary of such date and, thereafter, if such Advance is not repaid on the last day of such preceding Interest Period, each subsequent one-month period commencing on the last day of the immediately preceding Interest Period; provided, however, that:

(i) if any Interest Period would otherwise end after the Maturity Date, such Interest Period shall end on the Maturity Date;

(ii) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day, provided, however, that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day; and

(iii) whenever the first day of any Interest Period occurs on a day of an initial calendar month for which there is no numerically corresponding day in the calendar month that succeeds such initial calendar month, such Interest Period shall end on the last Business Day of such succeeding calendar month.

"Intellectual Property" means all patents, trademarks, trade names, copyrights, software, and trade secrets used in or necessary for the conduct of the business of any Loan Party and its Subsidiaries.

"L/C Facility Agreement" means the Letter of Credit Facility Agreement dated as of April 12, 2010, among, inter alia, the Parent, the subsidiary guarantors party thereto and Deutsche Bank Securities Inc., as sole bookrunner and arranger, as such agreement may be otherwise amended, supplemented or modified from time to time.

"Lender" means SG or any Person that shall become a party hereto pursuant to Section 7.07.

"Lender Process Agent" has the meaning specified in Section 7.10(c).

"Lending Office" means, with respect to SG, the office specified as its "Lending Office" opposite its name on the signature pages below, and with respect to any other Lender in the

Assignment and Acceptance pursuant to which such Lender became a Lender, or such other office of the Lender as the Lender may from time to time specify to the Loan Parties.

"Lien" means any lien, security interest or other charge or encumbrance of any kind, or any other type of preferential arrangement, including, without limitation, the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to real property.

"Loan Documents" means this Agreement, the Guaranty and any other document executed or delivered pursuant to or in connection with the foregoing.

"Loan Parties" means the Parent and the Borrower.

"Mandatory Costs" means the percentage rate per annum calculated by the Lender in accordance with Exhibit D.

"Material Adverse Change" means any material adverse change in the business, condition (financial or otherwise), operations, performance, or properties of the Parent and its Subsidiaries taken as a whole.

"Material Adverse Effect" means a material adverse effect on (a) the business, condition (financial or otherwise), operations, performance, or properties of the Borrower and its Subsidiaries taken as a whole, the Parent or the Parent and its Subsidiaries taken as a whole, (b) the rights and remedies of the Lender under the Loan Documents, (c) the ability of any Loan Party to perform its obligations under any Loan Document to which it is party or (d) the legality, validity, binding effect or enforceability of any Loan Document to which it is a party against any Loan Party.

"Maturity Date" means May 23, 2011.

"Notice of Borrowing" has the meaning specified in Section 2.02.

"Parent" has the meaning set forth in the preamble hereto.

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, signed into law October 26, 2001.

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, Japan or any member state of the European Union (or by any agency of any thereof to the extent such obligations are backed by the full faith and credit of such jurisdiction), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, a credit rating of at least A-1 from S&P or P-1 from Moody's;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than US$500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAAm by S&P and Aaa by Moody's and (iii) have portfolio assets of at least US$1,000,000,000;

(f) loans, advances, or investments existing on the Effective Date and listed on Schedule 5.02(c);

(g) additional loans or advances by the Parent or any of its Subsidiaries to employees and officers in the ordinary course of business and in amounts not to exceed an aggregate of US$20,000,000 outstanding at any time;

(h) investments which constitute Specified Transactions expressly permitted under subsection (d) of Section 5.02(k);

(i) loans, advances, or investments which constitute Debt permitted under Section 5.02;

(j) advances to, or investments in, a Subsidiary of the Parent, Woongjin Energy Co., Ltd., a company organized under the laws of the Republic of Korea, or Philippine Electric Corp. by the Parent or any Subsidiary in the ordinary course of business as conducted from time to time;

(k) transactions in connection with factoring of the accounts receivable of any Loan Party or any of its Subsidiaries pursuant to the Tech Credit Agreement, as the same may be amended or restated from time to time; and

(l) prepayments of obligations to vendors and suppliers in the ordinary course of business as conducted from time to time in an amount not to exceed US$450,000,000.

"Permitted Liens" means:

(a) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 5.01(b);

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 5.01(b);

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof), including those incurred pursuant to any law primarily concerning the environment, preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters, in each case in the ordinary course of business as conducted from time to time;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under Section 6.01(f);

(f) easements, zoning restrictions, rights-of-way, and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of any Loan Party or any of its Subsidiaries;

(g) Liens arising out of obligations under Capitalized Leases, so long as such Liens attach only to the property sold and being leased in such transaction and any accessions thereto or proceeds thereof and related property;

(h) any interest or title of a lessor under any leases or subleases entered into by any Loan Party or any of its Subsidiaries in the ordinary course of business as conducted from time to time;

(i) Liens that are contractual rights of set-off relating to (i) the establishment of depository relations with banks not given in connection with the issuance or incurrence of Indebtedness, (ii) relating to pooled deposit or sweep accounts of any Loan Party or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of any Loan Party or any of its Subsidiaries or (iii) purchase orders and other agreements entered into with customers of any Loan Party or any of its Subsidiaries in the ordinary course of business;

(j) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(k) licenses of Intellectual Property granted in the ordinary course of business;

(l) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(m) Liens solely on any cash earnest money deposits made by any Loan Party or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(n) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(o) agreements to subordinate any interest of any Loan Party or any of its Subsidiaries in any accounts receivable or other proceeds arising from inventory consigned by any Loan Party or any of its Subsidiaries pursuant to an agreement entered into in the ordinary course of business;

(p) Liens arising from precautionary UCC financing statements regarding operating leases;

(q) Liens on equity interests in joint ventures held by any Loan Party or any of its Subsidiaries securing obligations of such joint venture;

(r) Liens on securities that are the subject of repurchase agreements constituting Permitted Investments under subsection (d) of the definition thereof;

(s) Liens on accounts receivable, inventory and cash collateral securing Permitted Indebtedness under (and as defined in) the L/C Facility Agreement granted pursuant to the documents, instruments and agreements governing the L/C Facility Agreement as in effect on the

Effective Date, and Liens securing Permitted Indebtedness under (and as defined in) the Union Bank Credit Agreement;

(t) Liens in favor of customers or suppliers of any Loan Party or any of its Subsidiaries on equipment, supplies and inventory purchased with the proceeds of advances made by such customers or suppliers under, and securing obligations in connection with, supply agreements;

(u) Liens that arise by operation of law for amounts not yet due;

(v) existing and future Liens related to or arising from the sale, transfer, or other disposition of rights to solar power rebates in the ordinary course of business as conducted from time to time;

(w) existing and future Liens in favor of any Loan Party's bonding company covering materials, contracts, receivables, and other assets which are related to, or arise out of, contracts which are bonded by that bonding company in the ordinary course of such Loan Party's business as conducted from time to time;

(x) Liens in connection with the sale-leaseback arrangement, pursuant to the Master Lease Agreement dated as of June 26, 2009 by and among WF-SPWR I Solar Statutory Trust, Whippletree Solar, LLC, and the other Persons party thereto of certain solar power production projects and the related escrow of funds supporting the obligations of certain Subsidiaries thereunder;

(y) Liens in connection with an escrow by the Parent in the amount of US$2,400,000 in respect of the performance obligations of Greater Sandhill I, LLC ("GS"), an unaffiliated customer of the Parent, under a Solar Energy Purchase Agreement between GS and Public Service Company of Colorado and related documentation;

(z) Liens on Equity Interests in project finance Subsidiaries of the Parent or Subsidiaries of the Parent to secure project finance related Indebtedness;

(aa) customary Liens on securities accounts of any Loan Party in favor of the securities broker with whom such accounts are maintained, provided that (i) such Liens arise in the ordinary course of business of the applicable Loan Party and such broker pursuant to such broker's standard form of brokerage agreement; (ii) such securities accounts are not subject to restrictions against access by any Loan Party; (iii) such Liens secure only the payment of standard fees for brokerage services charged by, but not financing made available by, such broker and such Liens do not secure Indebtedness for borrowed money; and (iv) such Liens are not intended by any Loan Party to provide collateral to such broker; and

(bb) other Liens so long as the outstanding principal amount of the obligations secured thereby does not exceed (as to the Loan Parties in the aggregate) US$5,000,000 at any one time;.

"Person" means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company or other entity, or a government or any political subdivision or agency thereof.

"Process Agent" has the meaning specified in Section 7.10(b).

"Reference Banks" means, the principal office in Italy of Barclays Bank plc, Credit Suisse AG and Deutsche Bank AG or such other banks as may be appointed by the Lender in consultation with the Borrower.

"Regulation D" means Regulation D of the Board of Governors of the U.S. Federal Reserve System, as in effect from time to time.

"Screen Rate" means, the percentage rate per annum for Euro borrowings determined by the Banking Federation of the European Union for the relevant period, displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Lender may specify another page or service displaying the appropriate rate after consultation with the Parent and the Borrower.

"Solvent" means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, f or which such Person's property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Specified Transaction" means any of the following:

(a) the acquisition by any Loan Party of all or substantially all of the assets of another Person or division of such Person;

(b) the merger or consolidation of any Loan Party with or into any other entity, provided that the surviving entity shall be a Loan Party, and provided further that, in any transaction involving the Parent, the Parent shall be the surviving Person;

(c) the acquisition by a Loan Party of a controlling or majority interest in any other Person; and

(d) investments in other Persons, including joint ventures, by a Loan Party.

"Subsidiary" of any Person means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding capital stock having ordinary voting power to elect a majority of the Board of Directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (b) the interest in the capital or profits of such limited liability company, partnership or joint venture or (c) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Su bsidiaries or by one or more of such Person's other Subsidiaries.

"Tech Credit Agreement" means that certain Purchase Agreement dated May 15, 2006 (as amended on October 19, 2006, October 13, 2008, and December 29, 2008), by and between the Parent and Technology Credit Corporation, as transferred and assigned to SunPower North America, LLC, by the Parent.

"Termination Date" means the earlier of April 23, 2011 and the date of termination of the Commitment pursuant to Section 2.08 or 6.01.

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

"Total Stock Consideration" means all consideration consisting of Capital Stock in the Parent or any of its Subsidiaries.

"United States" or "U.S." means the United States of America.

"Union Bank Credit Agreement" means that certain Credit Agreement dated as of October 29, 2010 among, inter alia, the Parent, the subsidiary guarantors party thereto, Union Bank, N.A., as administrative agent, sole lead arranger, and a lender, and the other lenders party thereto from time to time, as may be amended or restated from time to time.

"Unused Commitment" means, at any time, the Lender's Commitment at such time minus the aggregate principal amount of all Advances outstanding at such time.

"Voting Stock" means Capital Stock issued by any Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

"Wells Fargo Facility Agreeement" means the Amended and Restated Credit Agreement, dated March 20, 2009, between the Parent and Wells Fargo Bank, National Association as amended and in effect as of the Effective Date .

SECTION 1.02. Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

SECTION 1.03. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States consistent with those applied in the preparation of the financial statements referred to in Section 4.01(e) ("GAAP") or, in the case of the Borrower or the Borrower's Subsidiaries, in accordance with the applicable generally accepted accounting principles as required by the laws of the country of incorporation or formation of the Borrower or the Borrower's Subsidiaries (as the case may b e).

ARTICLE II

AMOUNTS AND TERMS OF THE ADVANCES

SECTION 2.01. The Advances. The Lender agrees, on the terms and conditions hereinafter set forth, to make Advances to the Borrower from time to time on any Business Day during the period from the Effective Date until the Termination Date in an amount not to exceed the Lender's Unused Commitment. Each Borrowing shall be in an amount of EUR 5,000,000 or an integral multiple of EUR 1,000,000 in excess thereof. Within the limits of the Lender's Commitment, the Borrower may borrow, repay and reborrow under this Section 2.01.

SECTION 2.02. Making the Advances. (a) Each Borrowing shall be made on notice, given not later than 11:00 A.M. (Milan time) on the third Business Day prior to the date of the proposed Borrowing. Each such notice of a Borrowing (a "Notice of Borrowing") shall be by telephone, confirmed immediately in writing, or telecopier or telex, in substantially the form of Exhibit A hereto, specifying therein the requested (i) date of such Borrowing and (ii) amount of such Borrowing. Upon fulfillment of the applicable condit ions set forth in Article III, the Lender will make the funds available to the Borrower at its address referred to in Section 7.02.

(b) Each Notice of Borrowing shall be irrevocable and binding on the Borrower. In the case of any Borrowing, the Borrower shall indemnify the Lender against any loss, cost or expense incurred by the Lender as a result of any failure to fulfill on or before the date specified in such Notice of Borrowing the applicable conditions set forth in Article III, including, without limitation, any loss (including loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by the Lender to fund the Advance when the Advance, as a result of such failure, is not made on such date.

SECTION 2.03. Fees. (a) Commitment Fee. The Borrower agrees to pay to the Lender a commitment fee computed at the rate of 1.00% per annum on the amount of the Lender's Unused Commitment from the date hereof until the Termination Date, payable quarterly in arrears and on the Maturity Date.

(b) Arrangement Fee. The Borrower agrees to pay the Lender a fee in the amount of EUR 375,000 (the "Arrangement Fee") along with all other accrued fees, costs and expenses of the Lender (including the accrued fees and expenses of counsel to the Lender), such fees becoming due on the Effective Date and payable upon the earliest of (i) the date of the first Borrowing hereunder and (ii) 10 Business Days after the date hereof.

SECTION 2.04. Continuation of Advances. Unless the Borrower provides written notice to the Lender of its intention to repay any maturing Advance on the last day of its Interest Period (such notice to be given not later than 11:00 A.M. (Milan time) on the third Business Day prior to the last day of such Interest Period), the Borrower shall be deemed to have requested a continuation of such maturing Advances for an additional Interest Period. If notice of the repayment is given in accordance with the preceding sentence as to any maturing Advance, such Advance shall be repaid on the last day of the applicable Interest Period. The Borrower shall repay to the Lender on the Maturity Date the aggregate principal amount of the Advances then outstanding.

SECTION 2.05. Interest on Advances. i) Scheduled Interest. The Borrower shall pay interest on the unpaid principal amount of each Advance owing to the Lender from the date of such Advance until such principal amount shall be paid in full, at a rate per annum equal at all times during each Interest Period to the sum of (x) EURIBOR for such Interest Period plus (y) the Applicable Margin in effect from time to time plus (z) Mandatory Costs, if any, payable in arrears on the last day of such Interest Period and on the date such Advance shall be paid in full.

(b) Default Interest. Upon the occurrence and during the continuance of an Event of Default, the Lender may require the Borrower to pay interest ("Default Interest") on (i) the unpaid principal amount of each Advance owing to the Lender, payable in arrears on the dates referred to in paragraph (a) above and (ii) to the fullest extent permitted by law, the amount of any interest, fee or other amount payable hereunder that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal at all times to 2% per annum above the rate p er annum required to be paid on Advances pursuant to paragraph (a) above; provided, however, that following acceleration of the Advances pursuant to Section 6.01, Default Interest shall accrue and be payable hereunder whether or not previously required by the Lender.

SECTION 2.06. Interest Rate Determination. If the Lender determines in good faith that EURIBOR for any Interest Period for any Advance will not adequately reflect the cost to the Lender of making, funding or maintaining its Advance for such Interest Period, the Lender shall forthwith so notify the Borrower. During the 15 days next succeeding the giving of such notice, the Borrower and the Lender shall negotiate in good faith in order to arrive at a mutually satisfactory interest rate which shall be applicable during such Interest Period to the Advance. If within such 15-day period, the Borrower and the Lender agree in writing upon an alter native interest rate, such rate shall be effective from the commencement of such Interest Period. If the Borrower and the Lender fail to agree upon such an alternative interest rate within such 15-day period, the interest rate during such Interest Period applicable to the Advance effective from the commencement of such Interest Period shall be such rate as the

Lender shall determine (in a certificate delivered by the Lender to the Borrower setting forth the basis of the computation of such amount, which certificate shall be conclusive and binding for all purposes, absent manifest error) to be necessary to compensate the Lender for its cost of obtaining (in good faith and using commercially reasonable efforts to minimize the interest cost to the Borrower) as of the commencement of such Interest Period funds for such Interest Period in an amount equal to the principal amount of the Advance plus the Applicable Margin. The Lender shall notify the Borrower of each such determination as promptly as practicable.

SECTION 2.07. Optional Termination or Reduction of the Commitments. The Borrower shall have the right, upon at least three Business Days' notice to the Lender, to terminate in whole or permanently reduce in part the Unused Commitment; provided, however, that each partial reduction shall be in a minimum amount of EUR 1,000,000 or an integral multiple of EUR 1,000,000 in excess thereof.

SECTION 2.08. Voluntary and Mandatory Prepayments of Advances. (a) The Borrower shall have the right to voluntarily prepay in whole or in part, the Advances, without premium or penalty, and (but subject to breakage costs) subject to payment of all accrued interest on the prepaid amounts; provided, however, that (i) each partial reduction shall be in a minimum of EUR 1,000,000 or an integral multiple of EUR 1,000,000 in excess thereof and (ii) the Borrower shall be obligated to reimburse the Lender in respect thereof pursuant to Section 7.04(c).

(b) If for any reason, a Material Adverse Change shall occur, the Borrower shall, within five (5) Business Days of the first occurrence of such occurrence or event, make a mandatory prepayment in respect of the Advances in an amount equal to the full amount of the Advances then outstanding at which time the Commitment shall terminate.

SECTION 2.09. Increased Costs and Increased Capital. (b) If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance with any guideline or request from any central bank or other governmental or regulatory authority (whether or not having the force of law), there shall be any increase in the cost to the Lender in an amount that the Lender deems material of agreeing to make or making, funding or maintaining its Advances (excluding for purposes of this Section 2.09 any such increased costs resulting from (x) Taxes or Other Taxes (as to which Section 2.12 shall govern) and (y) changes in the basis of taxation of overall net income or overall gross income by the United States or by the foreign jurisdiction or state under the laws of which the Lender is organized or has its Lending Office or any political subdivision thereof), then the Borrower shall from time to time, upon demand by the Lender, pay to the Lender additional amounts sufficient to compensate the Lender for such increased cost. A certificate as to the amount of such increased cost, submitted to the Borrower by the Lender, shall be conclusive and binding for all purposes, absent manifest error.

(b) If the Lender determines that compliance with any law or regulation or any guideline or request from any central bank or other governmental or regulatory authority (whether or not having the force of law) affects or would affect the amount of capital required or expected to be maintained by the Lender or any corporation controlling the Lender and that the amount of such capital is increased by or based upon the existence of the Lender's commitment to lend hereunder and other commitments of this type, then, upon demand by the Lender, the Borrower shall pay to the Lender, from time to time as specified by the Lender, additional amounts sufficient to compensate the Lender or such corporation in light of such circumstances, to the extent that the Lender reasonably determines such increase in capital to be allocable to the existence of the Lender's commitment to lend hereunder. A certificate as to such amounts submitted to the Borrower by the Lender shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.10. Illegality. Notwithstanding any other provision of this Agreement, if the Lender determines that the introduction of or any change in or in the interpretation of any law or regulation makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for the Lender or its Lending Office to perform its obligations hereunder to make Advances or to

fund or maintain Advances hereunder, the Lender shall forthwith give notice thereof to the Borrower, whereupon (a) until the Lender notifies the Borrower that the circumstances giving rise to such suspension no longer exist the obligation of the Lender to make any Advance shall be suspended and (b) if the Lender shall so request in such notice, the Borrower shall immediately prepay in full the then outstanding Advances, together with accrued interest thereon (and subject to break costs); provided, however, that before making any such demand, the Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Lending Office if the ma king of such a designation would allow the Lender or its Lending Office to continue to perform its obligations to make Advances or to continue to fund or maintain Advances and would not, in the judgment of the Lender, be otherwise disadvantageous to the Lender. Any amount prepaid pursuant to this Section 2.10 may not be reborrowed.

*SECTION 2.11. Payments and Computations. (a) The Borrower shall make each payment hereunder, irrespective of any right of counterclaim or set-off, not later than 11:00 A.M. (Milan time) on the day when due in Euros to the Lender at its account, which the Lender maintains with SWIFT SOGEITMM, IBAN. *** Account Name: Société Générale Milan, Reference Sunray nov2010, in same day funds.*

(b) The Borrower hereby authorizes the Lender, if and to the extent payment owed to the Lender is not made when due under the Loan Documents, to charge from time to time against any or all of the Borrower's accounts with the Lender any amount so due.

(c) All computations of interest and fees shall be made by the Lender on the basis of a year of 360 days, for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees are payable. Each determination by the Lender of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(d) Whenever any payment under the Loan Documents shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fees, as the case may be; provided, however, that, if such extension would cause payment of interest on or principal of any Advance to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

SECTION 2.12. Taxes (a) Any and all payments made to the Lender under the Loan Documents or under any instrument delivered hereunder shall be made, in accordance with Section 2.11 or the applicable provisions of such other instrument, free and clear of and without deduction for any and all present and future taxes (including, without limitation, value-added taxes and withholding taxes), levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto, excluding, in the case of the Lender, taxes imposed on the Lender's overall net income, and franchise taxes imposed on it in lieu of net income taxes, by the jurisdiction under t he laws of which the Lender is organized or any political subdivision thereof and taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, by the jurisdiction of the Lender's Lending Office or any political subdivision thereof (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities hereinafter referred to as "Taxes"). If the applicable Loan Party shall be required by law to deduct any Taxes from or in respect of any sum payable under the Loan Documents or under any other instrument to be delivered hereunder or thereunder to the Lender, (i) the sum payable shall be increased as may be necessary so that, after making all required deductions (including deductions applicable to additional sums payable under this Section 2.12), the Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable L oan Party shall make such deductions and (iii) the applicable Loan Party shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, the applicable Loan Party shall pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made under the Loan Documents or from the execution, delivery or registration of, performing under, or

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

otherwise with respect to any Loan Document or any other instrument to be delivered thereunder (hereinafter referred to as "Other Taxes").

(c) The Loan Parties shall indemnify the Lender for and hold it harmless against the full amount of Taxes or Other Taxes (including, without limitation, any taxes of any kind imposed or asserted by any jurisdiction on amounts payable under this Section 2.12) imposed on or paid by the Lender or any Affiliate of the Lender in respect of any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within 30 days from the date the Lender makes written demand therefor.

(d) Within 30 days after the date of any payment of Taxes, the applicable Loan Party shall furnish to the Lender, at its address referred to in Section 7.02, the original or a certified copy of a receipt evidencing such payment. In the case of any payment under the Loan Documents, if the applicable Loan Party determines that no Taxes are payable in respect thereof, such Loan Party shall, at the Lender's request, furnish, or cause the payor to furnish, to the Lender, an opinion of counsel acceptable to the Bank stating that such payment is exempt from Taxes.

SECTION 2.13. Use of Proceeds. The proceeds of the Advances shall be available (and the Borrower agrees that it shall use such proceeds) solely for the funding of the development costs and construction costs incurred by the Borrower in connection with certain European photovoltaic projects or for the development, construction and acquisition of assets generating energy from solar power in Europe (in each case, whether directly or through one or more Subsidiaries).

ARTICLE III

CONDITIONS TO EFFECTIVENESS AND LENDING

SECTION 3.01. Conditions Precedent to Effectiveness of Section 2.01. Section 2.01 of this Agreement shall become effective on and as of the first date (the "Effective Date") on which the following conditions precedent have been satisfied:

(a) There shall have occurred no Material Adverse Change since July 4, 2010.

(b) There shall exist no action, suit, investigation, litigation or proceeding affecting any Loan Party or any of Borrower's Subsidiaries pending or threatened before any court, governmental agency or arbitrator that (i) could be reasonably likely to have a Material Adverse Effect or (ii) purports to affect the legality, validity or enforceability of any of the Loan Documents or the consummation of the transactions contemplated hereby.

(c) All governmental and third party consents and approvals necessary in connection with the transactions contemplated hereby shall have been obtained (without the imposition of any conditions that are not acceptable to the Lender) and shall remain in effect, and no law or regulation shall be applicable in the reasonable judgment of the Lender that restrains, prevents or imposes materially adverse conditions upon the transactions contemplated hereby.

(d) The Borrower shall have notified the Lender in writing as to the proposed Effective Date.

(e) [Reserved]

(f) On the Effective Date, the following statements shall be true and the Lender shall have received a certificate signed by a duly authorized officer of each Loan Party, dated the Effective Date, stating that:

(i) The representations and warranties contained in Section 4.01 are correct on and as of the Effective Date, and

(ii) No event has occurred and is continuing that constitutes a Default.

(g) The Lender shall have received on or before the Effective Date the following, each dated such date, in form and substance satisfactory to the Lender:

(i) The Loan Documents, each duly executed by the parties thereto.

(ii) Certified copies of the (A) resolutions of the Board of Directors of each Loan Party approving the terms of, and authorizing entry into the Loan Documents, (B) resolutions of the shareholders of the Borrower approving the terms of and authorizing entry into the Loan Documents, (C) the Constituent Documents of each Loan Party as in effect on the date the resolutions specified in clause (A) were adopted and (D) all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to this Agreement and the other Loan Documents, and a certificate of the Secretary or an Assistant Secretary of each Loan Party certifying the absence of any change or amendment to the Constituent Documents of such Loan Party since the date the resolution s specified in clause (A) were adopted.

(iii) A certificate of the Secretary or an Assistant Secretary of each Loan Party certifying that (i) the names and true signatures of the officers of such Loan Party authorized to sign the Loan Documents and the other documents to which it is a party to be delivered by it hereunder, and (ii) the documents listed in this Section 3.01(g) are correct, complete and in full force and effect and have not been amended or superseded as of the date of the certificate.

(iv) A Compliance Certificate from the Parent signed by the Chief Financial Officer or Secretary of the Parent.

(v) A letter from the Process Agent indicating its acceptance of the appointment by the Loan Parties.

(vi) A favorable opinion of (A) Jones Day, New York counsel for the Loan Parties and (B) Mamo TCV Advocates, Maltese counsel to the Loan Parties, each in satisfactory form and substance to the Lender.

(vii) The Parent's financial statements for the fiscal year ended January 3, 2010, including balance sheets, income and cash flow statements audited by independent public accountants of recognized international standing and prepared in conformity with GAAP applied on a consistent basis, and interim quarterly financial statements.

(h) The corporate organizational structure, capital structure and ownership of the Parent and its Subsidiaries shall be as set forth on Schedule 3.01 annexed hereto.

(i) The Lender shall have received, to the extent requested, all documentation and other information relating to the Loan Parties required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

(j) The Lender shall have received copies of written consents to the transactions contemplated hereby from the Administrative Agents under (and as defined in) the L/C Facility Agreement, the Union Bank Credit Agreement and the Wells Fargo Facility Agreement, each in form and substance satisfactory to the Lender.

SECTION 3.02. Conditions Precedent to each Borrowing. The obligation of the Lender to make an Advance on the occasion of each Borrowing shall be subject to the conditions precedent that the Effective Date shall have occurred and except as the Lender may waive in writing, on the date of such Borrowing (a) the following statements shall be true (and each of the giving of the applicable Notice of Borrowing and the acceptance by the Borrower of the proceeds of such Borrowing shall constitute a representation and warranty by each Loan Party that on the date of the Borrowing such statements are true):

(i) the representations and warranties contained in Section 4.01 are correct on and as of such date, before and after giving effect to such Borrowing and to the application of the proceeds therefrom, as though made on and as of such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects; and

(ii) no event has occurred and is continuing, or would result from such Borrowing or from the application of the proceeds therefrom, that constitutes a Default;

and (b) the Lender shall have received such other approvals, opinions or documents as the Lender may reasonably request.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

SECTION 4.01. Representations and Warranties of the Loan Parties. The Loan Parties represent and warrant as follows:

(a) The Borrower is a limited liability company, registered, validly existing and in good standing under the laws of Malta and has all requisite corporate power and authority, and holds all governmental licenses, permits and other approvals necessary to own, lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted, except whether the failure to do so could not reasonably be expected to result in a Material Adverse Effect. The Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority and holds all governmental licenses, permits and other approvals to own, lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted, except whether the failure to do so could not reasonably be expected to result in a Material Adverse Effect. The Capital Stock of the Borrower is not subject to any warrant or seizure.

(b) The execution, delivery and performance by the Loan Parties of the Loan Documents to which each is a party, and the consummation of the transactions contemplated hereby, are within such Person's corporate powers, have been duly authorized by all necessary corporate action, and do not contravene (i) such Person's Constituent Documents or (ii) law or any contractual restriction binding on or affecting such Person the contravention of which could reasonably be expected to have a Material Adverse Effect.

(c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or any other third party is required for the due execution, delivery and performance by the Loan Parties of the Loan Documents to which either is a party, other than (i) those that have already been obtained and are in full force and effect and (ii) those approvals, consents, exemptions, authorizations, actions, notices or filings the failure of which to obtain, take, give, or make could not reasonably be expected to have a Material Adverse Effect.

(d) This Agreement has been, and each other Loan Document to which a Loan Party is a party when delivered hereunder will have been, duly executed and delivered by such Person. This Agreement is, and each other Loan Document to which a Loan Party is a party, when delivered hereunder will be, the legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its respective terms.

(e) The Consolidated balance sheet of the Parent and its Subsidiaries as at December 30, 2007, December 28, 2008 and January 3, 2010, and the related Consolidated statements of income and cash flows of the Parent and its Subsidiaries for the fiscal years then ended, accompanied by an opinion of PricewaterhouseCoopers LLP, independent public accountants, copies of which have been furnished to the Lender, fairly present the Consolidated financial condition of the Parent and its Subsidiaries as at such dates and the Consolidated results of the operations of the Parent and its Subsidiaries for the periods ended on such dates, all in accordance with GAAP. Since January 3, 2010, there has been no Mat erial Adverse Change.

(f) Except as disclosed in Schedule 4.02(f), there is no pending or threatened action, suit, investigation, litigation or proceeding, including, without limitation, any Environmental Action, affecting the Loan Parties or any of the Borrower's Subsidiaries before any court, governmental agency or arbitrator that (i) could be reasonably likely to have a Material Adverse Effect or (ii) purports to affect the legality, validity or enforceability of any Loan Document or the consummation of the transactions contemplated thereby.

(g) None of the Loan Parties or the Borrower's Subsidiaries is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the U.S. Federal Reserve System), and no proceeds of any Advance will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

(h) The Loan Parties and each of the Borrower's Subsidiaries have filed, have caused to be filed or have been included in all material tax returns (national, departmental, local, municipal and foreign) required to be filed and have paid all material taxes, assessments, fees and other charges (including interest and penalties) due with respect to the years covered by such returns, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP.

(i) The Loan Parties and each of the Borrower's Subsidiaries are in compliance with all applicable laws, ordinances, rules, regulations and requirements of all governmental authorities (including, without limitation, all governmental licenses, certificates, permits, franchises and other governmental authorizations and approvals necessary to the ownership of their respective properties or to the conduct of their respective businesses, Environmental Laws, and laws with respect to social security and pension fund obligations), in each case except to the extent that failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(j) No income, stamp or other taxes (other than taxes on, or measured by, net income or net profits) or levies, imposts, deductions, charges, compulsory loans or withholdings whatsoever are or will be, under applicable law, imposed, assessed, levied or collected by any applicable jurisdiction (or any political subdivision or taxing authority thereof or therein) either (i) on or by virtue of the execution or delivery of the Loan Documents or (ii) on any payment to be made by the Loan Parties pursuant to the Loan Documents.

(k) The obligations of the Loan Parties under the Loan Documents to which it is a party constitute direct, unconditional, unsubordinated and unsecured obligations of such Loan Party and do rank and will rank pari passu in priority of payment and in all other respects with all other unsecured Debt of such Loan Party.

(l) None of the Loan Parties is an "investment company" or a "promoter" or "principal underwriter" for, an "investment company", as such terms are defined in the Investment Company Act of 1940, as amended.

(m) No information, exhibit or report furnished by or on behalf of the Loan Parties to the Lender in connection with the negotiation of this Agreement or pursuant to the terms of the Loan Documents contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements made therein not misleading as of the date it was dated (or if not dated, so delivered); provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time and the Lender recognizes and acknowledges that such projected financial information is not to be viewe d as facts and that actual results during the period or periods covered by such projections may differ from the projected results and such differences may be material.

(n) Each Loan Party, immediately following the consummation of each transaction contemplated by the Loan Documents, will be Solvent.

(o) No proceeding or case has been commenced or filed against either Loan Party or any of the Borrower's Subsidiaries seeking (i) its reorganization, liquidation, dissolution, arrangement or winding up, (ii) the appointment of a receiver, custodian, trustee, examiner, liquidator or the like of it or of all or any substantial part of its property or (iii) similar relief with respect to it under any law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment or debts.

(p) No Default has occurred and is continuing.

(q) Schedule 5.02(a) hereto is a complete and correct list of all existing material Liens (other than Permitted Liens) granted by the Loan Parties and each of the Borrower's Subsidiaries as of the date hereof and (ii) Schedule 5.02(b) hereto is a complete and correct list of all existing material Debt (other than Debt permitted under Section 5.02) of the Loan Parties and each of the Borrower's Subsidiaries as of the date hereof.

(r) As of the Effective Date except as set forth in Schedule 5.02(a), the Loan Parties and each of the Borrower's Subsidiaries have good title to, or valid leasehold interests in all its real and personal property material to its business, free and clear of any Liens or adverse claims except as expressly permitted by this Agreement and except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(s) As of the Effective Date, the Loan Parties and the Borrower's Subsidiaries own or have the right to use, all Intellectual Property used in the conduct of its business, except where the failure to own or have such right to use in the aggregate has not had and would not reasonably be expected to have a Material Adverse Effect. No claim has been asserted and is pending by any Person challenging the use of any such Intellectual Property by the Loan Parties or any of the Borrower's Subsidiaries or the validity or effectiveness of any such Intellectual Property, except for such claims that in the aggregate would not reasonably be expected to result in a Material Adverse Effect. To the best knowledge of the Loan Parties, the use of such Intellectual Property by the Loan Parties and the Borrower's Subsidiaries does not infringe on the rights of any Person, except for such claims and infringements that, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(t) Schedule 4.01 contains a complete and up-to-date list of the Subsidiaries of the Borrower as of the Effective Date.

ARTICLE V

COVENANTS

SECTION 5.01. Affirmative Covenants. So long as any Advance shall remain unpaid or the Lender shall have any Commitment hereunder, each Loan Party will:

(a) Compliance with Laws, Etc. Comply, and cause each of the Borrower's Subsidiaries to comply, in all material respects, with all applicable laws, rules, regulations and orders of any governmental or regulatory authority, such compliance to include, without limitation, compliance with Environmental Laws, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) Payment of Taxes, Etc. Pay and discharge, and cause each of the Borrower's Subsidiaries to pay and discharge, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges or levies imposed upon it or upon its property or assets or in respect of any of its income, business or franchises before any penalty accrues thereon and (ii) all lawful claims that, if unpaid, might by law become a Lien upon its property or assets or in respect of any of its income, business or franchises before any penalty accrues thereon; provided, however, that neither Loan Party nor any of the Borrower's Subsidiaries shall be required to pay or discharge any such tax, assessment, charge or claim that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained, unless and until any Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors.

(c) Maintenance of Insurance. Maintain, and cause each of the Borrower's Subsidiaries to maintain, insurance with financially sound, responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which such Loan Party or such Subsidiary operates.

(d) Preservation of Corporate Existence, Etc. Preserve and maintain, and cause each of the Borrower's Subsidiaries to preserve and maintain, its organizational existence, rights (charter and statutory), permits, authorizations, qualifications, approvals, licenses, privileges and franchises; provided, however, that the Loan Parties and their Subsidiaries may consummate any merger or consolidation permitted under Section 5.02(c).

(e) Visitation Rights. Permit the Lender or any agents or representatives thereof (upon one (1) Business Day's notice), to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, such Loan Party and any of the Borrower's Subsidiaries, and to discuss the affairs, finances and accounts of such Loan Party and any of the Borrower's Subsidiaries with any of their officers, employees or directors and with their independent certified public accountants, all during regular business hours and as often as reasonably requested; provided, however, that unless an Event of Default shall have occurred and be continuing, such inspection right shall be limited to one occurrence in any 6-month period.

(f) Keeping of Books. Keep, and cause each of the Borrower's Subsidiaries to keep, proper books of record and account, in which full and correct entries shall be made of all material financial transactions and the assets and business of such Loan Party and each such Subsidiary in accordance with applicable GAAP as required by the laws of the country of incorporation of that Loan Party and/or each such Subsidiary, provided that the books of account are consolidated into the Parent's consolidated books of account, which are presented in accordance with United States GAAP.

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of the Borrower's Subsidiaries to maintain and preserve, all of its properties that are used or useful in

the conduct of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(h) Transactions with Affiliates. Conduct, and cause each of the Borrower's Subsidiaries to conduct, all transactions otherwise permitted under this Agreement with any of its Affiliates on terms that are fair and reasonable and no less favorable to such Loan Party or such Subsidiary than it would obtain in a comparable arm's-length transaction with a Person not an Affiliate.

(i) Reporting Requirements. Furnish to the Lender:

(i) as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Parent, Consolidated balance sheets of the Parent and its Subsidiaries as of the end of such quarter and Consolidated statements of income and cash flows of the Parent and its Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, duly certified (subject to year-end audit adjustments) by the chief financial officer of the Parent as having been prepared in accordance with generally accepted accounting principles, and certificates of the chief financial officer of the Parent as to compliance with the terms of this Agreement and setting forth in reasonable detail the calculatio ns necessary to demonstrate compliance with Section 5.03, provided that in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Parent shall also provide, if necessary for the determination of compliance with Section 5.03, a statement of reconciliation conforming such financial statements to GAAP;

(ii) as soon as available and in any event within 90 days after the end of each fiscal year of the Parent, (x) a copy of the annual audit report for such year for the Parent and its Subsidiaries, containing Consolidated balance sheets of the Parent and its Subsidiaries as of the end of such fiscal year and Consolidated statements of income and cash flows of the Parent and its Subsidiaries for such fiscal year, all as reported on by PricewaterhouseCoopers LLP or other independent public accountants or recognized national standing, provided that in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Parent shall also provide, if necessary for the determination of compliance with Section 5.03, a statement of reconciliation conforming such financial statements to GAAP and (y) a duly completed Compliance Certificate signed by the chief financial officer of the Parent;

(iii) as soon as possible and in any event within five (5) days after the occurrence of each Default continuing on the date of such statement, a statement of the chief financial officer of the Parent setting forth details of such Default and the action that the Parent has taken and proposes to take with respect thereto;

(iv) promptly after the sending or filing thereof, other than as may be delivered or deemed delivered pursuant to another clause of this Section 5.01(i), copies of all reports that a Loan Party sends to any of its equity holders, and copies of all reports and registration statements that a Loan Party or any of its Subsidiaries files with the U.S. Securities and Exchange Commission or any national securities exchange in Malta, the United States or any other securities exchange or regulator, if any;

(v) promptly after the commencement thereof, notice of all actions and proceedings before any court, governmental agency or arbitrator affecting the Loan Parties or any of their Subsidiaries of the type described in Section 4.01(f); and

(vi) such other information respecting the Loan Parties as the Lender may from time to time reasonably request;

provided, however, that anything required to be delivered pursuant to Sections 5.01(g)(i) or (ii) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which the Parent posts such documents, or provides a link thereto on the Parent's website on the Internet or on which such reports are filed with the SEC and become publicly available.

(j) Further Assurances. Execute and deliver any and all further documents, financing statements, agreements and instruments, and take all further action that may be required under applicable law, or that the Lender may reasonably request, in order to effectuate the transactions contemplated by the Loan Documents.

(k) Annual Budget. During the continuance of a Default or an Event of Default, at the request of the Lender, a Loan Party will furnish to the Lender, within ten (10) Business Days after such request, a copy of its annual budget for the then fiscal year.

SECTION 5.02. Negative Covenants. So long as any Advance shall remain unpaid or the Lender shall have any Commitment hereunder, neither Loan Party will:

(a) Liens, Etc. Create or suffer to exist, or permit any of the Borrower's Subsidiaries to create or suffer to exist, any mortgage, pledge, security interest, encumbrance or other Lien on or with respect to any of its properties, whether now owned or hereafter acquired, or assign, or permit any of the Borrower's Subsidiaries to assign, any right to receive income, other than:

(i) Permitted Liens;

(ii) the Liens expressly permitted by the Cash Collateral Agreement;

(iii) Liens on accounts receivable and any resulting credit balances arising from the factoring of the accounts receivable of any Loan Party or any of its Subsidiaries under the Tech Credit Agreement;

(iv) the Liens existing on the Effective Date and described on Schedule 5.02(a) hereto; and

(v) the replacement, extension or renewal of any Lien permitted by clause (iv) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Debt secured thereby.

(b) Debt. Create, incur, guarantee, assume or suffer to exist, or permit any of the Borrower's Subsidiaries to create, incur, guarantee, assume or suffer to exist, any Debt, except:

(i) Debt under this Agreement;

(ii) Debt that is non-recourse to such Loan Party or such Subsidiary of the Borrower (including Debt containing customary recourse carve-outs, including those for environmental indemnities); provided that such Debt shall not be permitted under this clause (ii) if in connection therewith a personal recourse claim is established by judgment, decree or award by any court of competent jurisdiction or arbitrator of competent jurisdiction and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken to attach or levy upon any assets of such Loan Party or such Subsidiary of the Borrower to enforce any such judgment, decree or award;

(iii) Debt of a Subsidiary of the Borrower that is non-recourse to the Borrower, to the Parent, or to any Subsidiary of Parent (other than the Subsidiary incurring such Debt);

(iv) Debt existing on the date hereof and listed on Schedule 5.02(b);

(v) Debt arising from the endorsement of instruments for collection in the ordinary course of business;

(vi) Debt of any Loan Party or Subsidiary of the Borrower (on the one hand) to the Parent or any Subsidiary (on the other hand) in the ordinary course of business as conducted from time to time;

(vii) Guarantees by any Loan Party or Subsidiary of the Borrower in the ordinary course of business as conducted from time to time of any Loan Party or any Subsidiary, for any obligation other than Financial Indebtedness;

(viii) Debt in favor of customers and suppliers of the Parent and any of its Subsidiaries in connection with supply and purchase agreements in an aggregate principal amount not to exceed Two Hundred Million Dollars (US$200,000,000) at any one time and any refinancings, refundings, renewals or extensions thereof (without shortening the maturity thereof or increasing the principal amount thereof);

(ix) Debt in respect of (i) the Parent's 1.25% Senior Convertible Debentures due 2027 issued under that certain Indenture (the "Indenture"), dated as of February 7, 2007 by and among the Parent and Wells Fargo Bank, National Association (the "Trustee"), that certain First Supplemental Indenture, dated as of February 7, 2007 by and among the Parent and the Trustee with respect to the Parent's 1.25% Senior Convertible Debentures due 2027, each as in effect on the date hereof, in the maximum aggregate principal amount not to exceed US$200,000,000 plus accrued interest thereon, (ii) the Parent's 0.75% Senior Convertible De bentures issued under the Indenture and that certain Second Supplemental Indenture, dated as of July 25, 2007, by and between the Parent and the Trustee with respect to the Parent's 0.75% Senior Convertible Debentures due 2027, each as in effect on the date hereof, in the maximum aggregate principal amount of US$225,000,000 plus accrued interest thereon, (iii) the Parent's 4.75% Senior Convertible Debentures due 2014 issued under the Indenture and that certain Third Supplemental Indenture, dated May 4, 2009 by and between the Parent and the Trustee, in the maximum aggregate principal amount of US$230,000,000, and refinancings thereof, and (iv) the Parent's 4.5% Senior Convertible Debentures due 2015 issued under the Indenture and that certain Fourth Supplemental Indenture, dated April 1, 2010 by and between the Parent and the Trustee, in the maximum aggregate principal amount of US$250,000,000, and refinancings thereof;

(x) Debt owed to bonding companies in connection with obligations under bonding contracts (however titled) entered into in the ordinary course of business, pursuant to which such bonding companies issue bonds or otherwise secure performance of a Loan Party or a Loan Party's Subsidiaries for the benefit of their customers and contract counterparties;

(xi) Debt of the Parent owing to International Finance Corporation, in an aggregate principal amount not to exceed, at any time, US$75,000,000 (plus interest accruing thereon and costs, fees and expenses incurred in connection therewith);

(xii) Debt of the Parent, in an aggregate principal amount not to exceed US$250,000,000, with a bank counterparty which is guaranteed by the Export-Import Bank of the U.S.;

(xiii) Debt of any Loan Party or any of its Subsidiaries pursuant to the L/C Facility Agreement in an aggregate outstanding amount not to exceed US$400,000,000;

(xiv) Debt of any Loan Party or Subsidiary pursuant to the Union Bank Credit Agreement, in an aggregate outstanding amount not to exceed US$100,000,000;

(xv) liabilities of any Loan Party or any of its Subsidiaries under Hedge Agreements, with nationally recognized financial institutions reasonably satisfactory to the Lender pursuant to bona fide hedging transactions and not for speculation;

(xvi) Debt in connection with the factoring of the accounts receivable of any Loan Party in respect of rebates from U.S. Governmental Authorities pursuant to (and as defined in) the Tech Credit Agreement in the ordinary course of business, which Indebtedness shall not exceed an aggregate amount equal to the face amount of such accounts receivable plus any accrued interest thereon;

(xvii) Debt consisting of guarantees by one or more Loan Parties of payment obligations of customers under purchase agreements entered into by such customers with the Parent or any of its Subsidiaries, in an aggregate amount for all Loan Parties combined not to exceed US$50,000,000; and

(xviii) other Debt in an aggregate amount for all Loan Parties not in excess of US$25,000,000.

(c) Mergers, Etc. Enter into any transaction of merger or consolidation with or into any Person (unless it is the surviving entity and no Default exists after giving effect thereto), or liquidate, wind-up, discontinue its business or dissolve itself (or suffer any liquidation, winding up or dissolution).

(d) Accounting Changes. Make or permit any change in accounting policies or reporting practices, except as required by applicable generally accepted accounting principles.

(e) Sales, Etc. of Assets. Sell, lease, transfer or otherwise dispose of (other than to a Subsidiary) all or substantially all of its business or property, whether now or hereafter acquired, in each case other than (i) in connection with a Specified Transaction or (ii) sales by the Borrower or any Subsidiary of the Borrower's of all or a portion of the equity of any of Borrower's Subsidiaries to a bona fide third-party purchaser on an arms' length basis.

(f) Dividends, Etc. Declare or make any dividend payment or other distribution of assets, properties, cash rights, obligations or securities on account of any shares of any class of Capital Stock of such Loan Party, or purchase, redeem or otherwise acquire for value (or permit any of the Borrower's Subsidiaries to do so) any class of Capital Stock of such Loan Party or any warrants, rights or options to acquire any such Capital Stock, now or hereafter outstanding, (a) except as permitted under its Constituent Documents, (b) which, after giving effect thereto, would result in the occurrence of any Default, (c) during the continuance of any Event of Default, or (d) from and after notice from the Lender of the occurrence of any Default, until such time as the Default has been cured or waived in accordance with the terms hereof. Without limiting the foregoing, the Parent shall not declare or pay any amount to its shareholders which, in the aggregate exceeds US$200,000,000 in any fiscal year.

(g) Change in Nature of Business. Engage, or permit any of the Borrower's Subsidiaries to engage, to any material extent in any business other than businesses of the type conducted by such Loan Party on the date hereof and any businesses reasonably related thereto from time to time; provided that the Borrower and the Borrower's Subsidiaries may sell all or a portion of the equity of any of the Borrower's Subsidiaries to a bona fide third-party purchaser on an arms' length basis.

(h) [Reserved.]

(i) Amendment of Constituent Documents. Amend its Constituent Documents in any respect which would reasonably be expected to have a Material Adverse Effect.

(j) Fiscal Year. Change, or permit any of the Borrower's Subsidiaries to change, the method of identifying its fiscal periods without the prior written consent of the Lender (not to be unreasonably withheld); provided, however, that the Borrower or any of its Subsidiaries may change the method of identifying their fiscal periods solely to align such fiscal periods with those of the Parent without the consent of the Lender.

(k) Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly-owned Subsidiary prior to such merger) any Capital Stock, evidences of Debt or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or series of transactions) any assets of any other Person constituting a business unit, except (a) Permitted Investments, (b) loans or advances made to any Subsidiary of the Parent (or any special-purpose entity created or sponsored by the Parent or a Subsidiary of the Parent) or made by any Subsidiary of the Parent (or special- purpose entity created or sponsored by the Parent or a Subsidiary of the Parent) to the Parent or any other Subsidiary of the Parent (or any special-purpose entity created or sponsored by the Parent or a Subsidiary of the Parent), (c) guarantees permitted by Section 5.02(b), (d) in accordance with and pursuant to the terms of the indentures governing the Indenture Indebtedness (such as a conversion of debt to equity securities or cash settlement thereof by way of repaying, prepaying, or purchasing Indebtedness thereunder), or (e) Specified Transactions, other than (i) Specified Transactions with respect to which the Total Non-Stock Consideration paid or payable by such Loan Party exceeds (A) US$50,000,000 in the aggregate in respect of Specified Transactions that occur during the period from the date hereof until the end of fiscal year 2010 and (B) US$200,000,000 in the aggregate per fiscal year in respect of Specified Transactions that oc cur during any fiscal year after fiscal year 2010; provided, however, that a Loan Party may enter into a Specified Transaction regardless of the value of Total Non-Stock Consideration so long as such Specified Transaction involves no unaffiliated third parties and involves only such Loan Party and one or more Subsidiaries and (ii) Specified Transactions with respect to which the Total Stock Consideration paid or payable by such Loan Party exceeds US$750,000,000 in the aggregate per fiscal year.

(l) Hedge Agreements. Enter into any Hedge Agreement, except Hedge Agreements entered into in the ordinary course of business (not for purposes of speculation) to hedge or mitigate risks related to interest rates, currency exchange rates, or credit risk to which such Loan Party is exposed in the conduct of its business as conducted from time to time or the management of its liabilities, or for commodities hedges in the ordinary course of business as conducted from time to time, or hedges entered into in connection with Debt of a Loan Party convertible into equity securities of the Loan Party (or cash settled, with settlement calculated with reference to the price of the Loan Party's equity securities) for the benefit of the holders of

such Loan Party's equity securities, or hedges entered into in connection with solar energy renewable credits.[1]

(m) Margin Stock. Use the proceeds of any Advance, whether directly or directly, and whether immediately, incidentally, or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or in a manner that will violate or be inconsistent with Regulation T, U, or X of the Board of Governors of the Federal Reserve System.

(n) Pari Passu Ranking. Ensure that at all times the claims of the Lender against it under the Loan Documents will rank at least pari passu with the claims of all of its other unsecured and unsubordinated creditors, except for claims that are preferred by any fiscal, civil, employment, bankruptcy, insolvency, liquidation or other similar laws of general application.

SECTION 5.03. Financial Covenants. So long as any Advance shall remain unpaid or the Lender shall have any Commitment hereunder, the Parent shall:

(a) At all times maintain on a consolidated basis unrestricted cash and cash equivalents in an aggregate amount not less than the lesser of (i) US$225,000,000 or (ii) an amount equal to the sum of (A) US$50,000,000 plus (B) an amount equal to fifty percent (50%) of the credit exposure under the L/C Facility Agreement at such time.

(b) Not permit or suffer the ratio of (i) the aggregate Financial Indebtedness of the Parent and its consolidated Subsidiaries at any time (other than Debt of any consolidated Subsidiary that is non-recourse to such Subsidiary except for customary carve-outs (including environmental liability, gross negligence or willful misconduct, and similar matters)) to (ii) the sum of (A) the aggregate Financial Indebtedness of the Parent and its consolidated Subsidiaries at such time (other than Debt of any consolidated Subsidiary that is non-recourse to such Subsidiary except for customary carve-outs (including environmental liability, gross negligence or willful misconduct, and similar matters)) plus (B) the stockholder's equity of the Parent and its consolidated Subsidiaries at such time to exceed fifty-five percent (55%).

(c) Maintain an interest coverage ratio on a rolling four quarters basis of consolidated EBITDA to consolidated interest expense of not less than 3.0 to 1.0 at the end of any fiscal quarter of the Parent.

(d) At all times, from and after the fourth fiscal quarter of 2010, maintain a ratio of gross Financial Indebtedness to consolidated EBITDA for the four immediately preceding completed fiscal quarters of the Parent of not more than 4.0 to 1.0 at the end of any fiscal quarter of the Parent. As used herein, the term "gross Financial Indebtedness" means at any time the aggregate Financial Indebtedness of the Parent and its consolidated Subsidiaries at such time (other than Debt of any consolidated Subsidiary that is non-recourse to such Subsidiary except for customary carve-outs (including environmental liability, gross negligence or willful misconduct, and similar matters)).

(e) Maintain a ratio of net consolidated Financial Indebtedness to consolidated EBITDA for the four immediately preceding completed fiscal quarters of the Parent of not more than 5.5 to 1.0 at the end of any of the first three fiscal quarters of the Parent ending during fiscal year 2010. As used herein, "net consolidated Financial Indebtedness" means at any time an amount equal to (i) the aggregate Financial Indebtedness of the Parent and its consolidated Subsidiaries at such time (other than Debt of any of its consolidated Subsidiaries that is non-recourse to such Subsidiary except for customary carve-outs (including environmental liability, gross negligence or

willful misconduct, and similar matters)) minus (ii) the amount, if any, by which (A) the aggregate amount of unrestricted cash and cash equivalents of the Parent and its consolidated Subsidiaries at such time exceeds (B) the aggregate amount of unrestricted cash and cash equivalents required to be maintained by the Parent and its consolidated Subsidiaries at such time pursuant to Section 5.03(a).

ARTICLE VI

EVENTS OF DEFAULT

SECTION 6.01. Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

(a) The Borrower shall default in the payment of (i) any principal of any Advance when the same becomes due and payable, or (ii) any interest, fees or other amounts whatsoever payable under this Agreement or any other Loan Document and in the case of this clause (ii) such default continues unremedied for three (3) Business Days after the date thereof; or

(b) Any representation or warranty made by any Loan Party herein or in any other Loan Document or by any Loan Party (or any of its officers) in any document delivered in connection herewith or therewith shall prove to have been incorrect in any material respect when made; or

(c) (i) Any Loan Party shall fail to perform or observe any term, covenant or agreement contained in Section 5.01(c), (d), (f) or (i), 5.02 or 5.03, or (ii) any Loan Party shall fail to perform or observe any other term, covenant or agreement contained in any Loan Document on its part to be performed or observed if such failure shall remain unremedied for 10 or more days after the earlier of (x) the date such Loan Party obtains knowledge thereof or (y) the date written notice thereof shall have been given to such Loan Party by the Lender; or

(d) (i) Any Loan Party or any of the Borrower's Subsidiaries shall fail to pay any principal of or premium or interest on any Debt that is outstanding in a principal or notional amount of at least US$25,000,000 (or its equivalent in other currencies) in the aggregate (but excluding Debt outstanding hereunder) of such Loan Party or such Subsidiary (as the case may be), when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt and shall contin ue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Debt; or (iii) any such Debt shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made, in each case prior to the stated maturity thereof; or

(e) Any Loan Party or any of the Borrower's Subsidiaries shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against any Loan Party or any of the Borrower's Subsidiaries seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any subs tantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 30 or more days, or any of the

actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or any Loan Party or any of the Borrower's Subsidiaries shall take any corporate action to authorize any of the actions set forth above in this subsection (e); or

(f) Judgments or orders for the payment of money in excess of US$25,000,000 (or its equivalent in other currencies) in the aggregate shall be rendered against any Loan Party or any of the Borrower's Subsidiaries and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 10 or more consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(g) Any non-monetary judgment or order shall be rendered against a Loan Party that could be reasonably expected to have a Material Adverse Effect, and there shall be any period of 10 or more consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(h) The obligations of the Loan Parties under the Loan Documents or the Parent under the Guaranty shall fail to rank at least pari passu with all other unsecured Debt of the Loan Parties or the Parent, as the case may be; or

(i) Any provision of the Loan Documents shall cease to be valid and binding on or enforceable against any applicable Loan Party, or any Loan Party shall so assert or state in writing, or the obligations of any Loan Party under any Loan Document shall in any way become illegal; or

(j) Either (i) any authority asserting or exercising governmental or police powers in Malta shall take any action, including a general moratorium, canceling, suspending or deferring the obligation of the Borrower to pay any amount of principal or interest payable under the Loan Documents or preventing or hindering the fulfillment by the Borrower of its obligations under the Loan Documents or having any effect on the currency in which the Borrower may pay its obligations under the Loan Documents or on the availability of foreign currencies in exchange for Malta (including any requirement for the approval to exchange foreign currencies for Malta) or otherwise or (ii) the Borrower shall, voluntarily or involuntarily, participate or take any action to participate in any fa cility or exercise involving the rescheduling of the Borrower's debts or the restructuring of the currency in which the Borrower may pay its obligations; or

(k) Any authority asserting or exercising governmental or police powers in Malta or any Person acting or purporting to act under such authority shall have taken any action to condemn, seize or appropriate, or to assume custody or control of, all or any portion of the property of the Borrower; or

(l) Any license, consent, authorization or approval of any kind necessary to enable the any Loan Party to comply with any of its obligations under the Loan Documents or conduct its business shall be revoked, withdrawn or withheld or shall be modified or amended in a manner prejudicial, in the opinion of the Lender, to the interests of the Lender hereunder; or

(m) A Change of Control shall occur; or

(n) The Parent shall fail to perform or observe any term, covenant or agreement in the L/C Facility Agreement or the Union Credit Facility Agreement, or (ii) a default or event of default shall have occurred and be continuing under the L/C Facility Agreement or the Union Credit Facility Agreement.

then, and in any such event, the Lender (i) may declare its Commitment to be terminated, whereupon the same shall forthwith terminate, and (ii) may, by notice to the Loan Parties, declare the Advances and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Advances, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Loan Parties; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to either of the Loan Parties under clause (e) above, (A) the Commitment shall automatically be terminated and (B) the Advances, all such interest and all such amounts shall automatically become and b e due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Loan Parties.

ARTICLE VII

MISCELLANEOUS

SECTION 7.01. Amendments, Etc. No amendment or waiver of any provision of the Loan Documents, nor consent to any departure by any Loan Party or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 7.02. Notices, Etc. All notices and other communications provided for hereunder shall be in writing (including telecopier communication) and mailed (by international courier), telecopied or delivered, if to the Parent, at its address at 3939 North 1st Street, San Jose, CA 95134, Attn: Chief Financial Officer, with a copy at the same address to Attn: General Counsel; if to the Borrower, at its address at SunPower Corporation Malta Holdings Limited, Suite 1, Level 2, Pinto Wharf, Forni Complex, Valletta Waterfront , Floriana, Malta FRN 1913, Attention: the Director Claire Bartolo; if to the initial Lender, at its Lending Office specified opposite its name on the signature pages below; if to any other Lender, at its Lending Office specified in the Assignment and Acceptance pursuant to which it became a Lender; or, as to the Borrower or the Lender, at such other address as shall be designated by such party in a written notice to the other party. All such notices and communications shall, when mailed or telecopied, be effective when deposited in the mail, telecopied or delivered. Delivery by telecopier of an executed counterpart of any amendment of any Loan Document shall be effective as delivery of a manually executed counterpart thereof.

SECTION 7.03. No Waiver; Remedies. No failure on the part of the Lender to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 7.04. Costs and Expenses. (a) The Borrower agrees to pay on demand all reasonable costs and expenses of the Lender in connection with the preparation, execution, delivery, administration, modification and amendment of any Loan Document and any other document to be delivered hereunder, including, without limitation, (i) all due diligence, transportation, computer, duplication, appraisal, consultant, and audit expenses and (ii) the reasonable fees and expenses of counsel for the Lender with respect thereto and with respect to advising the Lender as to its rights and responsibilities under this Agreement and the other Loan Documents.&# 160; The Borrower further agrees to pay on demand all costs and expenses of the Lender, if any (including, without limitation, reasonable counsel fees and expenses), in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of the Loan Documents and the other documents to be delivered hereunder, including, without limitation, reasonable fees and expenses of counsel for the Lender in connection with the enforcement of rights under this Section 7.04(a).

(b) Each Loan Party agrees to jointly and severally indemnify and hold harmless the Lender and each of its Affiliates and their officers, directors, employees, agents and advisors (each, an "Indemnified

Party") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (i) any Loan Document and any other document to be delivered hereunder, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Advances or (ii) the actual or alleged presence of Hazardous Materials on any property of a Loan Party or any of the Borrower's Subsidiaries or any Env ironmental Action relating in any way to a Loan Party or any of the Borrower's Subsidiaries, except to the extent such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 7.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by a Loan Party or any of the Borrower's Subsidiaries, its directors, equityholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. Each Loan Party also agrees not to assert any claim for special, indirect, consequential or punitive damages against the Lender, any of its Af filiates, or any of their respective directors, officers, employees, attorneys and agents, on any theory of liability arising out of or otherwise relating to the Loan Documents, any of the transactions contemplated therein or the actual or proposed use of the proceeds of the Advances.

(c) If any payment of principal of any Advance is made by the Borrower to or for the account of the Lender other than on the last day of the Interest Period for such Advance, as a result of a payment pursuant to Section 2.08 or 2.10 or for any other reason, the Borrower shall, upon demand by the Lender, pay to the Lender any amounts required to compensate the Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by the Lender to fund or maintain such Advance.

(d) Without prejudice to the survival of any other agreement of the Loan Parties or any of the Borrower's Subsidiaries hereunder and under any other Loan Document, the agreements and obligations of the Loan Parties contained in Sections 2.09, 2.12, 7.04, 7.08, 7.10, 7.11 and 7.12 shall survive the payment in full of principal, interest and all other amounts payable hereunder.

SECTION 7.05. Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, the Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Lender or such Affiliate to or for the credit or the account of any Loan Party against any and all of the obligations of the Loan Party now or hereafter existing under the Loan Documents whether or not the Lender shall have made any demand under this Agreement or a ny other Loan Document and although such obligations may be unmatured. The Lender agrees promptly to notify the Loan Parties after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Lender and its Affiliates under this Section 7.05 are in addition to other rights and remedies (including, without limitation, other rights of set-off) that the Lender and its Affiliates may have.

SECTION 7.06. Binding Effect. This Agreement shall become effective (other than Section 2.01, which shall only become effective upon satisfaction of the conditions precedent set forth in Section 3.01) when it shall have been executed by the Borrower and the Lender, and thereafter shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lender.

SECTION 7.07. Assignments and Participations. (a) The Lender may assign to one Person all of its rights and obligations under the Loan Documents (including, without limitation, all of its

Commitment, the Advances owing to it); provided, however, that (i) any assignment to a Person (other than an Affiliate of the Lender) shall require the consent of the Borrower (such consent not to be unreasonably withheld or delayed; provided that, if an Event of Default has occurred and is continuing, no such consent shall be required) and (ii) the parties to each such assignment shall execute and deliver an Assignment and Acceptance. Upon such execution and delivery, from and after the effective date specified in each Assignment and Acceptance, (x) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of the Lender hereunder and (y) the Lender assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than its rights under Sections 2.09, 2.12 and 7.04 to the extent any claim thereunder relates to an event arising prior to such assignment) and be released from its obligations under this Agreement and such Lender shall cease to be a party hereto.

(b) By executing and delivering an Assignment and Acceptance, the Lender assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with any Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other instrument or document furnished pursuant hereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Loan Parties or the performance or observance by the Loan Parties of any of their obligations under any Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of each Loan Document, together with copies of the financial statements referred to in Section 4.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon such assigning Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; and (v) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as the Lender.

(c) The Lender may sell participations to one or more banks or other entities (other than any Loan Party or any of its Subsidiaries or Affiliates) in or to all or a portion of its rights and obligations under the Loan Documents (including, without limitation, all or a portion of its Commitment, the Advances owing to it); provided, however, that (i) the Lender's obligations under this Agreement (including, without limitation, its Commitment hereunder) shall remain unchanged, (ii) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under the Loan Documents and (iv) no participant under any such participation shall have any right to approve any amendment or waiver of any provision of the Loan Documents, or any consent to any departure by the Borrower therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, any Advance or any other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of principal of, or interest on, any Advance or any other amounts payable hereunder, in each case to the extent subject to such participation.

(d) The Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 7.07, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Loan Parties furnished to the Lender by or on behalf of the Loan Parties.

(e) Notwithstanding any other provision set forth in this Agreement, the Lender may at any time create a security interest in all or any portion of its rights under the Loan Documents (including, without limitation, the Advances owing to it) including in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the U.S. Federal Reserve System.

SECTION 7.08. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

SECTION 7.09. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different 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. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 7.10. Jurisdiction; Waiver of Immunities. (a) Each Loan Party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or federal court of the United States sitting in the Borough of Manhattan in the City of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to the Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such New York State court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) The Borrower hereby appoints CT Corporation System (the "Process Agent"), with an office on the date hereof at 111 Eighth Avenue, New York, NY 10011, United States, as its agent to receive on behalf of the Borrower service of copies of the summons and complaint and any other process which may be served in any such action or proceeding. Such service may be made by mailing or delivering a copy of such process to the Borrower in care of the Process Agent at the Process Agent's above address, and the Borrower hereby irrevocably authorizes and directs the Process Agent to receive and forward such service on its behalf. As an alternative method of service, the Borrower also irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to the Borrower at its address specified in Section 7.02.

(c) The Lender hereby irrevocably appoints Société Générale (the "Lender Process Agent"), with an office on the date hereof at 1221 Avenue of the Americas, New York, NY 10020, Attention: Legal Department, United States, as its agent to receive on behalf of the Lender and its property service of copies of the summons and complaint and any other process which may be served in any such action or proceeding. Such service may be made by mailing or delivering a copy of such process to the Lender in care of the Lender Process Agent at the Lender Process Agent's above address, and the Lender hereby irrevocably authorizes and directs the Lender Process Agent to accept such service on its behalf. As an alternative method of service, the Lender also irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to the Lender at its address specified in Section 7.02.

(d) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to the Loan Documents in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(e) To the extent that a Loan Party has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that Loan Party hereby irrevocably and unconditionally waives such immunity in respect of its obligations under this Agreement and, without limiting the generality of the foregoing, agrees that the waivers set forth in this subsection (d) shall have the fullest scope permitted under the Foreign Sovereign Immunities Act of 1976 of the United States and are intended to be irrevocable for purposes of such Act.

(f) Nothing in this Section 7.10 shall affect the right of the Lender to serve legal process in any other manner permitted by law or affect the right of the Lender to bring any action or proceeding against any Loan Party or its property in the courts of other jurisdictions, including, without limitation, the courts sitting in Malta.

SECTION 7.11. Judgment Currency. (a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due under the Loan Documents in Euros into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Lender could purchase Euros with such other currency in Milan on the Business Day preceding that on which final, nonappealable judgment is given.

(b) The obligations of the Loan Parties in respect of any sum due to the Lender under the Loan Documents shall, notwithstanding any judgment in a currency other than Euros, be discharged only to the extent that on the Business Day following receipt by the Lender of any sum adjudged to be so due in such other currency, the Lender may, in accordance with normal, reasonable banking procedures, purchase Euros with such other currency. If the amount of Euros so purchased is less than the sum originally due to the Lender, in Euros, each Loan Party agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Lender against such loss.

SECTION 7.12. WAIVER OF JURY TRIAL EACH OF THE LOAN PARTIES AND THE LENDER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE LOAN DOCUMENTS OR THE ACTION OF THE LENDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

SECTION 7.13. Confidentiality. The Lender agrees to hold all Confidential Information obtained pursuant to the provisions of this Agreement in accordance with its customary procedure for handling such information of this nature and in accordance with safe and sound banking practices, provided, that nothing herein shall prevent the Lender from disclosing and/or transferring such Confidential Information (i) upon the order of any court or administrative agency or otherwise to the extent required by statute, rule, regulation or judicial process, (ii) to bank examiners or upon the request or demand of any other regulatory agency or authority, (iii) which had been publicl y disclosed other than as a result of a disclosure by the Lender prohibited by this Agreement, (iv) in connection with any litigation to which the Lender is a party, or in connection with the exercise of any remedy hereunder or under this Agreement, (v) to the Lender's legal counsel and independent auditors and accountants, (vi) to the Lender's branches, subsidiaries, representative offices, affiliates and agents and third parties selected by any of the foregoing entities, wherever situated, for confidential use (including in connection with the provision of any service, including the provision of credit insurance or reinsurance, and for data processing, statistical and risk analysis purposes), and (vii) subject to provisions substantially similar to those contained in this Section 7.13, to any actual or proposed participant or assignee.

SECTION 7.14. Patriot Act Notice.The Lender hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of the Loan Party and other information that will allow the Lender to identify each Loan Party in accordance with the Patriot Act. Each Loan Party shall, and shall cause each of the Borrower's Subsidiaries to, provide such information and take such actions as are reasonably requested by the Lender in order to assist the Lender in maintaining compliance with the Patriot Act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

SUNPOWER CORPORATION

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

SUNPOWER CORPORATION MALTA HOLDINGS LIMITED

By /s/ Dennis V. Arriola
Title:

Lender

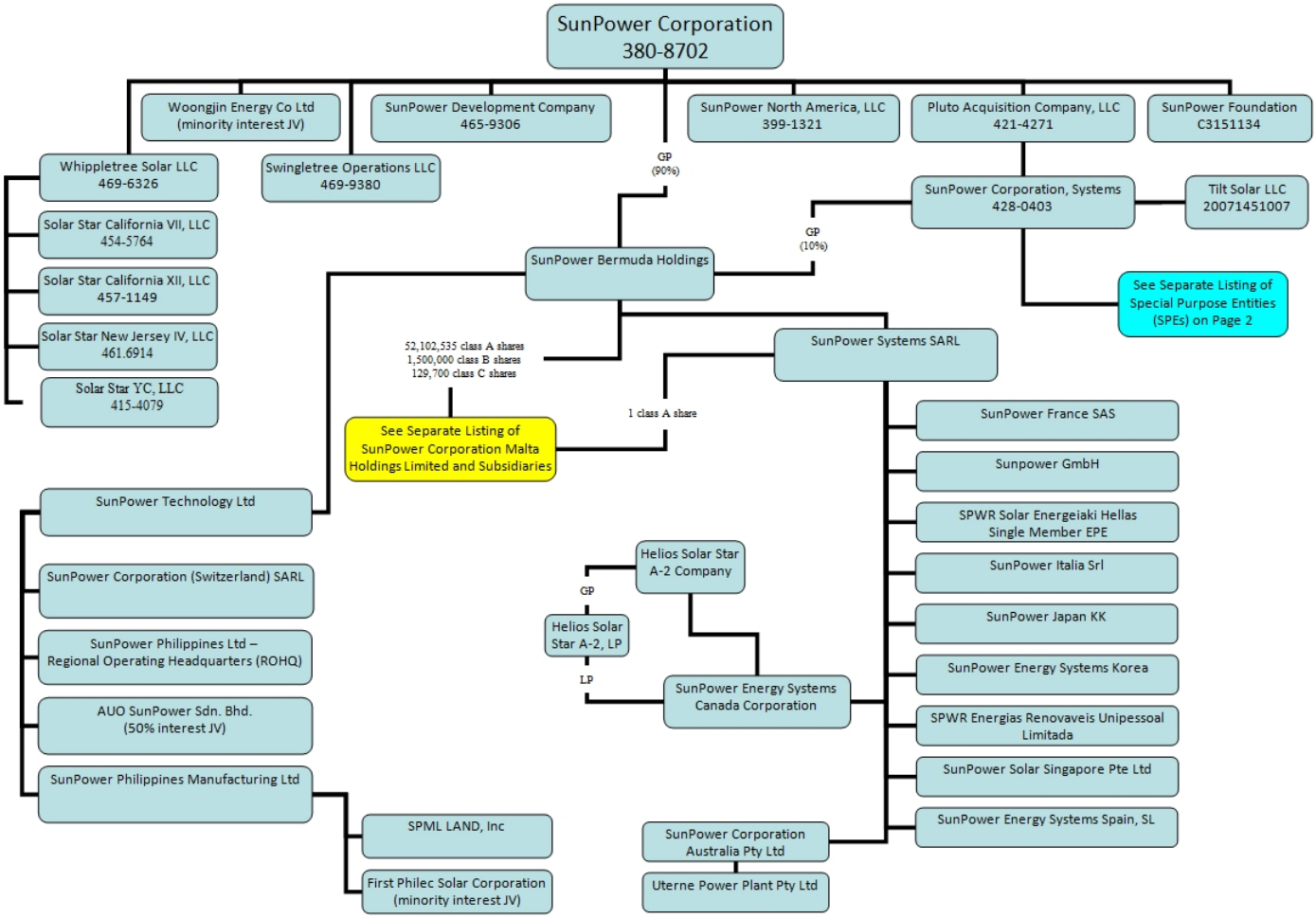
Lending Office
Via Olona, 2
20123 Milan
Italy

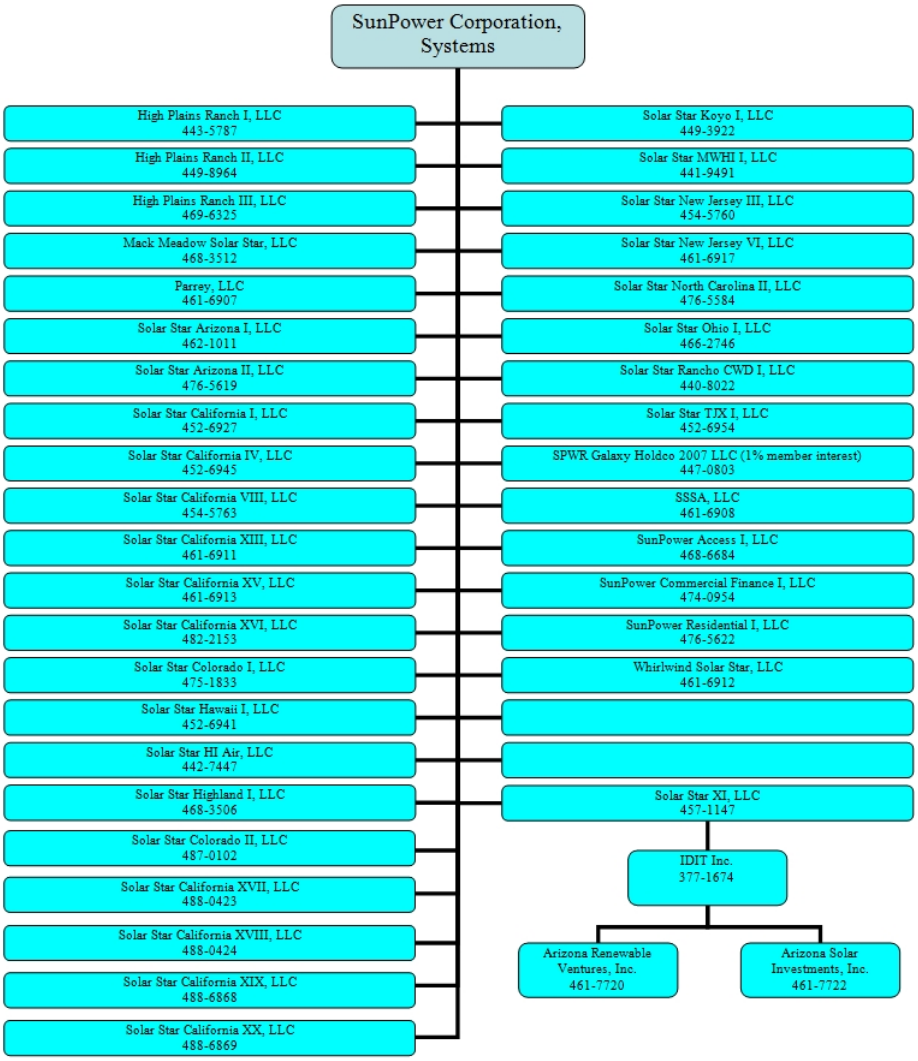
SOCIÉTÉ GÉNÉRALE, MILAN BRANCH

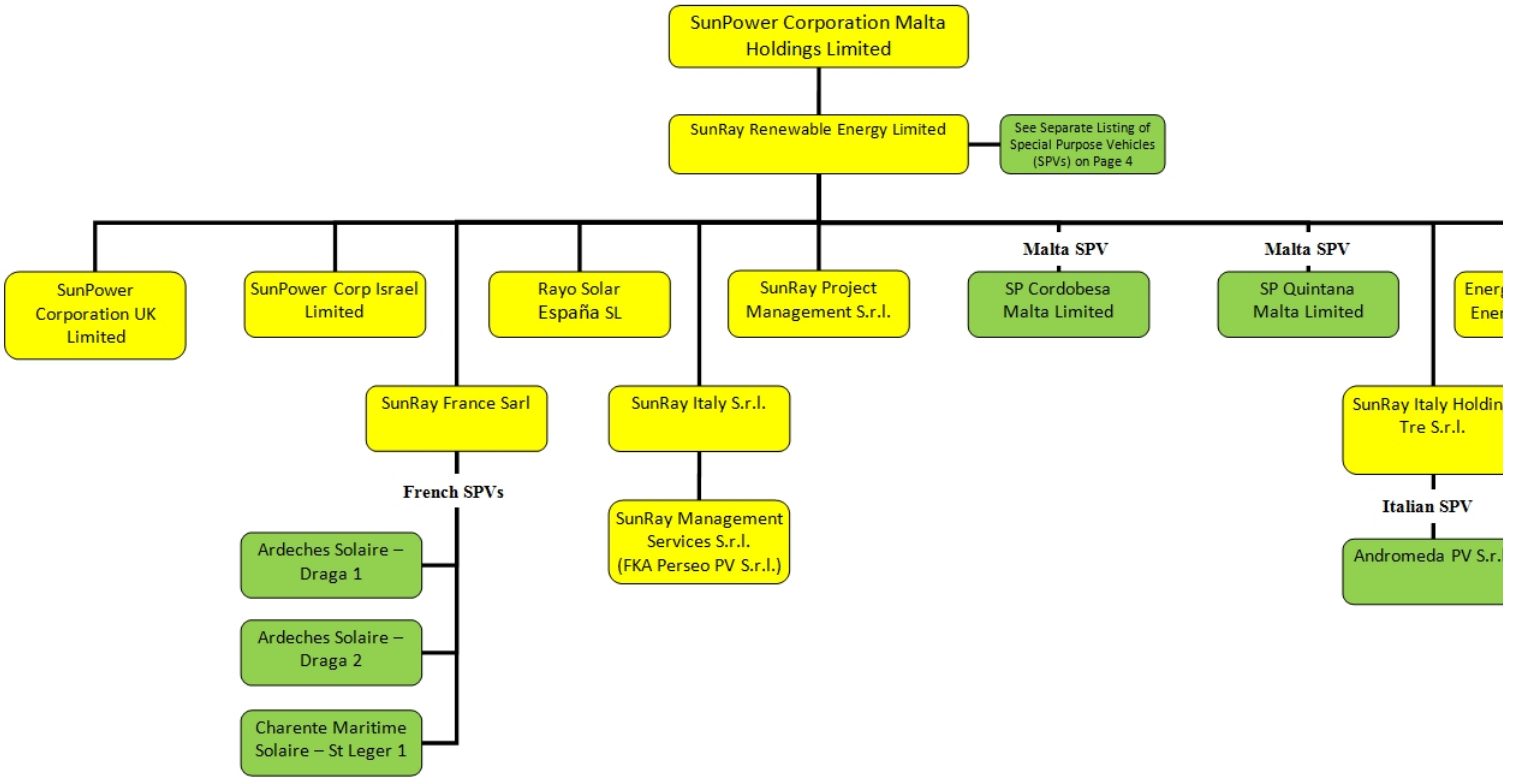
By /s/ Matthew Vickerstaff
Title: Managing Director

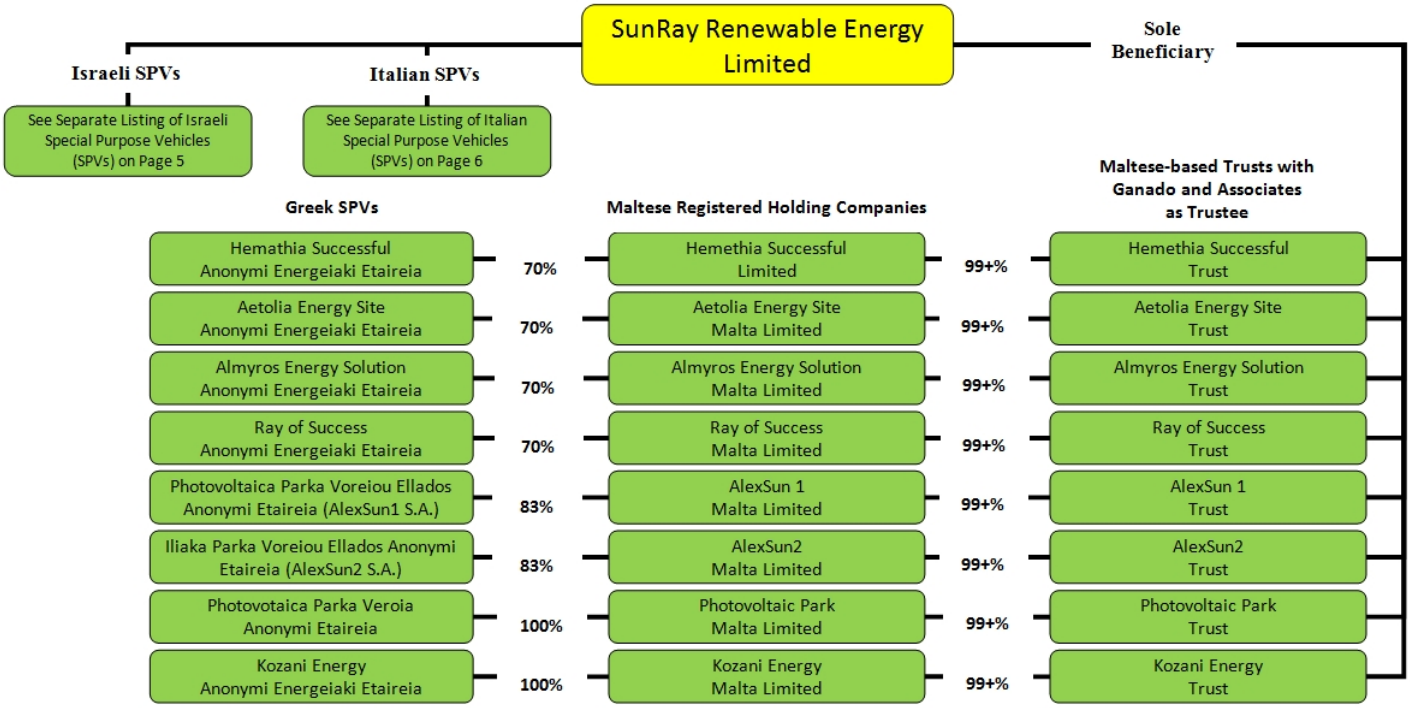
SCHEDULE 3.01

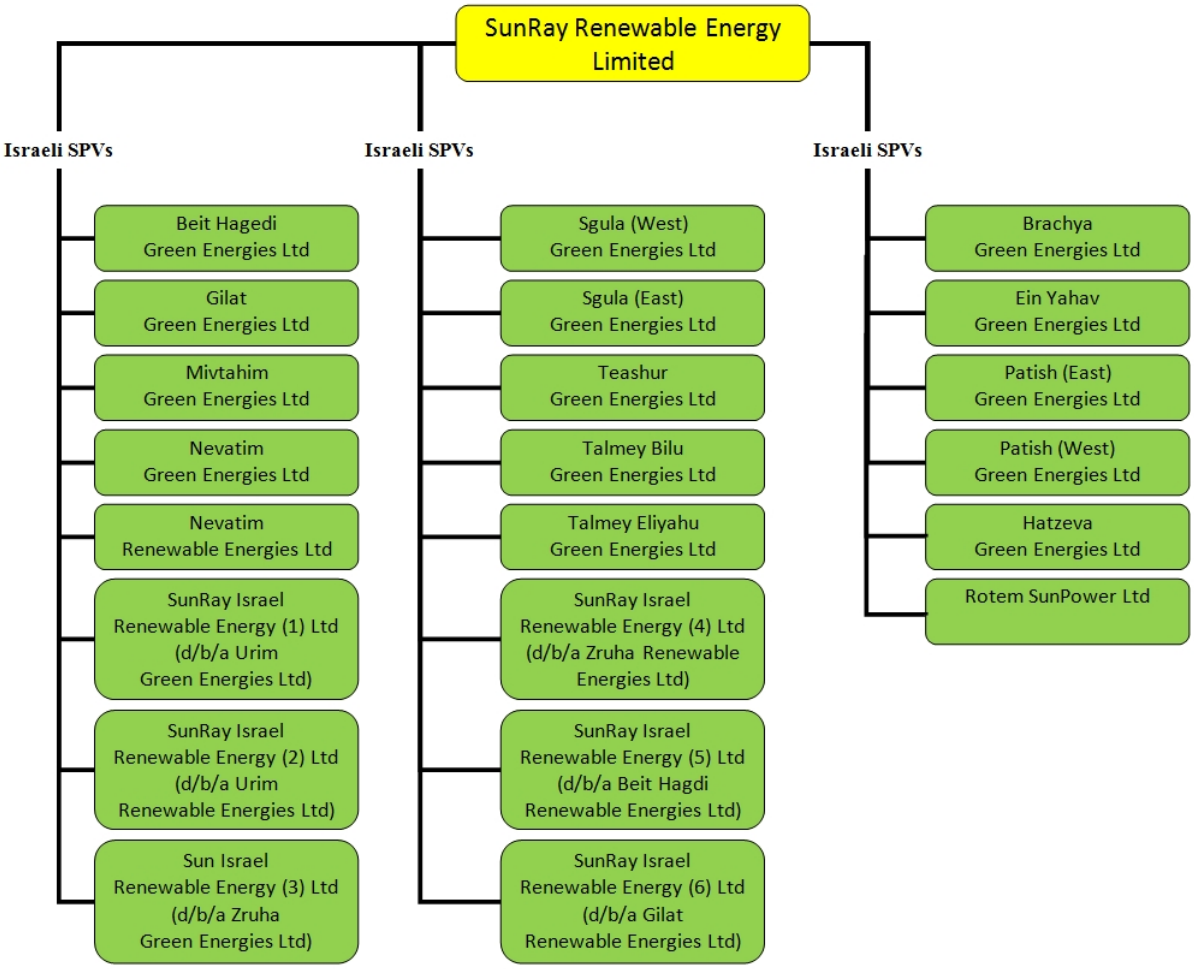
CORPORATION ORGANIZATIONAL STRUCTURE

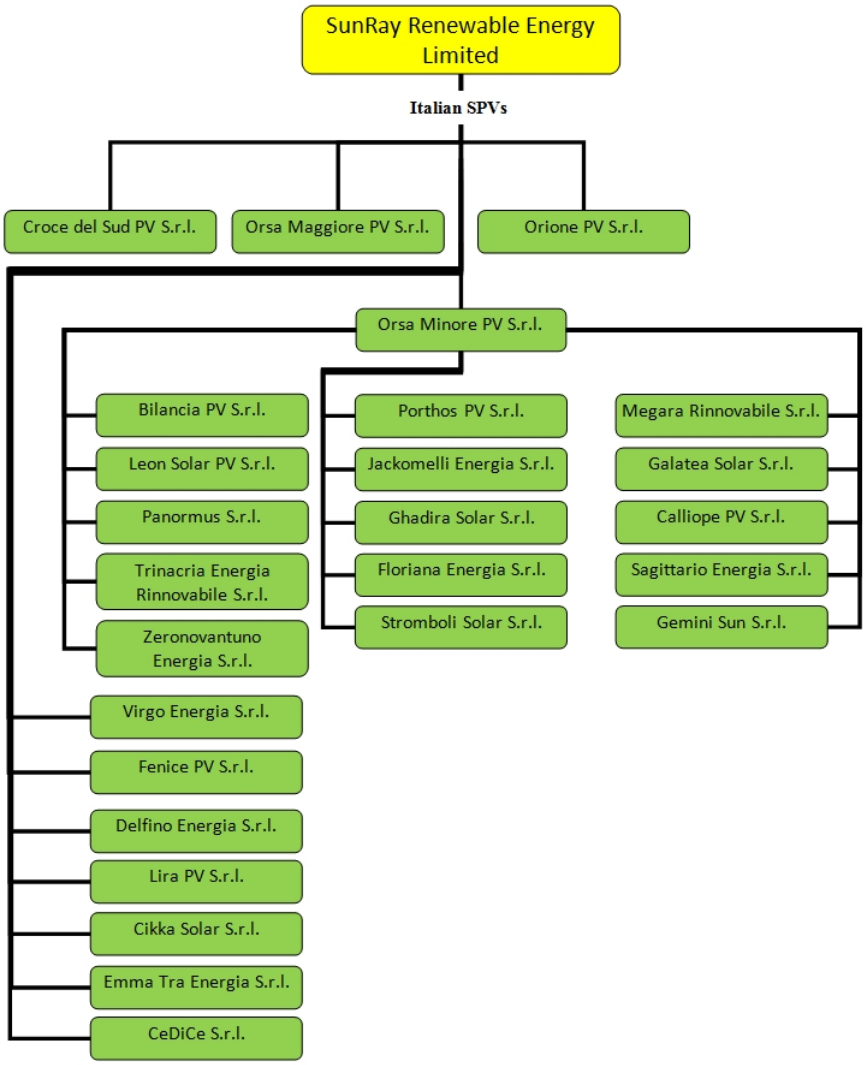



SunPower Corporation, Systems
High Plains Ranch I, LLC 443-5787
High Plains Ranch II, LLC 449-8964
High Plains Ranch III, LLC 469-6325
Mack Meadow Solar Star, LLC 468-3512
Parrey, LLC 461-6907
Solar Star Arizona I, LLC 462-1011
Solar Star Arizona II, LLC 476-5619
Solar Star California I, LLC 452-6927
Solar Star California IV, LLC 452-6945
Solar Star California VIII, LLC 454-5763
Solar Star California XIII, LLC 461-6911
Solar Star California XV, LLC 461-6913
Solar Star California XVI, LLC 482-2153
Solar Star Colorado I, LLC 475-1833
Solar Star Hawaii I, LLC 452-6941
Solar Star HI Air, LLC 442-7447
Solar Star Highland I, LLC 468-3506
Solar Star Colorado II, LLC 487-0102
Solar Star California XVII, LLC 488-0423
Solar Star California XVIII, LLC 488-0424
Solar Star California XIX, LLC 488-6868
Solar Star California XX, LLC 488-6869
Solar Star Koyo I, LLC 449-3922
Solar Star MWHI I, LLC 441-9491
Solar Star New Jersey III, LLC 454-5760
Solar Star New Jersey VI, LLC 461-6917
Solar Star North Carolina II, LLC 476-5584
Solar Star Ohio I, LLC 466-2746
Solar Star Rancho CWD I, LLC 440-8022
Solar Star TJX I, LLC 452-6954
SPWR Galaxy Holdco 2007 LLC (1% member interest) 447-0803
SSSA, LLC 461-6908
SunPower Access I, LLC 468-6684
SunPower Commercial Finance I, LLC 474-0954
SunPower Residential I, LLC 476-5622
Whirlwind Solar Star, LLC 461-6912
Solar Star XI, LLC 457-1147
IDIT Inc. 377-1674
Arizona Renewable Ventures, Inc. 461-7720
Arizona Solar Investments, Inc. 461-7722


SunPower Corporation Malta Holdings Limited
SunRay Renewable Energy Limited
See Separate Listing of Special Purpose Vehicles (SPVs) on Page 4
SunPower Corporation UK Limited
SunPower Corp Israel Limited
Rayo Solar España SL
SunRay Project Management S.r.l.
Malta SPV
SP Cordobesa Malta Limited
Malta SPV
SP Quintana Malta Limited
SunRay France Sarl
SunRay Italy S.r.l.
SunRay Italy Holdin Tre S.r.l.
French SPVs
SunRay Management Services S.r.l. (FKA Perseo PV S.r.l.)
Italian SPV
Andromeda PV S.r.
Ardeches Solaire – Draga 1
Ardeches Solaire – Draga 2
Charente Maritime Solaire – St Leger 1


SunRay Renewable Energy Limited
Sole Beneficiary
Israeli SPVs
See Separate Listing of Israeli Special Purpose Vehicles (SPVs) on Page 5
Italian SPVs
See Separate Listing of Italian Special Purpose Vehicles (SPVs) on Page 6
Greek SPVs
Maltese Registered Holding Companies
Maltese-based Trusts with Ganado and Associates as Trustee
Hemathia Successful Anonymi Energeiaki Etaireia
70%
Hemethia Successful Limited
99+%
Hemethia Successful Trust
Aetolia Energy Site Anonymi Energeiaki Etaireia
70%
Aetolia Energy Site Malta Limited
99+%
Aetolia Energy Site Trust
Almyros Energy Solution Anonymi Energeiaki Etaireia
70%
Almyros Energy Solution Malta Limited
99+%
Almyros Energy Solution Trust
Ray of Success Anonymi Energeiaki Etaireia
70%
Ray of Success Malta Limited
99+%
Ray of Success Trust
Photovoltaica Parka Voreiou Ellados Anonymi Etaireia (AlexSun1 S.A.)
83%
AlexSun 1 Malta Limited
99+%
AlexSun 1 Trust
Iliaka Parka Voreiou Ellados Anonymi Etaireia (AlexSun2 S.A.)
83%
AlexSun2 Malta Limited
99+%
AlexSun2 Trust
Photovotaica Parka Veroia Anonymi Etaireia
100%
Photovoltaic Park Malta Limited
99+%
Photovoltaic Park Trust
Kozani Energy Anonymi Energeiaki Etaireia
100%
Kozani Energy Malta Limited
99+%
Kozani Energy Trust


SunRay Renewable Energy Limited
Israeli SPVs
Beit Hagedi Green Energies Ltd
Gilat Green Energies Ltd
Mivtahim Green Energies Ltd
Nevatim Green Energies Ltd
Nevatim Renewable Energies Ltd
SunRay Israel Renewable Energy (1) Ltd (d/b/a Urim Green Energies Ltd)
SunRay Israel Renewable Energy (2) Ltd (d/b/a Urim Renewable Energies Ltd)
Sun Israel Renewable Energy (3) Ltd (d/b/a Zruha Green Energies Ltd)
Israeli SPVs
Sgula (West) Green Energies Ltd
Sgula (East) Green Energies Ltd
Teashur Green Energies Ltd
Talmey Bilu Green Energies Ltd
Talmey Eliyahu Green Energies Ltd
SunRay Israel Renewable Energy (4) Ltd (d/b/a Zruha Renewable Energies Ltd)
SunRay Israel Renewable Energy (5) Ltd (d/b/a Beit Hagdi Renewable Energies Ltd)
SunRay Israel Renewable Energy (6) Ltd (d/b/a Gilat Renewable Energies Ltd)
Israeli SPVs
Brachya Green Energies Ltd
Ein Yahav Green Energies Ltd
Patish (East) Green Energies Ltd
Patish (West) Green Energies Ltd
Hatzeva Green Energies Ltd
Rotem SunPower Ltd


SunRay Renewable Energy Limited
Italian SPVs
Croce del Sud PV S.r.l.
Orsa Maggiore PV S.r.l.
Orione PV S.r.l.
Orsa Minore PV S.r.l.
Bilancia PV S.r.l.
Leon Solar PV S.r.l.
Panormus S.r.l.
Trinacria Energia Rinnovabile S.r.l.
Zeronovantuno Energia S.r.l.
Porthos PV S.r.l.
Jackomelli Energia S.r.l.
Ghadira Solar S.r.l.
Floriana Energia S.r.l.
Stromboli Solar S.r.l.
Megara Rinnovabile S.r.l.
Galatea Solar S.r.l.
Calliope PV S.r.l.
Sagittario Energia S.r.l.
Gemini Sun S.r.l.
Virgo Energia S.r.l.
Fenice PV S.r.l.
Delfino Energia S.r.l.
Lira PV S.r.l.
Cikka Solar S.r.l.
Emma Tra Energia S.r.l.
CeDiCe S.r.l.

SCHEDULE 4.02(f)

EXISTING LITIGATION

1. In November 2009, the Audit Committee of the Board of Directors of Parent (the "Audit Committee") initiated an independent investigation regarding certain unsubstantiated accounting entries. The Audit Committee announced the results of its investigation in March 2010. For information regarding the Audit Committee's investigation, see *Part I - "Item 1: Notes to Condensed Consolidated Financial Statements - Note 1*," and "*Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations - Restatement of Previously Issued Condensed Consolidated Financial Statements*" of Parent's Form 10-Q for the quarter ended October 3, 2010, and Parent's Annual Report on Form 10-K for the year ended January 3, 2010. For a description of the control deficiencies identified by management as a result of the investigation and Parent's internal reviews, and management's plan to remediate those deficiencies, see *Part I - "Item 4: Controls and Procedures"* of Parent's Form 10-Q for the quarter ended October 3, 2010.

2. Three securities class action lawsuits were filed against Parent and certain of Parent's current and former officers and directors in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired Parent's securities from April 17, 2008 through November 16, 2009. The cases were consolidated as Plichta v. SunPower Corp. et al., Case No. CV-09-5473-RS (N.D. Cal.), and lead plaintiffs and lead counsel were appointed on March 5, 2010. Lead plaintiffs filed a consolidated complaint on May 28, 2010. The actions arise from the Audit Committee's investigation announcement on November 16, 2009. The consolidated complaint alleges that the defendants made material misstatements and omissions concerning Parent's financial results for 2008 and 2009, seeks an unspecified amount of damages, and alleges violations of Sections 10(b) and 20(a) of the Securit ies Exchange Act of 1934, and Sections 11 and 15 of the Securities Act of 1933. Parent believes it has meritorious defenses to these allegations and will vigorously defend itself in these matters. The court held a hearing on the defendant's motions to dismiss the consolidated complaint on November 4, 2010, and took the motions under submission. Parent's management currently believes that the ultimate outcome of the lawsuits will not have a Material Adverse Effect.

3. Derivative actions purporting to be brought on behalf of Parent have also been filed in state and federal courts against several of Parent's current and former officers and directors based on the same events alleged in the securities class action lawsuits described above. The California state derivative cases were consolidated as In re SunPower Corp. S'holder Derivative Litig., Lead Case No. 1-09-CV-158522 (Santa Clara Sup. Ct.), and co-lead counsel for plaintiffs have been appointed. The complaints assert state-law claims for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement, and waste of corporate assets. Plaintiffs are scheduled to file a consolidated complaint on or before December 3, 2010. The federal derivative complaints were consolidated as In re SunPower Corp. S'holder Derivative Litig., Master File No. CV-09-05731-RS (N.D. Cal.), and lead plaintiffs and co-lead couns el were appointed on January 4, 2010. The complaints assert state-law claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment, and seek an unspecified amount of damages. Parent intends to oppose the derivative plaintiffs' efforts to pursue this litigation on its behalf. Parent's management currently believes that the ultimate outcome of the lawsuits will not have a Material Adverse Effect.

***

SCHEDULE 5.02(a)

EXISTING LIENS

1. Liens on deposit account number *** maintained in the name of Parent with Wells Fargo Bank, N.A., investment account number *** maintained in the name of Parent with Wells Fargo Bank, N.A., and multi-currency account numbers *** and *** maintained in the name of Parent with Wells Fargo Bank, N.A.'s Cayman Islands branch, securing the Wells Fargo Indebtedness (as defined in Schedule 5.02(b)).

***

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

SCHEDULE 5.02(b)

EXISTING DEBT

1. Indebtedness of the Parent in connection with the Parent's guarantee of leasing arrangements, pursuant to a Term Leasing Master Agreement between the Parent's former Malaysian subsidiary, now a joint venture, AUO SunPower Sdn. Bhd., as lessee and IBM Malaysia Sdn. Bhd. as lessor. [Desktop and laptop computers for use by the Parent's Malaysian Subsidiary]

2. Indebtedness of the Parent in connection with the Parent's guarantee of leasing arrangements, pursuant to a Corporate Guarantee by the Parent of obligations of SunPower Philippines Mfg. Ltd. as lessee in favor of IBM Philippines, Inc. as lessor [Desktop and laptop computers for use by the Parent's Philippines subsidiary]

3. Indebtedness of the Parent under the Parent's Master Agreement with Cisco Systems Capital Corporation as lessor and any schedules appurtenant thereto. [Routers and other IT equipment for use by the Parent and its Subsidiaries]

4. Indebtedness of the Parent in connection with leasing arrangements with US Bancorp. [Office copiers and printers for use by the Parent and its Subsidiaries]

5. Indebtedness of the Parent in connection with a leasing arrangement with Well Fargo Bank, N.A. as lessor. [Cleaning equipment for use of the Parent and its Subsidiaries]

6. Indebtedness of the Parent pursuant to the following promissory notes, each dated March 26, 2010, issued to certain officers and employees of SunRay Renewable Energy ("SunRay"), in lieu of cash payment to such persons for their SunRay shares in connection with the Parent's acquisition of SunRay:

    a. *** in the amount of $***;
    b. *** in the amount of $***;
    c. *** in the amount of $***;
    d. *** in the amount of $***;
    e. *** in the amount of $***;
    f. *** in the amount of $***;
    g. *** in the amount of $***; and
    h. *** in the amount of $***.

7. Indebtedness in an aggregate outstanding amount not exceeding $600,000 of the Parent, and guarantees of the Parent's obligations by SunPower North America, LLC and SunPower Corporation, Systems, in connection with the Amended and Restated Credit Agreement, dated March 20, 2009, between the Parent and Wells Fargo Bank, National Association as amended and in effect as of the Effective Date (the "Wells Fargo Indebtedness").

***

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

SCHEDULE 5.02(c)

EXISTING LOANS, ADVANCES, AND INVESTMENTS

1. Investment in *** (approximately $3,000,000).
2. Investment in *** (approximately $1,500,000).
3. Investment in Woongjin Energy Co. Ltd. (approximately $34,000,000).
4. Put/Call option to invest in ***.
5. Investment in *** (approximately $10,000,000).
6. 1% member interest in SPWR Galaxy Holdco 2007 LLC.
7. Investment in a privately-held company accepted in connection with a ***, with a current value that does not exceed $***.

***

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

EXHIBIT A - FORM OF
NOTICE OF BORROWING

Société Générale, Milan Branch
as Lender under
the Credit Agreement
referred to below
OPER/FIN/STR/DMT
189, rue d'aubervilliers
75886 PARIS CEDEX 18
Facsimile: +33 170 71 9560

[Date]

Attention: _____

Ladies and Gentlemen:

The undersigned, SunPower Corporation Malta Holdings Limited, refers to the Revolving Credit Agreement, dated as of November 23, 2010 (as amended or modified from time to time, the "Credit Agreement", the terms defined therein being used herein as therein defined), among the undersigned, SunPower Corporation and the Lender, and hereby gives you notice, irrevocably, pursuant to Section 2.02 of the Credit Agreement that the undersigned hereby requests a Borrowing under the Credit Agreement, and in that connection sets forth below the information relating to such Borrowing (the "Proposed Borrowing") as required by Section 2.02(a) of the Credit Agreement (capitalized terms used but not defined in this Notice are used with the meaning ascribed thereto in the Credit Agreement):

(i) The Business Day of the Proposed Borrowing is _____, 20__.

(ii) The amount of the Proposed Borrowing is EUR_____.

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Borrowing:

(A) the representations and warranties contained in Section 4.01 of the Credit Agreement are correct, before and after giving effect to the Proposed Borrowing and to the application of the proceeds therefrom, as though made on and as of such date; and

(B) no event has occurred and is continuing, or would result from such Proposed Borrowing or from the application of the proceeds therefrom, that constitutes a Default.

Very truly yours,

SUNPOWER CORPORATION MALTA HOLDINGS LIMITED

By
Title:

EXHIBIT B - FORM OF
ASSIGNMENT AND ACCEPTANCE

Reference is made to the Credit Agreement dated as of November 23, 2010 (as amended or modified from time to time, the "Credit Agreement") among SUNPOWER CORPORATION, a Delaware corporation (the "Parent"), SUNPOWER CORPORATION MALTA HOLDINGS LIMITED, a Maltese company (the "Borrower") and the Lender (as defined in the Credit Agreement). Terms defined in the Credit Agreement are used herein with the same meaning.

The "Assignor" and the "Assignee" referred to on Schedule 1 hereto agree as follows:

1. The Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, all of the Assignor's rights and obligations under the Loan Documents as of the date hereof. After giving effect to such sale and assignment, the Assignee's Commitment and the amount of the Advance owing to the Assignee will be as set forth on Schedule 1 hereto.

2. The Assignor (i) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any other instrument or document furnished pursuant thereto; and (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or the performance or observance by the Borrower of any of its obligations under the Loan Documents or any other instrument or document furnished pursuant thereto.

3. The Assignee (i) confirms that it has received a copy of the Loan Documents, together with copies of the financial statements referred to in Section 4.01 thereof and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (ii) agrees that it will, independently and without reliance upon the Assignor and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; (iii) confirms that it is a sophisticated investor which has the ability to evaluate the merits and risks of an investment in the Loan Documents, including, without limitation , the financial and political conditions in Malta as of the date hereof, and the ability to assume the economic risks involved in such an investment; and (iv) agrees that it will perform in accordance with their terms all of the obligations that by the terms of the Loan Documents are required to be performed by it as the Lender.

4. Following the execution of this Assignment and Acceptance, it will be delivered to the Borrower. The effective date for this Assignment and Acceptance (the "Effective Date") shall be the date of delivery hereof to the Borrower, unless otherwise specified on Schedule 1 hereto.

5. Upon such delivery to the Borrower, as of the Effective Date, (i) the Assignee shall be a party to the Loan Documents and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of the Lender thereunder and (ii) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Loan Documents.

6. Upon such delivery to the Borrower, from and after the Effective Date, the Borrower shall make all payments under the Loan Documents in respect of the interest assigned hereby (including, without limitation, all payments of principal, interest and facility fees with

respect thereto) to the Assignee. The Assignor and Assignee shall make all appropriate adjustments in payments under the Loan Documents for periods prior to the Effective Date directly between themselves.

7. This Assignment and Acceptance shall be governed by, and construed in accordance with, the laws of the State of New York.

8. This Assignment and Acceptance may be executed in any number of counterparts and by different 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. Delivery of an executed counterpart of Schedule 1 to this Assignment and Acceptance by telecopier shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused Schedule 1 to this Assignment and Acceptance to be executed by their officers thereunto duly authorized as of the date specified thereon.

Schedule 1
to
Assignment and Acceptance

Percentage interest assigned:	100%
Assignee's Commitment:	EUR_____
Aggregate outstanding principal amount of Advance assigned:	EUR_____
Principal amount of Advance payable to Assignee:	EUR_____

Effective Date: _____, 20__

[NAME OF ASSIGNOR**]**, as Assignor

By
Title:

Dated: _____, 20__

[NAME OF ASSIGNEE**]**, as Assignee

By
Title:

Lending Office:
[Address**]**

Acknowledged this

___ day of _____, 20__

SUNPOWER CORPORATION MALTA HOLDINGS LIMITED

By: _____
Title:

EXHIBIT C - FORM OF
COMPLIANCE CERTIFICATE

To: Société Générale, Milan Branch
as Lender under
the Credit Agreement
referred to below
OPER/FIN/STR/DMT
189, rue d'aubervilliers
75886 PARIS CEDEX 18
Facsimile: +33 170 71 9560

Re: Compliance Certificate as of and for period ending: _____ __, 20__

Ladies and Gentlemen:

This certificate (this "Compliance Certificate") is submitted pursuant to the Credit Agreement, dated as of November 23, 2010 (as amended, modified, supplemented, restated or renewed from time to time, the "Credit Agreement") by and among SUNPOWER CORPORATION MALTA HOLDINGS LIMITED (the "Borrower"), a limited liability company registered under the laws of Malta, SUNPOWER CORPORATION, a Delaware corporation (the "Parent") and SOCIÉTÉ GÉNÉRALE, MILAN BRANCH (the "Lender"). All capitalized terms used herein shall have the meanings specified in the Credit Agreement unless otherwise defined herein.

The undersigned hereby certifies that: (a) [he][she] is the acting and incumbent [Chief Financial Officer] [Secretary] of the Parent, and (b) in such capacity, [he][she] is authorized to execute this Compliance Certificate on behalf of the Parent in connection with the Credit Agreement.

The undersigned has reviewed the terms and conditions of the Credit Agreement and the definitions and provisions contained in the Credit Agreement, and, has made, or have caused to be made under the supervision of the undersigned, such examination or investigation as is necessary to enable the undersigned to express an informed opinion, and to provide a certification, as to the matters referred to herein.

The undersigned hereby further represents, warrants and certifies that:

1. Each Loan Party is in complete and strict compliance, as of, and for the period ending, _____ __, 20__ (the "Compliance Date"), with all agreements, conditions and covenants contained in the Credit Agreement and the other Loan Documents, except as noted below.

2. The representations and warranties of each Loan Party contained in the Credit Agreement and the other Loan Documents are true and correct as of the Compliance Date as if made on such date (or, in the case of representations and warranties stated as having been made only as of the Closing Date, such representations and warranties remain true and correct in all material respects as of the Closing Date).

3. There exists no Default or Event of Default under the Credit Agreement or any of the other Loan Documents.

4. Each Loan Party is in compliance with each of the covenants in Section 5.03 of the Credit Agreement, as of, and for the period ending on, the Compliance Date, and attached hereto as

Schedule 1 is a true and correct copy of the calculation of such financial covenants, prepared by the undersigned.

5. Attached to such Schedule 1 are true, correct and complete copies of the documents and work sheets supporting the above certifications.

6. Since November 23, 2010 there has been no Material Adverse Effect as to any Loan Party.

7. Each Loan Party is in compliance with each of the reporting covenants in Section 5.01(i) of the Credit Agreement, as of, and for the period ending on the Compliance Date, and attached hereto as Schedule 2 are the quarterly and annual (as applicable) financial statements required under Section 5.01(i) of the Credit Agreement and the other reports, letters, opinions, notices and other required under the Credit Agreement;

8. The financial statements furnished on Schedule 2 attached hereto are complete and correct and have been prepared in accordance with GAAP (except for the lack of footnotes required by GAAP and changes resulting for normal year end adjustments, in the case of financial statements other than those as of a Fiscal Year end), consistently applied from one period to the next, and fairly present the financial condition of the Loan Parties and their Subsidiaries.

9. Each Loan Party is Solvent.

10. No Liens have arisen, been granted or otherwise exist with respect to any assets or properties of any Loan Party other than Permitted Liens.

THIS COMPLIANCE CERTIFICATE IS EXECUTED AND DELIVERED THIS _____ DAY OF _____, 20__.

Very Truly Yours,

SUNPOWER CORPORATION

By: _____

Print Name: _____

Title: _____

Schedule 1
to
Compliance Certificate

Schedule 2
to
Compliance Certificate

REQUIRED FINANCIAL STATEMENTS

EXHIBIT D – MANDATORY COSTS

1. Mandatory Costs are an addition to the interest rate to compensate the Lender for the cost of compliance with the requirements of the European Central Bank as imposed on the Lender on or after the date of this Agreement.

2. On the first day of each Interest Period (or as soon as possible thereafter), the Lender shall calculate, as a percentage rate, a rate for Mandatory Costs in accordance with the paragraph set out below.

3. The applicable rate will be the percentage (calculated on a pro rata basis) notified by the Lender to the Loan Parties. This percentage will be confirmed by the Lender to be in its reasonable determination the cost of complying with the minimum reserve requirements of the European Central Bank in respect of any Advance made from its Lending Office.

Exhibit 10.47

GUARANTY

This GUARANTY is entered into as of November 23, 2010, by SunPower Corporation, a Delaware corporation (the "Guarantor"), in favor of and for the benefit of Société Générale and each of its successors and assigns as Lender (as hereinafter defined) under the Credit Agreement referred to below (the "Guarantied Party").

RECITALS:

(A) SunRay Malta Holding (the "**Borrower**"), the Guarantor and Société Générale as lender (in such capacity, the "**Lender**") are parties to a Revolving Credit Agreement dated as of November 23, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"; unless otherwise defined herein, terms defined in the Credit Agreement and used herein have the meaning given to them in the Credit Agreement).

(B) Pursuant to the terms of the Credit Agreement, the Lender has agreed to make Advances to the Borrower upon the terms and subject to the conditions set forth therein.

(C) The Borrower is an indirectly wholly owned Subsidiary of the Guarantor and the Guarantor will derive substantial direct and indirect benefits from the transactions contemplated by the Credit Agreement. Accordingly, the Guarantied Obligations (as hereinafter defined) are being incurred for and will inure to the benefit of the Guarantor (which benefits are hereby acknowledged).

(D) It is a condition precedent to the making of Advances under the Credit Agreement that the Guarantor execute and deliver this Guaranty.

1 Guaranty.

(a) In consideration of the premises above and in order to induce the Guarantied Party to extend credit to the Borrower pursuant to the Credit Agreement, the Guarantor irrevocably and unconditionally guarantees, as primary obligor and not merely as surety, the due and punctual payment in full of all Guarantied Obligations (as hereinafter defined) when the same shall become due, whether at stated maturity, by acceleration, demand or otherwise (including amounts that would become due by the Borrower but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code). The term "**Guarantied Obligations**" is used herein in its most comprehensive sense and includes any and all payment obligations of the Borrower or the Guarantor now or hereafter made, incurred or created, whether absolute or contingent, liquidated or unliquidated, wheth er due or not due, and however arising under or in connection with the Credit Agreement, this Guaranty and the other Loan Documents, including (i) those arising under successive borrowing transactions under the Credit Agreement which shall either continue such obligations of the Borrower or from time to time renew them after they have been satisfied and (ii) all amounts that constitute part of the Guarantied Obligations and would be owed by the Borrower to the Guarantied Party under or in respect of the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Borrower.

(b) Any interest on any portion of the Guarantied Obligations that accrues after the commencement of any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Borrower (or, if interest on any portion of the Guarantied Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guarantied Obligations if said proceeding had not been commenced) shall be included in the Guarantied Obligations because it is the intention of the Guarantor

and the Guarantied Party that the Guarantied Obligations should be determined without regard to any rule of law or order that may relieve the Borrower of any portion of such Guarantied Obligations.

(c) In the event that all or any portion of the Guarantied Obligations is paid by the Borrower, the obligations of the Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) is rescinded or recovered directly or indirectly from the Guarantied Party as a preference, fraudulent transfer or otherwise, and any such payments that are so rescinded or recovered shall constitute Guarantied Obligations.

(d) Subject to the other provisions of this Section 1, upon the failure of the Borrower to pay any of the Guarantied Obligations when and as the same shall become due and payable, the Guarantor will upon demand pay, or cause to be paid, in cash, to the Guarantied Party, an amount equal to the aggregate of the unpaid Guarantied Obligations.

2 Guaranty Absolute; Continuing Guaranty.

The obligations of the Guarantor hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full in cash of the Guarantied Obligations. In furtherance of the foregoing and without limiting the generality thereof, the Guarantor agrees that:

(a) this Guaranty is a guaranty of payment when due and not of collectibility;

(b) the Guarantied Party may enforce this Guaranty upon the occurrence and during the continuance of an Event of Default;

(c) the obligations of the Guarantor hereunder are independent of the obligations of the Borrower under the Loan Documents and the obligations of any other guarantor of the obligations of the Borrower and a separate action or actions may be brought and prosecuted against the Guarantor whether or not any action is brought against the Borrower or any of such other guarantors and whether or not the Borrower is joined in any such action or actions; and

(d) the Guarantor's payment of a portion, but not all, of the Guarantied Obligations shall in no way limit, affect, modify or abridge the Guarantor's liability for any portion of the Guarantied Obligations that has not been paid. This Guaranty is a continuing guaranty and shall be binding upon the Guarantor and its successors and assigns, and the Guarantor irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guarantied Obligations.

3 Actions by the Guarantied Party.

The Guarantied Party may from time to time, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any limitation, impairment or discharge of the Guarantor's liability hereunder:

(a) renew, extend, accelerate or otherwise change the time, place, manner or terms of payment of the Guarantied Obligations;

(b) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guarantied Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; and

(c) exercise any other rights available to the Guarantied Party under the Loan Documents.

4 No Discharge.

This Guaranty and the obligations of the Guarantor hereunder shall be valid and enforceable and shall not be subject to any limitation, impairment or discharge for any reason (other than payment in full of the Guarantied Obligations), including without limitation the occurrence of any of the following, whether or not the Guarantor shall have had notice or knowledge of any of them:

(a) any failure to assert or enforce, or agreement not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy with respect to the Guarantied Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guarantied Obligations;

(b) any waiver or modification of, or any consent to departure from, any of the terms or provisions of the Credit Agreement, any of the other Loan Documents or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guarantied Obligations;

(c) the Guarantied Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect;

(d) the application of payments received from any source to the payment of indebtedness other than the Guarantied Obligations, even though the Guarantied Party might have elected to apply such payment to any part or all of the Guarantied Obligations;

(e) any defenses, set-offs or counterclaims which the Borrower may assert against the Guarantied Party in respect of the Guarantied Obligations, including but not limited to failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and

(f) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of the Guarantor as an obligor in respect of the Guarantied Obligations.

5 Waivers.

The Guarantor waives, to the maximum extent permitted by applicable law, for the benefit of the Guarantied Party:

(a) any right to require the Guarantied Party, as a condition of payment or performance by the Guarantor, to (i) proceed against the Borrower, any other guarantor of the Guarantied Obligations or any other Person, (ii) proceed against or exhaust any security held from the Borrower, any other guarantor of the Guarantied Obligations or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of the Guarantied Party in favor of the Borrower or any other Person, or (iv) pursue any other remedy in the power of the Guarantied Party;

(b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Borrower including, without limitation, any defense based on or arising out of the lack of validity or the unenforceability of the Guarantied Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Borrower from any cause other than the absence of any outstanding Guarantied Obligations (including payment in full thereof);

(c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;

(d) any defense based upon the Guarantied Party's errors or omissions in the administration of the Guarantied Obligations;

(e) (i) any principles or provisions of law, statutory or otherwise, that are or might be in conflict with the terms of this Guaranty and any legal or equitable discharge of the Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting the Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that the Guarantied Party protect, secure, perfect or insure any Lien or any property subject thereto;

(f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance of this Guaranty, notices of default under the Credit Agreement or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guarantied Obligations or any agreement related thereto, notices of any extension of credit to the Borrower and notices of any of the matters referred to in Sections 3 and 4 and any right to consent to any thereof;

(g) to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Guaranty.

The Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Loan Documents and that the waivers set forth in this Section 5 are knowingly made in contemplation of such benefits.

6 The Guarantor's Rights of Subrogation, Contribution, Etc.; Subordination of Other Obligations.

(a) Until the Guarantied Obligations shall have been paid in full and the Commitment shall have terminated, the Guarantor shall not exercise:

(i) any claim, right or remedy, direct or indirect, that the Guarantor now has or may hereafter have against the Borrower or any of its assets in connection with this Guaranty or the performance by the Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including, without limitation, (x) any right of subrogation, reimbursement or indemnification that the Guarantor now has or may hereafter have against the Borrower, (y) any right to enforce, or to participate in, any claim, right or remedy that the Guarantied Party now has or may hereafter have against the Borrower, and (z) any benefit of, and any right to participate in, any collateral or security now or hereafter held by the Guarantied Party, and

(ii) any right of contribution the Guarantor now has or may hereafter have against any other guarantor of any of the Guarantied Obligations.

(b) The Guarantor further agrees that, to the extent the agreement not to exercise any of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification the Guarantor may have against the Borrower or against any collateral or security, and any rights of contribution the Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights the Guarantied Party may have against the Borrower, to all right, title and

interest the Guarantied Party may have in any such collateral or security, and to any right the Guarantied Party may have against such other guarantor.

(c) Any indebtedness of the Borrower now or hereafter held by the Guarantor is subordinated in right of payment to the Guarantied Obligations, and any such indebtedness of the Borrower to the Guarantor collected or received by the Guarantor after an Event of Default has occurred and is continuing under the Credit Agreement, and any amount paid to the Guarantor on account of any subrogation, reimbursement, indemnification or contribution rights referred to in the preceding paragraph when all Guarantied Obligations have not been paid in full, shall be held in trust for the Guarantied Party and shall forthwith be paid over to the Guarantied Party to be credited and applied against the Guarantied Obligations.

7 Expenses.

The Guarantor agrees to pay, or cause to be paid, on demand, any and all reasonable costs and expenses (including reasonable fees and costs of counsel) incurred or expended by the Guarantied Party in connection with the enforcement of or preservation of any rights under this Guaranty.

8 Financial Condition of the Borrower.

The Guarantied Party shall not have any obligation (and the Guarantor waives any duty on the part of the Guarantied Party) to disclose or discuss with the Guarantor its assessment, or the Guarantor's assessment, of the financial condition of the Borrower or any matter or fact relating to the business, operations or condition of the Borrower. The Guarantor has adequate means to obtain information from the Borrower on a continuing basis concerning the financial condition of the Borrower and its ability to perform its obligations under the Loan Documents, and the Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and of all circumstances bearing upon the risk of non-payment of the Guarantied Obligations.

9 Amendments and Waivers; Termination.

(a) No amendment, modification, termination or waiver of any provision of this Guaranty, and no consent to any departure by the Guarantor therefrom, shall in any event be effective without the written concurrence of the Guarantied Party and, in the case of any such amendment or modification, the Guarantor. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

(b) Subject to Section 1(c), this Guaranty will terminate upon the later to occur of (i) the indefeasible payment in full in cash of all Guarantied Obligations, and (ii) the termination of the Commitment, at which time the Guarantied Party will execute and deliver to the Guarantor, at the Guarantor's expense, all releases and similar documents that the Guarantor may reasonably request to evidence such termination. Any execution and delivery of releases or other documents pursuant to this Section 11(b) will be without recourse to or warranty by the Guarantied Party.

10 Miscellaneous.

(a) The rights, powers and remedies given to the Guarantied Party by this Guaranty are cumulative and shall be in addition to and independent of all rights, powers and remedies given to the Guarantied Party by virtue of any statute or rule of law or in any of the Loan Documents or any other agreement between the Guarantor and the Guarantied Party or between the Borrower and the Guarantied Party. Any forbearance or failure to exercise, and any delay by the Guarantied Party in exercising any right, power

or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

(b) In case any provision in or obligation under this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(c) This Guaranty shall be governed by, and construed in accordance with, the laws of the State of New York**.**

(d) This Guaranty shall inure to the benefit of the Guarantied Party and its successors and assigns permitted pursuant to Section 7.07 of the Credit Agreement.

(e) The Guarantor hereby agrees not assign or delegate any or all of its rights or obligations under this Guaranty.

(f) The Guarantor hereto hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of any New York State court or federal court of the United States sitting in the Borough of Manhattan in the City of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Guaranty, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such New York State court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Guaranty in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(g) **Each of the Guarantor and the Guarantied Party hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Guaranty or any of the other Loan Documents or the actions of the Lender in the negotiation, administration, performance or enforcement hereof or thereof. THE GUARANTOR AND, BY ITS ACCEPTANCE OF THE BENEFITS HEREOF, THE GUARANTIED PARTY EACH (I) ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE GUARANTOR AND THE GUARANTIED PARTY TO ENTER INTO A BUSINESS RELATIONSHIP, THAT THE GUARANTOR AND THE GUARANTIED PARTY HAVE ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS GUARANTY OR ACCEPTING THE BENEFITS THEREOF, AS THE CASE MAY BE, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS, AND (II) FURTHER WA RRANTS AND REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS**

OF THIS GUARANTY. In the event of litigation, this Guaranty may be filed as a written consent to a trial by the court.

(h) This Guaranty may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original for all purposes; but all such counterparts together shall constitute but one and the same instrument.

(i) All notices hereunder shall be given in accordance with the terms of Section 7.02 of the Credit Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Guarantor and, solely for purposes of the waiver of the right to jury trial contained in Section 11, the Guarantied Party have caused this Guaranty to be duly executed and delivered by their respective signatories thereunto duly authorized as of the date first written above.

The Guarantor:

SUNPOWER CORPORATION

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

Guarantied Party:

SOCIÉTÉ GÉNÉRALE

By /s/ Matthew Vickerstaff
Name: Matthew Vickerstaff
Title: Managing Director

:

Exhibit 10.48

PROJECT LOAN FACILITY AGREEMENT

26 NOVEMBER 2010

€195,200,000

CREDIT FACILITY

for

ANDROMEDA PV S.R.L

arranged by
BNP PARIBAS, MILAN BRANCH

and

SOCIÉTÉ GÉNÉRALE, MILAN BRANCH

SUBJECT TO IMPOSTA SOSTITUTIVA PURSUANT TO ARTICLES 15 AND FOLLOWING OF ITALIAN PRESIDENTIAL DECREE NO. 601 OF 29 SEPTEMBER 1973

ALLEN & OVERY
Allen & Overy LLP

CONTENTS

THIS AGREEMENT has been entered into on 26 November 2010 in Rome

BETWEEN:

(1) **ANDROMEDA PV S.R.L.,** a company incorporated under the laws of Italy, whose registered office is at Piazza Filippo Meda 3, 20121 Milan, Italy, with a fully paid-up corporate capital of Euro 50,000, and whose registration number with the Companies' Registry of Milan, tax code and VAT No. is 06293700966 (the **Borrower**);

(2) **BNP PARIBAS MILAN BRANCH,** a company incorporated as a société anonyme under the laws of France, having its registered office at 16 Boulevard des Italiens, 75009 Paris, France, and registered on the Commercial Register in France under number 662042449 RCS PARIS, which acts for the purposes hereof through its Milan branch, whose offices are located at Piazza San Fedele 2, Milan (hereinafter an **Arranger** and an **Original Facility A Lender**);

(3) **SOCIÉTÉ GÉNÉRALE**, **MILAN BRANCH**, a company incorporated as a société anonyme under the laws of France, having its registered office at Boulevard Haussmann 29, 75009 Paris, with a fully paid-up corporate capital of Euro 933,027,038.75 (nine hundred and thirty three million twenty seven thousand and thirty eight/75), which acts for the purposes hereof through its Italian branch, whose offices are located in Via Olona 2, Milan, tax code and registration number at the Companies Registry of Milan No. 80112150158, enrolled in the register of the banks held by Bank of Italy under No. 4858 (hereinafter **SG**, an **Arranger** and an **Original Facility A Lender**); and

(4) **DEUTSCHE BANK AG, LONDON BRANCH,** incorporated under the laws of the Federal Republic of Germany, acting through its London office at Winchester House, 1 Great Winchester Street, London EC2N 2DB, United Kingdom (hereinafter the **Senior Agent**).

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

Common Terms Agreement means the common terms agreement dated the date of this Agreement between (among others) the Borrower, the Original Lenders and the Senior Agent.

Facility A1 Rate of Interest means:

(a) in respect of the first Interest Period for each Facility A1 Loan, the Initial Period Rate per annum; and

(b) in respect of subsequent Interest Periods, 6.152 per cent. per annum.

Facility A2 Rate of Interest means:

(c) in respect of the first Interest Period for each Facility A2 Loan, the Initial Period Rate per annum; and

(d) in respect of subsequent Interest Periods, 6.152 per cent. per annum.

Initial Period Rate means a rate of interest equal to EONIA plus 0.85 per cent.

Issuer Acceleration Notice has the meaning given to it in Condition 10(b).

Project Loan Payment Date means, in respect of payment of interest on a Project Loan, the date that is twelve Business Days prior to each Note Payment Date.

Party means a party to this Agreement.

Rate of Interest means

(a) the Facility A1 Rate of Interest; and

(b) the Facility A2 Rate of Interest.

(a) **Relevant Day-Count Fraction** means:with respect to a Facility A1 Loan and a Facility A2 Loan during the first Interest Period only, the actual number of days in the first Interest Period divided by 360.

(b) with respect to a Facility A1 Loan for any Interest Period after the first Interest Period, the actual number of days in the Interest Period divided by 365 (or, if any portion of that Interest Period falls in a leap year, the sum of (I) the actual number of days in that portion of the Interest Period falling in a leap year divided by 366 and (II) the actual number of days in that portion of the Interest Period falling in a non-leap year divided by 365); and

(c) with respect to a Facility A2 Loan for any Interest Period after the first Interest Period, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

Day Count Fraction = $\frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$

Where:

"Y_1" is the year, expressed as a number, in which the first day of the Interest Period falls;

"Y_2" is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"M_1" is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

"M_2" is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"D_1" is the first calendar day, expressed as a number, of the Interest Period, unless such number is 31, in which case D_1 will be 30; and

"D_2" is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31 and D_2 is greater than 29, in which case D_2 will be 30.

Relevant Lender means:

(a) an Original Lender; or

(b) any person which becomes a Relevant Lender after the date of this Agreement,

and, in each case, has not ceased to be a Relevant Lender in accordance with the terms of this Agreement and the Common Terms Agreement.

Request means a request for a Project Loan, substantially in the form of Schedule 1 (Form of Request).

1.2 Construction

(a) Capitalised terms defined in the Common Terms Agreement have, unless expressly defined in this Agreement, the same meaning in this Agreement.

(b) The provisions of clause 1.3 (Construction) of the Common Terms Agreement apply to this Agreement as if they were set out in full in this Agreement, except that references to the Common Terms Agreement will be construed as references to this Agreement.

1.3 Common Terms Agreement

The rights and obligations of the Parties to this Agreement are also governed by the Common Terms Agreement and this Agreement is to be read in conjunction with, and is subject to the terms and conditions of the Common Terms Agreement including, without limitation, all conditions precedent, representations, warranties, provisions relating to the Senior Agent, undertakings and Events contained therein. In the case of any inconsistency between the provisions of this Agreement and those of the Common Terms Agreement, the provisions of the Common Terms Agreement shall prevail.

2. FACILITIES

2.1 Facility A1

Subject to the terms of this Agreement and the other Finance Documents, the Relevant Lenders agree with the Borrower to make available to the Borrower a term loan facility in an aggregate amount equal to the aggregate of the Facility A1 Commitments of all the Relevant Lenders.

2.2 Facility A2

Subject to the terms of this Agreement and the other Finance Documents, the Relevant Lenders agree with the Borrower to make available to the Borrower a term loan facility in an aggregate amount equal to the aggregate of the Facility A2 Commitments of all the Relevant Lenders.

3. CONDITIONS PRECEDENT

The obligations of each Relevant Lender to participate in a Project Loan under this Agreement are subject to clause 4.1 (Conditions Precedent documents) and clause 4.2(a) (Further conditions precedent) of the Common Terms Agreement.

4. UTILISATION

4.1 Giving of Requests

(a) The Borrower may borrow a Project Loan by giving to the Senior Agent a duly completed Request.

(b) The Borrower shall give a Request in accordance with clause 4.1 (Conditions Precedent documents) of the Common Terms Agreement.

(c) Unless the Senior Agent otherwise agrees, the latest time for receipt by the Senior Agent of a duly completed Request is 11.00 a.m. on the day of the proposed borrowing.

(d) Each Request is irrevocable.

4.2 Completion of Requests

A Request for a Project Loan will not be regarded as having been duly completed unless (and in addition to the requirements specified in the Common Terms Agreement):

(a) it identifies the Facility under which the Project Loan is to be made;

(b) it specifies the purpose(s) for which the Project Loan will be applied and that purpose is allowed under this Agreement;

(c) the Drawdown Date is a Business Day falling within the Facilities A Availability Period;

(d) the amount of the Project Loan requested is the maximum undrawn amount available under the relevant Facility on the proposed Drawdown Date;

(e) the Request indicates that the Project Loan is to be paid:

(i) in an amount equal to 50 per cent. of the proceeds to the BNPP Drawdown Account; and

(ii) in an amount equal to 50 per cent. of the proceeds to the SG Drawdown Account; and

(f) the Request under a Facility is given at the same time as a Request under the other Facility.

4.3 Drawing for Imposta Sostitutiva

(a) Both Facility A1 and Facility A2 are subject to the *Imposta Sostitutiva* and the Borrower irrevocably authorises each Original Facility A Lender to withhold from the proceeds of any Project Loan an amount equal to the aggregate amount of the *Imposta Sostitutiva* payable by such Original Facility A Lender in respect of that Project Loan.

(b) Each Original Facility A Lender undertakes to use amounts withheld by it pursuant to Clause 4.3(a) to pay *Imposta Sostitutiva* due in respect of each Facility A1 Loan and Facility A2 Loan.

(c) Both Facility B1 and Facility B2 are subject to the *Imposta Sostitutiva* and the Borrower irrevocably authorises Société Générale to withhold from the proceeds of any Project Loan an amount equal to the aggregate amount of the *Imposta Sostitutiva* payable in respect of Facilities B1 and B2.

(d) SG undertakes to use amounts withheld by it pursuant to Clause 4.3(c) to pay *Imposta Sostitutiva* due in respect of Facility B1 Loan and Facility B2.

4.4 Advance of Project Loan

(a) The Senior Agent must promptly notify each Relevant Lender of the details of the requested Project Loan and the amount of its share in that Project Loan.

(b) The amount of each Relevant Lender's share of the requested Project Loan will be its Pro Rata Share on the proposed Drawdown Date.

(c) No Relevant Lender is obliged to participate in a Project Loan if as a result:

(i) its share in the Project Loan under Facility A1 or Facility A2 would exceed its Commitment for that Facility; or

(ii) the Project Loans under a Facility would exceed the Total Commitments for that Facility.

(d) If the conditions set out in this Agreement have been met, each Relevant Lender must pay its share in the requested Project Loan through its Facility Office on or before the Drawdown Date into the relevant Drawdown Account specified in the Request.

4.5 First utilisation of the Facilities

If no Project Loan is drawn within the Facilities A Availability Period, Facility A1 and Facility A2 shall be deemed irrevocably cancelled and this Agreement terminated, save for the provisions of Clause 9 (Taxes) and any provisions in the Common Terms Agreement relating to this Agreement and/or Facility A which survive termination.

5. REPAYMENT

(a) Subject to paragraph (b) below, the Borrower must repay the Project Loan in instalments on each Repayment Date in the amounts set out in Schedule 3 (Repayment Schedule for Project Loans).

(b) Repayment Instalments will be reduced by any prepayments of Project Loans or cancellations of Commitments made under the Common Terms Agreement or this Agreement in accordance with the Common Terms Agreement.

(c) The Borrower may not re-borrow any part of a Project Loan which is repaid.

6. PREPAYMENT AND CANCELLATION

6.1 Mandatory and involuntary prepayment

The Borrower must prepay a Project Loan if, and to the extent, required by the Common Terms Agreement.

6.2 Voluntary prepayment

The Borrower may prepay a Project Loan if, and to the extent, permitted by the Common Terms Agreement.

6.3 Cancellation

The Commitments of the Relevant Lenders will be cancelled if, and to the extent, required by the Common Terms Agreement.

6.4 Repayment, voluntary prepayment or refinancing by transfer

The Borrower may repay or prepay a Project Loan or refinance a Project Loan by transfer if, and to the extent, permitted by the Common Terms Agreement.

6.5 Miscellaneous provisions

No prepayment or cancellation is allowed except in accordance with the express terms of this Agreement and the Common Terms Agreement.

7. INTEREST

7.1 Calculation of interest

(a) Each Project Loan will bear interest from (and including) the Drawdown Date for that Project Loan at the rate per annum (expressed as a percentage) equal to the Facility A1 Rate of Interest in respect of the Facility A1 Loan and the Facility A2 Rate of Interest in respect of the Facility A2 Loan and, in relation to each Interest Period, such interest will be payable in euro partly in arrear and partly in advance on each Project Loan Payment Date subject to the terms of the Accounts Agreement. The amount of interest payable shall be determined in accordance with paragraph (b) below.

(b) The amount of interest payable in respect a Project Loan for any Interest Period shall be an amount equal to the product of:

R x PAO x DCF

(where R is the applicable Rate of Interest, PAO is the amount outstanding on that Project Loan on the first day of such Interest Period after any repayments made on such day (the Notional Principal Amount) and DCF is the Relevant Day-Count Fraction) rounded down to the nearest cent.

(c) The Borrower expressly acknowledges that the amount of interest payable on each Project Loan Payment Date must be no less than the aggregate of

(i) the amount of the SACE On-going Fees payable; and

(ii) the amount of interest payable on the Notes,

on the Note Payment Date falling at the end of the relevant Interest Period and agrees that interest shall accrue on the Notional Principal Amount for the entire Interest Period regardless of any repayment, prepayment or other reduction of the Facility A1 Loans and/or the Facility A2 Loans during such Interest Period without double counting any accrued interest paid by the Borrower on a prepayment of the Facility A1 Loans and/or the Facility A2 Loans during such Interest Period.

7.2 Payment of interest

Except where it is provided to the contrary in this Agreement, the Borrower must pay interest for the then current Interest Period on each Project Loan made to it on each Project Loan Payment Date.

8. INTEREST PERIODS

8.1 Selection

(a) Each Project Loan has successive Interest Periods.

(b) The first Interest Period of each Project Loan will commence on, and include, the Drawdown Date for that Loan and will end on, but exclude, the Scheduled Issue Date.

(c) The second Interest Period of each Project Loan will commence on, and include, the Scheduled Issue Date and will end on, but exclude, the first Note Payment Date.

(d) Each subsequent Interest Period of a Project Loan will be six months and will commence on, and include, a Note Payment Date and will end on, but exclude, the following Note Payment Date.

8.2 No overrunning the Final Maturity Date

If an Interest Period would otherwise overrun the Final Maturity Date, it will be shortened so that it ends on the Final Maturity Date.

8.3 Other adjustments

The Facility A Lenders and the Borrower may enter into such other arrangements as they may agree for the adjustment of Interest Periods and the consolidation and/or splitting of Project Loans, including, but not limited to, for the purpose of ensuring that payments of interest under the Project Loans are equal to projected payments of interest on the Notes.

8.4 Notification

The Senior Agent must notify each relevant Party of the duration of each Interest Period promptly after ascertaining its duration.

9. TAXES

9.1 Tax Gross-up

(a) Subject to Subclause 9.3 (Exception from Gross-up) all payments by the Borrower to a Relevant Lender under this Agreement shall be made free and clear of and without any deduction, except to the extent that the Borrower is required by law to make payment subject to any Taxes. If any Tax or amounts in respect of Tax must be deducted, from any amounts payable or paid by the Borrower to any Qualifying Lender under this Agreement, the Borrower shall pay such additional amounts as may be necessary to ensure that the relevant Qualifying Lender receives a net amount equal to the full amount which it would have received had payment not been made subject to Tax.

(b) A Relevant Lender and the Borrower must co-operate in completing any procedural formalities necessary for the Borrower to obtain authorisation to make that payment without a Tax deduction or to apply a Tax deduction at a lower rate possible according to the applicable law and regulations.

9.2 Tax receipts

All Taxes required by law to be deducted by the Borrower from any amounts paid or payable to any Relevant Lender under this Agreement shall be paid promptly by the Borrower when due and in any

event before penalties attach thereto and the Borrower shall, within 15 days of the payment being made, deliver to the Senior Agent for the Relevant Lender evidence reasonably satisfactory to that Relevant Lender (including all relevant tax receipts) that the payment has been duly remitted to the appropriate authority.

9.3 Exception from Gross-up

No additional amounts shall be paid for the account of a Qualifying Lender under Subclause 9.1 (Tax Gross-up) for or on account of:

(a) any Tax if, and to the extent that, such Qualifying Lender ceases to be exempt from deduction or withholding of that Tax in respect of payments to it under this Agreement for a reason that is not related to a change in any treaty, law or regulation or any official interpretation or administration of a treaty, law or regulation relating to Tax;

(b) any Tax in respect of which a Tax deduction would not have been imposed, or would have been imposed at a lower rate, should such Qualifying Lender have co-operated with the Borrower pursuant to Subclause 9.1 (Tax Gross-up), paragraph (b), above;

(c) any Tax assessed on a Qualifying Lender:

(i) under the law of the jurisdiction in which that Qualifying Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Qualifying Lender is treated as resident for tax purposes; or

(ii) under the law of the jurisdiction in which that Qualifying Lender 's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable, also including the imposta regionale sulle attività produttive (IRAP), by that Qualifying Lender.

9.4 Tax indemnity

(a) The Borrower shall (within 10 (ten) Business Days of demand by the Senior Agent) pay to a Relevant Lender an amount equal to the loss, liability or cost which that Relevant Lender determines will be or has been suffered for or on account of Tax by that Relevant Lender in respect of this Agreement.

(b) Paragraph (a) above does not apply to any Tax assessed on a Relevant Lender under the laws of the jurisdiction in which:

(i) that Relevant Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Relevant Lender is treated as resident for tax purposes; or

(ii) that Relevant Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if the Tax is imposed on or calculated by reference to the aggregate net income received or receivable by that Relevant Lender (including, without limitation, by reference to the net value of production of that Relevant Lender for IRAP purposes).

(c) Paragraph (a) above does not apply with respect to any amount of loss, liability or cost which is compensated for by an equal increased payment under the tax gross-up in

accordance with Subclause 9.1 (Tax Gross-up), paragraph (a), or would have been compensated by the tax gross-up but was not so compensated because the exclusion under Subclause 9.3 (Exception from Gross-up) applied.

(d) Paragraph (a) above does not apply to any Tax paid or due by a Relevant Lender as a consequence of its negligence or wilful misconduct.

(e) A Relevant Lender making, or intending to make, a claim under paragraph (a) above must promptly notify the Senior Agent of the event which will give, or has given, rise to the claim, following which the Senior Agent shall notify the Borrower.

9.5 Tax credits

(a) If, following the imposition of any Tax (an **Applicable Tax**) on any payment by the Borrower in consequence of which the Borrower is required under Subclause 9.1 (Tax Gross-up) to pay any additional amount in respect of Tax to a Qualifying Lender, that Qualifying Lender based on a common interpretation of any relevant laws or regulations and acting in good faith) receives or is granted a credit against or remission for or deduction from or in respect of any Applicable Tax payable by it, or obtains any other relief in respect of any Tax on its profit or income, which in that Qualifying Lender's opinion in good faith is both identifiable and quantifiable by it (any of the foregoing, to the extent so identifiable and quantifiable, being referred to as a saving), that Qualifying Lender shall, to the extent that it can do so without prejudice to its right to the relevant saving and subject to the Borrower's obligation to repay the amount to that Qualifying Lender if the relevant saving is subsequently disallowed or cancelled (which repayment shall be made promptly on receipt of notice by the Borrower of such disallowance or cancellation), reimburse the Borrower as soon as reasonably practicable after receipt of such saving by that Qualifying Lender with such amount as that Qualifying Lender shall in its sole opinion but in good faith have concluded to be the lower of (i) the amount or value of the relevant saving; and (ii) such amount as will leave it, after that reimbursement in the same after-tax position as it would have been if the additional amount had not been due.

(b) Nothing contained in this Agreement shall interfere with the right of a Qualifying Lender to arrange its Tax and other affairs in whatever manner it thinks fit and, in particular, no Qualifying Lender shall be under any obligation to claim relief from Tax on its corporate profits, or from any similar Tax liability, in respect of the Applicable Tax, or to claim relief in priority to any other claims, relief, credits or deductions available to it (but shall act reasonably in deciding whether to claim such relief) or to disclose details of its Tax affairs. A Qualifying Lender shall not be required to disclose any information it considers confidential relating to the organisation of its affairs.

9.6 Value added taxes

(a) All amounts set out, or expressed to be payable under a Finance Document by any Party to a Finance Party for Facilities A1 and A2 which (in whole or in part) constitute the consideration for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (c) below, if VAT is chargeable on any supply made by any Finance Party for Facilities A1 and A2 to any Party under a Finance Document, that Party must pay to the Finance Party for Facilities A1 and A2 (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT (and such Finance Party for Facilities A1 and A2 must promptly provide an appropriate VAT invoice to that Party).

(b) If VAT is chargeable by reference to any supply made by any Finance Party for Facilities A1 and A2 (the **Supplier**) to any other Finance Party for Facilities A1 and A2 (the **Recipient**) under a Finance Document, and any Party (the **Relevant Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse the Recipient in respect of that consideration), the relevant Party must also pay to the Supplier (in addition to and at the same time as paying that amount) an amount equal to the amount of VAT. The Recipient must promptly pay to the Relevant Party an amount equal to any credit or repayment from the relevant tax authority which it rea sonably determines relates to the VAT chargeable on that supply.

(c) Where a Finance Document requires a Party to reimburse a Finance Party for Facilities A1 and A2 for any costs or expenses, that Party must also at the same time pay and indemnify that Finance Party for Facilities A1 and A2 against all VAT incurred by that Finance Party for Facilities A1 and A2 in respect of the costs or expenses but only to the extent that the relevant Finance Party for Facilities A1 and A2 (reasonably) determines that neither it nor any other member of any group of which it is a member for VAT purposes is entitled to credit or repayment from the relevant tax authority in respect of the VAT.

9.7 Imposta Sostitutiva

This Agreement will benefit from the Imposta Sostitutiva regime.

10. PAYMENTS

All payments by a Party under the Finance Documents must be made in accordance with clause 6 (Payments) of the Common Terms Agreement.

11. ACCELERATION

The provisions of clause 15.32 (Acceleration) of the Common Terms Agreement shall apply to this Agreement.

12. FEES

No fees are payable by the Borrower except in accordance with the express terms of the Common Terms Agreement.

13. AMENDMENTS AND WAIVERS

Any provision of this Agreement may only be amended or waived in accordance with Clause 21 (Amendments and Waivers) of the Common Terms Agreement.

14. CHANGES TO THE PARTIES

14.1 Assignments and transfers by Relevant Lenders

A Relevant Lender may only assign or transfer any of its rights and obligations under this Agreement as provided for, and in accordance with, the Common Terms Agreement.

15. SENIOR AGENT

(a) It is hereby acknowledged and agreed by the other parties hereto that the Senior Agent has no responsibility for any of the obligations of any other party nor shall it be liable to any

other party for any action or omission by the Senior Agent pursuant to this Agreement except to the extent that any such loss, liability, cost, damages or expenses have resulted from the Senior Agent's gross negligence, fraud or wilful misconduct.

(b) It is hereby further acknowledged and agreed that the Senior Agent will exercise or refrain from exercising its rights, powers, benefits, duties, functions and/or discretions conferred on it under this Agreement and any other Finance Document (including, without limitation, in giving its consent, approval or authorisation to any event, matter or thing requested or making any determination hereunder or thereunder) in accordance with and subject to the provisions of the Common Terms Agreement or the Intercreditor Agreement and, in the event of any inconsistency between the Common Terms Agreement and the Intercreditor Agreement, from the Issue Date until the redemption in full of the Notes, the Intercreditor Agreement shall prevail.

16. NOTICES

Any communication in connection with a Finance Document must be made in accordance with clause 28 (Notices) of the Common Terms Agreement.

17. GOVERNING LAW

This Agreement, and any non-contractual obligations arising out of or in connection with it, is governed by Italian law.

18. ENFORCEMENT

For the benefit of each Finance Party for Facilities A1 and A2, the Borrower agrees that the terms of clause 32.1 (Jurisdiction) of the Common Terms Agreement shall apply mutatis mutandis to any dispute in connection with any Finance Document.

SCHEDULE 1

FORM OF REQUEST

To: [AGENT] as **Senior Agent**

From: [ ]

Date: [ ]

ANDROMEDA PV S.R.L. - Common Terms Agreement dated [l] 2010 (the Agreement)

1. We refer to the Agreement. Capitalised terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement. This is a Request.

2. We wish to borrow the [Facility A1/Facility A2] Loan on the following terms:

   (a) Drawdown Date: [*insert Business Day falling after signing of the Agreement*]

   (b) Amount/currency: [*insert amount of Facility A1 / Facility A2 Commitment*]

3. Our payment instructions are: [€[l] *to BNPP Drawdown Account and* €[l] *to SG Drawdown Account*].

4. We confirm that each condition precedent under the Agreement which must be satisfied on the date of this Request is so satisfied.

5. This Request is irrevocable.

_____

ANDROMEDA PV S.R.L.

SCHEDULE 2

FORM OF WITHDRAWAL REQUEST

To: [AGENT] as **Senior Agent**

CC: [ENGLISH ACCOUNT BANK][SG DRAWDOWN ACCOUNT BANK][BNPP DRAWDOWN ACCOUNT BANK]

From: [ ]

Date: [ ]

ANDROMEDA PV S.R.L. - Common Terms Agreement dated [l] 2010 (the Agreement)

1. We refer to the Agreement. Capitalised terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement. This is a Withdrawal Request.

2. We wish to withdraw the following amount from the [Equity Account][Deposit Account][SG Drawdown Account][BNPP Drawdown Account]: [l]

3. Our payment instructions are:

4. We confirm that each condition precedent under the Agreement which must be satisfied on the date of this Withdrawal Request is so satisfied.

5. This Withdrawal Request is irrevocable.

_____

ANDROMEDA PV S.R.L.

SCHEDULE 3

REPAYMENT SCHEDULE FOR PROJECT LOANS

	Repayment Date	Repayment Instalment (Euro)	
		Facility A1 Loan	Facility A2 Loan
1.	September 2012	2,500,000.00	2,500,000.00
2.	March 2013	960,000.00	960,000.00
3.	September 2013	2,090,000.00	2,090,000.00
4.	March 2014	1,150,000.00	1,150,000.00
5.	September 2014	2,360,000.00	2,360,000.00
6.	March 2015	1,470,000.00	1,470,000.00
7.	September 2015	2,670,000.00	2,670,000.00
8.	March 2016	1,630,000.00	1,630,000.00
9.	September 2016	2,780,000.00	2,780,000.00
10.	March 2017	1,660,000.00	1,660,000.00
11.	September 2017	2,970,000.00	2,970,000.00
12.	March 2018	1,860,000.00	1,860,000.00
13.	September 2018	3,130,000.00	3,130,000.00
14.	March 2019	2,090,000.00	2,090,000.00
15.	September 2019	3,290,000.00	3,290,000.00
16.	March 2020	2,270,000.00	2,270,000.00
17.	September 2020	3,490,000.00	3,490,000.00
18.	March 2021	2,440,000.00	2,440,000.00
19.	September 2021	3,750,000.00	3,750,000.00
20.	March 2022	2,670,000.00	2,670,000.00
21.	September 2022	3,920,000.00	3,920,000.00
22.	March 2023	2,830,000.00	2,830,000.00

	Repayment Date	Repayment Instalment (Euro)	
		Facility A1 Loan	Facility A2 Loan
23.	September 2023	4,130,000.00	4,130,000.00
24.	March 2024	3,040,000.00	3,040,000.00
25.	September 2024	4,270,000.00	4,270,000.00
26.	March 2025	3,090,000.00	3,090,000.00
27.	September 2025	4,500,000.00	4,500,000.00
28.	March 2026	2,950,000.00	2,950,000.00
29.	September 2026	4,490,000.00	4,490,000.00
30.	March 2027	3,180,000.00	3,180,000.00
31.	September 2027	4,630,000.00	4,630,000.00
32.	March 2028	3,530,000.00	3,530,000.00
33.	September 2028	4,810,000.00	4,810,000.00
34.	November 2028	1,000,000.00	1,000,000.00

/s/ Margareth Carducci

ANDROMEDA PV S.R.L.
as Borrower

/s/ Marco Germani

BNP PARIBAS, MILAN BRANCH
as Arranger and Original Facility A Lender

/s/ Leonardo Pecciarini

SOCIÉTÉ GÉNÉRALE, MILAN BRANCH
as Arranger and Original Facility A Lender

/s/ Davide Pluchino

DEUTSCHE BANK AG, LONDON BRANCH
as Senior Agent

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

Exhibit 10.49

COMMON TERMS AGREEMENT

26 NOVEMBER 2010

between

BNP PARIBAS, MILAN BRANCH

SOCIÉTÉ GÉNÉRALE, MILAN BRANCH

DEUTSCHE BANK AG, LONDON BRANCH

and

ANDROMEDA PV S.R.L.

arranged by

BNP PARIBAS, MILAN BRANCH

and

SOCIÉTÉ GÉNÉRALE, MILAN BRANCH

SUBJECT TO IMPOSTA SOSTITUTIVA PURSUANT TO ARTICLES 15 AND FOLLOWING OF ITALIAN PRESIDENTIAL DECREE NO. 601 OF 29 SEPTEMBER 1973

ALLEN & OVERY

Allen & Overy LLP

CONTENTS

THIS AGREEMENT has been entered into on 26 November 2010 in Rome

BETWEEN:

(1) **ANDROMEDA PV S.R.L.**, a company incorporated under the laws of Italy, whose registered office is at Piazza Filippo Meda 3, 20121 Milan, Italy with a fully paid-up corporate capital of Euro 50,000, and whose registration number with the Companies' Registry of Milan, tax code and VAT No. is 06293700966 (the **Borrower**);

(2) **BNP PARIBAS, MILAN BRANCH,** a company incorporated as a société anonyme under the laws of France, having its registered office at 16 Boulevard des Italiens, 75009 Paris, France, and registered on the Commercial Register in France under number 662042449 RCS PARIS, which acts for the purposes hereof through its Milan branch, whose offices are located at Piazza San Fedele 2, Milan, (hereinafter an **Arranger** and an **Original Lender**);

(3) **SOCIÉTÉ GÉNÉRALE**, **MILAN BRANCH**, a company incorporated as a société anonyme under the laws of France, having its registered office at Boulevard Haussmann 29, 75009 Paris, with a fully paid-up corporate capital of Euro 933,027,038.75 (nine hundred and thirty-three million twenty-seven thousand and thirty-eight/75), which acts for the purposes hereof through its Italian branch, whose offices are located in Via Olona 2, Milan, tax code and registration number at the Companies Registry of Milan No. 80112150158, enrolled in the register of the banks held by Bank of Italy under No. 4858 (hereinafter an **Arranger** and an **Original Lender**); and

(4) **DEUTSCHE BANK AG, LONDON BRANCH**, incorporated under the laws of the Federal Republic of Germany, acting through its London office at Winchester House, 1 Great Winchester Street, London EC2N 2DB, United Kingdom (the **Senior Agent**).

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

Account Banks means:

(a) the Project Accounts Bank;

(b) the VAT Account Bank;

(c) the SG Drawdown Account Bank;

(d) the BNPP Drawdown Account Bank; and

(e) the English Account Bank.

Accounts Agreements means the English Accounts Agreement and the Project Accounts Agreement.

Actual/360 means the actual number of days in the Interest Period divided by 360.

Administrative Party means any of the Arrangers or the Senior Agent.

Adviser means the Technical Adviser, the Insurance Adviser, the Lenders' Legal Advisers, the Market Adviser, the Model Adviser, the Tax Adviser or any other adviser appointed under this Agreement.

AEEG means the Italian Authority for electricity and gas (Autorità per l'energia elettrica e il gas).

AEEG Resolution 90 means the AEEG Resolution No. 90/07, as integrated and amended by the AEEG Resolutions ARG/elt 74/08, ARG/elt 99/08, ARG/elt 161/08 and ARG/elt 1/09.

AEEG Resolution 280 means the AEEG Resolution No. 280/07.

Affiliate means a Subsidiary or a Holding Company of a person or any other Subsidiary of that Holding Company.

Approved Auditor means PricewaterhouseCoopers, Deloitte, Ernst & Young, KPMG or any of their related entities operating in Italy or any other auditor approved by the Senior Agent.

Assignment of VAT Receivables means the agreement in the form attached in Schedule 9 hereto, entered into by the Borrower in accordance with Clause 13.15 (Tax affairs).

Authorisation means an authorisation, consent, approval, resolution, licence, exemption, filing, notorisation or registration.

Availability Period means:

(a) in respect of Facilities A1 and A2 (the **Facilities A Availability Period**), the period from and including the Financial Close up to and including the date falling 20 Business Days after Financial Close;

(b) in respect of a New Facility B1 Loan (the **Facility B1 Availability Period**), the period from and including Financial Close up to and including 31 January 2011;

(c) in respect of a New Facility B2 Loan (the **Facility B2 Availability Period**), the period from and including 1 January 2011 up to and including 30 September 2011;

(d) in respect of Rollover Facility B1 Loans and Rollover Facility B2 Loans (the **Facility B Rollover Availability Period**), the period from and including Financial Close up to and excluding the Final Maturity Date for Facility B1 and Facility B2; and

(e) in respect of a Withdrawal (the **Withdrawal Availability Period**), the period from and including Financial Close up to and including 30 September 2011.

Available Commitment means a Facility A1 Commitment, a Facility A2 Commitment, an Available Facility B1 Commitment or an Available Facility B2 Commitment.

Available Facility B1 Commitment means, in relation to a Lender, an amount initially equal to its Facility B1 Commitment as reduced and/or increased from time to time pursuant to the terms of this Agreement and/or the VAT Facility Agreement less:

(a) the amount of such Lender’s participation in any outstanding Facility B1 Loans and, prior to the expiry of the Facility B1 Availability Period, Facility B2 Loans; and

(b) in relation to any proposed drawdown, the amount of such Lender’s participation in any Facility B1 Loans and, prior to the expiry of the Facility B1 Availability Period, Facility B2

Loans that are due to be made under Facility B1 or Facility B2 on or before the proposed Drawdown Date,

other than, in each case, such Lender's participation in any Facility B1 Loans and, prior to the expiry of the Facility B1 Availability Period, Facility B2 Loans that are due to be repaid or prepaid on or before the proposed Drawdown Date,

provided that the Available Facility B1 Commitment of a Lender shall never exceed that Lender's Facility B1 Commitment.

Available Facility B2 Commitment means, in relation to a Lender, an amount initially equal to its Facility B2 Commitment as reduced and/or increased from time to time pursuant to the terms of this Agreement and/or the VAT Facility Agreement less:

(a) the amount of such Lender's participation in any outstanding Facility B2 Loans and, prior to the expiry of the Facility B2 Availability Period, Facility B1 Loans; and

(b) in relation to any proposed drawdown, the amount of such Lender's participation in any Facility B2 Loans and, prior to the expiry of the Facility B2 Availability Period, Facility B1 Loans that are due to be made under Facility B2 or Facility B1 on or before the proposed Drawdown Date,

other than, in each case, such Lender's participation in any Facility B2 Loans and, prior to the expiry of the Facility B2 Availability Period, Facility B1 Loans that are due to be repaid or prepaid on or before the proposed Drawdown Date,

provided that the Available Facility B2 Commitment of a Lender shall never exceed that Lender's Facility B2 Commitment.

Available Funding means, on any date, the aggregate of:

(a) the undrawn Total Available Commitments; and

(b) the amount of Other Eligible Funding,

in each case on such date which is available for the Borrower to meet Project Costs.

Bankruptcy Law means the Italian bankruptcy law set out in Royal Decree No. 267 of 16 March 1942, as amended by Legislative Decree No. 5 dated 9 January 2006 and by Legislative Decree No. 169 dated 7 September 2007 and as from time to time amended and/or integrated.

Borrower Document means a Finance Document, an Equity Document or a Project Document.

Borrower Right of Use Agreement means the contract executed on 16 September 2009, as amended and/or restated from time to time, between the Borrower and Cassiopea PV S.r.l., whereby the Borrower was granted a right of use on the Common Infrastructure, structured as a "contratto per persona da nominare".

Borrower's Advisers and Auditors means Allen & Overy LLP, Studio Legale Chiomenti, Deloitte, Bernoni, Operis Business Engineering Limited, Solar Engineering - Decker & Mack GmbH, 8.2 Ingenieurpartnerschaft - Obst & Ziehmann, AquaSoli GmbH & Co. KG, STU Engineering S.r.l., Armando Latino, Meyers-Reynolds & Associates, Inc, Fraunhofer Institut Solare Energiesysteme, Poyry Energy Consulting, OMNIA S.r.l., European Engineering - Consorzio Stabile di Ingegneria,

Alfa Tau, Studio Tribuatario e societario, T click S.r.l., Dr. Schroeter & Dr. Kneidl Beratende Ingenieure GmbH.

Borrower's Guarantee means:

(a) each performance bond for an amount equal to 20% of the Price (as defined under the Plant EPC Contracts) to be issued pursuant to 11.1(a)(ii) of the Plant EPC Contracts (**Subsequent Performance Bank Guarantee**);

(b) once received, each performance bond for an amount equal to 15% of the Price (as defined under the Plant EPC Contracts) to be issued pursuant to clause 11.2(a) and Annex 15 Part 2 of the Plant EPC Contracts (**Initial Warranty Bank Guarantee**);

(c) once received, each performance bond for an amount equal to 10% of the Price (as defined under the Plant EPC Contracts) to be issued pursuant to clause 11.2(a) and Annex 16 Part 2 of the Plant EPC Contracts (**Subsequent Warranty Bank Guarantee**);

(d) if and once received, each parent company guarantee to be issued by the EPC Co-obligor pursuant to clause 11.3 and Annex 15 of the Plant EPC Contracts and Clause 10.2 of the Direct Agreements executed in connection with the Plant EPC Contracts;

(e) if and once received, each parent company guarantee to be issued by the O&M Co-obligor pursuant to Clause 4.3 and Annex 8 of the Plant O&M Agreements and Clause 9.2 of the Direct Agreements executed in connection with the Plant O&M Agreements; and

(f) each first demand bank guarantee to be issued by Banca Popolare di Sondrio Soc. Coop. p.a. and delivered by the Substation Operator pursuant to clause 12 and Annex 3 of the Substation O&M Agreements.

Borrower's Legal Adviser means an international or Italian first ranking law firm.

Break Costs means the amount (if any) which a Lender is entitled to receive under Subclause 19.5 (Break Costs).

Business Day means any day (other than a Saturday or Sunday) on which banks are open for general business in Luxembourg, Milan, Rome and London and which is a TARGET Settlement Day.

Calculations and Forecasting Agreement means the calculations and forecasting agreement dated the date of this Agreement between the Borrower, the Senior Agent and the Lenders.

Calendar Quarter Date means each of 31st March, 30th June, 30th September and 31st December in any calendar year.

Cash Collateral Account means the account no. IBAN *** opened by the Quotaholder with the Project Accounts Bank.

Charge over Accounts means:

(a) the Charge over Deposit Account;

(b) the Charge over Equity Account;

(c) the Charge over SG Drawdown Account; and

(d) the Charge over BNPP Drawdown Account.

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

***Charge over Deposit Account** means the charge over the Deposit Account, entered into on the same date as the English Accounts Agreement between, among others, the Borrower and the Senior Agent.*

***Charge over BNPP Drawdown Account** means the charge over the BNPP Drawdown Account, entered into on the same date as the English Accounts Agreement between BNP Paribas, Milan Branch and the Borrower.*

***Charge over SG Drawdown Account** means the charge over the SG Drawdown Account, entered into on the same date as the English Accounts Agreement between Société Générale, Milan Branch and the Borrower.*

***Charge over Equity Account** means the charge over the Equity Account, entered into on the same date as the English Accounts Agreement between, among others, the Borrower and the Senior Agent.*

***Class A1 Controlling Party** has the meaning given in the Intercreditor Agreement.*

***Class A1 Reference BTP Rate** means the yield-to-maturity of a benchmark BTP (Buoni del Tesoro Poliennali) issued by the Republic of Italy with a maturity closest to the remaining weighted average life of the Class A1 Notes on the date on which any Make-whole Amount is calculated, which shall be provided to the Senior Agent by an investment bank selected by the Senior Agent and approved by the Majority Lenders.*

***Class A2 Controlling Party** has the meaning given in the Intercreditor Agreement.*

***Class A2 Reference BTP Rate** means the yield-to-maturity of a benchmark BTP (Buoni del Tesoro Poliennali) issued by the Republic of Italy with a maturity closest to the remaining weighted average life of the Class A2 Notes on the date on which any Make-whole Amount is calculated, which shall be provided to the Senior Agent by an investment bank selected by the Senior Agent and approved by the Majority Lenders.*

***Commitment** means a Facility A1 Commitment, or a Facility A2 Commitment, or a Facility B1 Commitment or a Facility B2 Commitment.*

***Common Infrastructure** means the Substation and the further assets identified in schedule 1 (Ulteriori Infrastrutture) of the Borrower Right of Use Agreement.*

***Common Infrastructure Insurance Proceeds** means all proceeds of Insurance (whether by way of claims, return of premia, ex gratia settlements or otherwise) for physical damage loss in respect of the Common Infrastructure.*

***Compensation** means any sum received by the Borrower in respect of:*

(a) Performance LDs;

(b) the nationalisation, expropriation, confiscation or requisition of all or part of the Project Facilities;

(c) the forfeiture, suspension or other abrogation by any Government Entity of any part of the rights of the Borrower under the Borrower Documents or the Transaction Authorisations; or

(d) any other intervention in the Project by or on behalf of any Government Entity.

Computer Model means the computerised financial model of the Project forecasting its cash flows, profit and loss accounts, balance sheets, and ratios throughout the life of the Project, stored on CD-Rom, and consisting of algorithms as set out on the print-out from such CD-Rom.

Conditions means the Terms and Conditions of the Notes (as set out in schedule 2 to the Intercreditor Agreement).

Confidentiality Agreement means an agreement to be executed pursuant to Clause 24 (Disclosure of Information) in form and substance of the confidentiality agreement under Schedule 6 (Confidentiality Agreement).

Construction Costs means all amounts payable by the Borrower under the Interconnection Agreements, the Plant EPC Contracts, the Substation EPC Contracts and the Dedicated Connection Services Agreements.

Construction Period means, in relation to each Plant, the period ending on the Project Completion Date for that Plant.

Construction Termination Amount means any and all amounts received by the Borrower in case of termination due to default of: (i) the Plant EPC Contractor pursuant to clauses 15.1 and 15.2 of the Plant EPC Contracts; and (ii) the Substation Contractor pursuant to clause 8/A/2 of the Substation EPC Contracts.

Contested Taxes has the meaning given in Clause 13.15(a)(ii) (Tax affairs).

Conto Energia Concession means a concession agreement between the Borrower and GSE to be executed, with reference to each Solar Block, pursuant to terms and conditions provided for under the Conto Energia Decree and the AEEG Resolution 90.

Conto Energia Decree means the Ministry of Economic Development Decree dated 19 February 2007 or the Ministry of Economic Development Decree dated 6 August 2010, as applicable.

Controlling Party has the meaning given in the Intercreditor Agreement.

Convenzione means the agreement entered into between the Borrower and the Municipality of Montalto di Castro:

(a) in respect of Montalto 45MW Plant, on 29 March 2010; and

(b) in respect of Montalto 6MW Plant, on 2 August 2010.

Debt:Equity Ratio means the ratio of the amounts outstanding under Facility A1 and Facility A2 to Eligible Equity.

Decree 239 means the Italian legislative decree No. 239 of 1 April 1996, as subsequently amended and supplemented.

Dedicated Connection Service Agreement means the two agreements providing, inter alia, for two dedicated connection lines in order to transmit data from the Plant to the Terna Dispacciamento Control Centers, to be entered into by the Borrower with Terna S.p.A..

Development Costs means all costs (including, without limitation, Land Costs), verified to the satisfaction of the Arrangers, which the Sponsor and its Affiliates have incurred on the Borrower's

behalf in developing the Project (including internal costs such as salaries etc) prior to Financial Close and funded through Quotaholder Subordinated Debt.

Direct Agreement means each direct agreement between the Borrower, the Senior Agent and (respectively):

(a) the Plant EPC Contractor and the EPC Co-obligor (each an **EPC Direct Agreement**);

(b) the Plant Operator and the O&M Co-obligor (each an **O&M Direct Agreement** and, together with the EPC Direct Agreements, the **Relevant Direct Agreements**);

(c) the Manager; and

(d) the Suppliers,

or any other document designated as such by the Senior Agent and the Borrower.

Direct Agreement Indemnity Provision means each of:

(a) clause 10.1 of each EPC Direct Agreement; and

(b) clause 9.1 of each O&M Direct Agreement.

Discharge Date has the meaning given to it in the Equity Subscription Agreement.

Disruption Event means:

(a) a material disruption to the payment or communications systems or to the financial markets which are required to operate in order for payments to be made (or other transactions to be carried out) in connection with the transactions contemplated by the Finance Documents, which is not caused by, and is beyond the control of, any of the Parties; or

(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing it, or any other Party from:

(i) performing its payment obligations under the Finance Documents; or

(ii) communicating with other Parties under the Finance Documents,

and which is not caused by, and is beyond the control of, the Party whose operations are disrupted.

Distribution means any payment, other than a payment due and payable under a Project Document, by the Borrower from the Distribution Account.

Distribution Date means, in respect of each Scheduled Calculation Date, the first Business Day following the date on which the Historic Statement, Forecast, Historic Annual Debt Service Cover Ratio, Projected Annual Debt Service Cover Ratio and the Loan Life Cover Ratio for that Scheduled Calculation Date have been finally determined.

Drawdown Accounts means the BNPP Drawdown Account and the SG Drawdown Account.

Drawdown Date means each date on which a Facility is utilised.

Early Redemption Additional Amount means the amount that the Issuer will be liable to pay to the tax authority under Decree 239 as a result of the Notes having been redeemed in whole prior to the expiry of the Initial Period.

EIB means the European Investment Bank.

EIB Cancellation Amount means the amount payable to the EIB pursuant to Clause 16 of the Subscription Agreement in the event that the Issue Date does not occur on the Scheduled Issue Date (which amount payable may be subject to set-off in accordance with Clause 16.2 of the Subscription Agreement).

EIB Make-whole Additional Amount has the meaning ascribed to it in the Subscription Agreement.

EIB Up-front Fees means the combined management and underwriting commission payable to the EIB pursuant to the terms of the Subscription Agreement.

Eligible Equity means, from time to time, the aggregate of:

(a) the amount of the Borrower's paid up quota capital (including any equity reserve including those relating to *versamenti in conto futuro aumento di capitale*); and

(b) the principal amount of all outstanding Quotaholder Subordinated Debt.

Eligible Institution means:

(a) any depository institution organised under the laws of any state which is a member of the European Union or of the United States of America,

(i) whose unsecured and unsubordinated debt obligations are rated at least "P-1" by Moody's in respect of short-term debt and at least "A1" by Moody's in respect of long-term debt; or

(ii) whose obligations under the Transaction Documents to which it is a party are guaranteed, in a manner that is in accordance with Moody's rating criteria, by a depository institution organised under the laws of any state which is a member of the European Union or of the United States of America, whose unsecured and unsubordinated debt obligations are rated at least "P-1" by Moody's in respect of short-term debt and at least "A1" by Moody's in respect of long-term debt; and

(a) with respect to Deutsche Bank S.p.A. acting as Project Accounts Bank under the terms of the Project Accounts Agreement, for so long as:

(i) Deutsche Bank AG's unsecured and unsubordinated debt obligations are rated at least "P-1" by Moody's in respect of short-term debt and at least "A1" by Moody's in respect of long-term debt;

(ii) it continues to be owned (directly or indirectly) by Deutsche Bank AG;

(iii) there are no material changes in the ownership structure of Deutsche Bank AG which would result in the downgrading of the Notes; and

(iv) the words "Deutsche Bank" are contained in its legal name,

and, in any case, only until such date as Moody's notifies the Lenders that Deutsche Bank S.p.A no longer qualifies as an Eligible Institution.

Eligible VAT Payment means a VAT Payment that qualifies for the annual refund pursuant to Article 30 and 38-bis of Presidential Decree n. 633 of 26 October 1972.

English Accounts Agreement means the accounts agreement dated the date of this Agreement between inter alia the Borrower, the Drawdown Account Banks, the English Account Bank, the Lenders and the Senior Agent.

Environmental Law has the meaning given to it in Subclause 12.10 (Environmental matters).

EONIA means the Euro Overnight Index Average.

EPC Co-obligor means SunPower Corporation, a company duly incorporated under the laws of Delaware, whose registered office is in 3939 North First Street, San Jose, California, IRS Employer Identification Number 94-3008969.

Equity means the quota capital (including any equity reserve such as, without limitation, those relating to versamenti in conto futuro aumento di capitale) of the Borrower and the Quotaholder Subordinated Debt.

Equity Documents means:

(a) the Equity Subscription Agreement; and

(b) the Quotaholder Subordinated Loan Agreement.

Equity Subscription Agreement means the equity subscription agreement entered into on the date hereof between the Quotaholder, the Borrower, the Senior Agent and the Lenders, regulating, inter alia, the injection of Equity by the Quotaholder.

EURIBOR means:

(a) for an Interest Period of any Facility B1 Loan or Facility B2 Loan with a duration equal to one, two or six calendar months or any overdue amount denominated in Euro under any Loan:

(i) the applicable Screen Rate; or

(ii) if no Screen Rate is available for that Interest Period of that Loan or overdue amount, the arithmetic mean (rounded upward to four decimal places) of the rates as supplied to the Senior Agent at its request quoted by the Reference Banks to leading banks in the European interbank market,

in each case as of 11.00 a.m. (Brussels time) on the Rate Fixing Day for the offering of deposits in Euro for a period comparable to that Interest Period; or

(b) in relation to a Facility B1 Loan or a Facility B2 Loan with an Interest Period with a duration not equal to one, two or six calendar months, EURIBOR will be the arithmetic mean (rounded upward to four decimal places) of the rates as supplied to the Senior Agent at its request quoted by the Reference Banks to leading banks in the European interbank market as of 11.00 a.m. (Brussels time) on the Rate Fixing Day for the offering of deposits in Euro for a period comparable to the relevant Interest Period.

Euro and € means the single currency of the Participating Member States.

Event means:

(a) a Relevant Event; or

(b) a Potential Relevant Event.

Excess Equity Amount means an amount equal to € 819,000.

Facilities A1 and A2 means Facility A1 and Facility A2.

Facilities B1 and B2 means Facility B1 and Facility B2.

Facility means a credit facility made available under this Agreement and the other Finance Documents.

Facility A Lenders means the Lenders under Facility A1 and Facility A2.

Facility A1 means the facility made available under the Project Loan Facility Agreement, designated therein as "Facility A1" and referred to in Subclause 2.1 (Facility A1).

Facility A1 Commitment means:

(a) for an Original Lender the amount set opposite its name in Schedule 1 (Original Parties) under the heading **Facility A1 Commitment** and the amount of any other Facility A1 Commitment it acquires; and

(b) for any other Lender, the amount of any Facility A1 Commitment it acquires,

to the extent not cancelled, transferred or reduced under this Agreement or the Project Loan Facility Agreement.

Facility A1 Loan means the Loan made available under Facility A1.

Facility Agreement means each of the Project Loan Facility Agreement and VAT Facility Agreement.

Facility A2 means the facility made available under the Project Loan Facility Agreement, designated therein as "Facility A2" and referred to in Subclause 2.2 (Facility A2).

Facility A2 Commitment means:

(a) for an Original Lender the amount set opposite its name in Schedule 1 (Original Parties) under the heading **Facility A2 Commitment** and the amount of any other Facility A2 Commitment it acquires; and

(b) for any other Lender, the amount of any Facility A2 Commitment it acquires,

to the extent not cancelled, transferred or reduced under this Agreement or the Project Loan Facility Agreement.

Facility A2 Loan means the Loan made available under Facility A2.

Facility B Commitment means a Facility B1 Commitment and a Facility B2 Commitment.

Facility B Lender means a Lender under Facility B1 and Facility B2.

Facility B1 means the facility made available under the VAT Facility Agreement, designated therein as "Facility B1" and referred to in Subclause 2.3 (Facility B1).

Facility B1 Commitment means:

(a) for an Original Lender the amount set opposite its name in Schedule 1 (Original Parties) under the heading **Facility B1 Commitment** and the amount of any other Facility B1 Commitment it acquires; and

(b) for any other Lender, the amount of any Facility B1 Commitment it acquires,

to the extent not cancelled, transferred or reduced under this Agreement or the VAT Facility Agreement.

Facility B2 Commitment means:

(a) for an Original Lender the amount set opposite its name in Schedule 1 (Original Parties) under the heading **Facility B2 Commitment** and the amount of any other Facility B2 Commitment it acquires; and

(b) for any other Lender, the amount of any Facility B2 Commitment it acquires,

to the extent not cancelled, transferred or reduced under this Agreement or the VAT Facility Agreement.

Facility B1 Loan means a Loan made available under Facility B1.

Facility B2 means the facility made available under the VAT Facility Agreement, designated therein as "Facility B2" and referred to in Subclause 2.4 (Facility B2).

Facility B2 Loan means a Loan made available under Facility B2.

Facility Office means the office(s) notified by a Lender to the Senior Agent:

(a) on or before the date it becomes a Lender; or

(b) by not less than five Business Days' notice,

as the office(s) through which it will perform its obligations under this Agreement.

Fee Letter means:

(a) any letter entered into by reference to this Agreement between one or more Administrative Parties and the Borrower setting out the amount of certain fees referred to in this Agreement; and

(b) the SACE Guarantee Fee Letter.

Final Acceptance Certificate has the meaning ascribed to it in the Plant EPC Contracts.

Final Acceptance Long Stop Date has the meaning ascribed to it in the Plant EPC Contracts.

Final Maturity Date means:

(a) in respect of Facility A1 and Facility A2, 30 November 2028;

(b) in respect of Facility B1 and Facility B2, 31 October 2015; and

(c) in respect of the Notes, 30 November 2028.

Finance Document means:

(a) this Agreement;

(b) the VAT Facility Agreement;

(c) the Project Loan Facility Agreement;

(d) the Calculations and Forecasting Agreement;

(e) the Project Accounts Agreement;

(f) the English Accounts Agreement;

(g) a Direct Agreement;

(h) a Security Document;

(i) the Equity Subscription Agreement;

(j) a Fee Letter;

(k) a Transfer Certificate;

(l) the Intercreditor Agreement;

(m) any other document designated as such by the Senior Agent and the Borrower.

Finance Party means a Lender or an Administrative Party and shall include SACE as a creditor of the Borrower to the extent only that amounts are owed directly from the Borrower to SACE under the SACE Documents, including (without limitation) where the Issuer is appointed agent of SACE to recover amounts due from the Borrower pursuant to the subrogation of SACE to the rights of the Issuer against the Borrower pursuant to Clause 4.4 of the SACE Guarantee and Reimbursement Agreement.

Financial Close means the date on which the Senior Agent notifies the Borrower and the Lenders that it has received all of the documents and other evidence set out in Schedule 2 (Condition Precedent Documents) in form and substance satisfactory to the Lenders (acting reasonably) and/or waived receipt of those documents and other evidence, the Lenders having confirmed the same in writing to the Senior Agent.

Financial Indebtedness means any indebtedness for or in respect of:

(a) moneys borrowed;

(b) any acceptance credit (including any dematerialised equivalent);

(c) any bond, note, debenture, loan stock or other similar instrument;

(d) any agreement treated as a finance or capital lease in accordance with GAAP;

(e) receivables sold or discounted (otherwise than on a non-recourse basis);

(f) the acquisition cost of any asset to the extent payable after its acquisition or possession by the party liable where the deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset;

(g) any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction will be used to calculate its amount);

(h) any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing or is otherwise classified as a borrowing in accordance with GAAP;

(i) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; or

(j) any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in the above paragraphs.

Financing Costs means any of the following:

(a) interest, fees and any other costs or expenses payable under the Finance Documents (including, for the avoidance of doubt, any SACE Ongoing Fees); and

(b) any Tax in respect of any of the above.

Financing Principal means principal amounts payable by the Borrower under the Project Loan Facility Agreement and/or VAT Facility Agreement.

Force Majeure Event means an event of force majeure as defined in or contemplated by any Project Document.

GAAP means generally accepted accounting principles in Italy, including, without limitation, those issued by the Consiglio Nazionale dei Dottori Commercialisti e dei Ragionieri and the Organismo Italiano di Contabilità (O.I.C.), as in effect at the relevant time or for the relevant period and as consistently applied.

GME means Gestore del Mercato Elettrico S.p.A.

Good Industry Practice means the standard, practices, methods and procedures and that degree of skill, diligence, prudence, foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances.

Government Entity means:

(a) the government of Italy;

(b) any authority, agency or department established by the government of Italy;

(c) the Banca d'Italia or any entity holding all or a substantial part of the foreign reserves or investments of Italy;

(d) any province, state or other political subdivision of Italy; and

(e) any public corporation or other entity of which any of the entities described in the preceding paragraphs have direct or indirect control and **control** for this purpose means the power to direct the management and the policies of the entity whether through the ownership of share capital, contract or otherwise.

GSE means Gestore dei Servizi Energetici – GSE S.p.A.

Guarding and Security Agreement means the guarding and security agreement in respect of the Plants to be entered into between the Borrower and the relevant guarding contractor.

Holding Company of any person, means a person in respect of which that person is a Subsidiary.

Immaterial Amendment means, in relation to a document, an amendment, modification or waiver which:

(a) is of a formal, minor or technical nature;

(b) is made to correct a manifest error; or

(c) if made, would not (in the context of the document as a whole) be materially adverse to the interests of the Borrower or the Finance Parties.

Imposta Sostitutiva means the tax provided by Article 15 and following of the Italian Presidential Decree (DPR) No. 601 of 29 September 1973, as amended from time to time.

Increased Cost means:

(a) an additional or increased cost;

(b) a reduction in the rate of return from Facility B1 or Facility B2 or on a Finance Party for Facility B1's or a Finance Party for Facility B2's (or its Affiliate's) overall capital; or

(c) a reduction of an amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates but only to the extent attributable to that Finance Party having entered into any Finance Document or funding or performing its obligations under any Finance Document.

Initial Period means the period commencing on (and including) the Issue Date and ending on (but excluding) the date falling 18 calendar months after the Issue Date.

Insolvency Proceedings (i) means any proceeding pertaining to a company concerning its liquidation, bankruptcy (fallimento), winding-up (including any voluntary winding-up), dissolution, reorganisation, moratorium, or similar including, but not limited to, arrangement with creditors (concordato preventivo), adjustment of creditors' claims (concordato fallimentare), forced administrative liquidation (liquidazione coatta amministrativa), extraordinary administration (amministrazione straordinaria) and extraordinary administration of large companies in difficulty or in insolvency (amministrazione straordinaria delle grandi imprese in stato di insolvenza), debt restructuring agreements (accordi di ristrutturazione dei debiti) pursuant to Article 182-bis of the Italian Royal Decree 267/1942, restructuring plans (piani di risanamento) pursuant to Article 67,

paragraph 3(d) of the Bankruptcy Law, including any filing (unless such filing is clearly groundless and/or is discharged within 45 days) in connection thereof and (ii) shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated.

Insurance means each of the contracts and policies of insurance taken out by or on behalf of the Borrower or (to the extent of its interest) in which the Borrower has an interest, as listed under Schedule 4 (Insurance Schedule).

Insurance Adviser means Marsh S.p.A. or any other firm of insurance adviser appointed under this Agreement.

Insurance Proceeds means all proceeds of Insurance payable to or received by the Borrower (whether by way of claims, return of premia, ex gratia settlements or otherwise).

Intellectual Property means:

(a) any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests, whether registered or unregistered; and

(b) any licences and rights to use the property identified in paragraph (a) above.

Interconnection means the interconnection between the Substation Expansion Assets and the national power grid (Rete di Transmissione Nazionale) to be provided under the Interconnection Agreements.

Interconnection Agreements means the Interconnection agreements entered into between the Borrower and Terna:

(a) in respect of Montalto 45MW Plant, on 30 July 2010; and

(b) in respect of Montalto 6MW Plant, on 12 October 2010,

relating, in each case, to the connection of the Substation Expansion Assets to the national power grid (Rete di Transmissione Nazionale).

Intercreditor Agreement means the intercreditor agreement dated on or prior to the Issue Date between, inter alia, the Borrower, the Senior Agent, the Original Facility A Lenders, the Original Facility B Lender, the Issuer, the Quotaholder, the Sponsor, the Noteholders (represented by the Representative of the Noteholders) and the Other Issuer Creditors.

Interest Amount Arrears means, in respect of a given Project Loan Payment Date, the portion of the interest payable on a Facility A1 Loan or a Facility A2 Loan during the Interest Period in which such Project Loan Payment Date falls which remains unpaid on that Project Loan Payment Date.

Interest Period means each period determined under a Facility Agreement by reference to which interest on a Loan or an overdue amount is calculated.

Involuntary Prepayment Amount means, in respect of a prepayment made in accordance with Subclause 5.1 (Mandatory prepayment - illegality) or 5.7 (Involuntary prepayment and cancellation) before the end of the Initial Period, an amount equal to the amount of interest that would have accrued on such prepaid amounts during the remainder of the Initial Period less any amount accruing

on such prepaid amounts in the Issuer Collection Account so that the Issuer has the necessary funds to pay the aggregate of:

(a) the SACE Ongoing Fees falling due during the remainder of the Initial Period; and

(b) the interest on the Notes due on each Note Payment Date falling during the Initial Period.

Issue Date means the date on which the Notes are issued, such date being 15 December 2010, or such other date as may be agreed between the parties to this Agreement (other than the Senior Agent).

Issue Failure means, following the first drawdown under Facility A1 and Facility A2, either:

(a) notwithstanding the satisfaction of the conditions precedent in the Subscription Agreement, the Notes are not issued or are cancelled immediately after issue in accordance with the Subscription Agreement; or

(b) the conditions precedent to the issue are not satisfied,

save, in each case, to the extent that such Issue Failure is the result of any breach by the Joint Lead Managers of the Subscription Agreement.

Issuer means Andromeda Finance S.r.l.

Issuer Acceleration Notice has the meaning given to it in Condition 10(b) (Service of an Issuer Acceleration Notice);

Issuer Account Bank means the bank at which the Issuer holds its bank accounts, which at the date of this Agreement, is Deutsche Bank S.p.A..

Issuer Agency and Accounts Agreement means the agency and accounts agreement dated on or around the date hereof between, among others, the Issuer, the Issuer Account Bank and the Representative of the Noteholders.

Issuer Agents means the Agents as defined in the Issuer Agency and Accounts Agreement.

Issuer Assignment Date means the date on which the Lenders assign all rights in relation to Facilities A1 and A2 to the Issuer as permitted by Subclause 22.7 (Assignment to the Issuer).

Issuer Collection Account means the euro denominated current account opened by the Issuer with the Issuer Account Bank pursuant to the Issuer Agency and Accounts Agreement.

Issuer Corporate Servicer means Securitisation Services S.p.A. or any successor corporate servicer appointed from time to time in respect of this Securitisation.

Issuer Corporate Services Agreement means the agreement dated on or about the date hereof between the Issuer Corporate Servicer, the Representative of the Noteholders and the Issuer.

Issuer Costs means Issuer Up-front Costs and Issuer Ongoing Costs.

Issuer Deed of Pledge means a deed of pledge under Italian law to be executed on or around the Issue Date between the Issuer and the Representative of the Noteholders acting on its own behalf and on behalf of the other Issuer Secured Creditors.

Issuer Event of Default means an event specified in Condition 10.

Issuer Expenses Loan means any loan made in accordance with the Issuer Expenses Loan Agreement.

Issuer Expenses Loan Agreement means the loan agreement dated on or around the date hereof between the Borrower and the Issuer for the purposes of advancing amounts to the Issuer to pay Issuer Costs.

Issuer Mandate Agreement means a mandate agreement dated on or around the date hereof between the Issuer and the Representative of the Noteholders.

Issuer Ongoing Costs means:

(a) all amounts payable by the Issuer from time to time in accordance with paragraphs (i) to (iii) of the Issuer Pre-Enforcement Priority of Payments or paragraphs (i) to (iii) of the Issuer Post-Enforcement Priority of Payments; and

(b) any other amounts payable by the Issuer from the proceeds of an Issuer Expenses Loan in accordance with the Issuer Loan Expenses Agreement.

Issuer Post-Enforcement Priority of Payments means the Post-Enforcement Class A1 Priority of Payments and the Post-Enforcement Class A2 Priority of Payments as provided in Conditions 3(f) and 3(g) respectively.

Issuer Pre-Enforcement Priority of Payments means the Pre-Enforcement Priority of Payments of the Issuer as provided in Condition 3(e).

Issuer Servicer means Securitisation Services SpA or any successor servicer appointed from time to time in respect of this Securitisation.

Issuer Servicing Agreement means the servicing agreement dated on or about the date hereof between the Issuer and the Issuer Servicer.

Issuer Shareholder Commitment means the shareholder's commitment in relation to the Issuer dated on or around the date hereof between the Issuer, SVM Securitisation Vehicles Management S.p.A. and the Representative of the Noteholders.

Issuer Up-front Costs means the costs and expenses and any applicable VAT referred to in Subclause 20.4(b) (Issuer Ongoing Costs and Issuer Up-Front Costs).

Issuer Voluntary Redemption Notice means a notice from the Issuer to the Borrower (copied to the Senior Agent) notifying the Borrower that the Issuer has elected to redeem the Notes in full in accordance with Condition 7(g) (Optional redemption for taxation, legal or regulatory reasons) and requesting that the Borrower repay the Project Loans in full on the immediately following Project Loan Payment Date.

ISTAT CPI means the variation of retail prices in Italy as evidenced by the "indice ISTAT dei prezzi al consumo per l'intera collettività nazionale" or, for periods when such index is not available, the "indice ISTAT dei prezzi al consumo per famiglie di operai ed impiegati", as from time to time disclosed by ISTAT.

Italian Civil Code means the Italian Royal Decree No. 262 of 16 March 1942, as amended and supplemented from time to time.

Italian Power Exchange means the electricity market provided for by Article 5, paragraph 1, of the Legislative Decree No. 79 of 16 March 1999, as approved by means of the Decree of the Ministry of Industry, Commerce and Craft (now Ministry of Economic Development) of 9 May 2001.

Italian Securitisation Law means the Italian Law No. 130 of 30 April 1999 as published in the Italian Official Gazette No. 111 of 14 May 1999 (legge sulla cartolarizzazione dei crediti) and any rules, regulations and guidelines issued by the Bank of Italy or any other public authority and which implement the Italian Securitisation Law, as amended and supplemented from time to time.

Italy means the Republic of Italy.

Joint Insurance Account has the meaning given to it in the Joint Insurance Account Trust Deed.

Joint Insurance Account Trust Deed means the joint insurance account trust deed dated 13 May 2010 between, inter alia, the Borrower, Cassiopea PV S.r.l., Centauro PV S.r.l., Orsa Minore PV S.r.l. and Sunray Italy S.r.l and the Trustee.

Joint Insurance Agreement means the agreement for the management of the Common Infrastructure Insurance Proceeds entered into on 17 September 2009 between the Borrower and, amongst others, Cassiopea PV S.r.l., Centauro PV S.r.l., Orsa Minore PV S.r.l. and Sunray Italy S.r.l., as amended and/or integrated from time to time.

Joint Lead Manager means each of BNP Paribas and Société Générale, in each case acting in such capacity.

Joint Lead Manager Up-front Fees means the combined management and underwriting commissions payable to each of the Joint Lead Managers pursuant to the terms of the Subscription Agreement.

Land Agreements means each agreement (including the Convenzione, but excluding the Borrower Right of Use Agreement) conferring on the Borrower the right to use or have access to land (including tenancy, superficie and servitù rights and the transfer agreement ("atto di cessione volontaria") pursuant to article 20 of the Presidential Decree no. 327/2001) or under which the Borrower purchases land for the purposes of the Project unless substituted or released in accordance with the terms of t his Agreement and each such substitute agreement entered into after the date of this Agreement in form and substance satisfactory to the Senior Agent.

Land Costs means all amounts (including deposits) paid by the Sponsor or its Affiliates prior to Financial Close in acquiring land or interests in land for the Project.

Legislative Decree 231 means Italian Legislative Decree No. 231/2001, as amended and/or integrated from time to time, which provides a regime of administrative responsibility for companies and other entities for certain crimes committed, either in their interest or to their advantage, by their managers, directors or subjects subordinated to their direction or vigilance.

Lender means:

(a) an Original Lender; or

(b) any person which becomes a lender after the date of this Agreement.

Lenders' Legal Advisers means Linklaters LLP or such other legal adviser appointed under this Agreement.

Loan means, unless otherwise stated in this Agreement, the principal amount of each borrowing under this Agreement or a Facility Agreement or the principal amount outstanding of that borrowing.

Loan Payment Date means a Project Loan Payment Date or a VAT Loan Payment Date as applicable.

Long-Stop Completion Date means:

(a) in respect of the Montalto 45MW Plant, 30 September 2011; and

(b) in respect of the Montalto 6MW Plant, 30 September 2011.

Major Project Party means:

(a) until the expiry of the defects period under the Plant EPC Contracts, the Plant EPC Contractor and the EPC Co-obligor;

(b) until the expiry of the defects period under the Substation EPC Contracts, the Substation Contractor;

(c) the Manager;

(d) the Plant Operator;

(e) the O&M Co-obligor;

(f) the Substation Operator; and

(g) any other person providing a guarantee of the liabilities under a Project Document of any persons in paragraphs (a) to (f) who is an affiliate of that person.

Majority Lenders means, subject to Subclause 21.3 (Instructing Parties), the Lenders:

(a) whose share in the outstanding Loan and whose undrawn Available Commitments then aggregate 66.67% or more of the Loan and the undrawn Available Commitments of all the Lenders; or

(b) if there is no Loan then outstanding, whose Available Commitments then aggregate 66.67% or more of the Total Available Commitments; or

(c) if there is no Loan then outstanding and the Total Available Commitments have been reduced to zero, whose Available Commitments aggregated 66.67% or more of the Total Available Commitments immediately before the reduction.

Make-whole Amount means:

(a) in respect of holders of Class A1 Notes, an amount equal to the positive difference between (i) the net present value, as of the relevant redemption date, of future scheduled principal and interest payments on the Class A1 Notes to their Final Maturity Date discounted at the Class A1 Reference BTP Rate; and (ii) the Principal Amount Outstanding of the Class A1 Notes;

(b) in respect of holders of Class A2 Notes, an amount equal to the positive difference between (i) the net present value, as of the relevant redemption date, of future scheduled principal and interest payments on the Class A2 Notes to their Final Maturity Date discounted at the Class

A2 Reference BTP Rate; and (ii) the Principal Amount Outstanding of the Class A2 Notes; and

(c) in respect of the EIB (to the extent it is a holder of the Class A2 Notes), the EIB Make-whole Additional Amount.

Management Services Agreement means the management services agreement between the Borrower and the Manager entered into on 19 October 2010.

Manager means Sunray Management Services S.r.l.

Margin has the meaning given to it in the VAT Facility Agreement.

Market Adviser means Pöyry Energy Consulting (Oxford) Limited or such other market adviser appointed under this Agreement.

Material Adverse Effect means an effect or series or combination of effects, which:

(a) is; or

(b) (other than for the purposes of Subclause 10.24 (Material Adverse Effect) and Subclause 15.7 (Material Adverse Effect)) would, with the passing of time, reasonably be expected to be,

materially adverse to:

(i) the business or financial condition of the Borrower;

(ii) the ability of the Borrower to perform its material obligations (financial or otherwise) under the Finance Documents;

(iii) the validity or enforceability of any Borrower Document;

(iv) the rights or remedies of the Lenders (taken as a whole) under the Finance Documents; or

(v) (disregarding the effect on effectiveness or ranking of any Security Interest or transaction referred to in Subclause 12.4(b) (Negative pledge) below) the perfection, effectiveness or ranking of any Security Interest granted or purported to be granted pursuant to any of the Security Documents.

Maximum Aggregate Facility B Commitment is €22,000,000.

Missing Tariff Liquidated Damage means the Missing Tariff Liquidated Damage as defined under clause 12.6 of the Plant EPC Contracts.

Model Adviser means Operis Business Engineering Limited.

Moody's means Moody's Investors Service Inc.

Monitoring Report means a report covering the following matters:

(a) during the Construction Period:

(i) area of concern and recovery actions (if any);

(ii) finance summary:

(A) invoice and payment status;

(B) change orders (if any);

(iii) progress of the works, including reference to any of the following (as applicable):

(A) civil works;

(B) mechanical works;

(C) electrical works;

(D) procurement status;

(E) works on site;

(F) material receipt;

(G) civil construction;

(H) mechanical erection;

(I) electrical and instrumentation;

(J) commissioning;

(K) quality; and

(L) health/safety and environmental;

(b) after the end of the Construction Period:

(i) summary of the Plants performance, including comparison of actual versus guaranteed yield (kWh);

(ii) summary on a monthly basis level of PR/technical availability for each inverter including the following information:

(A) irradiance (horizontal + plan of array) (for each month);

(B) yield for each month after inverter (AC);

(C) yield for each month before inverter (DC);

(iii) incidents occurred including description of main faults occurred to the Plants;

(iv) alarms and events recorded by anti intrusion systems, including list of damages/stolen parts (if any);

(v) grid failures events, including time of failure and actions taken;

(vi) incidents/failures occurred, including listing all the incidents/failures in the Plants' operation/performance occurred, the resolution actions taken and their current status;

(vii) scheduled maintenance/inspections performed pursuant to schedules Annex 1-4 of the Plant O&M Agreements;

(viii) unscheduled maintenance/inspections performed;

(ix) spare parts used;

(x) capital replacement services performed, and

(xi) health and safety.

Montalto 45MW Plant means the 45MWp solar photovoltaic power plant in Montalto di Castro, Viterbo province, Lazio, Italy, or such lower or higher MWp rated photovoltaic solar plants as may be constructed pursuant to the terms of the Plant EPC Contract, located at the Site and in accordance with, inter alia, the technical characteristics set out in Annex 6 (Technical Specifications of the Principal Equipment and Authorised Equipment) of the Plant EPC Contract for such Plant.

Montalto 6MW Plant means the 6MWp solar photovoltaic power plant in Montalto di Castro, Viterbo province, Lazio, Italy, or such lower or higher MWp rated photovoltaic solar plants as may be constructed pursuant to the terms of the Plant EPC Contract, located at the Site and in accordance with, inter alia, the technical characteristics set out in Annex 6 (Technical Specifications of the Principal Equipment and Authorised Equipment) of the Plant EPC Contract for such Plant.

Mortgage means each first ranking mortgage in favour of the Lenders created under the deed of mortgage entered into on the date hereof as notarial deed, or deed with notarised signature (scrittura privata autenticata) between the Borrower, the Senior Agent and the Lenders.

New Facility B1 Loan means a Facility B1 Loan that is not a Facility B1 Rollover Loan.

New Facility B2 Loan means a Facility B2 Loan that is not a Facility B2 Rollover Loan.

Note Payment Date means an interest payment date under the Notes.

Notes means the €98,300,000 class A1 notes (the Class A1 Notes) and the €98,300,000 class A2 notes (the Class A2 Notes) to be issued by the Issuer as more fully described in the Prospectus.

Obligor means:

(a) the Borrower; and

(b) the Quotaholder.

O&M Co-obligor means SunPower Corporation, a company duly incorporated under the laws of Delaware, whose registered office is in 3939 North First Street, San Jose, California, IRS Employer Identification Number 94-3008969.

Operating Budget means the annual budget of the Borrower itemising the operating expenditures forecast to be incurred in that year, to be delivered to the Senior Agent after the end of the Construction Period pursuant to Subclause 11.4 (Operating period).

Operating Costs means all costs and expenses incurred by the Borrower in the ordinary course of its business including but not limited to:

(a) operating costs and expenses set out in the Operating Budget;

(b) liabilities of the Borrower under the Project Documents;

(c) premia on Insurances;

(d) maintenance expenditure in respect of the Project, including expenditure in respect of the repairing and reinstatement of the Common Infrastructure pursuant to the Joint Insurance Agreement;

(e) fees and costs of the Advisers and the Borrower's Advisers and Auditors;

(f) remuneration of the Trustee and other amounts due to the Trustee pursuant to the Joint Insurance Account Trust Deed;

(g) transaction charges and other fees due to the Account Banks in the manner agreed between the Borrower and the Account Banks;

(h) administrative, management and employee costs; and

(i) any other costs and expenses agreed by the Senior Agent and the Borrower,

but excluding:

(i) Project Costs (other than those falling within paragraph (d) of the definition of Project Costs);

(ii) Taxes;

(iii) Financing Principal;

(iv) Financing Costs;

(v) any Distribution; and

(vi) depreciation, non cash charges, reserves, amortisation of intangibles and similar book keeping entries.

Original Facility A Lenders means a Facility A Lender that is also an Original Lender.

Original Facility B Lender means a Facility B Lender that is also an Original Lender.

Original Financial Statements means the unaudited financial statements of the Borrower dated not later than 60 days prior to Financial Close.

Other Eligible Funding means, on any date, the aggregate of:

(a) the amount of Equity committed to be provided after that date under the Equity Subscription Agreement and the Quotaholder Subordinated Loan Agreement;

(b) any amount of Insurance Proceeds (other than the Common Infrastructure Insurance Proceeds) that the Borrower has claimed and in respect of which the insurers are not contesting liability, which is expected to be payable before the Long-Stop Completion Date;

(c) any amount of any liquidated damages expected to be payable to the Borrower prior to the Long-Stop Completion Date under the Project Documents;

(d) the proceeds of any actual or projected VAT reclaim expected to be received prior to the Long-Stop Completion Date;

(e) the aggregate balances standing to the credit of each Drawdown Account, the Proceeds Account and the Deposit Account; and

(f) any other funding which the Majority Lenders are satisfied (acting reasonably) is unconditionally committed and available for the Borrower to drawdown in order to meet Project Costs.

Other Issuer Creditors has the meaning given to it in the Conditions.

Participating Member State means a member state of the European Communities that adopts or has adopted the Euro as its lawful currency under the legislation of the European Community for Economic Monetary Union.

Party means a party to this Agreement.

Performance LDs means the Production Liquidated Compensation as defined under clause 12.3(f) of the Plant EPC Contracts.

Permitted Covenant means:

(a) the further rights of use on the Common Infrastructure granted by Cassiopea PV S.r.l. under the Right of Use Agreements;

(b) the undertakings given under the Joint Insurance Agreement;

(c) the arrangements contemplated in the Joint Insurance Account Trust Deed;

(d) any restriction or onerous covenant disclosed in the due diligence report of the Lenders' Legal Adviser delivered in accordance with paragraph 9 of Schedule 2 (Condition Precedent Documents); or

(e) any restriction or onerous covenant set out in Schedule 9 (Disclosed Security Interests/Covenants).

Permitted Payments means, for any relevant period (without counting any item more than once), all moneys payable by the Borrower at that time or paid by the Borrower in that period as:

(a) Operating Costs;

(b) Taxes;

(c) Right of Use Payments; and

(d) any other amount agreed by the Senior Agent.

Permitted Person means:

(a) the Sponsor Parent; or

(b) any person approved by the Majority Lenders (as such term is construed pursuant to Clause 21.2(d)) in accordance with Clause 15.25(c) (Ownership of the Borrower).

Permitted Security Interests means the Security Interests referred to in Clause 12.

Permitted Subordinated Debt means:

(a) any Quotaholder Subordinated Debt; and

(b) any other Financial Indebtedness incurred in the ordinary course of business at a time when no Event is continuing up to a maximum aggregate amount of Euro 1,000,000.00:

(i) that is subordinated in right and priority of payment to amounts outstanding under this Agreement on terms satisfactory to the Majority Lenders; or

(ii) which in accordance with its terms may only be repaid and serviced from Distributions and/or amounts standing to the credit of the Distribution Account in accordance with Subclause 14.2 (Distributions).

Plant means the Montalto 45MW Plant and the Montalto 6MW Plant.

Plant EPC Contracts means the two engineering, procurement and construction contracts between the Borrower and the Plant EPC Contractor dated:

(a) in respect of the Montalto 45MW Plant, 5 March 2010, as amended and restated on 15 September 2010 and further amended on 13 October 2010, 16 November 2010 and 24 November 2010; and

(b) in respect of the Montalto 6MW Plant, 15 September 2010, as amended on 13 October 2010 and 24 November 2010.

Plant EPC Contractor means SunPower Italia in such capacity under the Plant EPC Contracts.

Plant O&M Agreements means two operations and maintenance agreements in respect of the Plants between the Borrower and the Plant Operator dated:

(a) in respect of the Montalto 45MW Plant, 24 November 2010; and

(b) in respect of the Montalto 6MW Plant, 24 November 2010.

Plant Operator means SunPower Italia in such capacity under the Plant O&M Agreements.

Pledge of Feed-in Tariff Receivables means the pledge of the Borrower's receivables arising under each Conto Energia Concession to be entered into as notarial deed, or deed with notarised signature (scrittura privata autenticata) between the Borrower and the Senior Agent, in the name and on behalf of the other Finance Parties, securing until the expiry of the Security Period (save as otherwise provided herein), the claims of the Finance Parties arising under the Finance Documents vis-à-vis the Borrower, pursuant to Subclause 13.8 (Pledge of Receivables towards GSE).

Pledge over Cash Collateral Account means the pledge over the Cash Collateral Account, in form and substance of the form under Schedule 5 (Form of Pledge over the Cash Collateral Account) of the Equity Subscription Agreement, to be entered into on the date hereof by exchange of commercial letters between, among others,. the Quotaholder, the Senior Agent, the Borrower and the Project Accounts Bank, securing the obligation of the Quotaholder to effect the Equity contributions as provided under the Equity Subscription Agreement.

Pledge over Quotaholder Receivables means the pledge over the Quotaholder's receivables arising from Quotaholder Subordinated Loan Agreement to be entered into by exchange of commercial

letters between, among others, the Quotaholder, the Senior Agent and the Finance Parties, securing, until the expiry of the Security Period (save as otherwise provided herein), the claims of the Finance Parties vis-à-vis the Borrower.

Pledge over Quotas means the pledge over the quotas representing 100% of the corporate capital of the Borrower entered into on the date hereof as notarial deed, or deed with notarised signature (scrittura privata autenticata) between, among others, the Quotaholder, the Senior Agent and the Finance Parties, securing, until the expiry of the Security Period (save as otherwise provided herein), certain claims of the Finance Parties vis-à-vis the Borrower.

Pledge over Receivables and Accounts means the pledge of the Borrower's receivables under the Plant EPC Contracts, the Substation EPC Contracts, the Plant O&M Agreements, the Substation O&M Agreements, the Interconnection Agreements, the Borrower Right of Use Agreement, each Borrower's Guarantee (other than the guarantees under letter (b), (c), (d) and (e) of the definition of Borrower's Guarantee), the Insurances (other than the Borrower's receivables arising from any Insurance in respect of the Common Infrastructure to be applied in accordance with the Joint Insurance Agreement), the Direct Agreements entered into in connection with the Plant EPC Contracts and Plant O&M Agreements, the Equity Subscription Agreement and pledge over the Borrower's bank accounts (excep t for the Drawdown Accounts, the Equity Account, the Deposit Account, the Distribution Account and the Joint Insurance Account), entered into between the Borrower, the Senior Agent and the Lenders, securing, until the expiry of the Security Period (save as otherwise provided herein), the claims of the Finance Parties arising under the Finance Documents vis-à-vis the Borrower.

Potential Relevant Event means an event or circumstance which, with the giving of notice, lapse of time or fulfilment of any other condition (other than a condition which is a discretion (whether or not subjective) of one or a group of Finance Parties), would constitute a Relevant Event.

Power Purchase Agreement means any contract or series of contracts for the sale of electricity entered into by the Borrower and any person other than the GSE and the GME.

Prepayment Additional Amounts means, in respect of any prepayment or refinancing under Clause 5 (Prepayment and Cancellation), any Break Costs, SACE Accelerated Guarantee Fee, Make-whole Amounts, Involuntary Prepayment Amount, Early Redemption Additional Amount and any other amounts payable in respect of such prepayment or refinancing in accordance with Subclause 5.10 (Miscellaneous provisions).

Principal Amount Outstanding means, at any time in respect of the Notes, the aggregate principal amount outstanding under the Notes at such time.

Privilegio Speciale means the notarial deed, or deed with notarised signature (scrittura privata autenticata), entered into on the date hereof between the Borrower, the Senior Agent and the Lenders providing a first-ranking lien pursuant to Article 46 of Legislative Decree No. 385/93 over all present and future property capable of being subject to such security, securing, until the expiry of the Security Period (save as otherwise provided herein), the claims of the Lenders arising under the Facilities.

Project means the design, development, financing, construction, testing, commissioning, operation and maintenance of the Plants and the Substation Expansion Assets.

Project Accounts Agreement means the accounts agreement dated the date of this Agreement between the Borrower, the Project Accounts Bank, the Lenders and the Senior Agent.

Project Completion Date means the date on which the following conditions have been satisfied:

(a) the final provisional acceptance certificate has been issued under the Plant EPC Contracts by the Borrower and the Technical Adviser; and

(b) the completion of the works by the Substation Contractor has occurred in accordance with the terms and conditions of the Substation EPC Contract and has been certified by the Technical Adviser.

Project Costs means:

(a) Development Costs;

(b) the following expenditure incurred by the Borrower in carrying out the Project Works:

(i) Construction Costs;

(ii) fees and costs of any professional adviser engaged by the Borrower in respect of the design and construction of the Project Works;

(iii) costs of any site investigation surveys and tests; and

(iv) all amounts payable by the Borrower under any Land Agreement or the Borrower Right of Use Agreement;

(c) the cost of any Transaction Authorisations and any legal, accounting or professional fees and costs incurred by the Borrower in obtaining such Transaction Authorisations;

(d) Operating Costs payable prior to the expiry of the Withdrawal Availability Period;

(e) *Imposta Sostitutiva* in respect of the Facilities;

(f) taxes payable by the Borrower prior to the expiry of the Withdrawal Availability Period (including all VAT Payments);

(g) Financing Costs accrued and payable prior to the expiry of the Withdrawal Availability Period;

(h) legal, accounting and other professional fees and costs incurred by the Borrower in connection with the negotiation and entry into of the Borrower Documents and any document referred to in the Borrower Documents;

(i) fees and costs of the Advisers and the Borrower's Advisers and Auditors;

(j) Issuer Costs; and

(k) any other costs and expenses agreed as such by the Senior Agent but excluding:

(i) any other Financing Costs;

(ii) Financing Principal; and

(iii) any other Operating Costs.

Project Documents means:

(a) each Plant EPC Contract;

(b) each Substation EPC Contract;

(c) each Plant O&M Agreement;

(d) each Substation O&M Agreement;

(e) each Interconnection Agreement;

(f) each *Conto Energia* Concession (once executed by all the parties thereto);

(g) each *Ritiro Dedicato* Concession (if entered into and once executed by all the parties thereto);

(h) any Power Purchase Agreement (if entered into and once executed by all the parties thereto);

(i) the Borrower Right of Use Agreement;

(j) the Joint Insurance Agreement;

(k) the Joint Insurance Account Trust Deed;

(l) the Management Services Agreement;

(m) the Guarding and Security Agreement (once executed by all the parties thereto);

(n) each Land Agreement;

(o) each Borrower's Guarantee;

(p) the Dedicated Connection Service Agreements (once executed by all the parties thereto); and

(q) any other material contract designated as such by the Borrower and the Senior Agent.

Project Facilities means:

(a) the Site;

(b) the Plants; and

(c) the Substation Expansion Assets.

Project Loan means each of the Facility A1 Loan and the Facility A2 Loan.

Project Loan Facility Agreement means the credit agreement in respect of Facilities A1 and A2 dated on the date of this Agreement between (among others) the Borrower, the Facility A Lenders and the Senior Agent.

Project Loan Facility Commitment means any Facility A1 Commitment and Facility A2 Commitment.

Project Loan Payment Date has the meaning given to it in the Project Loan Facility Agreement.

Project Works means the works contemplated by the Plant EPC Contracts and the Substation EPC Contracts.

Pro Rata Share means:

(a) for the purpose of determining a Lender's share in a utilisation of a Facility, the proportion which its Available Commitment under that Facility bears to the Total Available Commitments for that Facility; and

(b) for any other purpose on a particular date:

(i) the proportion which a Lender's share of the outstanding Loans (if any) bears to all the outstanding Loans;

(ii) if there is no Loan outstanding on that date, the proportion which the aggregate of its Facility A1 Commitment, its Facility A2 Commitment and its Available Facility B1 Commitment and Available Facility B2 Commitment bears to the aggregate Total Available Commitments of all Facilities on that date;

(iii) if the Total Commitments of all Facilities have been cancelled, the proportion the aggregate of which its Facility A1 Commitment, its Facility A2 Commitment and its Available Facility B1 Commitment and Available Facility B2 Commitment bore to the Total Available Commitments of all Facilities immediately before being cancelled; or

(iv) when the term is used in relation to a particular Facility, the above proportions, but applied only to the Loans and Available Commitments for that Facility.

Prospectus means the prospectus of the Issuer dated on or around the date of this Agreement in respect of the Notes.

Qualifying Lender means:

(a) a bank or a financial institution resident in Italy for Italian tax purposes and lending from a Facility Office located in Italy and which is not acting for the purposes of this Agreement through a permanent establishment (*stabile organizzazione*) located outside Italy;

(b) a bank or a financial institution lending from a Facility Office located in Italy and acting for the purposes of this Agreement through a permanent establishment (*stabile organizzazione*) with which that Lender's participation(s) in the relevant Loan(s) is(/are) effectively connected and for which the payment of interest made by the Borrower is taxable pursuant to Article 152, paragraph 1, of Italian Presidential Decree No. 917 of 22 December 1986;

(c) a Treaty Lender; or

(d) the Issuer.

Quotaholder means Sunray Italy Holding Tre S.r.l..

Quotaholder Subordinated Debt means any amounts lent or committed to be lent by the Quotaholder to the Borrower under the Quotaholder Subordinated Loan Agreement.

Quotaholder Subordinated Loan Agreement means a subordinated loan agreement entered into on the date hereof between the Quotaholder and the Borrower.

Rate Fixing Day means the second TARGET Settlement Day before the first day of an Interest Period for Facility B1 or Facility B2 or such other day as the Senior Agent determines is generally treated as the rate fixing day by market practice in the relevant interbank market.

Reference Banks means the Senior Agent, UniCredit Corporate Banking S.p.A., Intesa Sanpaolo S.p.A. and MPS Capital Services Banca per le Imprese S.p.A. and any other bank or financial institution appointed as such by the Senior Agent under this Agreement.

Relevant Disposal Proceeds has the meaning given to it in Clause 12.5(c).

Relevant Event means an event specified as such in Clause 15 (Events).

Remaining Project Costs means the amount of Project Costs which the Borrower, acting reasonably, certifies it is necessary to pay to a third party (and which have not already been paid) in order for each Project Completion Date to occur. In determining this amount and provided it is received in time for the Borrower not to be delayed in submitting a Request or a Withdrawal Request, the Borrower must use the Technical Adviser's estimate of the remaining Construction Costs which will be incurred by it in order for the Project Completion Date to occur, which will be included in the Technical Adviser's Drawdown Certificate.

Repayment Date means each date for the payment of a Repayment Instalment as specified in Schedule 3 (Repayment Schedule for Project Loans) of the Project Loan Facility Agreement, provided that if any such date is not a Business Day, that date will be the first following day that is a Business Day.

Repayment Instalment means each instalment for repayment of the Project Loans.

Representative of the Noteholders has the meaning given to it in the Conditions.

Request means a request for a Loan, substantially in the form of Schedule 1 (Form of Request) to the Project Loan Facility Agreement or Schedule 1 (Form of Request) to the VAT Facility Agreement (as the case may be).

Reservations means any reservations, qualifications or other matters as listed under Schedule 7 (Reservations).

Reserved Discretion has the meaning given to that term in Subclause 13.10 (Project Documents).

Right of Use Agreements means collectively:

(a) the Borrower Right of Use Agreement;

(b) the contract executed on 16 September 2009 between Cassiopea PV S.r.l. and Centauro PV S.r.l., whereby the latter was granted a right of use on the Common Infrastructure, structured as a "*contratto per persona da nominare*";

(c) the contract executed on 16 September 2009 between Cassiopea PV S.r.l. and Orsa Minore PV S.r.l., whereby the latter was granted a right of use on the Common Infrastructure, structured as a "*contratto per persona da nominare*"; and

(d) the contract executed on 16 September 2009 between Cassiopea PV S.r.l. and Sunray Italy S.r.l., whereby the latter was granted a right of use on the Common Infrastructure, structured as a "*contratto per persona da nominare*".

Right of Use Payment means any payment to be made by the Borrower under the Borrower Right of Use Agreement.

Ritiro Dedicato Concession means each concession executed or to be executed between the Borrower and the GSE for withdrawal of energy pursuant to the terms and conditions provided for under the AEEG Resolution 280.

Rollover Facility B1 Loan means, unless provided to the contrary in this Agreement, one or more Facility B1 Loans:

(a) to be made on the same day that a maturing Facility B1 Loan is due to be repaid;

(b) the aggregate amount of which is equal to or less than the maturing Facility B1 Loan; and

(c) to be made for the purpose of refinancing a maturing Facility B1 Loan.

Rollover Facility B2 Loan means, unless provided to the contrary in this Agreement, one or more Facility B2 Loans:

(a) to be made on the same day that a maturing Facility B2 Loan is due to be repaid;

(b) the aggregate amount of which is equal to or less than the maturing Facility B2 Loan; and

(c) to be made for the purpose of refinancing a maturing Facility B2 Loan.

Rules of the Organisation of Noteholders means the rules of the organisation of Noteholders attached as a schedule to the Conditions.

SACE means SACE S.p.A. – Servizi Assicurativi del Commercio Estero.

SACE Accelerated Guarantee Fee means the fee payable to SACE on an accelerated basis pursuant to the SACE Guarantee Fee Letter following a prepayment.

SACE Breakage Fee means an amount equal to ten basis points of the aggregate Facility A1 Commitments which may be retained by SACE in the event that the Issue Date does not occur on the Scheduled Issue Date.

SACE Document means:

(a) the SACE Financial Guarantee;

(b) the SACE Guarantee and Reimbursement Agreement;

(c) the SACE Warranty and Indemnity Agreement; and

(d) the SACE Guarantee Fee Letter.

SACE Financial Guarantee means the financial guarantee dated on or about the date of this Agreement issued by SACE.

SACE Guarantee and Reimbursement Agreement means the guarantee and reimbursement agreement dated on or about the date of this Agreement between, among others, the Issuer, the Borrower and SACE.

SACE Guarantee Fee Letter means the fee letter dated on or about the date of this Agreement between the Issuer, the Borrower and SACE.

SACE Ongoing Fees means any ongoing fee payments payable to SACE pursuant to the SACE Guarantee Fee Letter.

SACE Security Costs means any reasonable and documented costs and expenses incurred in connection with the creation, perfection or registration of any Security Interest granted by the Borrower in favour of SACE at any time after it has become fully and automatically subrogated to the rights of the Issuer pursuant to Clause 4.4 of the SACE Guarantee and Reimbursement Agreement.

SACE Up-front Fee means the up-front fee payable to SACE pursuant to the SACE Guarantee Fee Letter.

SACE Warranty and Indemnity Agreement means the warranty and indemnity agreement dated on or about the date of this Agreement between, among others, the Issuer, the Borrower and SACE.

S&P means Standard & Poor's Rating Services, a Division of The McGraw Hill Companies, Inc.

Scheduled Issue Date means the 15 December 2010.

Screen Rate means the percentage rate per annum determined by the Banking Federation of the European Union for Euro and the relevant period displayed on page EURIBOR01 of the Reuters screen. If that page is replaced or the service ceases to be available, the Senior Agent (after consultation with the Borrower and the Lenders) may specify another page or service displaying the appropriate rate.

Securitisation means the securitisation of the Project Loans in accordance with Italian Law No. 130 of 30 April 1999.

Securitisation Documents means the Transfer Agreements, the Issuer Servicing Agreement, the SACE Financial Guarantee, the SACE Warranty and Indemnity Agreement, the SACE Guarantee and Reimbursement Agreement, the SACE Guarantee Fee Letter, the Issuer Corporate Services Agreement, the Intercreditor Agreement, the Settlement Agreement, the Issuer Agency and Accounts Agreement, the Issuer Expenses Loan Agreement, the Issuer Deed of Pledge, the Issuer Mandate Agreement, the Issuer Shareholder Commitment, the Subscription Agreement, the Conditions and the Rules of the Organisation of Noteholders.

Security Assets means all assets subject to any Security Interest created under the Security Documents.

Security Document means:

(a) the Pledge over Quotas;

(b) the Mortgage;

(c) the Privilegio Speciale;

(d) the Pledge over Receivables and Accounts;

(e) the Pledge over Quotaholder Receivables;

(f) each Charge over Accounts;

(g) each Pledge of Feed-in Tariff Receivables (once entered into pursuant to Subclause 13.8 (Pledge of Receivables towards GSE));

(h) each Assignment of VAT Receivables (once entered into pursuant to Subclause 13.15 (Tax affairs)); and

(i) tbe Pledge over Cash Collateral Account,

and any other document evidencing or creating any Security Interest executed by the Borrower or the Quotaholder over any asset of the Borrower or the Quotaholder to secure, inter alia, any obligations of the Borrower to any Finance Party under the Finance Documents.

Security Interest means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having a similar effect.

Security Period (Periodo di Responsabilità) means the period from the date of this Agreement to the date on which:

(a) (notwithstanding any partial repayment of any amounts payable under the Finance Documents), the Senior Agent (acting reasonably) is satisfied that all amounts that are payable by the Borrower under this Agreement or the other Finance Documents have been unconditionally paid or discharged in full and all the above payments are no longer subject to (i) declaration of "*inefficacia*" pursuant to Article 65 of the Bankruptcy Law, and (ii) insolvency claw back (*revocatoria fallimentare*) pursuant to Article 67 of the Bankruptcy Law due to the expiry of the period (applicable from time to time) during which such declaration of "*inefficacia*" and insolvency claw back action may be exercised under Italian law (or, if the case may be, under any applica ble analogous provision in any other jurisdiction); or

(b) alternatively, the following conditions are satisfied:

(i) only in the event of prepayment in full of all Loans in accordance with Subclause 5.4 (Voluntary prepayment) of this Agreement, (A) the Borrower has notified in writing the Senior Agent of its intention to unconditionally pay or discharge in full all amounts that are then due and payable by the Borrower under this Agreement or the other Finance Documents and (B) at the date of such notice, no Event is outstanding; and

(ii) the Borrower has provided to the Senior Agent the following documents in respect of the Borrower and any other person who will make the payments in order to satisfy the secured obligations under the Security Documents on behalf of the Borrower (jointly defined the **Relevant Obligors** and, individually, a **Relevant Obligor**, provided that any Transferee mentioned under Subclause 5.9 (Release of the Security in case of repayment, voluntary prepayment or refinancing by transfer), below shall not be deemed as a Relevant Obligor) dated, except for the documents to be provided pursuant to paragraph (A) below, not more than: (I) seven Business Days prior to the date of full discharge of any outstanding amount due and payable by the Borrower under the Fi nance Documents, for the documents to be provided pursuant to paragraphs (B), (C), (F) and (G) below; (II) ten Business Days prior to the date of full discharge of any outstanding amount due and payable by the Borrower under the Finance Documents, for the documents to be provided pursuant to paragraphs (D) and (E) below:

(A) copy of last two approved balance sheets in respect of each Relevant Obligor evidencing that its corporate capital (including any equity reserve such as, without limitation, those relating to *versamenti in conto futuro aumento di capitale*) has not been reduced (*integrità del capitale sociale*) and that (with the exception of any financial year of the Borrower which covers any period until the second year following the Project Completion Date) no losses have occurred during the related financial years;

(B) a "*certificato di vigenza*" in respect of each Relevant Obligor, evidencing that it is not and has never been subject to any insolvency proceeding (*procedura concorsuale*) (or, if a Relevant Obligor is not incorporated in Italy, the corresponding document in the relevant jurisdiction, if applicable);

(C) a certificate signed by a director (*legale rappresentante*) of each Relevant Obligor certifying that (1) at the time of the certificate no insolvency proceedings (*procedura concorsuale*) against it are pending nor (to its knowledge) the opening thereof has been requested by third parties or the Relevant Obligors (or, if a Relevant Obligor is not incorporated in Italy, the corresponding document in the relevant jurisdiction, if applicable); (2) at the time of the certificate it is not in a situation set forth under Articles 2482-bis or 2482-ter of the Italian Civil Code (if applicable); (3) at the time of making the repayment it is solvent, and (4) it will not become insolvent by reason of the repayment;

(D) a certificate issued by:

(1) the Court within the jurisdiction of which each Relevant Obligor has its registered office (and over each Relevant Obligor's administrative office, if in a different jurisdiction); and

(2) the Court within the jurisdiction of which the movable and immovable assets (*beni mobili ed immobili*) of each Relevant Obligor are located,

certifying that no seizure proceeding against any of the movable and/or immovable assets (procedura esecutiva mobiliare e/o immobiliare) of each Relevant Obligor is pending (or, if a Relevant Obligor is not incorporated in Italy, the corresponding document in the relevant jurisdiction, if applicable);

(E) an insolvency certificate issued by the *Sezione Fallimentare* of the competent Court evidencing that each Relevant Obligor is not subject to any insolvency proceedings (or, if a Relevant Obligor is not incorporated in Italy, the corresponding document in the relevant jurisdiction, if applicable);

(F) a "*visura protesti*" (certificate of legal proceedings) showing that each Relevant Obligor is not subject to legal proceedings for non-payment (*protesti*) (or, if a Relevant Obligor is not incorporated in Italy, the corresponding document in the relevant jurisdiction, if applicable); and

(G) only in the event of prepayment in full of all Loans in accordance with Subclause 5.4 (Voluntary prepayment) of this Agreement, in addition to the above requirements, a legal opinion from a law firm of primary standing (in form and substance acceptable to the Senior Agent) in relation to:

(1) the non-applicability of Article 65 of the Bankruptcy Law to such prepayment; and

(2) any change of the Bankruptcy Law or case law since the execution of this Agreement having the effect of increasing the risk (if any) to the Lenders that any such prepayment is subsequently clawed-back; and

(iii) in the event that all the preceding conditions listed in this paragraph (b) have been satisfied or waived by the Lenders, upon the Borrower's written request, the Senior Agent (acting reasonably) is satisfied that all amounts that are due and payable by the Borrower under this Agreement or the other Finance Documents have been unconditionally paid or discharged in full, or

(c) it is deemed expired pursuant to Subclause 5.9(e) (Release of the Security in case of repayment, voluntary prepayment or refinancing by transfer).

Settlement Agreement means the agreement on the date hereof between, inter alia, the Borrower, the Original Facility A Lenders, the Original Facility B Lender, the Issuer, the Quotaholder, the Sponsor, the Plant EPC Contractor, the EPC Co-obligor and the Plant Operator.

Site has the meaning given to it in the Plant EPC Contracts.

SMA means SMA Solar Technology AG.

Solar Block:

(a) for the purposes of the 45MW Plant, has the meaning given to the term "Ring" in the relevant Plant EPC Contract;

(b) for the purposes of the 6MW Plant, means the entire 6MW Plant.

Sponsor means Sunray Renewable Energy Limited.

Sponsor Parent means SunPower Corporation, a public company incorporated in the state of Delaware, I.R.S. Employer Identification No. 94-3008969.

Subscription Agreement means the subscription agreement in relation to the Class A1 and Class A2 Notes signed by all parties thereto and dated on or about the date hereof.

Subsidiary means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50% of the voting capital or similar right of ownership and control for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

Substation means the substation HT/MT for the connection in high voltage to the national power grid (Rete di Transmissione Nazionale) owned by Cassiopea PV S.r.l., on which the Borrower was granted a right of use pursuant to the terms of the Borrower Right of Use Agreement.

Substation Contractor means Terna.

Substation EPC Contracts means the two construction contracts in respect of the Substation Expansion Assets between the Borrower and the Substation Contractor dated:

(a) in respect of the Montalto 45MW Plant, 14 May 2010; and

(b) in respect of the Montalto 6MW Plant, 14 May 2010.

Substation Expansion Assets means the facilities and equipment to be installed by the Substation Contractor at the Substation to enable the connection of the Plants to the distribution grid.

Substation Operator means Terna.

Substation O&M Agreements means the two operations and maintenance agreements in respect of the Substation Expansion Assets between the Borrower and the Substation Operator dated:

(a) in respect of the Montalto 45MW Plant, 14 May 2010; and

(b) in respect of the Montalto 6MW Plant, 14 May 2010.

SunPower Italia means SunPower Italia S.r.l., a company incorporated under the laws of Italy, whose registered office is at Piazza Filippo Meda 3, 20121 Milan, Italy with a fully paid-up corporate capital of Euro 20,000, and whose registration number with the Companies' Registry of Milan, tax code and VAT No. is 06293700966.

Suppliers means:

(a) SMA Solar Technology AG, as the supplier of inverters;

(b) SunPower Corporation, as the supplier of trackers; and

(c) SunPower Corporation, as the supplier of modules.

TARGET System means Trans-European Automated Real-Time Gross Settlement Express Transfer System (known as TARGET2), which was launched on 19 November 2007 or any successor thereto.

TARGET Settlement Day means a day on which the TARGET System is open.

Tax means any tax (including VAT), levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest which is due and payable in connection with any failure or delay in payment of the same).

Tax Adviser means Deloitte & Touche.

Tax Authority Certificate means a certificate (Certificato dei carichi tributari pendenti) to be issued by the competent tax office setting out the tax position of the Borrower and, in particular, the tax liabilities due and not paid by the Borrower.

Tax Collection Agent Certificate means a certificate (Estratto conto debitorio) to be released by the competent tax collection agent (Agente della Riscossione) or otherwise downloaded from the relevant website of the competent tax collection agent setting out the tax position of the Borrower and, in particular, the tax liabilities due and not paid by the Borrower in whose respect an action has been set down (iscritta a ruolo).

Tax Deduction means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

Tax Payment means a payment made by the Borrower to a Finance Party:

(a) under Subclause 10.18 (Taxes); or

(b) in any way relating to a Tax Deduction or under any indemnity given by the Borrower in respect of a Tax under any Finance Document.

Technical Adviser means Fichtner GmbH Company KG or any other technical adviser appointed under this Agreement.

Technical Adviser's Drawdown Certificate means the certificate to be issued by the Technical Adviser in the form of Schedule 8 (Technical Adviser's Drawdown Certificate).

Terna means Terna - Rete Elettrica Nazionale Società per Azioni (i.e. Terna S.p.A.), the company that as from 1 November 2005 is in charge of the activities of transmission and despatch of electricity, encompassing the management of the National Transmission Network, pursuant to art. 1 paragraph 1 of the D.P.C.M. 11 May 2004.

Threshold Warehouse Account Balance means at any time an amount equal to the higher of:

(a) 5% of the then outstanding Facility A1 Loans and Facility A2 Loans; and

(b) €5,000,000.

Total Available Commitments means the aggregate of the Available Commitments of all the Lenders.

Total Commitments means the aggregate of the Commitments of all the Lenders.

Transaction Authorisation means any authorisation, permit, licence, consent or approval required by the Borrower (including under Environmental Law) for the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Borrower Documents or to otherwise implement the Project or to ensure that the Borrower Documents governed by Italian law are admissible in evidence in Italy.

Transaction Document has the meaning given in the Conditions.

Transfer Agreements means each of the agreements entered between the Original Facility A Lenders, the Issuer and the Borrower, relating to the transfer of the monetary receivables (crediti pecuniari individuabili in blocco) owed to the Original Facility A Lenders and arising out of the Project Loan Facilities.

Transfer Certificate means a certificate, substantially in the form of Part I of Schedule 3 (Transfer Certificate) with such amendments as the Senior Agent may approve or reasonably require or any other form agreed between the Senior Agent and the Borrower.

Treaty means a double taxation agreement.

Treaty Lender means a bank or a financial institution which:

(a) is treated as resident of a Treaty State for the purposes of the Treaty; and

(b) does not carry on a business in Italy through a permanent establishment (*stabile organizzazione*) with which that Lender's participation(s) in the relevant Loan(s) is(/are) effectively connected.

Treaty State means a jurisdiction having a Treaty with Italy which makes provision for full exemption from Tax imposed by Italy on interest.

Trustee means The Law Debenture Trust Corporation p.l.c.

UK Accounts means:

(a) the Deposit Account;

(b) the Equity Account; and

(c) the Drawdown Accounts.

Unpaid Taxes means, at any time, without counting any item more than once:

(a) any Taxes which are due from the Borrower but not yet paid, as evidenced by a Tax Authority Certificate and/or a Tax Collection Agent Certificate delivered to the Senior Agent pursuant to the Common Terms Agreement; and

(b) any Contested Taxes.

Up-front Fees means the EIB Up-front Fees, the SACE Up-front Fees and the Joint Lead Managers Up-front Fees.

Upstream Loan Agreement means any loan agreement between the Borrower and the Quotaholder under which the Borrower may lend amounts to the Quotaholder as Distributions, provided that the relevant loan is made at arm's length and in compliance with any applicable law (as confirmed, if requested by the Senior Agent, by the Borrower's Legal Adviser and this confirmation is satisfactory to the Senior Agent, acting reasonably).

Usury Law means Law No. 108 of 7 March 1996 (Disposizioni in materia di usura) and related implementation regulations, as subsequently replaced, amended and/or integrated.

VAT means Imposta sul Valore Aggiunto (value added tax).

VAT Facility Agreement means the credit agreement in respect of Facility B dated on the date of this Agreement between (among others) the Borrower, the Facility B Lender and the Senior Agent.

VAT Initial Security Period means, in respect of an Assignment of VAT Receivables, the period ending on the date falling 12 months after the date on which such Assignment of VAT Receivables is executed.

VAT Loan Payment Date has the meaning given to it in the VAT Facility Agreement.

VAT Payment means that portion of any payment payable by the Borrower which represents VAT (including any VAT incurred in respect of the Development Costs), to the extent that the Borrower is entitled to deduct such VAT under the applicable laws.

VAT Receivables (Credito IVA chiesto a rimborso) means the Borrower's annual VAT credit, the relevant interest accrued or which will accrue, any other connected right or claim connected thereto, in relation to which a refund request has been delivered by the Borrower to the competent authorities.

VAT Refund means any refund of VAT received by the Borrower in cash from the Italian Tax authorities.

Withdrawal means any withdrawal of amounts from the Deposit Account or any withdrawal of amounts from the Drawdown Accounts pursuant to Clause 4.2(b)(iii) of the English Accounts Agreement.

Withdrawal Request means a request for a Withdrawal, substantially in the form of Schedule 2 (Form of Withdrawal Request) to the Project Loan Facility Agreement.

1.2 Definitions in other documents

The following definitions have the meaning given to them in:

(a) the Project Accounts Agreement:

Account;

Project Accounts Bank;

Cash Sweep Lock-up Account;

Compensation Account;

Debt Service Reserve Account;

Distribution Account;

Major Maintenance Reserve Account;

Proceeds Account;

Required DSRA Balance;

Required Maintenance Balance;

Tax Reserve Account;

VAT Account; and

Warehouse Account

(b) The English Accounts Agreement

BNP Drawdown Account

BNP Drawdown Account Bank

Deposit Account

Drawdown Account Banks

Drawdown Accounts

Equity Account

English Account Bank

SG Drawdown Account

SG Drawdown Account Bank

(c) the Calculations and Forecasting Agreement:

Calculation Date;

Forecast;

Gross Revenues;

Historic Annual Debt Service Cover Ratio;

Historic Statement;

Loan Life Cover Ratio;

Projected Annual Debt Service Cover Ratio;

Ratio; and

Scheduled Calculation Date.

1.3 Construction

(a) In this Agreement, unless the contrary intention appears, a reference to:

(i) an amendment includes a supplement, novation, restatement or re-enactment or replacement (however fundamental and whether or not more onerous) and amended will be construed accordingly;

(ii) assets includes present and future properties, revenues and rights of every description;

(iii) an authorisation includes an authorisation, permit, consent, approval, resolution, licence, exemption, filing, registration or notarisation;

(iv) disposal means in relation to a right, an asset or an interest in an asset, a sale, transfer, grant, assignment, lease or other disposal, whether voluntary or involuntary, and dispose will be construed accordingly;

(v) including is including without limitation;

(vi) indebtedness includes any obligation (whether incurred as principal or as surety and whether present or future, actual or contingent) for the payment or repayment of money;

(vii) indexed means in the case of any amount increased or decreased annually from the date of this Agreement (or other specified date) in line with ISTAT CPI;

(viii) know your customer requirements are the identification checks that a Finance Party requests in order to meet its obligations under any applicable law or regulation to identify a person who is (or is to become) its customer;

(ix) a person includes any individual, firm, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;

(x) a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

(xi) a currency is a reference to the lawful currency for the time being of the relevant country;

(xii) an Event being outstanding means that it has not been remedied or waived;

(xiii) a provision of law, decree, resolution of any authority or another regulation, is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;

(xiv) a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Agreement;

(xv) a Party or any other person includes its successors in title, permitted assigns and permitted transferees;

(xvi) a Finance Document or other document or security includes (without prejudice to any prohibition on amendments) any amendment to that Finance Document or other document or security, including any change in the purpose of, any extension of or any increase in the amount of a facility or any additional facility;

(xvii) a time of day is a reference to Rome time;

(xviii) a reference to "extraordinary administration" in respect of a person or assets which are subject to the laws of Italy is a reference to extraordinary administration (*amministrazione straordinaria*) under Italian law;

(xix) a reference to "insolvency proceedings" is a reference to any insolvency proceeding (*procedura concorsuale*) under the Bankruptcy Law; and

(xx) references to “reasonable” or “reasonably” and similar expressions, including, without limitation, to “acting reasonably”, when used in this Agreement or any other Finance Document relating to the Senior Agent and any exercise of power, opinion, determination or other similar matter, shall be construed as meaning reasonable or reasonably (as the case may be) having regard to, and taking into account, the interests of the Lenders and the Senior Agent shall not be regarded as being unreasonable or acting unreasonably if the Senior Agent is seeking instructions from the Majority Lenders or acting in accordance with the instructions of the Majority Lenders pursuant to the terms of this Agreement and the Senior Agent shall be regarded as acting reasonably if it is acting in accordance with the instructions of the Majority Lenders; and

(xxi) references to “consent or approval not to be unreasonably withheld or delayed” or like references mean, in relation to the Senior Agent, that, in determining whether to

give such consent or approval, the Senior Agent shall have regard to the interests of the Lenders and the consent of the Senior Agent shall not be regarded as having been unreasonably withheld or delayed if the Senior Agent is seeking instructions or otherwise acting in accordance with the instructions of the Majority Lenders pursuant to the terms of this Agreement.

(b) An Historic Statement, Forecast, Historic Annual Debt Service Cover Ratio, Projected Annual Debt Service Cover Ratio or Loan Life Cover Ratio is **finally determined** when it has been finally determined in accordance with the Calculations and Forecasting Agreement.

(c) Unless the contrary intention appears, a reference to a **month** or **months** is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:

(i) if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);

(ii) if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and

(iii) notwithstanding subparagraph (i) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.

(d) Unless the contrary intention appears:

(i) a reference to a Party will not include that Party if it has ceased to be a Party under this Agreement;

(ii) a word or expression used in any other Finance Document or in any notice given in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement; and

(iii) any obligation of an Obligor under the Finance Documents which is not a payment obligation remains in force for so long as any payment obligation of the Borrower is or may be outstanding under the Finance Documents.

(e) The headings in this Agreement do not affect its interpretation.

(f) From the Issue Date until the redemption in full of the Notes, in the event that any inconsistencies should arise between the provisions of this Agreement and the provisions of the Intercreditor Agreement, the Intercreditor Agreement will prevail.

2. FACILITIES

2.1 Facility A1

Subject to the terms of this Agreement and the other Finance Documents, the Lenders agree with the Borrower to make available to the Borrower a term loan facility in an aggregate amount equal to the aggregate of the Facility A1 Commitments of all the Lenders.

2.2 Facility A2

Subject to the terms of this Agreement and the other Finance Documents, the Lenders agree with the Borrower to make available to the Borrower a term loan facility in an aggregate amount equal to the aggregate of the Facility A2 Commitments of all the Lenders.

2.3 Facility B1

Subject to the terms of this Agreement and the other Finance Documents, the Facility B Lenders agree with the Borrower to make available to the Borrower a revolving credit facility in an aggregate amount equal to the aggregate of the Facility B1 Commitments of all the Facility B Lenders.

2.4 Facility B2

Subject to the terms of this Agreement and the other Finance Documents, the Facility B Lenders agree with the Borrower to make available to the Borrower a revolving credit facility in an aggregate amount equal to the aggregate of the Facility B2 Commitments of all the Facility B Lenders.

2.5 Nature of a Finance Party's rights and obligations

Unless all the Finance Parties agree otherwise:

(a) the obligations of a Finance Party under the Finance Documents are several;

(b) failure by a Finance Party to perform its obligations does not affect the obligations of any other Party under the Finance Documents;

(c) no Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents;

(d) the rights of a Finance Party under the Finance Documents are separate and independent rights;

(e) a Finance Party may, except as otherwise stated in the Finance Documents, separately enforce those rights; and

(f) a debt arising under the Finance Documents to a Finance Party is a separate and independent debt.

3. PURPOSE

3.1 Project Loans

The Project Loans may only be used to fund:

(a) Project Costs (other than VAT Payments) payable during the Withdrawal Availability Period;

(b) any transfer to the Debt Service Reserve Account required or permitted under the Accounts Agreements; and

(c) any other purpose approved by the Senior Agent.

3.2 Facility B1 Loan and Facility B2 Loan

(a) Each Facility B1 Loan may only be used to:

(i) fund the payment of an Eligible VAT Payment related to amounts of VAT incurred in 2010; and/or

(ii) fund the refinancing of Eligible VAT Payments already made; and/or

(iii) repay or refinance existing Facility B1 Loans.

(b) Each Facility B2 Loan may only be used to:

(i) fund the payment of an Eligible VAT Payment relating to amounts of VAT incurred in 2011; and/or

(ii) repay or refinance existing Facility B2 Loans.

3.3 No obligation to monitor

No Finance Party is bound to monitor or verify the utilisation of a Facility.

4. CONDITIONS PRECEDENT

4.1 Conditions Precedent documents

(a) On the date of this Agreement, the Borrower shall deliver a Request in relation to Facility A1 and Facility A2 for an amount equal to the Facility A1 Commitment and the Facility A2 Commitment respectively.

(b) The obligations of each Lender to participate in a Loan are subject to the occurrence of Financial Close. The Senior Agent must notify the Borrower and the Lenders promptly upon Financial Close occurring.

4.2 Further conditions precedent

(a) The obligations of each Facility A Lender to participate in a Facility A1 Loan or a Facility A2 Loan are subject to the further conditions precedent that on the date of the Request and the Drawdown Date for the Facility A1 Loan and the Facility A2 Loan:

(i) the representations under the Finance Documents made or repeated by the Borrower on these dates are correct in all material respects;

(ii) no Event is outstanding or would result from the proposed Facility A1 Loan or Facility A2 Loan; and

(iii) the Remaining Project Costs are equal to or less than Available Funding.

(b) The Borrower's right to make a Withdrawal is subject to the Borrower submitting a Withdrawal Request to the Senior Agent (copied to the English Account Bank (in relation to a Withdrawal from the Deposit Account) and to the SG Drawdown Account Bank and the BNPP Drawdown Account Bank (in relation to a Withdrawal from the Drawdown Accounts)) and the further conditions precedent that on both the date of the Withdrawal Request and the date of the Withdrawal:

(i) the following having been delivered to the Senior Agent:

(A) in relation to a Withdrawal from the Deposit Account only, an original of the Intercreditor Agreement, duly executed by each of the parties to it;

(B) evidence that any notice to be delivered to the relevant pledged debtor pursuant to the Pledge over Receivables and Accounts has been sent by the Borrower;

(C) a copy certified as original by a legal representative of the Borrower of the receipts of the companies registry of Milan evidencing deposit of the Pledge over Quotas;

(D) a notarised copy of the relevant pages of the quotaholders' book of the Borrower evidencing registration of the pledge constituted by the Pledge over Quotas;

(E) copy of the Nota di Iscrizione of the Mortgage issued and duly stamped by the competent land registry office;

(F) evidence of the registration of the Privilegio Speciale pursuant to Article 46 of Legislative Decree No. 385 of 1 September 1993 with the register of the relevant Tribunale pursuant to Article 1524 of the Italian Civil Code and

(G) evidence that all relevant creditors of the Borrower have acceded to the Charge over Deposit Account;

(ii) the representations under the Finance Documents made or repeated by the Borrower on these dates are correct in all material respects;

(iii) no Event or, in the case of a Withdrawal to fund Financing Costs in whole or in part, no Relevant Event is outstanding or would result from the proposed Withdrawal;

(iv) in relation to a Withdrawal from the Deposit Account only, all amounts standing to the credit of the Drawdown Accounts after the Drawdown Date for Facilities A1 and A2 have been transferred to the Deposit Account and/or applied to pay in full the fees and expenses in accordance with Clauses 3.2(b) and (c) of the Project Accounts Agreement;

(v) in relation to a Withdrawal from the Deposit Account only, all Equity (other than the Excess Equity Amount and the €2,000,000 which the Borrower is permitted to retain in the Proceeds Account) injected pursuant to paragraph 4(b) of Schedule 2 has been fully utilised to pay Project Costs;

(vi) in relation to a Withdrawal from the Deposit Account only, all Up-front Fees due and payable have been paid;

(vii) the Remaining Project Costs are equal to or less than Available Funding;

(viii) for any Withdrawal to fund Construction Costs, a Technical Adviser's Drawdown Certificate in respect of such costs has been provided;

(ix) for any Withdrawal to fund any Project Costs (but only to the extent that such cost is equal to or greater than €25,000 in aggregate per supplier or contractor) falling

within paragraphs (a) to (d), (f) or (h) to (j) of the definition of Project Costs (other than any Construction Costs), it is accompanied by the original or a certified copy of an invoice or other evidence (including, but not limited to, certification by the Technical Adviser) that such cost is due and payable;

(x) for any Withdrawal to fund Project Costs or Operating Costs in respect of which VAT is due, a corresponding Facility B1 Loan or Facility B2 Loan has been requested;

(xi) for any Withdrawal, the withdrawal is in accordance with the English Accounts Agreement;

(xii) for any Withdrawal, the Withdrawal occurs during the Withdrawal Availability Period; and

(xiii) for any Withdrawal from the Deposit Account, no more than one other Withdrawal Request in relation to a Withdrawal from the Deposit Account has been made in the same month.

(c) The obligations of each Facility B Lender to participate in a Facility B1 Loan or a Facility B2 Loan are subject to the further conditions precedent that on both the date of the Request and the Drawdown Date for the relevant Facility B1 Loan or Facility B2 Loan:

(i) the representations under the Finance Documents made or repeated by the Borrower on these dates are correct in all material respects;

(ii) no Event or, in the case of a Rollover Facility B1 Loan or a Rollover Facility B2 Loan, no Relevant Event is outstanding or would result from the proposed Facility B1 Loan or Facility B2 Loan;

(iii) the Remaining Project Costs are equal to or less than Available Funding;

(iv) the Issue Date has occurred;

(v) the further conditions precedent in paragraph (b) above to the corresponding Withdrawal to fund Project Costs or Operating Costs in respect of which VAT is due, have been satisfied or otherwise waived; and

(vi) except in relation to a Rollover Facility B1 Loan or a Rollover Facility B2 Loan, a Tax Collection Agent Certificate dated no more than five Business Days before the Drawdown Date has been delivered to the Senior Agent.

(d) A Request for a Facility B1 Loan or a Facility B2 Loan may not be given if, as a result, there would be more than five Facility B1 Loans or five Facility B2 Loans outstanding.

5. PREPAYMENT AND CANCELLATION

5.1 Mandatory prepayment - illegality

(a) A Lender must notify the Borrower and the Senior Agent promptly if, and in any event not later than 5 (five) Business Days after, it becomes aware that it is unlawful in any jurisdiction for that Lender to perform any of its obligations under a Finance Document or to fund or maintain its share in any Loan.

(b) After notification under paragraph (a) above:

(i) the Borrower must repay or prepay the share of that Lender in each Loan made to it on the date specified in paragraph (c) below; and

(ii) the Commitments of that Lender will be immediately cancelled.

(c) The date for repayment or prepayment of a Lender's share in a Loan will be:

(i) the last day of any Interest Period of that Loan; or

(ii) if earlier, but without prejudice to the Lender's mitigation obligations under Clause 8 below, the date specified by the Lender in the notification under paragraph (a) above and which must not be earlier than the last day of any applicable grace period allowed by law.

Any delay in notifying any illegality shall, at the option of the Borrower, postpone the date for repayment, as set forth under paragraphs (c)(i) and (ii) above, provided that the Borrower shall make the relevant payment as soon as practically possible and in any event the period of postponement of the repayment or prepayment shall not exceed the period of delay in notifying the Borrower.

5.2 Mandatory prepayment – reduced Project Costs

(a) If the total aggregate amount of Project Costs is permanently reduced so that the total aggregate amount of proceeds from Facility A2 exceeds 50% of the total Project Costs, the Facility A Lenders may notify the Borrower and the Senior Agent in writing that they require the Facility A1 Loans and the Facility A2 Loans to be prepaid, respectively, in an aggregate amount equal to the excess. Upon receipt of such notification, the Borrower must, on the immediately following Project Loan Payment Date (provided that if the immediately following Project Loan Payment Date falls within 7 Business Days of the date of such notification, the date for prepayment will be the Project Loan Payment Date following that Project Loan Payment Date), prepay such amount together with any accrued interest and any Prepayment Additional Amount (if any) payable in respect of such prepayment.

(b) If the relevant Project Loan Payment Date on which the prepayment obligation in paragraph (a) above applies falls during the Initial Period, such repayment obligation will be deferred until the first Project Loan Payment Date occurring after the end of the Initial Period.

5.3 Mandatory prepayment – other

(a) If the Issue Date does not occur on the Scheduled Issue Date due to an Issue Failure, the Borrower must immediately on the Scheduled Issue Date prepay all Loans outstanding in full, together with any accrued interest and/or Break Costs. The Parties agree that in accordance with Clause 25 (Set-Off) such prepayment and any other payments owed to the Finance Parties following an Issue Failure may be discharged by way of set-off by the Lenders.

(b) Following the expiry of the Initial Period, the Borrower must, on the Project Loan Payment Date immediately following each date upon which the amount standing to the credit of the Warehouse Account is equal to or greater than the Threshold Warehouse Account Balance, prepay the Loans in an amount, which, when aggregated with any Prepayment Additional Amount payable in respect of any such prepayment, is equal to the amount standing to the credit of the Warehouse Account immediately prior to such prepayment.

(c) Following receipt by the Borrower of an Issuer Voluntary Redemption Notice, the Borrower must prepay the Project Loans in full on the immediately following Project Loan Payment Date.

5.4 Voluntary prepayment

(a) Subject to the other terms of this Agreement, the Borrower may, by giving not less than 30 days' prior notice to the Senior Agent, prepay on the same Loan Payment Date all the Facility A1 Loans, Facility A2 Loans, Facility B1 Loans and Facility B2 Loans at any time in whole, but not in part.

(b) The Borrower may not voluntarily prepay the Loans during the Initial Period.

(c) The Borrower may not voluntarily prepay the Loans unless it has sufficient funds to make the prepayment in full together with all accrued interest and any Prepayment Additional Amount.

5.5 Automatic cancellation

Each undrawn Facility B1 Commitment and Facility B2 Commitment of each Lender will be automatically cancelled at the close of business on the last day of the Availability Period for Facility B1 and Facility B2.

5.6 Voluntary cancellation

(a) Subject to the other terms of this Agreement, the Borrower may, by giving not less than ten days' prior written notice to the Senior Agent, cancel the unutilised amount of either or both of the Facility B1 Commitment and/or the Facility B2 Commitment in whole or in part.

(b) Partial cancellation of either or both of the Facility B1 Commitment or the Facility B2 Commitment must be in a minimum amount of €10,000 and an integral multiple of €10,000.

Any cancellation in part will be applied against the relevant Commitment of each relevant Lender pro rata.

5.7 Involuntary prepayment and cancellation

(a) Subject to the other terms of this Agreement, if the Borrower is, or will be, required to pay to a Lender:

(i) a Tax Payment; or

(ii) an Increased Cost

the Borrower may, while the requirement continues, give notice to the Senior Agent requesting prepayment and cancellation in respect of that Lender.

(b) After notification under paragraph (a) above and subject to the terms of this Agreement:

(i) the Borrower must repay or prepay that Lender's share in each Loan on the date specified in paragraph (c) below; and

(ii) the Commitments of that Lender will be immediately cancelled.

(c) The date for repayment or prepayment of a Lender's share in a Loan will be the immediately following Loan Payment Date.

(d) The Borrower may not make any involuntary prepayment of the Loans under this Subclause 5.7, unless it has sufficient funds to make the prepayment in full together with all accrued interest and Prepayment Additional Amounts.

5.8 Application of prepayment

(a) Unless otherwise specified in this Agreement or if the Majority Lenders consent to an alternative order of application, any amount to be applied in prepayment of Loans under this Clause 5 must be applied:

(i) first, in prepayment of the Project Loans on a *pro rata* basis; and

(ii) second, in prepayment of the Facility B1 Loans and Facility B2 Loans in the following order:

(A) first, against the Facility B1 Loans and Facility B2 Loans in respect of which the VAT Initial Security Period has not expired, on a *pro rata* basis; and

(B) second, against the Facility B1 Loans and Facility B2 Loans in respect of which the VAT Initial Security Period has expired, on a *pro rata* basis.

(b) Any prepayment of a Project Loan will be applied against its remaining Repayment Instalments *pro rata*.

5.9 Release of the Security in case of repayment, voluntary prepayment or refinancing by transfer

(a) Subject to paragraph (f) below, if the Borrower gives a notice to the Senior Agent (which is accompanied by documents listed in paragraph (b)(ii)(A) to (F) of the definition of **Security Period** in respect of the Borrower dated as specified therein) that it intends to refinance by transfer all the Loans, then, on the date specified in that notice (which shall be no less than 30 days after the date of the notice), each Lender (an **Exiting Lender**) must transfer all of its participations in each Loan, all of its Commitments, all of its rights and obligations under the Finance Documents and the Equity Subscription Agreement:

(i) by way of assignment or by way of transfer in accordance with Clause 22 (Changes to the Parties); or

(ii) by way of assignment pursuant to Article 58 of the Legislative Decree No. 385 dated 1 September 1993 (provided that the Borrower has delivered to the Exiting Lender (A) a legal opinion from a law firm of primary standing, in form and substance satisfactory to the Exiting Lender, confirming the existence of the requirements for such form of assignment provided by Article 58 of the Legislative Decree No. 385 dated 1 September 1993 and the other applicable provisions, and (B) a written declaration confirming that it waives any right it may have towards the Exiting Lender pursuant to Article 58, paragraphs (5) and (6) of the Legislative Decree No. 385 dated 1 September 1993),

at the option of the Borrower, for a purchase price equal to the par value of the Exiting Lender's share in the outstanding Loans to be transferred together with accrued interest thereon up to the date of transfer and the relevant portion of any other outstanding amount due and payable by the

Borrower to the Exiting Lender under the Finance Documents and, including, in the case of any Exiting Lender which is a Facility A Lender, an amount equal to any Prepayment Additional Amounts payable in respect of such transfer of the Project Loans (the Purchase Price), to the person or persons (and where more than one in the percentages) specified in that notice provided that each such transferee (the Transferee) is:

(i) an Original Lender or who is otherwise a Lender at that time which has a long-term credit rating from Standard & Poor's of at least BBB+ (or an equivalent rating from Moody's and/or Fitch); or

(ii) a bank or financial institution which is not an Affiliate of the Borrower, is regulated in Italy or elsewhere in the European Union and has a long-term credit rating from Standard & Poor's of at least A- (or an equivalent rating from Moody's and/or Fitch); or

(iii) only upon the unanimous Lenders' consent, a newly incorporated company which has (or whose debt has) a long-term credit rating from Standard & Poor's of at least BBB- (or an equivalent rating from Moody's and/or Fitch),

and provided further that no tax (other than any corporate income tax) is imposed on the Exiting Lender in relation to the transfer (A) which has not been paid to the tax authority or (B) for which an equivalent amount has not been paid by the Borrower to the Exiting Lender or (C) which the Transferee has not undertaken to pay on-demand to the Exiting Lender, and no other costs and expenses arising from the transfer (including costs for registration and perfection of any security, legal and notarial costs) shall be borne by the Exiting Lender.

(b) Subject to paragraph (f) below, the Parties agree that, in case a notice of prepayment of the Loans in full is delivered by the Borrower pursuant to Subclause 5.4 (Voluntary prepayment), if:

(i) the legal opinion mentioned in paragraph (b)(ii)(G) of the definition of **Security Period**: (A) is not received by the Senior Agent; or (B) is received by the Senior Agent, but is not satisfactory to any Lender; and/or

(ii) the condition set out under paragraph (b)(ii)(B) of the definition of **Security Period** is not satisfied and, upon the Borrower's written request to waive such condition, any Lender denies its consent to the waiver,

provided that, for avoidance of doubt, the documents listed in paragraph (b)(ii)(A) to (F) of the definition of Security Period are duly received by the Senior Agent, then the Borrower shall have the right to require the relevant Lender or all the Lenders (the Transferring Lender(s)) to transfer (and the Transferring Lender(s) will be obliged to do so), no later than ten Business Days from the Borrower's written request, all of their participations in each Loan, all of their Commitments, all of their rights and obligations under the Finance Documents and the Equity Subscription Agreement:

(i) by way of assignment or by way of transfer in accordance with Clause 22 (Changes to the Parties); or

(ii) by way of assignment pursuant to Article 58 of the Legislative Decree No. 385 dated 1 September 1993 (provided that the Borrower has delivered to the Transferring Lender(s) (A) a legal opinion from a law firm of primary standing, in form and substance satisfactory to the Transferring Lender(s), confirming the existence of the requirements for such form of assignment provided by Article 58 of the Legislative Decree No. 385 dated 1 September 1993 and the other applicable provisions, and (B) a written declaration confirming that it waives any right it may have towards the

Transferring Lender(s) pursuant to Article 58, paragraphs (5) and (6) of the Legislative Decree No. 385 dated 1 September 1993),

at the option of the Borrower, for a purchase price equal to the par value of the Transferring Lender(s)' share in the outstanding Loans to be transferred together with accrued interest thereon up to the date of transfer and the relevant portion of any other outstanding amount due and payable by the Borrower to the Transferring Lender(s) under the Finance Documents and, including, in the case of any Transferring Lender which is a Facility A Lender, an amount equal to any Prepayment Additional Amounts payable in respect of such transfer of the Project Loans (the Purchase Price), to the person or persons (and where more than one in the percentages) specified in that notice provided that each such transferee (the Transferee) is:

(i) an Original Lender or who is otherwise a Lender at that time which has a long-term credit rating from Standard & Poor's of at least BBB+ (or an equivalent rating from Moody's and/or Fitch); or

(ii) a bank or financial institution which is not an Affiliate of the Borrower, is regulated in Italy or elsewhere in the European Union and has a long-term credit rating from Standard & Poor's of at least A- (or an equivalent rating from Moody's and/or Fitch); or

(iii) only upon the unanimous Lenders' consent, a newly incorporated company which has (or whose debt has) a long-term credit rating from Standard & Poor's of at least BBB- (or an equivalent rating from Moody's and/or Fitch),

and provided further that no tax (other than any corporate income tax) is imposed on the Transferring Lender(s) in relation to the transfer (A) which has not been paid to the tax authority or (B) for which an equivalent amount has not been paid by the Borrower to the Transferring Lender(s) or (C) which the Transferee has not undertaken to pay on-demand to the Transferring Lender(s), and no other costs and expenses arising from the transfer (including costs for registration and perfection of any security, legal and notarial costs) shall be borne by the Transferring Lender(s).

(c) In case of transfer pursuant to paragraph (a) or (b) above, the Exiting Lenders' or the Transferring Lenders' consent (as the case may be) to the release of the Security Documents shall not be required and those Lenders shall, upon request by the Borrower or the Quotaholder, take all the necessary actions in order to release or to transfer (at the Borrower's option and discretion) the Security Interests created under the Security Documents on the same day of receipt of the Purchase Price when the Security Period has expired in accordance with paragraph (e) below.

(d) Neither the Senior Agent, nor a Lender, shall be obliged, at any time, either (i) to be a Transferee under paragraph (a) or (b) above or (ii) to procure the acceptance by a Transferee of a transfer under paragraph (a) or (b) above.

(e) For the avoidance of any doubt, in case of transfer under paragraph (a) or (b) above, the Security Period shall be deemed as expired with the payment of the Purchase Price by the Transferee to the Exiting Lender or to the Transferring Lender (as the case may be).

(f) No notice of intention to refinance or prepay contemplated in this Subclause 5.9 in relation to the Loans may be delivered to the Senior Agent during the Initial Period.

(g) The Transferee shall, on the date upon which the transfer takes effect, pay to the Senior Agent (for its own account) a fee of EUR3,000.

5.10 Miscellaneous provisions

(a) Subject to paragraph (i) below, any notice of prepayment and/or cancellation under this Agreement is irrevocable and must specify the relevant date(s) and affected Loans and Commitments. The Senior Agent must notify the Lenders promptly of receipt of any such notice.

(b) Unless otherwise specified (including, for the avoidance of doubt, in Subclause 5.3), all prepayments under this Agreement must be made with:

(i) accrued interest on the amount prepaid (and, for the avoidance of doubt, for the purpose of any prepayment of Facility A1 Loans or Facility A2 Loans, "accrued interest" includes all interest payable during the Interest Period in which the prepayment falls, regardless of whether it accrues on the amount prepaid before or after the date of prepayment); and

(ii) if applicable, must be increased by any Prepayment Additional Amount payable in connection with the prepayment and/or in respect of any early redemption of the Notes in whole or in part following the relevant prepayment.

(c) Except as otherwise provided in this Subclause 5.10, no premium or penalty is payable in respect of any prepayment except for Break Costs.

(d) The Senior Agent (acting on the instructions of the affected Lenders) and the Borrower may agree a shorter notice period for a voluntary prepayment or a voluntary cancellation.

(e) No prepayment or cancellation is allowed except in accordance with the express terms of this Agreement, the Project Loan Facility Agreement or the VAT Facility Agreement.

(f) The Borrower may not re-borrow any part of a Facility A1 Loan or a Facility A2 Loan which is prepaid.

(g) Without prejudice to the other terms of this Agreement, the Borrower may not exercise any right of voluntary prepayment or voluntary cancellation under Subclause 5.4 (Voluntary prepayment), Subclause 5.6 (Voluntary cancellation) or Subclause 5.7 (Involuntary prepayment and cancellation) before the latest Project Completion Date unless, at the date of notification of such prepayment or cancellation, the Available Funding exceeds or is equal to the Remaining Project Costs (assuming the relevant prepayment or cancellation has taken effect).

(h) No amount of any Facility A1 Commitment, Facility A2 Commitment, Facility B1 Commitment or Facility B2 Commitment cancelled under this Agreement may subsequently be reinstated.

(i) In relation to a voluntary prepayment under Clause 5.4 (Voluntary prepayment):

(i) the Senior Agent shall notify the Borrower, not later than 15 days prior to the date for prepayment, of the accrued interest due thereon and of the other amounts referred to in paragraph (b) above, payable in respect of such prepayment.

(ii) not later than the Acceptance Deadline (as defined in paragraph (iv) below), the Borrower shall notify the Senior Agent either:

(A) that it confirms the prepayment notice on the terms specified by the Senior Agent; or

(B) that it withdraws the prepayment notice.

(iii) if the Borrower gives the confirmation under paragraph (A) above, it shall effect the prepayment. If the Borrower withdraws the prepayment notice or fails to confirm it in due time, it may not effect the prepayment. Save as aforesaid, the prepayment notice shall be binding and irrevocable.

(iv) for the purposes of this paragraph (i), **Acceptance Deadline** means:

(A) 16h00 on the day of delivery, if the notice from the Senior Agent under paragraph (i) above, is delivered by 14h00 on a Business Day; or

(B) 11h00 on the next following day which is a Business Day, if the notice from the Senior Agent under paragraph (i) above, is delivered after 14h00 on a Business Day or is delivered on a day which is not a Business Day.

(v) Unless otherwise expressly stated in this Agreement, no prepayment may be made other than on a Loan Payment Date.

(j) The Senior Agent shall, in respect of any prepayment, give notice to the Borrower no later than 5 Business Days after being notified of such prepayment by the Borrower, of the amount of any accrued interest and Prepayment Additional Amounts (if any) payable in connection with such prepayment.

6. PAYMENTS

6.1 Place

(a) Unless a Finance Document specifies that payments under it are to be made in another manner and subject to paragraph (b) below, all payments (other than payments made by the Borrower in respect of Facility A1 and Facility A2 on or after the Issue Date which are to be paid to the Issuer by way of payment to the Issuer Collection Account) by a Party (other than the Senior Agent) under the Finance Documents must be made to the Senior Agent to its account at the Project Accounts Bank, the English Account Bank (in each case, provided that it is an Eligible Institution at the time of receipt of such payment) or another Eligible Institution:

(i) in the principal financial centre of the country of the relevant currency; or

(ii) in the case of Euro, in the principal financial centre of a Participating Member State or London,

as it may notify to that Party for this purpose by not less than five Business Days' prior notice.

(b) A sum due from the Borrower shall be deemed paid to the Senior Agent when the Senior Agent actually receives it.

6.2 Funds

Payments under the Finance Documents to a Lender or the Senior Agent must be made for value on the due date at such times and in such funds as the Senior Agent may specify to the Party concerned as being customary at the time for the settlement of transactions in the relevant currency in the place for payment.

6.3 Currency

(a) Unless a Finance Document specifies that payments under it are to be made in a different manner, the currency of each amount payable under the Finance Documents is determined under this Clause.

(b) Amounts payable in respect of Taxes, fees, costs and expenses are payable in the currency in which they are incurred.

(c) Each other amount payable under the Finance Documents is payable in Euros.

6.4 Distribution

(a) Each payment received by the Senior Agent under the Finance Documents for another Party must, except as provided below, be made available by the Senior Agent to that Party by payment (as soon as practicable after receipt in cleared funds):

(i) in the case of payment for the Borrower, to the Proceeds Account (save to the extent that the payment relates to the proceeds of a Loan whose Request directs it to be paid to a different Account when it should be paid to that other Account); and

(ii) in the case of a payment for a Party other than the Borrower, to its account with such office or bank:

(A) in the principal financial centre of the country of the relevant currency; or

(B) in the case of Euro, in the principal financial centre of a Participating Member State or London,

as it may notify to the Senior Agent for this purpose by not less than five Business Days' prior notice.

(b) Subject to Subclause 5.8 (Application of prepayment), the Senior Agent may apply any amount received by it for the Borrower in or towards payment (as soon as practicable after receipt) of any amount due from the Borrower under the Finance Documents or in or towards the purchase of any amount of any currency to be so applied.

(c) Where a sum is paid to the Senior Agent under this Agreement for another Party, the Senior Agent is not obliged to pay that sum to that Party until it has established that it has actually received it in cleared funds. However, the Senior Agent may assume that the sum has been paid to it, and, in reliance on that assumption, make available to that Party a corresponding amount. If it transpires that the sum has not been received by the Senior Agent, that Party must immediately on demand by the Senior Agent refund any corresponding amount made available to it together with interest on that amount from the date of payment to the date of receipt by the Senior Agent at a rate calculated by the Senior Agent to reflect its cost of funds.

6.5 No set-off or counterclaim

All payments made by the Borrower under the Finance Documents must be made without set-off or counterclaim.

6.6 Business Days

(a) If a payment under the Finance Documents is due on a day which is not a Business Day, the due date for that payment will instead be the next Business Day.

(b) During any extension of the due date for payment of any principal under this Agreement interest is payable on that principal at the rate payable on the original due date.

6.7 Partial payments

(a) If, at any time, the Borrower makes a payment under the Finance Documents and/or the Securitisation Documents, which is insufficient to discharge all the amounts then due and payable by the Borrower under such agreements, such payments must be applied towards the obligations of the Borrower under the Finance Documents or, as the case may be, the Securitisation Documents, in the order set out in Clause 3.2 of the Project Accounts Agreement and, when applicable, the Intercreditor Agreement.

6.8 Disruption to payment systems

(a) If the Senior Agent determines (in its discretion) that a Disruption Event has occurred or the Borrower notifies the Senior Agent that a Disruption Event has occurred, the Senior Agent:

(i) may, and (subject to (ii) below) must if requested by the Borrower, enter into discussions with the Borrower for a period of not more than five days with a view to agreeing any changes to the operation or administration of the Facilities (**changes**) as the Senior Agent may decide is necessary;

(ii) is not obliged to enter into discussions with the Borrower in relation to any changes if, in its opinion, it is not practicable so to do and has no obligation to agree to any changes;

(iii) may consult with the Finance Parties in relation to any changes but is not obliged so to do if, in its opinion, it is not practicable in the circumstances; and

(iv) must notify the Finance Parties of any changes agreed under this Subclause.

(b) Any agreement between the Senior Agent and Borrower will be (whether or not it is finally determined that a Disruption Event has occurred) binding on the Parties notwithstanding the provisions of Clause 21 (Amendments and Waivers).

(c) The Senior Agent accepts the discretions given to it by this Subclause only on the basis that, without prejudice to the provisions of Article 1229 of the Italian Civil Code, it will not be liable (either in contract or tort) for any damages, costs or losses of any kind which any Party may incur or sustain as a result of the Senior Agent taking or not taking any action under this Subclause.

(d) If the Senior Agent makes any payment to any person in respect of a liability incurred as a result of taking or not taking any action under this Subclause, the amount of that payment is an amount in respect of which each Lender must indemnify and/or secure the Senior Agent

for that Lender's Pro Rata Share of any loss or liability incurred by the Senior Agent under this Subclause (unless the Senior Agent has been reimbursed by the Borrower under a Finance Document).

(e) Paragraph (d) above applies notwithstanding:

(i) any other term of any Finance Document (including any term in Clause 16 (The Administrative Parties); and

(ii) irrespective of whether the payment was made as a result of actual or alleged negligence of the Senior Agent but so that the Senior Agent has no indemnity for claims against it which arise as a result of fraud or gross negligence or wilful misconduct of the Senior Agent.

6.9 Timing of payments

If a Finance Document does not provide for when a particular payment (including, for clarification purposes, an indemnity or reimbursement) is due, that payment will be due within seven Business Days of demand by the relevant Finance Party.

7. INTEREST

7.1 Interest on overdue amounts under Facility A1 and Facility A2 (provided the Issue Date occurs on the Scheduled Issue Date)

(a) In the event that on any Project Loan Payment Date there is any Interest Amount Arrears, such Interest Amount Arrears shall remain due and be payable on the following Project Loan Payment Date or on the day an Issuer Acceleration Notice is served to the Issuer, whichever comes first. Any such Interest Amount Arrears shall not accrue additional interest. A *pro rata* share of such Interest Amount Arrears shall be aggregated with the amount of, and treated as if it were, interest due, subject to this Subclause, on the outstanding Facility A1 Loan and Facility A2 Loan on the next succeeding Project Loan Payment Date.

(b) If the Borrower fails to repay any amount which is due and payable under Facility A1 or Facility A2, the relevant unpaid amount will continue to accrue interest in accordance with the terms of this Agreement and the Project Loan Facility Agreement and the Project Loan Facility Agreement except that the applicable rate of Interest shall be 2% per annum above the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted the Facility A1 Loan, if the overdue amount relates to Facility A1, or the Facility A2 Loan, if the overdue amount relates to Facility A2.

7.2 Interest on overdue amounts under Facilities B1 and B2 or under Facility A1 and Facility A2 (if the Issue Date does not occur on the Scheduled Issue Date)

(a) If the Borrower fails to pay any amount payable by it under the Finance Documents in relation to Facility B or, if the Issue Date does not occur on the Scheduled Issue Date, Facility A1 or Facility A2, it must immediately on demand by the Senior Agent pay interest on the overdue amount from (but excluding) its due date up to and including the date of actual payment, both before, on and after judgment.

(b) Interest on an overdue amount is payable at a rate determined by the Senior Agent to be 2% per annum above the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Facility A1 Loan or Facility A2 Loan if the overdue amount relates to Facility A1 or Facility A2 or a Facility B1 Loan or Facility B2 Loan, if the

overdue amount relates to Facility B1 or Facility B2. For this purpose, the Senior Agent may (acting reasonably):

(i) select successive Interest Periods of any duration of up to three months; and

(ii) determine the appropriate Rate Fixing Date for that Interest Period.

(c) Notwithstanding paragraph (b) above, if the overdue amount is a principal amount of a Facility B1 Loan or a Facility B2 Loan or, if the Issue Date does not occur on the Scheduled Issue Date, a Project Loan, and becomes due and payable before the last day of its current Interest Period, then:

(i) the first Interest Period for that overdue amount will be the unexpired portion of that Interest Period; and

(ii) the rate of interest on the overdue amount for that first Interest Period will be 2% per annum above the rate then payable on that Loan.

After the expiry of the first Interest Period for that overdue amount, the rate on the overdue amount will be calculated in accordance with paragraph (b) above.

(d) Interest (if unpaid) on an overdue amount will be compounded, to the extent permitted by Article 1283 of the Italian Civil Code, with that overdue amount at the end of each of its Interest Periods but will remain immediately due and payable.

7.3 Notification of amounts and rates of interest and SACE Ongoing Fees

(a) In relation to any Facility B1 Loan or Facility B2 Loan, the Senior Agent must promptly (and in any case within two Business Days from the relevant Rate Fixing Day) notify each relevant Party of the determination of a rate of interest under this Agreement.

(b) In relation to any Loan under this Agreement, the Senior Agent must promptly (and in any case within two Business Days from the start of an Interest Period (in relation to a Facility A1 Loan or Facility A2 Loan if the Issue Date has occurred on the Scheduled Issue Date) or two Business Days from the relevant Rate Fixing Day (in relation to a Facility B1 Loan or Facility B2 Loan or a Facility A1 Loan or Facility A2 Loan if the Issue Date has not occurred on the Scheduled Issue Date)) notify each relevant Party of (i) the amount of interest payable on the subsequent Loan Payment Date under each outstanding Loan under this Agreement and (ii) the amount of SACE Ongoing Fees payable on the subsequent Loan Payment Date (such amount shall be calculated by the Senior Agent on the basis of the SACE Guarantee Fee Letter).

7.4 Italian Usury Law

If pursuant to a change of law or in the official interpretation of Italian Usury Law or otherwise the rate of interest applicable to any Loan and/or the default rate of interest (if due at such time) at any time exceeds the maximum rate permitted by Italian Usury Law and this constitutes a breach of the provisions thereof, then the relevant interest rate or default rate shall be automatically reduced to the maximum admissible interest rate under such legislation for the period during which it shall not be possible to claim a higher interest rate.

8. INCREASED COSTS

8.1 Increased Costs

Except as provided below in this Clause, the Borrower must pay to a Finance Party the amount of any Increased Cost incurred by that Finance Party or any of its Affiliates as a result of:

(a) the introduction of, or any change in, or any change in the interpretation, administration or application of, any law or regulation; or

(b) compliance with any law or regulation made after the date of this Agreement.

8.2 Exceptions

The Borrower need not make any payment for an Increased Cost to the extent that the Increased Cost is:

(a) compensated for under another provision of a Finance Document or would have been but for an exception to that provision; or

(b) attributable to a Finance Party or its Affiliate failing to comply with any law or regulation.

8.3 Claims

(a) A Finance Party intending to make a claim for an Increased Cost must notify the Senior Agent of the circumstances giving rise to and the amount of the claim following which the Senior Agent will promptly notify the Borrower.

(b) Each Finance Party must, as soon as practicable after a demand by the Senior Agent, provide a certificate confirming the amount of the Increased Cost.

9. MITIGATION

9.1 Mitigation

(a) Subject to Clause 22.8 (Lender Obligations not applicable), each Finance Party must, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which result or would result in:

(i) any Tax Payment or Increased Cost being payable to that Finance Party;

(ii) that Finance Party being able to exercise any right of prepayment and/or cancellation under this Agreement by reason of any illegality, including transferring its rights and obligations under the Finance Documents to:

(A) an Affiliate; or

(B) another Original Lender indicated by the Borrower, which has a long-term credit rating from Standard & Poor's of at least BBB+ (or an equivalent rating from Moody's and/or Fitch); or

(C) another bank or financial institution indicated by the Borrower which is not an Affiliate of the Borrower, is regulated in Italy or elsewhere in the European Union and has a long-term credit rating from Standard & Poor's of at least A- (or an equivalent rating from Moody's and/or Fitch),

by way of assignment in accordance with Clause 22 (Changes to the Parties) for a purchase price calculated pursuant to Clause 22.9(d)(iv) (Replacement of Lenders); or

(iii) changing its Facility Office.

(b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

(c) A Finance Party is not obliged to take any step under this Subclause if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

(d) In the event of transfer by a Lender pursuant to paragraph (a) above, Clause 22 (Changes to the Parties) shall apply.

9.2 Conduct of business by a Finance Party

No term of this Agreement will:

(a) interfere with the right of any Finance Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;

(b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it in respect of Tax or the extent, order and manner of any claim; or

(c) oblige any Finance Party to disclose any information relating to its affairs (Tax or otherwise) or any computation in respect of Tax.

10. REPRESENTATIONS

10.1 Representations

The representations set out in this Clause are made by the Borrower to each Finance Party.

10.2 Status

(a) It is a limited liability company (*società a responsabilità limitata*), duly incorporated and validly existing under the laws of Italy.

(b) It has the power to own its assets and carry out the Project.

10.3 Powers and authority

It has the power to enter into and perform, and has taken all necessary action (including the assessment of the Borrower's commercial interest and corporate benefit by its competent corporate bodies) to authorise the entry into and performance of, the Borrower Documents to which it is or will be a party and the transactions contemplated by those Borrower Documents.

10.4 Legal validity

(a) Subject to the Reservations, each Borrower Document to which it is a party is legally binding, valid and enforceable in accordance with its terms.

(b) This Agreement and each Borrower Document to which it is a party is in the proper form for its enforcement in the jurisdiction of its incorporation.

10.5 Non-conflict

The entry into and performance by it of, and the transactions contemplated by, the Borrower Documents do not conflict with:

(a) as at the date of this Agreement, any law or regulation applicable to it;

(b) its constitutional documents; or

(c) any document which is binding upon it or any of its assets,

in relation to (c) only, only to the extent such conflict would have a Material Adverse Effect.

10.6 No default

As at the date of this Agreement:

(a) no Event is outstanding or will result from the execution of, or the performance of any transaction contemplated by, any Borrower Document;

(b) there is no outstanding breach by any party thereto of any material term of any Borrower Document to which it is a party and no person has disputed or disclaimed any liability under any Borrower Document to which it is a party; and

(c) no other event is outstanding which constitutes a default under any document which is binding on it or any of its assets to an extent or in a manner which would have a Material Adverse Effect.

10.7 Authorisations

(a) As at the date of this Agreement, except for registration of the Security Documents (if applicable), all Transaction Authorisations then required have been obtained or effected and are in full force and effect and the Borrower has complied with the terms and conditions thereof in all material respects.

(b) As at the date of this Agreement, it is not aware of:

(i) any reason why any Transaction Authorisation will not be obtained or effected by the time it is required;

(ii) any steps to suspend, revoke or cancel any Transaction Authorisation; or

(iii) any reason why any Transaction Authorisation will not be renewed when it expires without the imposition of any new restriction or condition.

10.8 Financial statements

Its financial statements most recently delivered to the Senior Agent (which, at the date of this Agreement, are the Original Financial Statements):

(a) have been prepared in accordance with GAAP, consistently applied; and

(b) (if audited) give a true and fair view of, or (if unaudited) fairly represents, the assets, liabilities and financial condition and the result of the operations of the Borrower as at the date to which they were drawn up,

except, in each case, as disclosed to the contrary in those financial statements.

10.9 Budgets and initial base case

Each Operating Budget and the initial base case referred to in paragraph 8 of Schedule 2 (Condition Precedent Documents), as at their respective dates:

(a) were prepared in good faith and with due care on the basis of (in the case of each Operating Budget) recent historical information and (in the case of each Operating Budget and such initial base case) assumptions believed by it to be reasonable;

(b) were consistent with the Borrower Documents; and

(c) fairly represented the Borrower's expectations in relation to the matters covered in it.

10.10 No material adverse change

As at the date of this Agreement, there has been no material adverse change in its financial condition since the date to which the Original Financial Statements were drawn up, other than any change associated with any cost, expense or indebtedness which the Borrower intends to discharge or refinance (as appropriate) out of the proceeds of the first drawdown under the Facilities including, without limitation, any indebtedness or obligations incurred under the Plant EPC Contracts and the Borrower's obligations towards the Borrower's Advisers and Auditors and the notary in charge of the Project.

10.11 Litigation

As at the date of this Agreement, no litigation, arbitration or administrative proceedings are current or, to its knowledge, pending or threatened in writing against it.

10.12 Solvency

It is not insolvent and:

(a) to its knowledge, no Insolvency Proceedings have commenced and no action has been taken to commence Insolvency Proceedings nor has been threatened in writing against it;

(b) has not taken any corporate action for the starting of any Insolvency Proceedings in respect of itself;

(c) has not convened nor has its board of directors resolved to convene any meeting of the quotaholders (and they will not do so, as a consequence of any Loan) pursuant to, and for the purposes of Article 2482-*bis* of the Italian Civil Code; and

(d) is not (and it will not be, as a consequence of any Loan) under the situation contemplated under Article 2482-*ter* of the Italian Civil Code.

10.13 Ownership of assets

As at the date of this Agreement, it has:

(a) good title to, or freedom to use under any applicable laws, the Site and any other assets (including Intellectual Property) necessary to implement the Project in accordance with the Borrower Documents; and

(b) good and marketable title to all the assets reflected in its Original Financial Statements,

in each case free from Security Interests (other than any Permitted Security Interest), restrictions and onerous covenants (other than any Permitted Covenant).

10.14 No other business

(a) It has not traded or carried on any business since the date of its incorporation which does not relate to the Project or the Common Infrastructure.

(b) As at the date of this Agreement, it does not have any participation in any company.

10.15 Project Documents

As at the date of this Agreement:

(a) each copy of a Project Document delivered to the Senior Agent under this Agreement is true and complete;

(b) there is no other agreement to which it is a party in connection with, or arrangements to which it is a party which amend, supplement or affect any Project Document in any way (other than the agreements mentioned under paragraph (d) below;

(c) subject to the Reservations:

(i) to the best of the Borrower's knowledge and belief (after due and careful enquiry), each Project Document constitutes the valid and binding obligations of the parties thereto in accordance with its terms;

(ii) the Borrower has received no notice of any dispute in connection with any Project Document or any material breach thereunder or any termination, cancellation or material suspension thereof in whole or in part; or

(iii) to the best of the Borrower's knowledge and belief (after due and careful enquiry), no circumstances entitling any party to any of the Project Documents to terminate, cancel, materially suspend or materially amend the same is outstanding; and

(d) except as disclosed to the Senior Agent in writing before the date of this Agreement, it is not a party to any material agreement other than the Borrower Documents.

10.16 Ownership

As at the date of this Agreement:

(a) no person has any right to call for the issue or transfer of any quota capital or loan stock in the Borrower other than in accordance with the Equity Documents or the Security Documents;

(b) the quotas in the capital of the Borrower are fully paid; and

(c) subject to the Security Documents, the Quotaholder is the legal and beneficial owner of all of the quota capital of the Borrower.

10.17 Pari Passu payment obligations

As at the date of this Agreement, its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other present and future unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

10.18 Taxes

As at the date of this Agreement:

(a) no claims are being, nor, as far as the Borrower is aware, might reasonably be expected to be, asserted against it with respect to Taxes which, if adversely determined to it, would have a Material Adverse Effect;

(b) all Tax reports and returns and social security returns required to be filed by or on behalf of the Borrower have been timely and properly filed. Such returns and reports reflect accurately all liabilities for Taxes and social security contributions of the Borrower for the periods covered thereby; and

(c) all Taxes and social security contributions required to be paid by or on behalf of the Borrower have been paid within the applicable time limit or are being contested in good faith.

10.19 Security

As at the date of this Agreement, subject to any formality required for the perfection of the relevant Security Interests, each Security Document entered into at the date of this Agreement creates a first priority Security Interests of the type described over the assets referred to in that Security Document.

10.20 Centre of Main Interests

For the purposes of the Council of the European Union Regulation No.1346/2000 on Insolvency Proceedings (the Regulation), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in Italy and it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

10.21 Information

(a) All factual information supplied in writing by the Borrower and the Quotaholder in connection with the Finance Documents is, to the best of the Borrower's knowledge, true, accurate and complete in all material respects as at its date.

(b) As at the date of this Agreement, nothing has occurred to the Borrower's knowledge which has not been disclosed to the Lenders which renders any material information provided to the Lenders and the Advisers by or on behalf of the Borrower prior to the date of this Agreement untrue, inaccurate or misleading in any material respect.

10.22 Financial Indebtedness

As at the date of this Agreement, the Borrower has not incurred any Financial Indebtedness, other than the Financial Indebtedness which it is permitted to incur in accordance with Subclause 12.6(b) (Financial Indebtedness), the indebtedness incurred under the EPC Plant Contracts and the indebtedness associated with the Borrower's obligations towards the Borrower's Advisors and Auditors and the notary in charge of the Project.

10.23 Compliance with law

As at the date of this Agreement, the Borrower is in compliance with any applicable laws or regulations (including but not limited to Environmental Law).

10.24 Material Adverse Effect

As at the date of this Agreement, no event or series of events has occurred prior to the date of this Agreement and is continuing which has a Material Adverse Effect.

10.25 Common Infrastructure

As at the date of this Agreement, Cassiopea PV S.r.l. has taken out all insurances required to be taken out by it pursuant to the Joint Insurance Agreement.

10.26 Times for making representations

(a) The representations set out in this Clause are made by the Borrower on the date of this Agreement.

(b) Unless a representation is expressed to be given at a specific date, each representation is deemed to be repeated by the Borrower on the Issue Date, the date of each Request, the date of each Withdrawal, each Repayment Date and the last day of each Interest Period which is not a Repayment Date, provided that, any reference in this Clause 10 to the "date of this Agreement" shall also be construed as a reference to the Issue Date.

(c) When a representation is repeated, it is applied to the circumstances existing at the time of repetition.

11. INFORMATION COVENANTS

The undertakings in this Clause 11 (Information Covenants) remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force. The undertakings in this Clause 11 (Information Covenants) are assumed by the Borrower also pursuant to Article 1381 of the Italian Civil Code, where applicable.

11.1 Financial statements

(a) The Borrower must supply to the Senior Agent in sufficient copies for all the Lenders:

(i) the audited financial statements of each Obligor for each of its financial years; and

(ii) its interim financial statements for the first half year of each of its financial years.

(b) All financial statements must be supplied as soon as they are available to the Borrower and:

(i) in the case of the Borrower's audited financial statements within 140 days of the end of the Borrower's financial year;

(ii) in the case of the other Obligor's audited financial statements, within 160 days of the end of the relevant financial year; and

(iii) in the case of the Borrower's interim financial statements, within 90 days of the first half year of each of its financial years.

(c) The audited financial statements of the Borrower shall be audited by an Approved Auditor.

(d) Each set of financial statements delivered pursuant to paragraph (a) above shall be certified by a director of the company to which they relate as a true and complete copy of the relevant original.

(e) All financial statements supplied by the Borrower in accordance with this Subclause must be either in English or accompanied by a certified English translation.

11.2 Form of financial statements

(a) The Borrower must ensure that each set of financial statements supplied under this Agreement are prepared using GAAP.

(b) The Borrower must notify the Senior Agent of any material change to the manner in which its audited financial statements are prepared.

(c) If requested by the Senior Agent, the Borrower must supply to the Senior Agent:

(i) a full description of any change notified under paragraph (b) above; and

(ii) sufficient information to enable the Finance Parties to make a proper comparison between the financial position shown by the set of financial statements prepared on the changed basis and its most recent audited consolidated financial statements delivered to the Senior Agent under this Agreement.

(d) The Senior Agent may, acting reasonably and after consultation with the Borrower and within 45 days of receiving a set of unaudited financial statements from the Borrower, request audited financial statements provided that such request is in writing and is accompanied by a full explanation (as prepared by the Lenders and the Senior Agent in writing) of the reasoning for the requirement for audited financial statements. The Borrower shall deliver audited financial statements to the Senior Agent as soon as reasonably practicable following receipt of the request.

11.3 Construction period

The Borrower must promptly notify the Senior Agent:

(a) (promptly on becoming aware of the same) of any breach (or attempted breach) of Site or Project or Common Infrastructure safety or security which has a Material Adverse Effect;

(b) of any material claim it may have under any indemnity or provision for liquidated damages under the Plant EPC Contracts; and

(c) of any actual or proposed change in the work programme under the Plant EPC Contracts and any other event which may delay the Project Completion Date.

11.4 Operating period

(a) From the Project Completion Date the Borrower must supply to the Senior Agent, in sufficient copies for all the Lenders if the Senior Agent so requests:

(i) operating reports in respect of each half-year in the form prescribed in the Management Services Agreement including information relating to the average

monthly performance ratio calculated in accordance with the requirements of those reports;

(ii) a cashflow statement for each half-year showing performance against budget;

(iii) a draft Operating Budget for the period:

(A) from the Project Completion Date up to the first Scheduled Calculation Date; and

(B) from the first Scheduled Calculation Date up to the third Scheduled Calculation Date and each consecutive 12 month period thereafter;

(iv) a copy of any material information, communication and documentation, provided to or by the Manager in relation to the Project and (to the extent it receives such information, communication and documentation) the Common Infrastructure under the Management Services Agreement; and

(v) to the extent not provided in paragraphs (i) to (iv) above, a semi-annual report of material events (including forced outages and major maintenance events), transactions, monthly statistics and annual averages of the volume of electricity produced and price of electricity sold, average monthly solar radiation on the site and average annual solar radiation over the last 12 month period.

(b) The information referred to in paragraph (a) above must be supplied by the Borrower as soon as it is available and in the case of each operating report and cashflow statement, within 15 days of the end of the relevant period. The draft Operating Budget must be supplied by the Borrower as soon as it is available, but in any event no less than 30 days before the Project Completion Date and thereafter 60 days before the start of each relevant 12 month period.

(c) Subject to paragraph (d) and (e) below, the Senior Agent must, within 17 days of receipt of any draft Operating Budget, acting reasonably and after consultation with the Technical Adviser and acting on the instructions of the Majority Lenders and without any undue delay, notify the Borrower whether or not it is approved for the purposes of this Agreement.

(d) Where the operating expenditure itemised in the draft Operating Budget is consistent with the most recent Forecast, a draft Operating Budget shall only not be approved where the Senior Agent is instructed by the Majority Lenders that:

(i) it contains material errors; or

(ii) the payment of the costs (excluding any contingent items and any part of any expenditure to be funded out of Financial Indebtedness incurred in accordance with Clause 12.6 (Financial Indebtedness)) set out in the draft Operating Budget would have a Material Adverse Effect or, if implemented, would be in breach of the Finance Documents.

(e) In the event that the Senior Agent is not instructed to issue a notice within the time period provided for in paragraph (c) above, the Operating Budget proposed by the Borrower will then be the Operating Budget for the relevant period under this Agreement. The Senior Agent shall have no liability to any person if the Operating Budget is deemed approved pursuant to this Clause.

(f) If a draft Operating Budget is not agreed, the Senior Agent (acting on the instructions of the Majority Lenders), the Lenders, the Technical Adviser and the Borrower must consult, in good faith, and use all reasonable endeavours to agree the draft as soon as practicable. Failing agreement, the matters in dispute in respect of the relevant draft Operating Budget must be referred to an Expert for resolution as provided in Subclause 11.5 (Submissions to an Expert) below.

(g) Without prejudice to paragraph (e) above, if a draft Operating Budget is approved by the Senior Agent, acting on the instructions of the Majority Lenders, it will then be the Operating Budget for the relevant period under this Agreement.

(h) In the case of any disagreement referred to in paragraph (f) above, following conclusion of those discussions or, if applicable, the determination of the matter in dispute by the Expert the Borrower shall produce the Operating Budget to reflect any changes agreed or determined which shall then be the Operating Budget for the relevant period under this Agreement.

11.5 Submissions to an Expert

(a) Subject to the terms of this Agreement, in this Subclause 11.5 (Submissions to an Expert) **Expert** means:

(i) in relation to economic issues, any person nominated by the Borrower and agreed by the Senior Agent, acting on the instructions of the Majority Lenders, or, failing agreement, nominated (on the application of either party) by the President for the time being of the Institute of Chartered Accountants (*Ordine dei Dottori Commercialisti*), or

(ii) in relation to technical issues, the Technical Adviser. In case of any disagreement by the Borrower or the Senior Agent on the appointment of the Technical Adviser for such purpose, the Expert will be any person nominated by the Borrower and agreed by the Senior Agent, acting on the instructions of the Majority Lenders, or, failing agreement, nominated (on the application of either party) by the President for the time being of the Italian Engineers Association (*Ordine degli Ingegneri*).

(b) The Borrower must:

(i) as soon as reasonably practicable refer any matters in dispute in respect of the relevant draft Operating Budget not agreed by the Borrower and the Senior Agent to the Expert; and

(ii) instruct the Expert to supply his/her decision as soon as practicable and, in any event, no later than ten Business Days following referral,

failing which, the Senior Agent must do the same.

(c) The Borrower and the Senior Agent must provide the Expert with information in relation to the matters in dispute together with appropriate supporting evidence.

(d) The Expert's determination is (except in the case of manifest error) final and binding on each Party and will be used in the relevant Operating Budget. The Expert's determination is deemed to be rendered pursuant to Article 1349, paragraph 1, of the Italian Civil Code.

(e) The costs of the Expert will be paid by the Borrower.

11.6 Information - miscellaneous

The Borrower must supply to the Senior Agent, in sufficient copies for all the Lenders if the Senior Agent so requests:

(a) all documents dispatched by the Borrower to its quotaholders (or any class of them) or its creditors generally at the same time as they are dispatched;

(b) promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against it;

(c) promptly on request, such further information regarding the financial condition, assets and operations of the Borrower as any Finance Party through the Senior Agent may reasonably request;

(d) as soon as they are available, copies of all material documents and other material communications and information given or received by it under any Project Document or in relation to the Project Facilities or in relation to the Common Infrastructure (but, in relation to such documents, communications and information in relation to the Common Infrastructure, the Joint Insurance Agreement and the Joint Insurance Account Trust Deed, only as soon as reasonably practicable following receipt of such documents, communication and information by it and only to the extent it is not expressly prohibited from providing such documents, communication and information to the Lenders under the Joint Insurance Agreement, the Joint Insurance Account Trust Deed or the Borrower Right of Use Agreement);

(e) promptly on becoming aware of them, details of any event or circumstance which is or may be a Force Majeure Event;

(f) promptly on becoming aware of any event or circumstance that has occurred and/or any omission to disclose a fact which in any such case would entitle any insurer to avoid or otherwise reduce its liability thereunder to less than the amount provided in the relevant policy;

(g) promptly on becoming aware of them, details of any claim made:

(i) by the Borrower under any Insurance where the claim is for a sum in excess of €200,000.00 (before deductibles) or where the amount of the claim when aggregated with all other amounts claimed by it under any Insurance during the previous six months exceeds €500,000.00; or

(ii) by a third party under the Joint Insurance Account Trust Deed where the claim is for a sum in excess of €200,000.00 (before deductibles) or where the amount of the claim when aggregated with all other amounts claimed under the Joint Insurance Account Trust Deed during the previous six months exceeds €500,000.00;

(h) promptly, on becoming aware of the same, a notice that another beneficiary has become co-insured under any Insurance relating to the Common Infrastructure, subject, in each case, to any express confidentiality restrictions (if any) in relation to the provision of such information in such Insurance or in the Joint Insurance Agreement;

(i) as soon as they are available, copies of any notice of a default, termination, dispute or material claim made against it under a Project Document or affecting the Project Facilities together with details of any action it proposes to take in relation to the same;

(j) promptly on becoming aware of them, any proposal for an amendment or waiver of a Project Document;

(k) copies of all Transaction Authorisations obtained by it;

(l) promptly upon becoming aware of them, details of any proceedings which are pending before any competent authority in relation to the suspension of any Transaction Authorisations;

(m) promptly upon becoming aware of them, details of any modification or amendment of the terms of any of the Transaction Authorisations;

(n) information regarding any change to its financial year 30 days before such change is implemented;

(o) promptly, any other financial and/or technical information, within its control and possession, concerning its business, operations and condition, as the Senior Agent, acting reasonably, may request from time to time;

(p) any information materially affecting the financial condition, business and operations of any Major Project Party, within the Borrower's control and possession, as the Senior Agent, acting reasonably, may request from time to time;

(q) promptly after becoming aware of them, details (but not price or terms) of any transfer by the Sponsor Parent of any direct or indirect participation in the Quotaholder;

(r) information regarding the engagement of any employees (other than any board member) by the Borrower;

(s) no later than 15 days after the expiry of each calendar month during the Construction Period, a Monitoring Report in relation to that calendar month; and

(t) no later than 45 days after each Scheduled Calculation Date, a Monitoring Report in respect of the six month period ending on that Calculation Date.

11.7 Notification of an Event

(a) The Borrower must notify the Senior Agent of any Event (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence together with details of any action it proposes to take to cure, remedy or mitigate the impact of the same.

(b) If the Senior Agent so requests (having been so instructed by the Majority Lenders, the Majority Lenders to act reasonably in relation to such instructions), the Borrower must supply to the Senior Agent a certificate, signed by an authorised signatory on its behalf, certifying that no Event is outstanding or, if an Event is outstanding, specifying the Event together with details of any action it proposes to take to cure, remedy or mitigate the impact of the same. The Senior Agent may only make two requests under this paragraph (b) in any six month period.

11.8 Use of websites

(a) Except as provided below, the Borrower may deliver any information under this Agreement to a Finance Party by posting it on to an electronic website if:

(i) the Borrower designates an electronic website for this purpose;

(ii) the Borrower notifies the Senior Agent of the address of and password for the website; and

(iii) the information posted is in a format previously agreed between the Borrower and the Senior Agent.

The Senior Agent must supply each relevant Lender with the address of and password for the website.

(b) Notwithstanding the above, the Borrower must supply to the Senior Agent in paper form a copy of any information posted on the website together with sufficient copies for:

(i) any Lender not agreeing to receive information via the website; and

(ii) within ten Business Days of request, any other Lender, if that Lender so requests.

(c) The Borrower must promptly upon becoming aware of its occurrence, notify the Senior Agent if:

(i) the website cannot be accessed;

(ii) the website or any information on the website is infected by any electronic virus or similar software;

(iii) the password for the website is changed together with the new password; or

(iv) any information to be supplied under this Agreement is posted on the website or amended after being posted.

(d) If the circumstances in sub-paragraph (c)(i) or (ii) above occur, the Borrower must supply any information required under this Agreement in paper form until the Senior Agent is satisfied that the circumstances giving rise to the notification are no longer continuing.

11.9 Know your customer requirements

(a) Subject to paragraph (b) below, the Borrower must promptly on the request of any Finance Party supply to that Finance Party any documentation or other evidence which is reasonably requested by that Finance Party (whether for itself, on behalf of any Finance Party or any prospective new Lender) to enable a Finance Party or prospective new Lender to carry out and be satisfied with the results of all applicable know your customer requirements.

(b) Each Lender must promptly on the request of the Senior Agent supply to the Senior Agent any documentation or other evidence which is reasonably required by the Senior Agent (taking into account its own interest) to carry out and be satisfied with the results of all applicable know your customer requirements.

11.10 Tax certificates

(a) Until the date on which all Facility B1 Loans and Facility B2 Loans have been repaid in full, on each Calendar Quarter Date starting as of the first Calendar Quarter Date to occur on or after the date of this Agreement the Borrower must request to the competent tax office the issuance of an updated Tax Authority Certificate in relation to the Borrower.

(b) No later than five Business Days after each Calendar Quarter Date, the Borrower must deliver to the Senior Agent a copy of the relevant request submitted by it to the competent tax office.

(c) The Borrower must deliver to the Senior Agent each original Tax Authority Certificate requested pursuant to paragraph (a) above within 5 Business Days of the date of receipt of the Tax Authority Certificate by the Borrower and, in any case, promptly following the date on which the Borrower is informed that the Tax Authority Certificate is available for collection.

(d) Prior to the execution of an Assignment of VAT Receivables, the Borrower must deliver to the Senior Agent a Tax Collection Agent Certificate dated no earlier than 5 Business Days before the date of such execution.

12. GENERAL COVENANTS

The undertakings in this Clause 12 (General Covenants) remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force. The undertakings in this Clause 12 (General Covenants) are assumed by the Borrower also pursuant to Article 1381 of the Italian Civil Code, where applicable.

12.1 Authorisations

(a) The Borrower must promptly obtain, maintain and comply with the terms of its Transaction Authorisations in all material respects.

(b) The Borrower must supply to the Senior Agent certified copies of any Transaction Authorisation required under any Italian law or regulation to enable the Borrower to perform its obligations under the Finance Documents or to ensure the legality, validity, enforceability or admissibility in evidence in Italy of any Finance Document.

12.2 Compliance with laws

The Borrower must:

(a) comply in all respects with all laws to which it is subject and all regulations applicable to it (including, for the avoidance of doubt, any laws and regulations to which it is subject that relate to the Project and any applicable procurement procedure required by EU law in general and in particular with the relevant EU Directives and in so far as EU Directives do not apply, by procurement procedures which, to the satisfaction of the Majority Lenders, respect the criteria of economy and efficiency as described in the EIB *Guide to Procurement* in force at the date of this Agreement);

(b) fulfil all the principles provided under Legislative Decree 231; and

(c) implement its relevant own organisational and management model in order to prevent the commission of any crime (including without limitation the crimes under Legislative Decree 231) and prevent the company from any liability incurred for the commission of such crimes by no later than the date falling six months after the date of this Agreement.

12.3 Pari passu ranking

The Borrower must ensure that its payment obligations under the Finance Documents rank at least pari passu with all its other present and future unsecured payment obligations, except for obligations mandatorily preferred by law applying to companies generally.

12.4 Negative pledge

(a) Except as provided below, the Borrower must not create or allow to exist any Security Interest on any of its assets.

(b) Paragraph (a) does not apply to:

(i) any Security Interest constituted by the Security Documents;

(ii) any lien arising by operation of law and in the ordinary course of its business.

12.5 Disposals

(a) Except as provided below, the Borrower must not, either in a single transaction or in a series of transactions and whether related or not dispose of all or any part of its business, undertaking or assets.

(b) Paragraph (a) does not apply to any disposal:

(i) of electricity under any Power Purchase Agreement and/or under the *Ritiro Dedicato* Concession;

(ii) required or allowed under the Borrower Documents;

(iii) of assets not required for the Project for a price consistent with the market value of the disposed asset;

(iv) of the Common Infrastructure Insurance Proceeds in accordance with the Joint Insurance Agreement;

(v) which is a Distribution the making of which does not breach the Finance Documents;

(vi) of assets in exchange for other assets comparable or superior as to type, value and quality;

(vii) which is a surrender or disposal of any tax credit, loss, relief or allowance available to and usable by it in a manner consistent with the most recent finally determined Forecast; or

(viii) made in the ordinary course of business of the Borrower where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration for any other disposal not permitted under the preceding sub-paragraphs) does not exceed €300,000.00 or its equivalent in any financial year of the Borrower.

(c) Following a disposal by the Borrower under paragraph (iii) and/or (viii) above, the proceeds of which exceed €75,000.00 in a single transaction or €150,000.00 in a calendar year, if the Borrower intends to use such proceeds within six months after the relevant payment to re-

invest in similar assets relating to the Borrower's business, then such proceeds must be transferred to the Compensation Account (such disposal proceeds being Relevant Disposal Proceeds). If the Borrower does not intend to use such proceeds within six months after the relevant payment to re-invest in similar assets relating to the Borrower's business, the Borrower must transfer an amount equal to €X of such disposal proceeds to the Warehouse Account and the remainder to the Distributions Account, where:

X = 0.85*DP

where:

DP = 100% of the disposal proceeds which the Borrower does not intend to use within six months after the relevant payment to re-invest in similar assets relating to the Borrower's business.

12.6 Financial Indebtedness

(a) Except as provided below the Borrower must not incur any Financial Indebtedness.

(b) Paragraph (a) does not apply to:

(i) any Financial Indebtedness incurred under the Finance Documents or the Plant EPC Contracts;

(ii) any Financial Indebtedness permitted pursuant to Subclause 12.13 (Third party guarantees);

(iii) Counter-indemnities relating to guarantees issued to the VAT Tax Authority in respect of VAT refunds pursuant to Article 38 *bis* of the Presidential Decree No. 633/72;

(iv) any Financial Indebtedness approved by the Majority Lenders (provided that, in the case of Financial Indebtedness with a maturity of at least three years, if such Financial Indebtedness is voluntarily prepaid, then the Borrower must transfer an amount proportionally the same as the voluntary prepayment of the relevant Financial Indebtedness to the Warehouse Account);

(v) any Permitted Subordinated Debt;

(vi) the guarantee dated 19th August 2010 issued for an amount of €30,000 in favour of the Montalto di Castro Municipality in connection with the Montalto 6MW Plant, pursuant to the Convenzione and in compliance also with Regional Law No 24 issued by Lazio Region on 6 July 1998, mentioned in the provisions of the single authorisation (*autorizzazione unica*) granted for the Project, or any replacement of such guarantee; or

(vii) the guarantee dated 19th August 2010 issued for an amount of €226,000 in favour of the Montalto di Castro Municipality in connection with the Montalto 45MW Plant, pursuant to the Convenzione and in compliance also with Regional Law No 24 issued by Lazio Region on 6 July 1998, mentioned in the provisions of the single authorisation (*autorizzazione unica*) granted for the Project, or any replacement of such guarantee.

12.7 Change of business, *patrimoni dedicati* and *finanziamenti destinati*

(a) The Borrower must not carry on any business other than the Project.

(b) The Borrower shall not, without the consent of the Senior Agent, execute or carry out any of the transactions provided for under Article 2447 *bis* of the Italian Civil Code.

12.8 Mergers

The Borrower must not enter into any amalgamation, demerger, merger or reconstruction.

12.9 Acquisitions

(a) Except as provided below, the Borrower must not make any investment in any other person.

(b) The Borrower must not have or acquire any participation in any company, whether by formation or otherwise.

(c) Paragraph (a) does not apply to Authorised Investments under and as defined in the Project Accounts Agreement, loans made under the Upstream Loan Agreement or investments funded by Distributions.

12.10 Environmental matters

(a) In this Subclause:

Environmental Approval means any authorisation required by an Environmental Law.

Environmental Claim means any claim by any person in connection with:

(i) a breach, or alleged breach, of an Environmental Law;

(ii) any accident, fire, explosion or other event of any type involving an emission or substance which is capable of causing harm to any living organism or the environment; or

(iii) any other environmental contamination.

Environmental Law means any EU law and Italian national laws and regulations, as well as applicable international treaties, concerning:

(i) the preservation, protection or improvement of the Environment; and/or

(ii) health and safety; and/or

(iii) the protection of human health; and/or

(iv) the conditions of the workplace; and/or

(v) any emission or substance which is capable of causing harm to any living organism or the Environment.

Environment means the following: (i) fauna and flora; (ii) soil, water, air, climate and landscape; and (iii) cultural heritage and built environment.

(b) The Borrower must ensure that it is, and has been, in compliance with all Environmental Law and Environmental Approvals applicable to it.

(c) The Borrower must promptly upon becoming aware notify the Senior Agent of:

(i) any Environmental Claim current, or to its knowledge, pending or threatened;

(ii) any circumstances reasonably likely to result in an Environmental Claim; or

(iii) any suspension, revocation or modification of any Environmental Approval.

(d) The Borrower must indemnify each Finance Party against any loss or liability incurred by that Finance Party as a result of any actual or alleged breach of any Environmental Law by any person, and which would not have arisen if a Finance Document had not been entered into, unless it is caused by that Finance Party's gross negligence or wilful misconduct.

12.11 Loans

(a) Except as provided below, the Borrower must not be the creditor in respect of any Financial Indebtedness.

(b) Paragraph (a) does not apply to:

(i) any credit provided under a Project Document;

(ii) any loan provided under the Upstream Loan Agreement;

(iii) any Distribution made in accordance with the Finance Documents;

(iv) any credit expressly approved by the Senior Agent; or

(v) any Authorised Investment.

12.12 Delivery of copies of certain Security Documents

The Borrower shall deliver to the Senior Agent a copy certified by a notary public (copia conforme all'originale) of each of the following documents (for those entered into by way of exchange of commercial letters, limited to the acceptance), duly executed by the parties to it, within 7 (seven) Business Days of the date of the relevant execution and in any event no later than the Issue Date:

(a) the Pledge over Quotas;

(b) the Mortgage;

(c) the Privilegio Speciale;

(d) the Pledge over Receivables and Accounts; and

(e) the Pledge over Quotaholder Receivables.

12.13 Third party guarantees

(a) In this Subclause, a **guarantee** includes an indemnity or other assurance against loss.

(b) The Borrower must not incur or allow to be outstanding any guarantee by it in respect of any other person.

(c) Subclause 12.13(b) does not apply to any guarantee arising under, or expressly allowed by, the Borrower Documents.

12.14 Letter of the Model Adviser

Within 10 days from the first Drawdown Date the Borrower shall provide a letter of the Model Adviser that confirms all the amendments that have been made to the initial base case finalised on or prior to the date of execution of this Agreement and that these amendments do not affect integrity of the financial model.

13. PROJECT COVENANTS

13.1 Use of Proceeds

The Borrower shall use the proceeds of the Loans exclusively for the execution of the Project as set out in Clause 3.

13.2 Capital expenditures

The Borrower must not incur any capital expenditure, other than:

(a) Project Costs;

(b) in accordance with Subclause 13.19 (Operating Budget);

(c) any capital expenditure associated with the reinstatement of the Common Infrastructure pursuant to the Joint Insurance Agreement;

(d) as required by any Project Document;

(e) as required by law; or

(f) as may be funded in whole or in part by Financial Indebtedness incurred in accordance with Subclause 12.6 (Financial Indebtedness).

13.3 Project Works

The Borrower must use its reasonable endeavours to ensure that the Project Works are completed in accordance with the Project Documents and Good Industry Practice.

13.4 Operation and maintenance

The Borrower must:

(a) from the Project Completion Date diligently operate and maintain, or ensure the diligent operation and maintenance of, the Project and the Common Infrastructure in a safe, efficient and business-like manner and in accordance with the Borrower Documents and Good Industry Practice;

(b) not terminate the appointment of the Plant Operator or the Substation Operator unless a replacement has been appointed whose identity is acceptable to the Senior Agent (acting reasonably) and where the terms of appointment are either substantially the same as the

terms under which the previous Plant Operator or Substation Operator (as applicable) was appointed or are otherwise acceptable to the Senior Agent (acting reasonably);

(c) subject to the conditions set out in the Direct Agreement entered into with SMA, upgrade the standard inverter warranty package taken by the Plant Operator with SMA in respect of a Plant to an advanced standard inverter warranty package (with 98% availability), in case: (a) such Plant O&M Agreement has been terminated, and (b) a replacement operations and maintenance agreement has not been entered into with a counterparty satisfactory to the Senior Agent (acting reasonably) on terms which are either substantially the same as the Plant O&M Agreement or otherwise satisfactory to the Senior Agent (acting reasonably); and

(d) ensure that following any termination of the appointment of the Manager that:

(i) within 60 days a replacement is appointed; or

(ii) the Manager's functions are fulfilled.

13.5 Payments for Interconnection

The Borrower must make the payment required to be made by it (if any) under the Interconnection Agreements in order for commencement of Interconnection works in good time (in the Borrower's reasonable estimation) so as to seek to ensure that the Interconnection is completed on or about the date then scheduled by the Borrower for completion of the Project Facilities to which such Interconnection relates.

13.6 *Conto Energia* Concession

(a) The Borrower must enter into each *Conto Energia* Concession in accordance with the applicable procedure by no later than the later of:

(i) the date falling ten Business Days after the date of receipt of the notice by GSE that the relevant feed-in tariff under the *Conto Energia* Decree has been granted to the 6MW Plant or to the first Solar Block of the 45MW Plant to become operational; and

(ii) the date falling 210 days after the date on which the 6MW Plant or the first Solar Block of the 45MW Plant becomes operational ("*Data di entrata in esercizio*") in accordance with the *Conto Energia* Decree and the AEEG Resolution 90.

(b) The Borrower undertakes to deliver to the Senior Agent a copy of each *Conto Energia* Concession, certified by an authorised signatory of the Borrower as a correct and complete copy of the original made available by GSE, within five Business Days from being aware of the execution of each *Conto Energia* Concession by GSE.

13.7 Power Purchase Agreement

(a) Except with the prior written consent of the Senior Agent, such consent not to be unreasonably withheld or delayed, the Borrower shall not enter into any Power Purchase Agreement.

(b) Should a Power Purchase Agreement be entered into in compliance with paragraph (a) above, the Borrower undertakes, within ten Business Days from the date of execution of the relevant Power Purchase Agreement, to enter into with the Senior Agent (acting in its name

and in the name and on behalf of the other Finance Parties) the pledge of all receivables arising from the relevant Power Purchase Agreement in the same form and substance as the Pledge over Receivables and Accounts, only to the extent the duration of said Power Purchase Agreement exceeds 12 months.

13.8 Pledge of Receivables towards GSE

(a) The Borrower undertakes to enter into with the Senior Agent, in the name and on behalf of the other Finance Parties the Pledge of Feed-in Tariff Receivables, in the form and substance set out on the GSE website or such other form agreed by the Borrower and the Finance Parties (acting reasonably) and accepted by the GSE within ten Business Days from being aware of the publication on the GSE website of the *Conto Energia* Concession duly signed by GSE by way of digital signature. Should the content of the Pledge of Feed-in Tariff Receivables requested by the Finance Parties not be acceptable for the GSE, the Borrower undertakes to enter into an assignment by way of security of the feed-in tariff receivables in the form and substance set out on the GSE website or such other form agreed by the Borrower and the Finance Parties (acting reasonably) and accepted by the GSE within ten Business Days from being aware of the publication on the GSE website of the *Conto Energia* Concession duly signed by GSE by way of digital signature.

(b) The Borrower must promptly execute and deliver all documents and take all actions which the Finance Parties may reasonably request which are necessary and appropriate in order to perfect any Pledge of Feed-in Tariff Receivables.

13.9 GSE Concession

Unless a Power Purchase Agreement is executed in accordance with Subclause 13.7 (Power Purchase Agreement) above, the Borrower must:

(a) notify GSE, within 20 Business Days from the first synchronisation of the 6MW Plant or the first Solar Block of the 45MW Plant, of its request to enter into the relevant *Ritiro Dedicato* Concession in accordance with AEEG Resolution 280; and

(b) no later than five Business Days from being aware of the execution of a *Ritiro Dedicato* Concession by GSE, deliver to the Senior Agent a copy of it certified by an authorised signatory of the Borrower as a correct and complete copy of the original made available by GSE.

13.10 Project Documents

(a) In this Subclause, **Reserved Discretion** means each discretion of the Borrower set out in Schedule 5 (Reserved Discretions).

(b) The Borrower must exercise its rights and comply with its obligations under each Project Document to which it is a party in all material respects and in a proper and timely manner consistent with the Borrower's obligations under the Finance Documents.

(c) Without prejudice to Subclause 13.4 (Operation and maintenance) above, except with the prior consent of the Senior Agent (such consent not to be unreasonably withheld or delayed), the Borrower must not and must not agree to:

(i) amend or waive, other than in accordance with paragraph (f) below and the Reserved Discretions;

(ii) assign or transfer; or

(iii) terminate or suspend,

all or any part of a Project Document.

(d) Subject to paragraphs (e) and (f) below, the Borrower must comply with Section A of Schedule 5 (Reserved Discretions).

(e) The Borrower is not obliged to exercise any Reserved Discretion in any particular manner or fail to exercise a Reserved Discretion if to do so would or would be likely to constitute a breach of any Borrower Document, Transaction Authorisation or any law or regulation or be otherwise actionable at the suit of any person.

(f) Subject to paragraph (g) below, the Borrower may at any time, make or consent to an Immaterial Amendment to a Project Document without the consent of the Senior Agent or the Majority Lenders.

(g) Should the Borrower intend to make or consent to an amendment, modification or waiver to any Project Document which it considers to fall within the scope of paragraph (c) of the definition of Immaterial Amendment without the consent of the Senior Agent or the Majority Lenders:

(i) the Borrower shall deliver to the Senior Agent and each Lender a notice describing the proposed amendment, modification or waiver and confirming that in the opinion of the Borrower (supported by the relevant Lenders' adviser(s)) such amendment, modification or waiver would not (in the context of the document as a whole) be materially adverse to the interests of the Borrower or the Finance Parties and requesting each Lender to confirm within 15 (fifteen) Business Days that they agree that the proposed amendment, modification or waiver falls within paragraph (c) of the definition of Immaterial Amendment; and

(ii) provided the Borrower has received written confirmation from the Majority Lenders within 15 (fifteen) Business Days that they agree that the proposed amendment, modification or waiver falls within paragraph (c) of the definition of Immaterial Amendment the Borrower will be entitled to treat such amendment, modification or waiver as an Immaterial Amendment and may make or consent to the proposed amendment, modification or waiver without the consent of the Senior Agent or the Majority Lenders.

(h) The Borrower shall use its reasonable efforts to obtain the warranty bond pursuant to Article 11.2 of each Plant EPC Contract by the time it is due to it.

(i) The Borrower shall execute the Guarding and Security Agreement within one month of the issuance of the Solar Park Provisional Acceptance Certificate (as defined in the Plant EPC Contracts), provided that if such agreement is entered into after Financial Close, it shall be entered into on terms and with a counterparty acceptable to the Senior Agent (acting on the instructions of the Majority Lending acting reasonably).

(j) The Borrower shall enforce its rights under the Warranty Bond (as defined in the Plant EPC Contract) in the event the Final Acceptance Certificate (as defined in the Plant EPC Contract) is not issued within the Final Acceptance Long Stop Date.

13.11 Completion

The Borrower shall use its reasonable efforts to ensure that the Project Completion Date in relation to each Project occurs as soon as possible and in any event by the respective Long-Stop Completion Date.

13.12 Material contracts

Except with the prior consent of the Senior Agent (such consent not to be unreasonably withheld or delayed), the Borrower must not enter into any contract other than the documents specified in Subclauses 13.6 (Conto Energia Concession) to 13.10 (Project Documents) after the date of this Agreement provided that this restriction shall not apply to a contract which is (or, for the avoidance of doubt, documents a transaction which is):

(a) a replacement contract which avoids or cures any breach of a Finance Document or Event and is entered into pursuant to Subclauses 15.12 (Effectiveness of Borrower Documents) and/or 15.14 (Project Documents) below; or

(b) a contract entered into in the Borrower's ordinary course of business on arm's length terms and the expected cost of which, in aggregate with the value of other contracts entered into pursuant to this paragraph (b), does not exceed the amount of €400,000.00 per annum; or

(c) permitted under any other provision of the Finance Documents; or

(d) required under any other provision of the Finance Documents.

13.13 Advisers

The Borrower must co-operate with each Adviser.

13.14 Treasury transactions

The Borrower must not enter into any derivative transaction protecting against or benefiting from fluctuations in any rate, price or other risk.

13.15 Tax affairs

(a) The Borrower must:

(i) promptly and timely file all Tax and social security reports and returns required to be filed by it in any jurisdiction;

(ii) promptly and timely pay all Taxes and social security contributions or, if any Taxes or social security contributions are being contested in good faith and by appropriate means, ensure an adequate reserve is set aside for payment of those Taxes or social security contributions (including, but not limited to, reserves for contested payments and suspended payments as a consequence of, *inter alia*, *fermo amministrativo* or injunctions of tax penalties notified by the Tax Authority to the Borrower) (all such amounts being referred to as **Contested Taxes**).

(b) Prior to the notification of the Assignment of VAT Receivables in respect of Eligible VAT Payments financed by Facility B2 and subject to the provisions of any Assignment of VAT Receivables, the Borrower shall not request the refund of recoverable VAT by way of reimbursement which is not annual or by way of set-off, unless:

(i) such VAT cannot qualify as an Eligible VAT Payment; or

(ii) an Assignment of VAT Receivables has been granted in respect of all Eligible VAT Payments financed by Facility B1 and Facility B2.

(c) When all the conditions imposed by law are met, the Borrower, without prejudice to the possibility to obtain the refund of the recoverable VAT by way of quarterly reimbursement or by way of set-off (in each case subject to paragraph (b) above), shall request, as soon as possible and no later than (i) 28 February in each year or (ii) 28 (twenty-eight) days from the date of approval of the VR model (or the otherwise applicable form) by the Direction of the "*Agenzia delle Entrate*" if such approval takes place after the first day of February of the relevant year, the refund of the relevant VAT pursuant to Article 30 and 38-bis of Presidential Decree n. 633 of 26 October 1972.

(d) No later than 10 Business Days after submitting the duly completed refund request to the Tax authority, the Borrower hereby undertakes to enter into an Assignment of VAT Receivables with the Finance Parties, pursuant to Article 1260 and following the Italian Civil Code in respect of each VAT Receivable which the Borrower is entitled to receive.

(e) The Borrower must promptly execute and deliver all documents and take all actions which the Finance Parties may reasonably request which are necessary and appropriate in order to:

(i) perfect any assignment of VAT Receivables (including, but not limited to, the execution and delivery of any notification of such deed of assignment to the relevant Tax authority pursuant to Article 1264 of the Italian civil code); or

(ii) enable the Finance Parties to exercise the rights and the remedies to which they are entitled pursuant to Finance Documents.

(f) The Borrower must refund each Finance Party any reimbursement of all or any part of a VAT Refund made by it in the event the Tax authorities (*Agenzia delle Entrate*) request, in accordance with Article 38-bis of Presidential Decree n. 633 of 26 October 1972 or/and any other applicable provisions, such Finance Party to reimburse all or any part of a VAT Refund.

(g) To the extent that following utilisation of any Facility B1 Loan or Facility B2 Loan it is subsequently determined, and the Borrower is aware, that any VAT Payment to which that Facility B1 Loan or Facility B2 Loan related will not be eligible for the annual VAT refund pursuant to Article 30 and 38-bis of Presidential Decree n. 633 of 26 October 1972 (the **Ineligible VAT**), the Borrower covenants to promptly notify the Senior Agent of the same, specifying the amount of such Facility B1 Loan or Facility B2 Loan that is ineligible for the annual VAT refund (the **Ineligible VAT Loan**). The Borrower covenants to transfer (subject to the order of priority of payments with the Proceeds Account set out in Clause 3.2 of the Project Account Agreement) an amount equal to the Ineligible VAT Loan from the Proceeds Acc ount to the VAT Account within four Business Days of becoming aware of such Ineligible VAT.

(h) To the extent that following utilisation of any Facility B1 Loan or Facility B2 Loan a Tax Collection Agent Certificate evidences Unpaid Taxes not evidenced in any previous Tax Collection Agent Certificates, the Borrower covenants to transfer (subject to the order of priority of payments with the Proceeds Account set out in Clause 3.2 of the Project Accounts Agreement) an amount equal to such Unpaid Taxes from the Proceeds Account to the Tax Reserve Account within four Business Days of such notification or, as the case may be, the receipt of the Tax Collection Agent Certificate.

(i) The Borrower undertakes to procure the issuance of a parent company, bank or insurance guarantee for the purposes of any VAT Refund relating to an Eligible VAT Payment according to the relevant provisions of law, as soon as practicable within the time period permitted by law or at any different time upon request by the relevant tax authority.

13.16 Power to remedy

(a) If the Borrower does not comply with:

(i) Schedule 4 (Insurance Schedule);

(ii) Subclause 13.3 (Project Works); or

(iii) Subclause 13.4 (Operation and maintenance),

and a Relevant Event occurs as a result, the Borrower must, after receipt of five Business Days' notice from the Senior Agent, allow the Senior Agent, its agents and contractors to enter the Project Facilities and (except to the extent it is expressly prohibited from granting such entry in the Borrower Right of Use Agreement and, in any event, in accordance with the relevant provisions of the Borrower Right of Use Agreement) the Common Infrastructure and allow the Senior Agent to do anything the Senior Agent (acting reasonably) considers necessary or desirable to remedy the failure to comply.

(b) Nothing done by the Senior Agent or its agents or contractors pursuant to this Subclause will in any way prejudice any right of a Finance Party under the Finance Documents or operate as a waiver of that right without the prior consent of all the Lenders.

(c) The Borrower must indemnify and/or secure and/or prefund and keep the Senior Agent indemnified and/or secured in each case to the Senior Agent's satisfaction, against any liability incurred by the Senior Agent in accordance with this Subclause.

13.17 Inspection

(a) In this Subclause:

Tests on Completion means the Acceptance Tests to be performed as a requirement prior to the signing of the Solar Park Provisional Acceptance Certificate (each as defined in the Plant EPC Contracts).

(b) The Technical Adviser may attend any Test on Completion.

(c) The Borrower must:

(i) give the Technical Adviser five days' prior notice of any Test on Completion;

(ii) ensure that the Senior Agent, its representatives, agents and each Adviser are given access to inspect the Project, the Project Facilities and (except to the extent it is expressly prohibited from granting such access in the Borrower Right of Use Agreement and, in any event, in accordance with the relevant provisions of the Borrower Right of Use Agreement) the Common Infrastructure, any records of the Project and (except to the extent it is expressly prohibited from granting such entry in the Borrower Right of Use Agreement and, in any event, in accordance with the relevant provisions of the Borrower Right of Use Agreement) the Common Infrastructure (including all drawings and specifications) and (should an Event be

outstanding) to its books, records and premises and any other places where it conducts its business, during normal business hours, upon notice of at least five Business Days, and to take copies of any documents inspected, provided that each Adviser (but not the Senior Agent or its representatives or agents) shall bear their own cost or expense which will result from the activities under this paragraph (ii); and

(iii) maintain up-to-date statutory books, books of account, bank statements and other records of the Borrower in accordance with good business practice and all applicable laws.

(d) The Technical Adviser may only observe and may not participate in any Test on Completion.

(e) The Borrower must, at the request of the Senior Agent and upon reasonable notice:

(i) attend any meeting scheduled with any Adviser at reasonable times during normal business hours; and

(ii) use all reasonable endeavours to ensure the attendance of representatives of other relevant parties (if appropriate) at those meetings.

(f) No:

(i) approval of any drawing or specification;

(ii) passing of any work;

(iii) visit to the Project or the Common Infrastructure; or

(iv) attendance at any meeting,

by the Senior Agent or any Adviser, its respective officers, employees or agents will excuse the Borrower from its obligations under the Finance Documents.

13.18 Insurances

The Borrower must comply with Schedule 4 (Insurance Schedule).

13.19 Operating Budget

After the Project Completion Date, the Borrower may not incur any cost or expense or series of costs and expenses that cause expenditure in that financial year to exceed 110% of the aggregate amount of costs, expenses and contingencies set out in the agreed Operating Budget for that financial year or, if, in accordance with this Agreement, no Operating Budget is yet approved for that financial year, the last Operating Budget proposed by the Borrower under Subclause 11.4 (Operating period).

13.20 Securitisation

(a) The Borrower must:

(i) assist the Finance Parties and the Issuer with any steps each of them may reasonably require to take to perfect the Securitisation, including the execution of any agreement, deed of amendment of the Finance Documents or other document which the Finance Parties or the Issuer may deem necessary or appropriate (in each case

acting reasonably) to perfect the assignment of rights, including all or part of the monetary claims deriving from this Agreement, and/or the transfer of rights under this Agreement and/or the granting of any Security Interest and/or the assignment of any Security Document; and

(ii) supply the Finance Parties and the Issuer with all information which the Finance Parties or the Issuer may reasonably require in connection with the Securitisation, including any information that needs to be disclosed in any prospectus and/or to any internationally recognised ratings agency or its professional advisors.

(b) The Borrower acknowledges and agrees that any information relating to this Agreement and the other Finance Documents to be disclosed in any prospectus in connection with any Securitisation will become publicly available information upon publication of the Prospectus; and

(c) The Parties to this Agreement acknowledge and agree that any undertaking in favour of the Issuer under this Agreement shall be deemed as provisions in favour of a third party (*stipulazioni a favore del terzo*) pursuant to article 1411 et sub. of the Italian Civil Code. The Parties acknowledge that, by declaring their acceptance of the above-mentioned rights and benefits under this Agreement with a side letter, the Issuer shall have no liabilities to, and will not assume or have any obligations of, any other Parties to this Agreement and will neither become party to this Agreement nor to the Facility Agreements.

13.21 Consultation

(a) If:

(i) any event or circumstance occurs after the date of this Agreement which has an effect or series or combination of effects, which is materially adverse to the ability of a Major Project Party to comply with any material obligations under the Borrower Documents;

(ii) any Financial Indebtedness of the EPC Co-obligor (for so long as it is a Major Project Party) and/or the O&M Co-obligor is not paid, when due (after the expiry of any originally applicable grace period), to the extent that the then unpaid relevant amount is in excess of Euro 10,000,000; or

(iii) GSE does not perform its payment obligations under the *Ritiro Dedicato* Concession within 90 days from the relevant due date and such non payment(s) is not remedied within 20 days of the expiry of the term referred above and has a Material Adverse Effect,

the Borrower must:

(A) consult and discuss with the Lenders in relation to the contractual rights and remedies which the Borrower has in respect of such Major Project Party or GSE (as appropriate) and/or alternatives to such Major Project Party or GSE (as appropriate) in such circumstances; and

(B) propose a plan of action in order to remedy such circumstances, taking into account the requirements brought up by the Lenders (the **Remediation Plan**),

within 20 days of the earlier of the Senior Agent giving notice (having been instructed by the Majority Lenders) and the Borrower becoming aware of the relevant circumstance or event.

(b) The Remediation Plan will be subject to the Majority Lenders' approval pursuant to Subclause 21.1 (Procedure) below.

(c) The Borrower must take any action reasonably required to:

(i) reflect in any Remediation Plan any reasonable suggestion of the Majority Lenders; and

(ii) implement any Remediation Plan in accordance with its terms once it has been approved by the Majority Lenders.

14. QUOTAHOLDER-RELATED COVENANTS

14.1 Corporate capital

The Borrower must not:

(a) issue any quota capital or alter any rights attaching to its issued quota capital as at the date of this Agreement; or

(b) issue any voting capital.

other than pursuant to the Equity Subscription Agreement.

14.2 Distributions

(a) Other than any transfer or deposit to the Distribution Account funded out of the proceeds of a Loan permitted under the Finance Documents or made with the consent of the Senior Agent and subject to paragraph (d) below, the Borrower must not transfer any money to the Distribution Account unless:

(i) the first Repayment Instalment has been repaid in full;

(ii) the balance on the Debt Service Reserve Account is no less than the Required DSRA Balance and the balance on the Major Maintenance Reserve Account is no less than the Required Maintenance Balance;

(iii) no Event is continuing or would result from the transfer;

(iv) any matter which has been previously referred to an expert under the Calculations and Forecasting Agreement has been agreed by the Majority Lenders, or, if not agreed by the Majority Lenders, has been resolved and the expert's determination provided and the relevant Forecast been finally determined on the basis of the expert's determination;

(v) the Historic Annual Debt Service Cover Ratio (as finally determined) for the most recent Scheduled Calculation Date exceeds 1.15:1;

(vi) the Projected Annual Debt Service Cover Ratio (as finally determined) for the most recent Scheduled Calculation Date exceeds 1.15:1;

(vii) the Loan Life Cover Ratio (as finally determined) for the most recent Scheduled Calculation Date exceeds 1.20:1;

(viii) the Forecast and Historic Statement for the most recent Scheduled Calculation Date has been finally determined; and

(ix) prior to the end of the VAT Initial Security Period either:

(A) amounts are available in the Proceeds Account after the proposed distribution, which are equal to, or greater than, the Facility B1 Loans and Facility B2 Loans outstanding, in respect of which the VAT Initial Security Period for the related Assignment of VAT Receivables has not expired (in each case, **Unhardened VAT Refunds**); or

(B) an unconditional, irrevocable first demand guarantee from the Sponsor Parent has been provided in favour of the Lenders guaranteeing such Unhardened VAT Refunds in full until the end of the relevant VAT Initial Security Period;

(b) In addition to what is provided under paragraph (a) above, other than any transfer or deposit to the Distribution Account funded out of the proceeds of a Loan permitted under the Finance Documents or made with the consent of the Senior Agent, the Borrower must not transfer any money to the Distribution Account if:

(i) the Borrower's auditing firm has qualified the annual audit report to the annual or semi-annual consolidated or non-consolidated financial statements of the Borrower:

(A) in respect of whether such accounts gives a true and fair view; or

(B) in any other respect and such qualification has a Material Adverse Effect.

until either (i) such qualification has been withdrawn by the Borrower's auditing firm, (ii) such issues have been resolved to the satisfaction of the Majority Lenders or (iii) in the case of the qualification in paragraph (B), such qualification no longer has a Material Adverse Effect;

(ii) one of the events described under Subclause 13.21 (Consultation), paragraph (a)(i), (a)(ii) or (a)(iii) above is outstanding until such event has been resolved to the satisfaction of the Majority Lenders; or

(iii) until the date on which all Facility B1 Loans and Facility B2 Loans have been repaid in full, either:

(A) any Tax liabilities are due but not paid by the Borrowers (including but not limited to any Tax liabilities identified in a Tax Authority Certificate or a Tax Collection Agent Certificate) or any reserves which have to be set aside in accordance with Clause 13.15(a)(ii) (Tax Affairs) have not been set aside (including, but not limited to, reserves for contested payments and suspended payments as a consequence of, *inter alia*, *fermo amministrativo* or injunctions of tax penalties notified by the Tax Authority to the Borrower), unless the aggregate amount of such Tax liabilities are covered by a reserve to be held in the Tax Reserve Account; or

(B) any guarantee referred to in Clause 13.15(i) (Tax affairs) is not issued if required by law in connection with any VAT Refund in relation to an Eligible VAT Payment or if requested by the competent tax authority.

(c) Except with the consent of the Senior Agent, the Borrower must only pay Distributions which are to be paid in cash from the Distribution Account.

(d) In derogation of the provisions under this Subclause 14.2, the conditions provided in paragraph (a) above shall not apply to any transfer to the Distribution Account and/or to any Distribution to repay the Quotaholder:

(i) by way of special Distributions, should the Quotaholder have paid any amount of Insurance Proceeds payable under any Insurance in order to fund the restoration, reinstatement or replacement of any asset lost or damaged, upon payment by the insurer or transfer from the Joint Insurance Account to the Borrower of the corresponding amount;

(ii) by way of special Distributions, as provided in Subclause 2.4 (Expiry of Equity Commitment and Discharge of Cash Collateral) of the Equity Subscription Agreement;

(iii) of any Equity in excess of the Equity (including for the avoidance of doubt any Excess Equity Amount) required under the initial base case referred to in Paragraph 8 of Schedule 2 (Condition Precedent Documents); and

(iv) by way of special Distribution, in accordance with Clause 12.5(c) (Disposals).

15. EVENTS

15.1 Relevant Events

Each of the events set out in Subclauses 15.2 (Non-payment) to 15.31 (Issuer Event of Default) (inclusive) is a Relevant Event.

15.2 Non-payment

The Borrower does not pay on the due date any amount payable by it under the Finance Documents in the manner required under the Finance Documents, unless the non-payment:

(a) is caused by technical or administrative error and is remedied within three Business Days of the due date; or

(b) is caused by a Disruption Event and is remedied within five Business Days of the due date.

15.3 Breach of other obligations

(a) The Borrower does not comply with:

(i) any term of Clause 3 (Purpose), Clause 12 (General Covenants) (other than any term referred to in Subclauses 12.2 (Compliance with laws) above), Clause 13 (Project Covenants) (other than any term referred to Subclauses 13.2 (Capital expenditures), 13.4(d)(i) and (ii) (Operation and maintenance), 13.5 (Payments for Interconnection), 13.6(b) (*Conto Energia* Concession), 13.10 (b) and (e) (Project Documents), 13.11 (Completion), 13.12 (Material contracts), 13.13 (Advisers),

13.14 (Treasury transactions), 13.15 (Tax affairs), 13.16 (Power to remedy), 13.17 (Inspection) and Clause 14 (Quotaholder-Related Covenants) of this Agreement;

(ii) any term of clauses 2.5 (Operation of Accounts), 3 (Proceeds Account), 4 (Debt Service Reserve Account), 5 (DSRA LC), 6 (Compensation Account), 7 (VAT Account), 8 (Major Maintenance Reserve Account), 9 (Distribution Account), 10 (Cash Sweep Lock-up Account), 11 (Warehouse Account), 12 (Tax Reserve Account, 16.2 (Procedure for investment), 16.4 (Qualifying criteria) and 17.2(f) (Account Bank) of the Project Accounts Agreement;

(iii) any term of clauses 2.6 (Operation of Accounts), 3 (Equity Account), 4 (Drawdown Account), 5 (Deposit Account) and 9.2(f) (Account Bank) of the English Accounts Agreement;

(iv) any term of clause 2 (Timing of Ratio Calculations) of the Calculations and Forecasting Agreement,

and such non-compliance is not remedied within 20 days of the earlier of the Senior Agent giving notice, having been instructed by the Majority Lenders, and the Borrower becoming aware of the non-compliance.

(b) The Borrower does not comply with Clause 12.10 (Environmental matters) or Clause 13.3 (Project Works) and either:

(i) such non-compliance has a Material Adverse Effect, unless the compliance:

(A) is capable of remedy; and

(B) is remedied within 20 days of the earlier of the Senior Agent giving notice, having been instructed by the Majority Lenders, and the Borrower becoming aware of the non-compliance; or

(ii) such non-compliance is not remedied within six months of the earlier of the Senior Agent giving notice, having been instructed by the Majority Lenders, and the Borrower becoming aware of the non-compliance.

(c) The Borrower or the Quotaholder is in breach of the subordination and priority provisions in the Intercreditor Agreement and such non compliance is not remedied within 20 days of the earlier of the Senior Agent giving notice, having been instructed by the Majority Lenders, and the Borrower becoming aware of the non-compliance.

(d) An Obligor does not comply with any other term of the Finance Documents (other than any term referred to in Subclause 15.2 (Non-payment) or in paragraphs (a), (b) and (c) above) and such non-compliance has a Material Adverse Effect, unless the non-compliance:

(i) is capable of remedy; and

(ii) is remedied within (A) 20 days of the earlier of the Senior Agent giving notice, having been instructed by the Majority Lenders, and the Obligor becoming aware of the non-compliance, or (B) if longer, the cure period applicable under the relevant provisions of the Finance Documents.

15.4 Misrepresentation

(a) A representation, warranty or certification (other than any representation, warranty or certification referred to in paragraph (b) below) made or repeated by an Obligor in any Finance Document or in any document delivered by or on behalf of an Obligor under any Finance Document is incorrect or misleading in any material respect when made or deemed to be repeated unless the facts and circumstances giving rise to the misrepresentation:

(i) are capable of remedy; and

(ii) are remedied within 20 days of the earlier of the Senior Agent giving notice, having been instructed by the Majority Lenders, and the Obligor becoming aware of the misrepresentation.

(b) A representation, warranty or certification made or repeated by an Obligor pursuant to Subclauses 10.5 (Non-conflict), 10.8 (Financial statements), 10.9 (Budgets and initial base case), 10.14 (No other business), 10.18 (Taxes) and 10.22 (Financial Indebtedness) is incorrect or misleading when made or deemed to be repeated where the facts or circumstances giving rise to the misrepresentation have a Material Adverse Effect, unless the facts and circumstances giving rise to the misrepresentation:

(i) are capable of remedy; and

(ii) are remedied within 20 days of the earlier of the Senior Agent giving notice, having been instructed by the Majority Lenders, and the Obligor becoming aware of the misrepresentation.

15.5 Cross-default

Any of the following occurs in respect of the Borrower:

(a) any of its Financial Indebtedness (other than any Permitted Subordinated Debt or any Financial Indebtedness under the Upstream Loan Agreement) is not paid when due (after the expiry of any originally applicable grace period);

(b) any of its Financial Indebtedness (other than any Permitted Subordinated Debt or any Financial Indebtedness under the Upstream Loan Agreement):

(i) becomes prematurely due and payable; and

(ii) is placed on demand,

in each case, as a result of an event of default or relevant event (howsoever described).

15.6 Cross-acceleration

Any of the Financial Indebtedness of the Plant EPC Contractor (while it is a Major Project Party) or the EPC Co-obligor (while it is a Major Project Party):

(a) becomes prematurely due and payable; and

(b) is placed on demand,

in each case, as a result of an event of default or relevant event (howsoever described).

15.7 Material Adverse Effect

(a) An event or circumstance occurs (other than an event or circumstance relating to a Major Project Party) after the date of this Agreement which has a Material Adverse Effect and such Material Adverse Effect is not cured, remedied or mitigated to the satisfaction of the Majority Lenders within 20 days of the Borrower becoming aware of such Material Adverse Effect or the Senior Agent notifying the Borrower of such Material Adverse Effect, having been instructed by the Majority Lenders.

(b) For the avoidance of doubt, paragraph (b) of the definition of Material Adverse Effect does not apply for the purposes of this Subclause 15.7.

15.8 Insolvency

Any of the following occurs in respect of the Borrower:

(a) it is, or is deemed for the purposes of any applicable law to be, unable to pay its debts as they fall due or insolvent;

(b) it admits its inability to pay its debts as they fall due;

(c) it suspends making payments on any of its debts or announces an intention to do so; or

(d) by reason of actual or anticipated financial difficulties, it begins negotiations with any creditor (other than a Finance Party) for the rescheduling of any of its indebtedness.

15.9 Insolvency Proceedings

Any of the following occurs in respect of the Borrower or a Major Project Party:

(a) a resolution of the meeting of the quotaholders or relevant corporate body, respectively, of the Borrower and/or of a Major Project Party to begin any Insolvency Proceedings; or

(b) the Borrower and/or a Major Project Party being subject to any Insolvency Proceedings.

15.10 Cessation of business

The Borrower ceases, or threatens to cease, to carry on business except:

(a) as part of a transaction agreed by the Senior Agent; or

(b) as a result of any disposal allowed under this Agreement.

15.11 Creditors' process

Any attachment, sequestration, distress, execution or analogous event affects any assets of the Borrower and is not discharged within 30 days.

15.12 Effectiveness of Borrower Documents

(a) Any Project Document is not effective in accordance with its terms or is alleged by the Borrower to be ineffective in accordance with its terms or it is or becomes unlawful for any Major Project Party to perform any of its material obligations under a Borrower Document, unless that Borrower Document is replaced by an agreement with a party satisfactory to the Senior Agent (acting on the instructions of the Majority Lenders, acting reasonably) and in a

form and substance either substantially the same as the agreement which it is replacing or otherwise in form and substance satisfactory to the Senior Agent (acting on the instructions of the Majority Lenders, acting reasonably and without delay) as follows:

(i) during the Construction Period:

(A) a draft replacement agreement is submitted to the Senior Agent within 30 days of the Borrower becoming aware of the unlawfulness or, should the Technical Adviser confirm that the Project Completion Date might be achieved within the latest Long-Stop Completion Date, such term shall be deemed as extended to 45 days;

(B) the Senior Agent (acting on the instructions of the Majority Lenders, provided that the Majority Lenders must act reasonably in relation to such instructions) informs the Borrower that the replacement agreement is satisfactory to it within the following 17 days, being understood that, pending a response by the Senior Agent, the Relevant Event shall not be triggered.; and

(C) the replacement agreement is entered into by the Borrower within five Business Days of the Senior Agent's approval under paragraph (B) above; and

(ii) following the end of the Construction Period, within 80 days of the Borrower becoming aware of the unlawfulness. The 80 day period will be extended on a day-for-day basis for each day in excess of 20 days (in aggregate) during which the Senior Agent and the Lenders are considering the identity of a counterparty and/or the terms of a replacement agreement proposed by the Borrower.

(b) A Security Document does not create the security it purports to create. Any Finance Document is not effective in accordance with its terms or is alleged by an Obligor to be ineffective in accordance with its terms or declared void (*nullo* or *annullabile*) or unenforceable (*inefficace*) other than by reason of any action or omission by the Senior Agent or any Finance Parties and such circumstance, if capable of remedy, is not remedied within 20 Business Days after the earlier to occur of the date on which the Senior Agent has given notice thereof to the Borrower (acting on the instructions of the Majority Lenders) and the date the Borrower has actual knowledge.

15.13 Transaction Authorisations

Any Transaction Authorisation required by the Borrower:

(a) is not obtained or effected by the time it is required;

(b) is revoked or cancelled or otherwise ceases to be in full force and effect;

(c) is not renewed or is renewed on revised terms not acceptable to the Senior Agent (acting reasonably); or

(d) is varied on terms not acceptable to the Senior Agent (acting reasonably),

and, in each case, this has a Material Adverse Effect.

15.14 Project Documents

(a) Any Major Project Party breaches its material obligations under any Project Document or any Direct Agreement Indemnity Provision where such breach is not remedied within 30 days of the earlier of the Senior Agent giving notice (acting on the instructions of the Majority Lenders) and the Borrower becoming aware of the breach or, if longer, such grace period as is granted under the relevant Project Document or Relevant Direct Agreement (such period the **Remedy Period**) and such breach has a Material Adverse Effect, unless that Project Document or Relevant Direct Agreement is replaced by an agreement, and with a party, satisfactory to the Senior Agent (acting on the instructions of the Majority Lenders, acting reasonably) and in form and substance either substantially the same as the agreement which it is replacing or otherwise in a form and substance satisfacto ry to the Senior Agent (acting on the instructions of the Majority Lenders, acting reasonably and without delay) as follows:

(i) during the Construction Period:

(A) a draft replacement agreement is submitted to the Senior Agent within 30 days of the expiry of the Remedy Period or, should the Technical Adviser confirm that the Project Completion Date might be achieved within the latest Long-Stop Completion Date, such term shall be deemed as extended to 45 days;

(B) the Senior Agent (acting on the instructions of the Majority Lenders) informs the Borrower that the replacement agreement is satisfactory to it within the following 17 days, being understood that, pending a response by the Senior Agent, the Relevant Event shall not be triggered; and

(C) the replacement agreement is entered into by the Borrower within five Business Days of the Senior Agent's approval under paragraph (B) above).

(ii) following the end of the Construction Period, within 80 days of the Borrower becoming entitled to terminate the relevant Project Document or Relevant Direct Agreement as a result of the relevant breach. The 80 day period will be extended on a day-for-day basis for each day in excess of 20 days in aggregate during which the Senior Agent and the Lenders are considering the identity of a counterparty and for the terms of a replacement agreement proposed by the Borrower.

(b) Any:

(i) Project Document is terminated or a Relevant Direct Agreement is terminated as a result of a breach of a Direct Agreement Indemnity Provision otherwise than pursuant to and as part of a permitted replacement under Subclause 13.4(b) (Operation and maintenance), 15.12 (Effectiveness of Borrower Documents) or 15.14 (Project Documents); or

(ii) Major Project Party issues a notice of termination of a Project Document

(iii) Major Project Party issues a notice of termination of a Relevant Direct Agreement as a result of a breach of a Direct Agreement Indemnity Provision,

in each case otherwise than by reason of full performance of the agreement or expiry of its term, unless that Project Document or Relevant Direct Agreement is replaced by an agreement with a party, satisfactory to the Senior Agent (acting on the instructions of the Majority Lenders, acting

reasonably) and in form and substance either substantially the same as the agreement which it is replacing or otherwise in a form and substance satisfactory to the Senior Agent (acting on the instructions of the Majority Lenders, acting reasonably and without delay) as follows:

(A) during the Construction Period:

I. a draft replacement agreement is submitted to the Senior Agent within 30 days of such event or, should the Technical Adviser confirm that the Project Completion Date might be achieved within the latest Long-Stop Completion Date, such period shall be deemed as extended to 45 days;

II. the Senior Agent (acting on the instructions of the Majority Lenders) informs the Borrower that the replacement agreement is satisfactory to it within the following 17 days, being understood that, pending a response by the Senior Agent, the Relevant Event shall not be triggered, and

III. the replacement agreement is entered into by the Borrower within five Business Days of the Senior Agent's approval under paragraph (II) above).

(B) following the end of the Construction Period, within 80 days of such event. The 80 days period will be extended on a day-for-day basis for each day in excess of 20 days in aggregate during which the Senior Agent and the Lenders are considering the identity of a counterparty and/or the terms of a replacement agreement proposed by the Borrower.

15.15 Constitutional documents

Without the prior consent of the Senior Agent (such consent not to be unreasonably withheld or delayed), any change is made to the Borrower's articles of association or other constitutional documents.

15.16 Equity investment

The Quotaholder does not perform its obligations under any Equity Document on the due date for performance unless such non-performance is remedied with five days.

15.17 Completion

(a) The Project Completion Date for any Plant does not occur by the relevant Long-Stop Completion Date.

(b) The construction works are delayed or interrupted by more than six months with respect to the performance schedule attached to the Plant EPC Contracts under Annex 9 (Project Implementation Schedule) and/or to the Substation EPC Contracts unless the Technical Adviser confirms in writing that each Project Completion Date can occur on or before the relevant Long-Stop Completion Date.

(c) Available Funding is not sufficient to achieve each Project Completion Date and the Borrower, within 30 Business Days of the earlier of the Senior Agent giving notice (having been so instructed by the Majority Lenders) and the Borrower becoming aware of this circumstance does not (i) demonstrate the contrary to the satisfaction of the Senior Agent,

acting reasonably, or (ii) provide the Senior Agent with the evidence, satisfactory to it, that other funds are unconditionally available to the Borrower in order to meet the Remaining Project Costs.

15.18 Abandonment

(a) The Borrower abandons all or a material part of the Project Facilities.

(b) Without limiting paragraph (a) above, the Borrower will be deemed to have abandoned the Project Facilities if it fails to perform any part of the operations or if no work or service is performed or provided (whether by it, the Plant EPC Contractor, the Substation Contractor, the Plant Operator, the Substation Operator or the Manager or any other person) for a continuous period of 40 days, unless the failure is as a result of a Force Majeure Event.

15.19 Nationalisation

(a) Any part of the Project Facilities or the Common Infrastructure is nationalised, expropriated, confiscated or requisitioned, save to the extent, in relation to the Common Infrastructure, that the Borrower's rights under the Borrower Right of Use Agreement are not adversely affected by such nationalisation, expropriation, confiscation or requisition.

(b) Any part of the Borrower's rights under the Borrower Documents or the Transaction Authorisations is forfeited, suspended or otherwise abrogated by any Government Entity which has, or would be reasonably likely to have a Material Adverse Effect.

(c) There is any other intervention in the Project by or on behalf of any Government Entity which has, or would be reasonably likely to have a Material Adverse Effect.

15.20 Litigation

Any litigation, arbitration or administrative proceedings (including, but not limited to, judicial seizures, interim measures or other similar proceedings, or orders issued pursuant to Article 2409 of the Italian Civil Code) are current or, to its knowledge pending or threatened in writing against it which, if adversely determined, are reasonably likely to have a Material Adverse Effect.

15.21 Insurance

(a) Any Insurance is avoided or suspended (in each case to any material extent); or

(b) any insurer is entitled to avoid or suspend (in each case to any material extent) or otherwise reduce its liability under any policy relating to any Insurance.

15.22 Project events

The Borrower does not have, or ceases to have:

(a) good title to, or freedom to use under any applicable laws, the Site and any other assets (including, but not limited to, Intellectual Property and the Common Infrastructure) necessary, to implement the Project in accordance with the Borrower Documents; and

(b) good and marketable title to all assets reflected in its latest audited financial statements,

in each case free from Security Interests (other than any Permitted Security Interest), restrictions and onerous covenants (other than any Permitted Covenant).

15.23 Annual Debt Service Cover Ratio

(a) The Historic Annual Debt Service Cover Ratio for an Historic Period is finally determined to be less than 1.10:1.

(b) The Projected Annual Debt Service Cover Ratio for a Projected DSCR Period is finally determined to be less than 1.10:1

15.24 Loan Life Cover Ratio

The Loan Life Cover Ratio is finally determined to be less than 1.15:1.

15.25 Ownership of the Borrower

(a) The Quotaholder ceases to hold directly 100% of the Borrower's corporate capital, without the Senior Agent's prior written consent (acting on the instructions of the Majority Lenders, which instructions must not be unreasonably withheld or delayed).

(b) At any time, one or more Permitted Persons taken together do not hold (directly or indirectly):

(i) at least 50.01% of the Borrower's corporate capital; and

(ii) the power to direct the management and policies of the Borrower, whether through the ownership of voting capital, by contract or otherwise,

without the Senior Agent's prior written consent (acting on the instructions of the Majority Lenders, which instructions shall not be unreasonably withheld or delayed).

(c) Other than the Sponsor Parent, no person shall become a Permitted Person unless:

(i) approved by the Majority Lenders (such approval not to be unreasonably withheld or delayed); and

(ii) no Event is outstanding.

For the avoidance of doubt, where this Clause 15.25 applies, the Senior Agent shall not be responsible for determining whether the Majority Lenders have unreasonably withheld or delayed instructions, shall be entitled to assume that the Majority Lenders have not unreasonably withheld or delayed any instructions given and shall have no liability (save in the case of fraud, gross negligence or wilful misconduct) to any person for acting on any such instructions. The Borrower shall be entitled, as between it and the Lenders, to dispute whether the Majority Lenders have unreasonably withheld or delayed any instructions to which this Clause 15.25 applies.

15.26 *Conto Energia* Concession

(a) The Borrower does not notify GSE, within 60 days from the date on which each Solar Block becomes operational (*Data di entrata in esercizio*), of its request to be granted with the feed-in tariff pursuant to the *Conto Energia* Decree and the AEEG Resolution 90, together with the documentation listed under annex 4 to the *Conto Energia* Decree.

(b) The Borrower does not notify the GSE, within 90 days from its request, of any further information and documentation needed for the granting of the feed-in tariff pursuant to the *Conto Energia* Decree and the AEEG Resolution 90.

(c) The Borrower does not notify the GSE, within two years from the date on which the first Solar Block becomes operational (*Data di entrata in esercizio*), of its request to be granted with the incentive relating to the last Solar Block of the 45MW Plant pursuant to article 5.7 of AEEG Resolution 90.

15.27 GSE

(a) The GSE does not perform its payment obligations under the *Conto Energia* Concession within 110 days from the relevant due date and such non payment is not remedied within 20 days of the expiry of the term referred above and has a Material Adverse Effect.

(b) The GSE ceases to be fully owned by the Italian state, unless it is transferred to a governmental body or other authority which is deemed equivalent to the Italian state.

(c) The Italian state ceases to guarantee payment of the feed-in tariff under the *Conto Energia* Decree by the GSE, unless the relevant payment obligation is guaranteed by a governmental or other authority which is deemed equivalent to the Italian state.

(d) A change in law occurs whereby the feed-in tariff under the *Conto Energia* Decree is no longer payable by the GSE and such change in law is applicable to the Borrower in relation to the Project, unless the relevant payment obligation is assumed by a governmental body or other authority which is deemed equivalent to the GSE.

For the purposes of this Subclause 15.27, change in law means the enactment, promulgation, execution or ratification of or any change in or amendment to any law, rule or regulation (or in the application or official interpretation of any law, rule or regulation) that occurs after the date of this Agreement.

15.28 Force Majeure Event

A Force Majeure Event as defined in or contemplated by any Project Document has occurred and is continuing for a period exceeding 180 days and has a Material Adverse Effect.

15.29 Remediation Plan

The Borrower has not obtained the Majority Lenders' approval to a Remediation Plan proposed by it pursuant to Subclause 13.21 (Consultation) above or resolved the relevant matter in any other way satisfactory to the Majority Lenders within six months of the date of the rejection of the Remediation Plan by the Majority Lenders.

15.30 Illegality

It is or becomes unlawful for the Borrower to perform any of its material obligations under any Borrower Document and such circumstance, if capable of remedy, is not remedied within 20 days after the earlier to occur of the date on which the Senior Agent has given notice thereof to the Borrower, having been instructed by the Majority Lenders, and the date the Borrower has actual knowledge.

15.31 Issuer Event of Default

On or after the Issuer Assignment Date, an Issuer Event of Default has occurred and is continuing.

15.32 Acceleration

If a Relevant Event is outstanding, the Senior Agent may, and must if so instructed by the Majority Lenders, subject in each case to its being indemnified and/or secured to its satisfaction, without prejudice to any further remedy provided by the law and under this Agreement, including the right of termination pursuant to Article 1454 of the Italian Civil Code save in the circumstances referred to in Subclauses 15.8 (Insolvency) and 15.9 (Insolvency Proceedings) above, by notice to the Borrower:

(a) cancel any undrawn portion of the Total Commitments; and/or

(b) suspend the Total Commitments; and/or

(c) withdraw from the Project Loan Facility Agreement and/or VAT Facility Agreement without paying any consideration (*recesso senza corrispettivo*); and/or

(d) (i) declare that acceleration (*decadenza dal beneficio del termine*) has occurred pursuant to Article 1186 of the Italian Civil Code and any Facility under the Project Loan Facility Agreement and/or the VAT Facility Agreement is immediately due and payable due to the circumstances referred to in Article 1186 of the Italian Civil Code and/or the circumstances referred to in Subclauses 15.8 (Insolvency) and 15.9 (Insolvency Proceedings), which hereby are deemed as equivalent to the circumstances referred to in Article 1186 of the Italian Civil Code by the Parties' mutual agreement without need of any judgment; and/or

(ii) only in the circumstances under Subclauses 15.2 (Non-payment), 15.11 (Creditors' process) and 15.26 (*Conto Energia* Concession), declare that the Project Loan Facility Agreement and/or VAT Facility Agreement is terminated by operation of law (*risoluzione di diritto*) pursuant to Article 1456 of the Italian Civil Code as of the moment on which the Borrower receives a written notice by the Senior Agent, in which the Senior Agent declares that it intends to avail itself of this Clause; or

(iii) save in the circumstances referred to in Subclauses 15.8 (Insolvency) and 15.9 (Insolvency Proceedings) above, declare as terminated the Project Loan Facility Agreement and/or VAT Facility Agreement pursuant to Article 1453 of the Italian Civil Code.

Should any notice be sent by the Senior Agent pursuant to paragraph (c) and/or (d) above, the Senior Agent shall have the right to enforce in whole or in part the Security Interests under the Security Documents (other than the Pledge over Cash Collateral Account, to the extent the same is not enforceable in accordance with its terms at such time).

15.33 Co-operation

If a Relevant Event is outstanding the Borrower must, on the request of the Senior Agent:

(a) supply to the Senior Agent a copy of any as-built drawings then in its possession showing all alterations made since the commencement of operation of the Project Facilities and (except to the extent it is expressly prohibited in the Borrower Right of Use Agreement to do so) the Common Infrastructure;

(b) supply to the Senior Agent a copy of any operation and maintenance manuals or similar documents for the Project Facilities and (except to the extent it is expressly prohibited in the Borrower Right of Use Agreement to do so) the Common Infrastructure then in its possession; and

(c) co-operate fully with the Senior Agent, any Adviser and any operator of the Project Facilities and (to the extent of its rights) the Common Infrastructure in order to achieve (if necessary) a smooth transfer of the operation of the Project Facilities and the Borrower's rights in relation to the Common Infrastructure.

15.34 No independent action

No Finance Party may, except (prior to the Issue Date) with the prior consent of all the Lenders and (after the Issue Date), in accordance with the Intercreditor Agreement:

(a) enforce or require the Senior Agent to enforce any Security Interest created or evidenced by any Security Document;

(b) sue for or institute any creditor's process (including an injunction, garnishment, execution or levy, whether before or after judgment) in respect of any obligation (whether or not for the payment of money) owing to it in respect of any Finance Document;

(c) take any step for the winding-up, administration of or dissolution of, or any insolvency proceeding, or for a voluntary arrangement, scheme of arrangement or other analogous step in relation to the Borrower; or

(d) apply for any order for an injunction or specific performance in respect of the Borrower in relation to any Finance Document.

15.35 Senior Agent's response for replacement agreements

Where the Senior Agent is to provide a response regarding a replacement agreement for the purposes of Clauses 15.12 and 15.14(a) and 15.14(b), each Party hereto hereby agrees and acknowledges that the Senior Agent will seek and act upon the instructions of the Majority Lenders in relation to any such response and the Senior Agent shall incur no liability to any person as a result of any delay caused thereby (or any related consequences), including if it is unable to provide a response within the relevant time period.

16. THE ADMINISTRATIVE PARTIES

16.1 Appointment and duties of the Senior Agent

(a) Each Finance Party (other than the Senior Agent and SACE) irrevocably appoints the Senior Agent to act as its agent (*mandatario con rappresentanza*) under the Finance Documents.

(b) Each Party acknowledges that the duties of the Senior Agent are solely mechanical and administrative in nature.

(c) Each Finance Party (other than the Senior Agent) irrevocably authorises the Senior Agent to:

(i) perform the duties and to exercise the rights, powers and discretions that are specifically given to it under the Finance Documents and agrees that no implied duties or obligations shall be read into this Agreement against the Senior Agent; and

(ii) execute in the name and on behalf of such Finance Party each Finance Document expressed to be executed by the Senior Agent in its name and its behalf,

provided that the Senior Agent is not authorised to perform duties, exercise rights, powers and discretions or execute documents on behalf of SACE.

(d) Each Finance Party (other than the Senior Agent and SACE (which, in the case of SACE, is not a party to any Finance Document)) hereby grants the Senior Agent with all widest powers to implement the mandate under paragraph (a), including, without limitation, the power to:

(i) negotiate and execute any amendment agreement in respect of any Finance Document;

(ii) negotiate and execute any waiver requested hereunder;

(iii) provide any consent which is expressed to be provided by the Senior Agent under this Agreement or any other Finance Document,

(also in accordance with the terms of the Intercreditor Agreement, when applicable) so that no lack of power may be claimed against the Senior Agent in respect of any of the above, provided that the Senior Agent shall always be entitled to seek instructions of the Majority Lenders in accordance with Clause 16.7 (Majority Lenders' instructions) in relation to the exercise of any right, power or discretion.

(e) Each Finance Party (other than the Senior Agent and SACE) acknowledges and agrees that the Senior Agent may enter in its name and on its behalf into contractual arrangements pursuant to or in connection with the Finance Documents to which the Senior Agent is also a party (in its capacity as Senior Agent or otherwise) and expressly authorises the Senior Agent, pursuant to article 1395 of the Italian Civil Code. The Finance Parties expressly waive any right they may have under article 1394 of the Italian Civil Code in respect of contractual arrangements entered into by the Senior Agent in their name and on their behalf pursuant to or in connection with the Finance Documents.

(f) Each of the Parties acknowledges and agrees that:

(i) the provisions of Clause 16.7 (Majority Lenders' instructions) of this Agreement; and

(ii) any other provisions of the Finance Documents pertaining to any right, powers, authorities and discretions that are specifically given to the Senior Agent under or in connection with the Finance Documents, which are inconsistent with the content of Clause 2.2 of the Intercreditor Agreement,

will be superseded by the terms of Clause 2.2 of the Intercreditor Agreement with effect as of the Issue Date.

(g) The Parties recognise and accept that in the event any inconsistencies should arise between the contractual provisions of this Agreement or any Finance Documents, on the one hand, and the content of an instruction given by the Instructing Parties (as defined under the Intercreditor Agreement) to the Senior Agent pursuant to the Intercreditor Agreement, on the other hand, the relevant instruction will at all times prevail and, as a result, the Senior Agent shall act in compliance with the relevant instruction only.

(h) The Parties acknowledge that, where SACE becomes fully and automatically subrogated to the rights of the Issuer pursuant to Clause 4.4 of the SACE Guarantee and Reimbursement Agreement, it will by notice to the Senior Agent be entitled to appoint the Senior Agent to act as its agent (*mandatario con rappresentanza*) in accordance with and on the terms of this Clause 16.

16.2 Role of the Arrangers

Except as specifically provided in the Finance Documents, each Arranger has no obligations of any kind to any other Party in connection with any Finance Document.

16.3 No fiduciary duties

Nothing in this Agreement makes an Administrative Party a trustee or fiduciary for any other Party or any other person. No Administrative Party shall be bound to account to any Lender for any sum or the profit element of any sum received for its own account or be liable to account for interest on those moneys.

16.4 Business with Affiliates of an Obligor

An Administrative Party may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Affiliate of an Obligor.

16.5 Individual position of an Administrative Party

(a) If it is also a Lender, each Administrative Party has the same rights and powers under the Finance Documents as any other Lender and may exercise those rights and powers as though it were not an Administrative Party.

(b) Each Administrative Party and any related entity may:

(i) carry on any business with any Obligor or its related entities (including acting as an agent or a trustee for any other financing); and

(ii) retain any profits or remuneration it receives under the Finance Documents or in relation to any other business it carries on with any Obligor or its related entities.

16.6 Reliance

The Senior Agent may:

(a) rely on any representation, notice or document believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person;

(b) rely on any statement made by any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify;

(c) engage, pay for, at the expense of the Borrower, and rely on the advice or services of any lawyers, accountants, surveyors or other experts selected by it (including those representing a Party other than the Senior Agent) and whether or not addressed to the Senior Agent and whether or not the liability of the relevant expert in respect thereof is limited by a monetary cap or otherwise;

(d) act under the Finance Documents through its personnel and agents; and

(e) assume (unless it has received written notice to the contrary in its capacity as agent to the Lenders) that:

(i) no Event has occurred (unless it has actual knowledge of an Event arising under Subclause 15.2 (Non-payment)) and that no event, occurrence or effect has a Material Adverse Effect (unless it has actual knowledge of such event, occurrence or effect);

(ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and

(iii) any notice or request made by the Borrower (other than a Request) is made on behalf of and with the consent and knowledge of all the Obligors.

(f) The Senior Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

(g) Notwithstanding any other provision of any Finance Document to the contrary, neither the Senior Agent nor any Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

(h) The Senior Agent shall not be obliged to take any step or action (including instituting any enforcement proceedings) in respect of this Agreement or any other Finance Document unless it has been indemnified and/or secured to its satisfaction against all actions, proceedings, claims and demands which may be brought against it and against all costs, charges, damages, expenses and liabilities which it may incur by taking such action.

(i) If the Senior Agent, in the exercise of its functions, requires to be satisfied or to have information as to any fact or the expediency of any act, it may call for, and shall be entitled to rely upon and accept as sufficient evidence of that fact or the expediency of that act, a certificate or letter of confirmation or explanation reasonably believed by it to be genuine and signed by an authorised signatory of the Borrower or a Lender as to that fact or to the effect that, in their opinion, that act is expedient and the Senior Agent need not call for further evidence and will not be responsible for any loss occasioned by acting on such certificate.

16.7 Majority Lenders' instructions

(a) The Senior Agent is fully protected if it acts, or refrains from acting, on the instructions of the Majority Lenders, and is entitled to seek instructions from the Majority Lenders at any time, in the exercise of any right, power or discretion vested in it or any matter not expressly provided for in the Finance Documents and the Senior Agent shall not be liable to any person for any delay (or related consequences) for seeking any such instructions. Any such instructions given by the Majority Lenders will be binding on all the Lenders. In the absence of instructions from the Majority Lenders, the Senior Agent may act or refrain from acting as it considers to be in the best interests of all of the Lenders and shall not be liable to any person for any loss occasioned thereby.

(b) For the avoidance of doubt, the Senior Agent shall not be responsible for determining whether the Majority Lenders have acted reasonably in relation to any instructions, shall be entitled to assume that the Majority Lenders have acted reasonably in giving any instructions and shall have no liability (save in the case of fraud, gross negligence or wilful misconduct) to any person for acting on such instructions. The Borrower shall be entitled, as between it

and the Lenders, to dispute whether the Majority Lenders have acted reasonably in relation to such instructions.

(c) The Senior Agent may assume that unless it has received notice to the contrary, any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised.

(d) The Senior Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings in connection with any Finance Document.

(e) The Senior Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received security satisfactory to the Senior Agent for any cost, loss or liability (together with any associated VAT) to it, which it may incur in complying with the instructions of the Majority Lenders (or, if appropriate, the Lenders).

16.8 Responsibility

(a) No Administrative Party is responsible for the adequacy, accuracy and/or completeness of any statement or information (whether written or oral) made in or supplied in connection with any Finance Document.

(b) No Administrative Party is responsible for the legality, validity, effectiveness, adequacy, completeness or enforceability of any Finance Document or any other document entered into, made or executed in anticipation of or in connection with any Finance Document.

16.9 Exclusion of liability

(a) Without limiting paragraph (b) below, the Senior Agent is not and will not be liable for any action taken or not taken by it in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.

(b) No Party (other than the Senior Agent) may take any proceedings against any officer, employee or agent of the Senior Agent in respect of any claim it might have against the Senior Agent or in respect of any act or omission of any kind by that officer, employee or agent in connection with any Finance Document.

(c) The Senior Agent is not and will not be liable for any delay (or related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Senior Agent if the Senior Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Senior Agent for that purpose.

(d) Nothing in this Agreement will oblige any Administrative Party to carry out or satisfy any know your customer requirement or other checks in relation to the identity of any person on behalf of any Finance Party.

(e) Each Finance Party confirms to each Administrative Party that it is solely responsible for any know your customer requirements it is required to carry out and that it may not rely on any statement in relation to those requirements made by any other person.

(f) The Senior Agent shall not be liable for any consequential, special, indirect or speculative loss or damage (including, but not limited to, loss of business, goodwill, opportunity or profit) of any kind whatsoever even if advised of the possibility of such loss or damage.

16.10 Events

(a) The Senior Agent is not obliged to monitor or enquire whether an Event has occurred. The Senior Agent is not deemed to have knowledge of the occurrence of an Event. The Senior Agent is not obliged to monitor or enquire whether any event, occurrence or an effect has a Material Adverse Effect and is not deemed to have knowledge of any such event, occurrence or effect provided that, if the Senior Agent is (i) notified in writing by an Party of an event, occurrence or effect which, in such Party's opinion, may be or become an Event or might have a Material Adverse Effect or (ii) is requested in writing by a Finance Party to enquire of an event, occurrence or effect, the Senior Agent agrees to make enquiries of the Borrower or the Lenders in relation thereto.

(b) If the Senior Agent:

(i) receives notice from a Party referring to this Agreement, describing an Event and stating that the event is an Event; or

(ii) is aware of the non-payment of any principal, interest or any fee payable to a Finance Party (other than the Senior Agent or any Arranger) under this Agreement,

it must promptly notify the other Finance Parties.

16.11 Information

(a) The Senior Agent must promptly forward to the person concerned the original or a copy of any document which is delivered to the Senior Agent by a Party for that person.

(b) Except where a Finance Document to which the Senior Agent is party specifically provides otherwise, the Senior Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

(c) Except as provided above, the Senior Agent has no duty:

(i) either initially or on a continuing basis to provide any Lender with any credit information or other information concerning the risks arising under or in connection with the Finance Documents (including any information relating to the financial condition or affairs of any Obligor or its related entities or the nature or extent of recourse against any Party or its assets) whether coming into its possession before, on or after the date of this Agreement; or

(ii) unless specifically requested to do so by a Lender in accordance with a Finance Document, to request any certificate or other document from any Obligor.

(d) In acting as the Senior Agent, the agency division of the Senior Agent is treated as a separate entity from its other divisions and departments. Any information acquired by the Senior Agent which, in its opinion, is acquired by it otherwise than in its capacity as the Senior Agent may be treated as confidential by the Senior Agent and will not be treated as information possessed by the Senior Agent in its capacity as such and the Senior Agent shall not be deemed to have notice of it.

(e) The Senior Agent is not obliged to disclose to any person any confidential information supplied to it by or on behalf of the Borrower solely for the purpose of evaluating whether any waiver or amendment is required in respect of any term of the Finance Documents.

(f) The Borrower irrevocably authorises the Senior Agent to disclose to the other Finance Parties any information which, in its opinion, is received by it in its capacity as the Senior Agent.

16.12 Release of Security

Without prejudice to the provisions under Clause 5.9 (Release of the Security in case of repayment, voluntary prepayment or refinancing by transfer) above, at the end of the Security Period the Senior Agent, subject to it being indemnified and/or secured to its satisfaction, and Lenders must take any action reasonably requested by the Borrower or the Quotaholder to release the Security Assets from the Security.

16.13 Indemnities

(a) Without limiting the liability of any Obligor under any Finance Documents each Lender must indemnify the Senior Agent, within 10 Business Days of demand, for that Lender's Pro Rata Share of any cost, expense, loss or liability incurred by the Senior Agent in acting in its capacity as the Senior Agent for the Finance Parties.

(b) The Senior Agent may deduct from any amount received by it for a Lender any amount due to the Senior Agent from that Lender under a Finance Document but unpaid.

16.14 Compliance

Each Administrative Party may refrain from doing anything (including disclosing any information) which might, in its opinion, constitute a breach of any law or regulation or be otherwise actionable at the suit of any person, and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation.

16.15 Resignation of the Senior Agent

(a) With the consent of the Majority Lenders, the Senior Agent may resign and appoint any of its Affiliates as successor Senior Agent by giving notice to the other Finance Parties and the Borrower.

(b) Alternatively, and without the consent of the Majority Lenders, the Senior Agent may resign by giving notice to the Finance Parties and the Borrower, in which case the Majority Lenders may appoint a successor Senior Agent.

(c) If no successor Senior Agent has been appointed under paragraph (b) above within 60 days after notice of resignation was given, the Senior Agent may appoint another financial institution as successor Senior Agent.

(d) The person(s) appointing a successor Senior Agent must, if practicable, consult with the Borrower prior to the appointment. Any successor Senior Agent must have an office in Italy.

(e) The resignation of the Senior Agent and the appointment of any successor Senior Agent will both become effective only when the successor Senior Agent notifies all the Parties that it accepts its appointment. On giving the notification, the successor Senior Agent will succeed

to the position of the Senior Agent and the term Senior Agent will mean the successor Senior Agent.

(f) The retiring Senior Agent must, at its own cost, make available to the successor Senior Agent such documents and records and provide such assistance as the successor Senior Agent may reasonably request for the purposes of performing its functions as the Senior Agent under the Finance Documents, provided that the Senior Agent shall not be required to disclose any documents or records which are confidential or proprietary in nature to it.

(g) Upon its resignation becoming effective, this Clause 16.15 will continue to benefit the retiring Senior Agent in respect of any action taken or not taken by it in connection with the Finance Documents while it was the Senior Agent, and, subject to paragraph (f) above, it will have no further obligations under any Finance Document.

(h) The Majority Lenders may, by notice to the Senior Agent, require it to resign under paragraph (b) above on giving the Senior Agent 15 days' written notice.

(i) Subject to paragraph (f), the Borrower shall bear the cost of any replacement of a Senior Agent in accordance with this Clause 16.15 (Resignation of the Senior Agent).

16.16 Relationship with Lenders

(a) The Senior Agent may treat each Lender as a Lender, entitled to payments under this Agreement and as acting through its Facility Office(s) until it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

(b) The Senior Agent may at any time, and must if requested to do so by the Majority Lenders, convene a meeting of the Lenders, subject to it being indemnified and/or secured to its satisfaction.

(c) The Senior Agent must keep a register of all the Parties and supply any other Party with a copy of the register on request. The register will include each Lender's Facility Office(s) and contact details for the purposes of this Agreement.

16.17 Notice period

Where this Agreement specifies a minimum period of notice to be given to the Senior Agent, the Senior Agent may, at its discretion, accept a shorter notice period.

16.18 Credit appraisal by the Lenders

Without affecting the responsibility (if any) of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Senior Agent and the Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

(a) the financial condition, status and nature of each Obligor;

(b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

(c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

(d) the adequacy, accuracy and/or completeness of any information provided by the Senior Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

16.19 Senior Agent's Management Time

In addition to the agency fee paid or payable to the Senior Agent under 18.1 (Agency fee) and any costs and expenses payable to the Senior Agent in accordance with Clause 20 (Expenses), the Borrower shall pay the Senior Agent a waiver fee in connection with any amendment or waiver of, or consent in respect of, any Finance Document or Transaction Document in accordance with the Fee Letter. Following the occurrence of an Event, any amount payable to the Senior Agent under Clause 19.2 (Other indemnities), Clause 20 (Expenses) and Clause 16.13 (Indemnities) shall include the costs of utilising the Senior Agent's management time or other resources (Management Time Costs) and will be calculated on the basis of such reasonable daily or hourly rates as the Senior Agent may notify t o the Borrower and the Lenders, and is in addition to any fees, costs and expenses paid or payable to the Senior Agent under Clause 18.1 (Agency fee) or Clause 20 (Expenses) as referred to above, provided that, for such time as both SACE is the Class A1 Controlling Party and EIB is the Class A2 Controlling Party, the Senior Agent's Management Time Costs (but not its expenses) shall be subject to an annual cap with effect from the date of this Agreement (excluding value-added tax) of EUR100,000, such cap may be increased from time to time with the consent of the Controlling Parties, such consent not to be unreasonably withheld or delayed. The parties hereby agree that if the Senior Agent's Management Time Costs are such that the Senior Agent requests that the annual cap referred to above be increased to cover such costs being or expected to be incurred, the Senior Agent shall have no obligation to take or continue to take any steps or action (including instituting or continuing with any proceeding s) (and shall incur no liability for refraining to take any such steps or action) until the Controlling Parties have consented to the increase in such cap being requested. The annual cap to the Management Time Costs referred to above shall not apply at any time with effect from the date on which either SACE or EIB ceases to be the Class A1 Controlling Party or the Class A2 Controlling Party, respectively.

16.20 Deduction from amounts payable by the Senior Agent

If any Party owes an amount to the Senior Agent under the Finance Documents the Senior Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Senior Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

16.21 Senior Agent as security agent

(a) The Senior Agent shall not be liable for any failure or omission to perfect, or defect in perfecting, the Security Interests created pursuant to any Security Document, including:

(i) failure to obtain any Authorisation for the execution, validity, enforceability or admissibility in evidence of any Security Document; or

(ii) failure to effect or procure registration of or otherwise protect or perfect any of the Security Interests created by the Security Documents under any laws in any territory.

(b) The Senior Agent may accept without enquiry, requisition, objection or investigation such title as any Obligor may have to any Security Assets.

(c) The Senior Agent and every receiver, delegate, attorney, agent or other similar person appointed under any Security Document may indemnify itself out of the Security Assets against any cost, expense, loss or liability incurred by it in that capacity (otherwise than by reason of its own gross negligence or wilful misconduct).

(d) The Senior Agent shall not have any duty:

(i) to ensure that any payment or other financial benefit in respect of any of the Security Assets is duly and punctually paid, received or collected; or

(ii) to ensure the taking up of any (or any offer of any) stocks, shares, rights, moneys or other property accruing or offered at any time by way of interest, dividend, redemption, bonus, rights, preference, option or warrant or otherwise in respect of any Security Assets.

(e) The Senior Agent may:

(i) employ and pay an agent selected by it to transact or conduct any business to transact or conduct any business and to do all acts required to be done by it (including the receipt and payment of money);

(ii) delegate to any person on any terms (including power to sub-delegate) all or any of its function,

and, provided that the Senior Agent, exercises reasonable care in selecting that agent or delegate, the Senior Agent shall not be responsible for any misconduct or omission by any agent or delegate appointed by it or bound to supervise the proceedings or acts of any such agent or delegate.

16.22 Notification to Servicer

The Senior Agent shall notify the Servicer:

(a) within 5 Business Days of the start of each Interest Period, of the interest and principal amounts which are payable on the Project Loans on the next Project Loan Interest Payment Date; and

(b) within 5 Business Days of the earlier of (i) the Senior Agent being notified of the amount and (ii) the date on which such prepayment is made, the amount of any prepayment of the Project Loans.

17. EVIDENCE AND CALCULATIONS

17.1 Accounts

Accounts maintained by a Finance Party in connection with this Agreement are prima facie evidence of the matters to which they relate for the purpose of any litigation or arbitration proceedings.

17.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under the Finance Documents will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

17.3 Calculations

Unless otherwise provided in the Facility Agreements, any interest or fee accruing under a Finance Document accrues from day to day and is calculated on an Actual/360 basis.

18. FEES

18.1 Agency fee

The Borrower must pay to the Senior Agent for its own account an agency fee in the manner agreed in the Fee Letter between the Senior Agent and the Borrower.

18.2 Commitment fee

(a) In respect of Facilities A1 and A2, the Borrower must pay to the Senior Agent for each Lender a commitment fee computed at a rate of 1% per annum on the undrawn, uncancelled amount of that Lender's Facility A1 Commitments and/or Facility A2 Commitments, payable on the earlier of (a) the Issue Date, and (b) the last day of the Availability Period for Facilities A1 and A2.

(b) In respect of Facilities B1 and B2, the Borrower must pay to the Senior Agent for each Lender a commitment fee computed at a rate of 50% of the applicable Margin per annum on the undrawn, uncancelled amount of the greater of that Lender's Available Facility B1 Commitments and Available Facility B2 Commitments, payable quarterly in arrears.

(c) Accrued commitment fee is payable quarterly in arrears from the date of this Agreement until the end of the Availability Period. Accrued commitment fee is also payable to the Senior Agent for a Lender on the date that all of its Commitments are cancelled in full.

18.3 Arrangement fee

The Borrower must pay to each of the Arrangers for their own account arrangement fees in the amount and manner agreed in the Fee Letters between the Arrangers and the Borrower.

19. INDEMNITIES

19.1 Currency indemnity

(a) The Borrower must, as an independent obligation, within three Business Days of demand, indemnify each Finance Party against any loss or liability which that Finance Party incurs as a consequence of:

(i) that Finance Party receiving an amount in respect of the Borrower's liability under the Finance Documents; or

(ii) that liability being converted into a claim, proof, judgment or order,

in a currency other than the currency in which the amount is expressed to be payable under the relevant Finance Document.

(b) Unless otherwise required by law, the Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable.

19.2 Other indemnities

(a) The Borrower must, within three Business Days of demand, indemnify each Finance Party against any cost, expenses, fees, claims, loss or liability which that Finance Party incurs as a consequence of:

(i) the occurrence of any Relevant Event;

(ii) any failure by the Borrower to pay any amount due under a Finance Document on its due date, including any resulting from any distribution or redistribution of any amount among the Lenders under this Agreement;

(iii) a Loan not being made after a Request has been delivered for that Loan due to conditions precedent for that Loan under Clause 4 (Conditions Precedent) not being met;

(iv) a Loan (or part of a Loan) not being prepaid in accordance with this Agreement; or

(v) the operation of any Direct Agreement.

(b) The Borrower's liability in each case includes any loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under any Finance Document or any Loan.

(c) The Borrower must promptly indemnify the Senior Agent against any loss, cost, expenses, fees or liability incurred by the Senior Agent as a result of:

(i) investigating any event which the Senior Agent reasonably believes to be an Event; or

(ii) acting or relying on any notice, request or instruction which the Senior Agent reasonably believes to be genuine, correct and appropriately authorised.

(d) The Borrower must indemnify, within three Business Days of demand, the Original Facility A Lenders against all losses, liabilities (including any taxes (save for taxes on income or corporation taxes), levies and duties), costs, damages and expenses which any of them may incur as a result of, or in connection with:

(i) their obligation, pursuant to Clause 22.7(e) of this Agreement or otherwise (including any similar provisions contained in the other Finance Documents or the Transfer Agreements), to exercise any rights, powers or faculties arising from this Agreement, any other Finance Document or a Transfer Agreement as may be directed by or on behalf of the Issuer in accordance with the terms of the Intercreditor Agreement; or

(ii) the execution of, and exercise of any powers, rights, faculties and duties provided under, the Finance Documents, the Intercreditor Agreement, the Transfer Agreements and the Settlement Agreement,

provided, however, that the Borrower shall not be liable under this Clause 19.2(d) for any loss or liability:

(i) incurred by the Original Facility A Lenders as a result of their own gross negligence (*colpa grave*) and/or wilful default (*dolo*); or

(ii) to the extent that the relevant Original Facility A Lender is already indemnified for such loss pursuant to terms of any Transaction Document or any other Finance Document.

(e) The Borrower must indemnify, on demand, the Senior Agent and its affiliates and each of their respective officers, directors, employees and agents (each a **Senior Agent Indemnified Person**) from and against all losses, liabilities (including any taxes, levies and duties), costs, damages and expenses (including legal expenses) which may be incurred by or asserted or awarded against any Senior Agent Indemnified Person as a result of, or in connection with, its entry into, performance or enforcement of the Finance Documents or any exercise or purported exercise of any rights, powers, discretions or remedies vested in the Senior Agent or any Senior Agent Indemnified Person arising from this Agreement or any other Finance Document, except to the extent that any such loss, liability, cost, damages or expenses have resulted from such Senior Agent Indemnified Person’s gross negligence, fraud or wilful misconduct.

(f) The provisions of Clause 19.2 will continue in full force and effect notwithstanding the termination of this Agreement or, in the case of the Senior Agent, its no longer being the Senior Agent.

19.3 Issuer’s Indemnity

Without prejudice to Clause 19.2(a) above and any other rights or remedies available pursuant to the Finance Documents and Italian law, the Borrower undertakes, from the Issuer Assignment Date, to indemnify on demand the Issuer (and its directors, officers and employees) (each an Indemnified Person) against all reasonable and documented damages, liabilities, costs and expenses (including, without limitation, taxes, SACE Breakage Fee, EIB Cancellation Amount, Prepayment Additional Amounts, legal fees and any fees and/or expenses associated with the winding-up, liquidation or dissolution of the Issuer or the maintenance of the corporate existence of the Issuer for a period of 2 years following the redemption of the Notes) incurred by such Indemnified Person in connection with the S ecuritisation Documents and/or any actions, claims, enquiries or proceedings of any type instigated against such Indemnified Person in respect of any of the Finance Documents and/or the Securitisation Documents or any of the transactions contemplated thereby (including any prepayments on the Loans) other than, in each case, as a result of the Indemnified Person's gross negligence (colpa grave) and/or wilful default (dolo) and only to the extent the Issuer is not already indemnified pursuant to Clauses 19.1 and 19.2 above and the Transfer Agreements.

19.4 Continuing obligations

The provisions of Clause 19.3 (Issuer’s Indemnity) will continue in full force and effect notwithstanding the termination of this Agreement until two years plus one day have elapsed since the day on which any note (including the Notes) issued or to be issued by the Issuer in connection with the Securitisation has been paid (or cancelled) in full.

19.5 Break Costs

(a) The Borrower must pay to each Facility B Lender its Break Costs if a Facility B1 Loan, Facility B2 Loan or overdue amount is repaid or prepaid otherwise than on a VAT Loan Payment Date applicable to it.

(b) **Break Costs** are the amount (if any) determined by the relevant Lender by which:

(i) the interest which that Lender would have received for the period from the date of receipt of any part of its share in a Loan or an overdue amount to the immediately following VAT Loan Payment Date for that Loan or overdue amount if the principal or overdue amount received had been paid on such VAT Loan Payment Date;

exceeds

(ii) the amount which that Lender would be able to obtain by placing an amount equal to the amount received by it on deposit with a leading bank in the appropriate interbank market for a period starting on the Business Day following receipt and ending on the immediately following VAT Loan Payment Date.

(c) Each Facility B Lender must supply to the Senior Agent for the Borrower details of the amount of any Break Costs claimed by it under this Subclause.

20. EXPENSES

20.1 Initial costs

The Borrower must pay to each Finance Party the amount of all costs and expenses (including legal fees) reasonably incurred by it and agreed with the Borrower in connection with the negotiation, preparation, printing and execution of the Finance Documents.

20.2 Subsequent costs

The Borrower must pay to each Finance Party the amount of all reasonable and documented costs and expenses (including professional, banking, exchange or legal fees and all taxes, duties, fees and other impositions of whatsoever nature, including stamp duty, registration fees and imposta sostitutiva) agreed with the Borrower (acting reasonably) in connection with:

(a) the negotiation, preparation, printing, execution, implementation and termination of any Finance Document (other than a Transfer Certificate) or any related document executed after the date of this Agreement and the performance of its obligations under this Agreement and any other Finance Document;

(b) the creation, perfection or registration of any Security Interest (subject, in respect of SACE Security Costs to the provisions of the SACE Guarantee and Reimbursement Agreement); and

(c) any amendment, waiver or consent requested by or on behalf of the Borrower or specifically allowed by this Agreement.

20.3 Enforcement costs

The Borrower must pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

20.4 Issuer Ongoing Costs and Issuer Up-Front Costs

(a) Without double counting with Clause 19.3, the Borrower must, pursuant to the Issuer Expenses Loan Agreement, advance to the Issuer on demand an amount equal to all Issuer Ongoing Costs notified to it from time to time, and any applicable value added tax.

(b) The Borrower must also pay the costs and expenses of the Issuer relating to the issue of the Notes and any applicable value added tax, including, without limitation:

(i) the up-front fees and expenses of the Rating Agencies, the Representative of the Noteholders, the Principal Paying Agent, the Agent Bank, the Computation Agent, the Account Banks and the Issuer Corporate Servicer due on or about the Issue Date;

(ii) the fees and expenses of the legal, accountancy (including any auditors) and other professional advisers instructed by the Issuer or by the Underwriters or by the Underwriters' legal counsel in connection with the creation and issue of the Notes, the preparation of the Prospectus and the preparation, negotiation and execution of the Securitisation Documents including all out-of-pocket expenses;

(iii) the costs incurred in connection with the listing of the Notes;

(iv) the cost of setting, proofing, printing and delivering the Prospectus;

(v) the cost of any advertising agreed by the Issuer in connection with the issue of the Notes; and

(vi) all taxes, duties and costs due by the Issuer in connection with the execution, amendment and/or termination of the Transfer Agreements and the transfer of the monetary receivables (*crediti pecuniari individuabili in blocco*) owed to the Original Facility A Lenders and arising out of the Project Loan Facilities (including the taxes, duties and costs related to the execution of all the formalities required for enforceability purposes).

(c) The provisions of this Clause 20.4 (Issuer Ongoing Costs and Issuer Up-Front Costs) will continue in full force and effect notwithstanding the termination of this Agreement.

21. AMENDMENTS AND WAIVERS

21.1 Procedure

(a) Except as provided in this Clause, any term of the Finance Documents may be amended or waived with the agreement of the Borrower and the Majority Lenders. The Senior Agent may effect, on behalf of any Finance Party, an amendment or waiver allowed under this Clause.

(b) The Senior Agent must notify the other Parties of any amendment or waiver effected by it under paragraph (a) above. Any such amendment or waiver is binding on all the Parties.

(c) If there is more than one Facility B Lender, the share in a Facility B1 Loan, Facility B2 Loan, Available Facility B1 Commitments, Available Facility B2 Commitments, Facility B1 Commitments, Facility B2 Commitments or any undrawn Facility B1 Commitments or Facility B2 Commitments of any Facility B Lender which does not reply to a request for waiver, amendment, consent or approval (in each case howsoever described) under a Finance Document to any matter which relates only to Facility B Lenders within 20 Business Days (or such longer period as the Borrower and the Senior Agent may agree) after receipt of a request from the Senior Agent will be excluded for the purpose of determining whether the required proportion of Facility B Lenders have agreed.

21.2 Exceptions

(a) An amendment or waiver which relates to:

(i) the definition of Majority Lenders in Subclause 1.1 (Definitions);

(ii) an extension of the date of payment of any amount under the Finance Documents (but not, for the avoidance of doubt, agreeing the duration of any Interest Period or the exercise by the Senior Agent of any other discretion under clause 8 (Interest Periods) of the Project Loan Facility Agreement or clause 8 (Interest Periods) of the VAT Facility Agreement);

(iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fee or other amount payable to a Lender under the Finance Documents (but not, for the avoidance of doubt, agreeing the duration of any Interest Period or the exercise by the Senior Agent of any other discretion under clause 8 (Interest Periods) of the Project Loan Facility Agreement or clause 8 (Interest Periods) of the VAT Facility Agreement);

(iv) an increase in, or an extension of, the Total Commitments;

(v) a release of any Obligor;

(vi) a release of any Security Document other than in accordance with the express terms of the Finance Documents;

(vii) any provision of a Finance Document which expressly requires the consent of each Lender;

(viii) the right of a Lender to assign or transfer its rights or obligations under the Finance Documents;

(ix) Subclause 2.5 (Nature of a Finance Party's rights and obligations), Subclause 5.9 (Release of the Security in case of repayment, voluntary prepayment or refinancing by transfer), Subclause 12.4 (Negative pledge), Clause 3 (Purpose), Schedule 2 (Condition Precedent Documents), Subclause 4.5 (First utilisation of the Facilities) of the Project Loan Facility Agreement and Subclause 4.5 (First utilisation of the Facility B) of the VAT Facility Agreement;

(x) an extension of any Availability Period; or

(xi) this Clause,

may only be made with the prior consent of all the Lenders and the provisions of Subclause 21.1(c) shall not apply to such amendments or waivers.

(b) An amendment or waiver which relates to the rights or obligations of an Administrative Party may only be made with the consent of that Administrative Party.

(c) Where an amendment or waiver does not relate to the rights or obligations of:

(i) the Facility A Lenders, the Facility A1 Commitment and Facility A2 Commitment shall be disregarded for the purpose of the definition of Majority Lenders; and

(ii) the Facility B Lenders, the Available Facility B1 Commitments and Available Facility B2 Commitments shall be disregarded for the purpose of the definition of Majority Lenders.

(d) For the purposes of a waiver of the provisions of or a consent related to Clause 15.25 (Ownership of the Borrower) references to the "Majority Lenders" shall be construed to require, in addition to any other requirement of this Agreement or the Intercreditor Agreement, the consent of the Facility B Lenders where the conditions set out in either paragraph (i) or paragraph (ii) below are met:

(i) (A) the VAT Initial Security Period in respect of Facility B1 and Facility B2 has not expired; and

(B) the Final Maturity Date relating to Facility B1 and Facility B2 has not occurred; or

(ii) (A) the VAT Initial Security Period in respect of Facility B1 and Facility B2 has expired; and

(B) the Final Maturity Date relating to Facility B1 and Facility B2 has occurred, but the Facility B1 Loans and/or Facility B2 Loans are still outstanding and not paid in full.

(e) A Fee Letter may be amended or waived with the agreement of the Administrative Party that is a party to that Fee Letter (or, in the case of the SACE Guarantee Fee Letter, SACE) and the Borrower.

21.3 Instructing Parties

On and from the Issue Date:

(a) all references in this Agreement to "Majority Lenders" shall be references to the Instructing Parties (as defined in the Intercreditor Agreement); and

(b) all decisions to be taken by Majority Lenders or all Lenders will be taken by the Instructing Parties in accordance with the Intercreditor Agreement, subject to the Entrenched Rights and Reserved Matters (as each term is defined in the Intercreditor Agreement).

21.4 Change of currency

If a change in any currency of a country occurs (including where there is more than one currency or currency unit recognised at the same time as the lawful currency of a country), the Finance

Documents will be amended to the extent the Senior Agent (acting reasonably and after consultation with the Borrower) determines is necessary to reflect the change.

21.5 Waivers and remedies cumulative

(a) The rights of each Finance Party under the Finance Documents:

(i) may be exercised as often as necessary;

(ii) are cumulative and not exclusive of its rights under the general law; and

(iii) may be waived only in writing and specifically.

(b) Delay in exercising or non-exercise of any right is not a waiver of that right.

22. CHANGES TO THE PARTIES

22.1 Assignments and transfers by the Borrower

The Borrower may not assign or transfer any of its rights and obligations under the Finance Documents without the prior consent of all the Lenders.

22.2 Transfers by Lenders

(a) Subject to the following provisions of this Clause 22 (Changes to the Parties), a Lender (the **Existing Lender**) may at any time transfer in whole or in part its participation in the Facilities to any other bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the **New Lender**) (each a **Transfer**) in compliance with Clause 22.4 (Procedure for Transfer), provided that no additional or increased cost, expense, Tax or other burden (whether or not under a Finance Document) to the Borrower or Quotaholder will result.

(b) Each Transfer shall be construed as a *cessione parziale di contratto* (or as a transfer (*cessione*) of rights and an assumption (*accollo liberatorio*) of obligations) and the New Lender shall be assigned the rights and assume the obligations of the Existing Lender, in their entirety or, in the case of Transfer of part of the participation of the Existing Lender, *pro rata*, under this Agreement and the other Finance Documents to which the Existing Lender is a party.

(c) Upon perfection of a Transfer in accordance with Clause 22.4 (Procedure for Transfer), effective as of the Transfer Date:

(i) the Existing Lender will transfer to the New Lender the rights and obligations expressed to be the subject of the Transfer in the Transfer Certificate (and any corresponding obligation by which it is bound under the other Finance Document);

(ii) the New Lender will:

(A) become party to this Agreement as a Lender and party to the other Finance Documents to which the Existing Lender was a party in the same capacity as the Existing Lender; and

(B) assume obligations equivalent to those obligations of the Existing Lender expressed to be the subject of the Transfer in the Transfer Certificate; and

(iii) to the extent the obligations referred to in subparagraph (ii) above are effectively assumed by the New Lender, the Existing Lender will be released from the obligations expressed to be the subject of the Transfer in the Transfer Certificate (and any corresponding obligation by which it is bound under the other Finance Document).

(d) By executing a Transfer Certificate the New Lender shall be deemed to have appointed the Senior Agent to act as its agent (*mandatario con rappresentanza*) pursuant to Clause 16.1 (Appointment and duties of the Senior Agent) and the other provisions of the Finance Documents.

(e) During the Facility B1 Availability Period and the Facility B2 Availability Period, a Lender may not Transfer all or any part of its participation in:

(i) Facility B1, unless at the same time and to the same New Lender it Transfers a *pro rata* amount of its participation in Facility B2; and

(ii) Facility B2, unless at the same time and to the same New Lender it Transfers a *pro rata* amount of its participation in Facility B1.

(f) Unless the Borrower and the Senior Agent otherwise agree, a Transfer must be in a minimum amount of €5,000,000.

22.3 Conditions to Transfer – consents

(a) Subject to Clause 22.7 below, any Transfer may only occur with the prior consent of the Borrower, which will not be unreasonably withheld, and will be deemed given if, after 20 Business Days of being requested in writing, the Borrower has not provided a reply to the request. The prior consent of the Borrower is not required during the subsistence of a Relevant Event or if, following the execution of the Transfer Agreements, the Issuer is required to sell the Loans to finance early redemption of the Notes pursuant to Condition 7(g) of the Notes.

(b) The Borrower hereby gives its consent to any Transfer by any Facility B Lender, provided that the proposed transferee is a Qualifying Lender and that, if the Transfer occurs before the end of the Availability Period for Facility B, it has a long-term rating of at least A- by Standard & Poor's or A3 by Moody's or, if the proposed transferee is an Original Lender, BBB+ by Standard & Poor's or an equivalent Moody's rating. Should the proposed transferee not meet such requirements, the prior written consent of the Borrower for any Transfer, not to be unreasonably withheld or delayed, will be required, as provided in paragraph (a) above.

(c) The Parties agree that upon any Transfer, in accordance with this Clause 22, the guarantees issued and Security Interest created under the Finance Documents shall be preserved, without novation (it being understood that the term "novation" shall be construed as the Italian term "*novazione*" under article 1230 and following of the Italian Civil Code), for the benefit of any New Lender.

22.4 Procedure for Transfer

(a) Without prejudice to paragraph (g) below, a Transfer is effected if:

(i) the Existing Lender and the New Lender deliver to the Senior Agent a duly completed certificate, substantially in the form of Part I of Schedule 3 (Transfer documents) (a **Transfer Certificate**); and

(ii) the Senior Agent executes the Transfer Certificate and delivers to the Borrower a notice substantially in the form of Part II of Schedule 3 (Transfer documents) (a **Transfer Notice**) together with an updated copy of Schedule 1 (Original Parties);

(b) The Transfer shall be effective on the date of receipt of the Transfer Notice by the Borrower or, if later, the date specified in the Transfer Notice (the **Transfer Date**).

(c) Each Party (other than the Existing Lender and the New Lender) irrevocably authorises the Senior Agent to execute any duly completed Transfer Certificate on its behalf.

(d) The Finance Parties (other than the Senior Agent) agree that the delivery of a Transfer Certificate to the Senior Agent shall constitute adequate notice to each of them of the Transfer for the purposes of article 1407, first paragraph, of the Italian Civil Code.

(e) The Borrower agrees that the delivery of a Transfer Notice to it shall constitute adequate notice of the Transfer for the purposes of article 1407, first paragraph, of the Italian Civil Code.

(f) The Senior Agent is not obliged to enter into a Transfer Certificate or otherwise give effect to a Transfer until it has completed all "know your customer requirements" to its satisfaction and received the Transfer Fee due to it in accordance with sub-Clause 22.4(h) below. The Senior Agent must promptly notify the Existing Lender and the New Lender if there are any such requirements. The New Lender shall promptly upon the written request of the Senior Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Senior Agent in order for the Senior Agent to carry out and be satisfied it has complied with all necessary "know your customer", money laundering or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

(g) If the consent of the Borrower is required for any Transfer (irrespective of whether it may be unreasonably withheld or not), the Senior Agent shall not enter into a Transfer Certificate and the Transfer shall not be effective if the Borrower withholds its consent.

(h) Other than in the case of the assignment to the Issuer provided for in Clause 22.7, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Senior Agent (for its own account) a fee of EUR3,000 (the **Transfer Fee**).

(i) Any reference in this Agreement to a Lender includes a New Lender but excludes a Lender if no amount is or may be owed to or by it under this Agreement.

22.5 Limitation of responsibility of Existing Lender

(a) Unless expressly agreed to the contrary, an Existing Lender is not responsible to a New Lender for the legality, validity, adequacy, accuracy, completeness or performance of:

(i) any Finance Document or any other document; or

(ii) any statement or information (whether written or oral) made in or supplied in connection with any Finance Document,

and any representations or warranties implied by law are excluded.

(b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

(i) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Finance Documents (including the financial condition and affairs of the Borrower and its related entities and the nature and extent of any recourse against any Party or its assets) in connection with its participation in this Agreement; and

(ii) has not relied exclusively on any information supplied to it by the Existing Lender in connection with any Finance Document.

(c) Nothing in any Finance Document requires an Existing Lender to:

(i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause; or

(ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under any Finance Document or otherwise.

22.6 Costs resulting from change of Lender or Facility Office

If:

(a) a Lender assigns or transfers any of its rights and obligations under the Finance Documents (other than to the Issuer pursuant to Subclause 22.7 below or pursuant to Clause 5.7 (Release of the Security in case of repayment, voluntary prepayment or refinancing by transfer) or changes its Facility Office; and

(b) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Borrower would be obliged to pay a Tax Payment or an Increased Cost,

then, the Borrower need only pay that Tax Payment or Increased Cost to the same extent that it would have been obliged to if no assignment, transfer or change had occurred.

22.7 Assignment to the Issuer

(a) The Parties acknowledge and agree that, without prejudice to the above provisions on Transfers, the Facility A Lenders may each enter into a Transfer Agreement with the Issuer whereby the Facility A Lenders assign to the Issuer in block (*in blocco*) under Articles 1 and 4 of the Italian Securitisation Law, without recourse (*pro soluto*) against each of them in case of default by the Borrower in accordance with Article 1267 of the Italian Civil Code, all of the Facility A Lenders' claims (*crediti*) in respect of the Project Loans (together with any ancillary rights,(including, without limitation, any related security arising from the relevant Security Documents) and (to the greatest extent possible under applicable law) the benefit of any rights (< font style="FONT-STYLE: italic; DISPLAY: inline">diritti), powers (*poteri*) and faculties (*facoltà*) of the Facility A Lenders now existing or arising at any time in the future, under or in connection with such Project Loans, this Agreement, and the other Finance Documents other than the VAT Facility Agreement (the **Other Rights**) other than the contractual rights under Clause 19.2(d) which will remain, in any case, vested with the Facility A Lenders only (the **Assignment**). The Parties acknowledge and agree that the execution of each Transfer Agreement will be conditional upon the confirmation from the Facility A Lenders that the Facility A1 Commitment and the Facility A2 Commitment have been fully drawn on or before the date of execution of the Transfer Agreements and no other a mounts may be disbursed under Facility A1 or Facility A2.

(b) The Assignment will only be effective following completion of the formalities requested under article 58 of Italian legislative decree No. 385 of 30 September 1993 as referred to in Italian law No. 130 of 30 April 1999 in order to render such Assignment enforceable against the Borrower and any other third party.

(c) The Borrower hereby gives its unfettered and irrevocable consent to the Assignment.

(d) Upon execution of the relevant Transfer Agreement, the Issuer will be treated as if it was a New Lender and the Issuer shall (to the greatest extent possible under applicable law) be entitled to exercise all the Other Rights in the same terms in which the Facility A Lenders would have exercised them if the Assignment had not occurred.

(e) The Parties acknowledge that, in the event that notwithstanding the provisions of the Transfer Agreements, any of the Other Rights, for any reason, is not capable of being transferred to the Issuer or the validity, effectiveness and/or enforceability of the transfer of the Other Rights from the Original Facility A Lenders to the Issuer is at any time contested or disputed, each of the Original Facility A Lenders will appoint, pursuant to the Transfer Agreements, the Issuer to act as its agent (*mandatario con rappresentanza*) with full power and authority pursuant to article 1723, second paragraph of the Italian Civil Code in respect of such Other Rights. As a result, each of the Original Facility A Lenders will authorise, in accordance with the Transfer Agreements, the Issuer to exercise in their name and on their behalf of it vis-à-vis any third party the Other Rights, it being understood that articles 1394, 1395 and 1713 of the Italian civil code shall not apply.

(f) Without prejudice to the powers of attorney given to the Issuer in accordance with paragraph (e) above and the terms of the Intercreditor Agreement, each of the Original Facility A Lenders will undertake to exercise those Other Rights which, notwithstanding the assignment of the rights referred to paragraph (a) and (e) above, are still vested with it, on the basis of instructions given to it by the Instructing Party on behalf of the Issuer, provided however that the relevant Original Facility A Lender shall not be bound to take any action unless it will have been indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may thereby render such Original Facility A Lender liable and all costs, charges, damages and expenses, reasonably incurred, which it may incur by so doing.

(g) The Parties acknowledge that upon perfection of the Assignment the Issuer shall benefit from the guarantees originally issued and Security Interests originally created in favour of the Facility A Lenders to guarantee and secure the Project Loans, without novation (it being understood that the term "novation" shall be construed as the Italian term "*novazione*" under article 1230 and following of the Italian Civil Code) and without the need for any further formality or action.

(h) The Issuer or any subsequent transferor may only transfer its rights under this Agreement, in whole or in part, in accordance with the provisions of Clause 22.4 (Procedure for Transfer) above.

22.8 Lender Obligations not applicable

The Parties acknowledge and agree that following the Issuer Assignment Date, the provisions of Clause 5.9 (Release of the Security in case of repayment, voluntary prepayment or refinancing by transfer), Clause 6.8 (Disruption to payment systems), Clause 8 (Increased Costs), Clause 9 (Mitigation), Clause 16.13 (Indemnities), Clause 26 (Pro Rata Sharing) of this Agreement and clause 9.1 (Tax gross-up) and clause 9.5 (Tax credits) of the Project Loan Facility Agreement, by being connected to the Claims and other rights assigned to the Issuer, will no longer be applicable to the

Facility A Lenders and, as a result, starting from the Issuer Assignment Date and whilst the Issuer is the owner of the Claims arising from the Project Loans, the Facility A Lenders will not be bound by such contractual provisions.

22.9 Replacement of Lenders

(a) On and following the Issuer Assignment Date, this Subclause 22.9 shall only apply to the Facility B Lenders and all references in this Subclause 22.9 to "Lenders" shall be construed accordingly.

(b) In this Subclause:

Affected Lender means, at any time a Lender:

(i) in respect of which the Borrower is at that time entitled to serve a notice under Subclause 5.7 (Involuntary prepayment and cancellation) but has not done so;

(ii) which is obliged to notify the Borrower under Subclause 5.1 that it is unlawful in any jurisdiction for that Lender to perform any of its obligations under a Finance Document or to fund or maintain its share in any Facility B1 Loan or Facility B2 Loan; or

(iii) which has become insolvent.

Non-Funding Lender means a Lender which has:

(i) failed to advance its share of any Loan it is obliged to make under this Agreement and the Borrower has determined that the Lender is not likely to advance that amount; or

(ii) given notice to the Borrower or the Senior Agent that it will not advance, or that it has disaffirmed any obligation to advance, its share in a Loan.

Relevant Lender means:

(i) an Affected Lender; or

(ii) a Non-Funding Lender.

Replacement Lender means a Lender or any other bank, financial institution, trust fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets selected by the Borrower which is willing to assume all of the obligations of the Relevant Lender, provided that it has a long-term rating of at least A- by Standard & Poor's or A3 by Moody's or, if it is an Original Lender, BBB+ by Standard & Poor's or an equivalent Moody's rating.

(c) The Borrower may, on giving ten Business Days' prior notice to the Senior Agent (and subject to the Borrower paying any fees, costs and expenses incurred by the Senior Agent in relation to such transfer) and a Relevant Lender, require that the Relevant Lender transfer all of its rights and obligations under this Agreement, the Facility Agreements and the Intercreditor Agreement to a Replacement Lender.

(d) On receipt of a notice under paragraph (c) above the Relevant Lender must transfer all of its rights and obligations under this Agreement:

(i) in accordance with Subclause 22.2 (Transfers by Lenders);

(ii) on the date specified in the notice;

(iii) to the Replacement Lender specified in the notice; and

(iv) for a purchase price equal to the aggregate of:

(A) the Relevant Lender's share in the outstanding Loan; and

(B) all accrued interest, fees and other amounts payable to the Relevant Lender under this Agreement as at the transfer date, together with any applicable tax or costs arising out of, or in connection with, the transfer.

(e) The Borrower may not make any payment or assume any financial obligation to or on behalf of the Replacement Lender as an inducement for a Replacement Lender to become a Lender, other than as provided in paragraph (d) above or out of a withdrawal from the Distribution Account.

(f) The Borrower's right to replace a Non-Funding Lender is in addition to all other rights and remedies available to the Borrower against the Non-Funding Lender.

23. ADVISERS

(a) If the Technical Adviser, the Insurance Adviser, the Lenders' Legal Advisers, the Model Adviser or the Market Adviser resigns or its appointment otherwise ceases or is terminated, the Senior Agent may appoint a replacement Adviser substantially under the same scope of work as that of the replaced Adviser.

(b) The Senior Agent may appoint additional advisers to act on behalf of the Finance Parties in relation to the Project.

(c) The Borrower must pay to the Senior Agent the amount of all reasonable and documented fees, costs and expenses (including legal fees and value added tax) reasonably incurred by the Senior Agent in connection with any appointment under paragraph (a) above, provided that (prior to the occurrence of a Relevant Event) such fees, costs and expenses of the adviser have been approved in advance by the Borrower (acting reasonably) and the Borrower has been informed in advance of the identity of the adviser.

(d) The Borrower must pay to the Senior Agent the amount of all reasonable and documented fees, costs and expenses (including legal fees and value added tax) reasonably incurred by the Senior Agent in connection with any appointment under paragraph (b) above, provided that (prior to the occurrence of a Relevant Event) such fees, costs and expenses of the adviser have been approved in advance by the Borrower (acting reasonably) and the Borrower has been informed in advance of the identity of the adviser.

(e) The Borrower must co-operate in good faith with each Adviser. If the Borrower is required to supply any information to the Senior Agent under this Agreement and the Senior Agent so requests, the Borrower must promptly supply a copy of that information to each Adviser.

(f) The Borrower must promptly pay to the Senior Agent the amount of all reasonable and documented fees, costs and expenses (including any value added tax and legal fees) payable by the Senior Agent to the Technical Adviser, the Insurance Adviser, the Lenders' Legal Advisers, the Model Adviser and the Market Adviser provided that (prior to the occurrence

of a Relevant Event) such fees, costs and expenses of the adviser have been approved in advance by the Borrower (acting reasonably).

24. DISCLOSURE OF INFORMATION

(a) Each Finance Party must keep confidential any information supplied to it by or on behalf of the Borrower in connection with the Finance Documents (such information being **Confidential Information**). However, a Finance Party is entitled to disclose information:

(i) which is publicly available, other than as a result of a breach by that Finance Party of this Clause;

(ii) in connection with any legal or arbitration proceedings;

(iii) if required to do so under any law or regulation;

(iv) to a governmental, banking, taxation or other regulatory authority;

(v) to its professional advisers;

(vi) to the extent allowed under paragraph (b) below;

(vii) with the agreement of the Borrower;

(viii) in the case of the Senior Agent, in accordance with Clause 16.11(f);

(ix) to any rating agency and its professional advisers in connection with the issue of the Notes or, in general, for the purposes of the Securitisation or to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors provided that the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information; or

(x) to a stock exchange listing authority or similar body in connection with the issue of the Notes or, in general, for the purposes of the Securitisation.

(b) A Finance Party may disclose to an Affiliate or any person (including the Issuer, and any other investors or potential investors (including sub-participants) in the Notes) with whom it may enter, or has entered into, any kind of transfer, participation or other agreement in relation to this Agreement (a **participant**):

(i) a copy of any Borrower Document; and

(ii) any information which that Finance Party has acquired under or in connection with any Borrower Document.

(c) However, before a participant may receive a copy of any Borrower Document or information, it must execute with the relevant Finance Party and the Borrower a Confidentiality Agreement, it being understood that the Borrower shall not be entitled to refuse the execution of the Confidentiality Agreement.

(d) This Clause supersedes any previous confidentiality undertaking given by a Finance Party in connection with this Agreement prior to it becoming a Party.

25. SET-OFF

A Finance Party may set off any due and payable obligation owed to it by the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any due and payable obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

26. PRO RATA SHARING

26.1 Redistribution

Subject to the Intercreditor Agreement, if any amount owing by the Borrower under this Agreement to a Finance Party (the recovering Finance Party) is discharged by payment, set-off or any other manner other than through the Senior Agent under this Agreement (a recovery), then:

(a) the recovering Finance Party must, within three Business Days, supply details of the recovery to the Senior Agent;

(b) the Senior Agent must calculate whether the recovery is in excess of the amount which the recovering Finance Party would have received if the recovery had been received and distributed by the Senior Agent under this Agreement; and

(c) the recovering Finance Party must within three Business Days pay to the Senior Agent an amount equal to the excess (the **redistribution**).

26.2 Effect of redistribution

(a) The Senior Agent must treat a redistribution as if it were a payment by the Borrower under this Agreement and distribute it among the Finance Parties, other than the recovering Finance Party, accordingly.

(b) When the Senior Agent makes a distribution under paragraph (a) above, the recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in that redistribution.

(c) If and to the extent that the recovering Finance Party is not able to rely on any rights of subrogation under paragraph (b) above, the Borrower will owe the Finance Party Lender a debt which is equal to the redistribution, immediately due and payable and of the type originally discharged.

(d) If:

(i) a recovering Finance Party must subsequently return a recovery, or an amount measured by reference to a recovery, to the Borrower; and

(ii) the recovering Finance Party has paid a redistribution in relation to that recovery,

each Finance Party must reimburse the recovering Finance Party all or the appropriate portion of the redistribution paid to that Finance Party, together with interest for the period while it held the redistribution. In this event, the subrogation in paragraph (b) above will operate in reverse to the extent of the reimbursement.

26.3 Exceptions

Notwithstanding any other term of this Clause, a recovering Finance Party need not pay a redistribution to the extent that:

(a) it would not, after the payment, have a valid claim against the Borrower in the amount of the redistribution; or

(b) it would be sharing with another Finance Party any amount which the recovering Finance Party has received or recovered as a result of legal or arbitration proceedings, where:

(i) the recovering Finance Party notified the Senior Agent of those proceedings; and

(ii) the other Finance Party had an opportunity to participate in those proceedings but did not do so or did not take separate legal or arbitration proceedings as soon as reasonably practicable after receiving notice of them.

27. SEVERABILITY

For the purposes of Article 1419, paragraph 1, of the Italian Civil Code, the nullity or invalidity of any single clause or provision of any Finance Document shall not cause the nullity or invalidity of the other clauses or provisions of the Finance Document nor affect the enforceability of any other clause or provision of any Finance Document.

28. NOTICES

28.1 In writing

(a) Any communication in connection with a Finance Document must be in writing and, unless otherwise stated, may be given:

(i) in person, by post, fax or any other electronic communication expressly approved in advance by the Senior Agent; or

(ii) if between the Senior Agent and a Lender, and the Senior Agent and the Lender agree, by e-mail or any other electronic communication.

(b) For the purpose of the Finance Documents, an electronic communication will be treated as being in writing.

(c) Unless it is agreed to the contrary, any consent or agreement required under a Finance Document must be given in writing.

28.2 Contact details

(a) Except as provided below, the contact details of each Party for all communications in connection with the Finance Documents are those notified by that Party for this purpose to the Senior Agent on or before the date it becomes a Party.

(b) The contact details of the Borrower for this purpose are:

Address: Piazza Filippo Meda 3, 20121 Milan, Italy

Telephone no: +39 0654 393901

Fax no: +39 0654 393925

Attention: Giuseppe La Loggia

E-mail: Giuseppe.LaLoggia@sunpowercorp.com,

with copies to the following:

Address: Via Cristoforo Colombo163, 00147 Rome, Italy

Telephone no: +39 0651 303401

Fax no: +39 0651 303430

Attention: Giuseppe Brunelli/ Luca Pettinato

E-mail: giuseppe.brunelli@sunpowercorp.com / luca.pettinato@sunpowercorp.com; and

Address: 8 Heathgate Place, Agincourt Road, London NW3 2NU

Telephone no: +44 207 2846023

Fax no: +44 207 267 3702

Attention: Tim Corfield

E-mail: tim.corfield@sunpowercorp.com

(c) The contact details of the Senior Agent for this purpose are:

Address: Deutsche Bank AG, London Branch

Telephone no: +44 (0) 207 547 6149

Fax no: +44 (0) 207 547 6149

Attention: Trust and Securities Services

(d) Any Party may change its contact details by giving five Business Days' notice to the Senior Agent or (in the case of the Senior Agent) to the other Parties.

(e) Where a Party nominates a particular department or officer to receive a communication, a communication will not be effective if it fails to specify that department or officer.

28.3 Effectiveness

(a) Except as provided below, any communication in connection with a Finance Document will be deemed to be given as follows:

(i) if delivered in person, at the time of delivery;

(ii) if posted, five days after being deposited in the post, postage prepaid, in a correctly addressed envelope;

(iii) if by fax, when received in legible form; and

(iv) if by any other electronic communication in accordance with Subclause 28.1 (In writing) above, when received in legible form.

(b) A communication given under paragraph (a) above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

(c) A communication to the Senior Agent will only be effective on actual receipt by it and then only if it is marked for the attention of the department or officer identified in paragraph (a) above (or any substitute department or officer as the Senior Agent shall specify for this purpose in accordance with Clause 28.2(d)).

28.4 The Borrower

All formal communications under the Finance Documents to or from the Borrower must be sent through the Senior Agent.

29. Language

(a) Any notice given in connection with a Finance Document must be in English.

(b) Any other document provided in connection with a Finance Document must be:

(i) in English; or

(ii) (unless the Senior Agent otherwise agrees) accompanied by a certified English translation. In this case, the English translation prevails unless the document is a statutory or other official document.

30. TRANSPARENCY RULES

Pursuant to and in accordance with the transparency rules enacted under Article 9.1 of the CICR (Comitato Interministeriale per il Credito e il Risparmio) Resolution of 4 March 2003 effective as of October 2003 and the subsequent transparency rules applicable to transactions and banking and financial services issued by the Bank of Italy and published in the Italian official gazette (Gazzetta Ufficiale) on 10 September 2009 (the Transparency Rules), the Parties mutually acknowledge and declare that (a) they have been assisted by their respective legal counsel in respect of this Agreement and (b) this Agreement and any of its terms and conditions have been negotiated on an individual basis and, as a result, this Agreement falls into the category of the agreements which have been negotiated individually "che costituiscono oggetto di trattativa individuale" which are exempted from the application of Section II of the Transparency Rules.

31. GOVERNING LAW

This Agreement, and any non-contractual obligations arising out of or in connection with it, are governed by Italian law.

32. ENFORCEMENT

32.1 Jurisdiction

Subject to Subclause 11.4 (Operating period) above and Clause 5 (Submission to an Expert) of the Calculations and Forecasting Agreement, for the benefit of each Finance Party, the Borrower agrees that the courts of Rome have exclusive jurisdiction to settle any disputes in connection with any Finance Document (including a dispute relating to any non-contractual obligations arising out of or in connection with them) and accordingly submits to the jurisdiction of the courts of Rome.

32.2 Waiver of immunity

The Borrower irrevocably and unconditionally:

(a) agrees not to claim any immunity from proceedings brought by a Finance Party against the Borrower in relation to a Finance Document and to ensure that no such claim is made on its behalf;

(b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and

(c) waives all rights of immunity in respect of it or its assets.

SCHEDULE 1

ORIGINAL PARTIES

Name of Original Lender(s)	Lender's Details	Facility A1 Commitments
Total Facility A1 Commitments		

Name of Original Lender(s)	Lender's Details	Facility A2 Commitments
Total Facility A2 Commitments		

Name of Original Lender(s)	Lender's Details	Facility B1 Commitments
Total Facility B1 Commitments		

Name of Original Lender(s)	Lender's Details	Facility B2 Commitments
Total Facility B2 Commitments		

SCHEDULE 2

CONDITION PRECEDENT DOCUMENTS

1. Borrower

(a) A copy of the constitutional documents of:

(i) the Borrower; and

(ii) the Quotaholder.

(b) A copy of the signing authorities for the Borrower, the Quotaholder and SunPower Corporation in respect of the Finance Documents to which each is party.

(c) A certificate of an authorised signatory of the Borrower confirming that utilising the Total Commitments in full would not breach any limit binding on it.

(d) A certificate of an authorised signatory of the Borrower certifying that each copy document provided to the Senior Agent in satisfaction of a condition precedent is correct, complete and (where appropriate) in full force and effect.

(e) A copy of the board resolution(s) and/or quotaholder's resolution(s) of the Borrower and the Quotaholder:

(i) approving the terms of, and the transactions contemplated by the Finance Documents to which it is expressed to be a party and resolving that it shall execute those Finance Documents;

(ii) approving the terms of, and the transactions contemplated by the Project Documents and resolving that it shall execute those Project Documents to be entered into by it prior to Financial Close;

(iii) approving the terms of, and the transactions contemplated by the Equity Documents and resolving that it shall execute those Equity Documents;

(iv) authorising a specified person to execute the Borrower Documents on its behalf; and

(v) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Borrower Documents.

(f) A specimen of the signature of each person authorised on behalf of the Borrower and the Quotaholder to execute any Borrower Document, or to sign or send any document or notice in connection with any Borrower Document or other ancillary documents to any of the foregoing.

(g) Evidence required by the Lenders for the purpose of any "know your customer" requirements.

(h) *Certificato di vigenza* from the Companies Register of Milan in respect of the Borrower and the Quotaholder dated not earlier than 10 Business Days prior to the date of Financial Close and containing a non-insolvency statement.

(i) A Tax Collection Agent Certificate in respect of the Borrower dated no more than 5 Business Days prior to the date of Financial Close.

(j) A Tax Authority Certificate in respect of the Borrower dated no more than 60 Business Days prior to the date of Financial Close.

(k) A certificate of the Borrower and Quotaholder, respectively, signed by a duly authorised signatory confirming that the Borrower is not in a situation contemplated by article 2482 *bis* and 2482 *ter* of the Italian Civil Code.

(l) An insolvency certificate (*certificato fallimentare*) issued by the *Sezione Fallimentare* of the competent Court evidencing that the Borrower is not subject to any insolvency proceedings

2. Finance Documents

Each Finance Document (other than the Intercreditor Agreement, the Pledge of Feed-in Tariff Receivables, each Transfer Certificate and the Assignment of VAT Receivables) (each a Relevant Finance Document), having been duly executed by the parties to it and the delivery of an original of each duly executed Relevant Finance Document (other than the Pledge over Quotas, the Mortgage and the Privilegio Speciale) to the Senior Agent.

3. Project Documents

(a) A copy of each Project Document (other than (a) the performance bonds under (b), (c), (d) and (e) of the definition of Borrower's Guarantee; (b) any Power Purchase Agreement; (c) the *Ritiro Dedicato* Concession; (d) the *Conto Energia* Concession; (e) (unless already executed) the Guarding and Security Agreement; and (f) the Dedicated Connection Service Agreements) duly executed by the parties to it.

(b) Notice to Proceed under the EPC Contracts.

(c) Evidence that the SMA defects and replacement warranty may, at the instruction of the Senior Agent or the Borrower, be renewed at intervals of 5 years up to a maximum term of 20 years and that the direct agreement to be provided by SMA provides for the provision of an upgraded warranty should SPWR cease to act as Plant Operator.

4. Equity

(a) A copy of each Equity Document duly executed by the parties to it.

(b) Evidence that the Equity indicated in the initial base case prepared in accordance with the Calculations and Forecasting Agreement has been injected in the Borrower and, at least euro 10,931,000 of such Equity is in cash and has been deposited in the Equity Account and is secured in accordance with the Charge over Equity Account.

(c) Evidence that the Project Accounts Bank has been duly notified of, or has accepted, the Pledge over Cash Collateral Account.

(d) Evidence that an amount equivalent to the maximum Equity commitment pursuant to Subclause 2.1 (Equity Contribution Commitment) of the Equity Subscription Agreement has been deposited in the Cash Collateral Account.

5. Insurances

(a) A copy certified as original by a duly authorised signatory of the Borrower of each insurance policy, and/or cover notes duly subscribed by the insurer, taken out by the Borrower in accordance with

Schedule 4 (Insurance Schedule), including the relevant endorsement in favour of the Lenders (Exhibit A) and the Broker Letter of Undertaking (Exhibit B).

(b) Evidence that Cassiopea PV S.r.l. has taken out all insurances required to be taken out by it pursuant to the Joint Insurance Agreement and Schedule 4 (Insurance Schedule).

6. Financial Information

The Original Financial Statements.

7. Computer Model

(a) The Computer Model.

(b) A letter from the Model Adviser to the Senior Agent in relation to the audit of the Computer Model.

8. Base Case

An initial base case prepared in accordance with the Calculations and Forecasting Agreement showing, until the Final Maturity Date:

(a) a minimum Projected Annual Debt Service Cover Ratio greater than or equal to 1.40:1; and

(b) a minimum projected Loan Life Cover Ratio greater than or equal to 1.40:1.

9. Advisers' reports

A copy of a due diligence report from each of the following addressed to the Finance Parties:

(a) the Insurance Adviser;

(b) the Market Adviser;

(c) the Technical Adviser;

(d) the Tax Adviser; and

(e) the Lenders' Legal Adviser.

10. Security

Evidence that the Borrower has duly accepted the Pledge over Quotaholder Receivables.

11. Accounts

(a) Evidence that each Account has been opened in accordance with the Project Accounts Agreement.

(b) Evidence that each UK Account has been opened in accordance with the English Accounts Agreement.

(c) Evidence that the Joint Insurance Account has been opened in accordance with the Joint Insurance Account Trust Deed.

12. Legal opinions

(a) A legal opinion of the Lenders' Legal Adviser, in relation to the Finance Documents and addressed to the Finance Parties.

(b) A legal opinion of Allen & Overy, legal adviser to the Borrower, in relation to (a) the powers and capacity of the Borrower to execute the Borrower Documents; (b) the powers and capacity of the Quotaholder to execute the Finance Documents to which it is a party; and (c) the absence of regulatory requirements for the execution, delivery and performance by the EPC Co-obligor and the O&M Co-obligor of the each Direct Agreement to which it is a party, addressed to the Finance Parties.

(c) A legal opinion of the Plant EPC Contractor's and of the Plant Operator's in-house legal counsel in relation to the powers and capacity of (a) the Plant EPC Contractor to execute the Plant EPC Contracts; (b) the Plant Operator to execute the Plant O&M Agreements; (c) the Plant EPC Contractor and the EPC Co-obligor to execute the Settlement Agreement; and (d) the EPC Co-obligor, the Plant EPC Contractor, the Plant Operator and the O&M Co-obligor to execute each Direct Agreement to which it is a party, addressed to the Finance Parties.

13. Miscellaneous

(a) Publication of the official feed-in tariff for photovoltaic plants for the year 2011.

(b) Confirmation, on the basis of the Base Case, that the liquidated damages and retentions under each EPC Contract are sufficient to establish a minimum Projected Annual Debt Service Cover Ratio of 1.40:1 on the assumption that the Plant is only eligible to receive the Q1 2011 feed-in tariff.

(c) Acceptance by the process agents under the English Accounts Agreement and each Charge over Accounts to act in such capacity.

SCHEDULE 3

TRANSFER CERTIFICATE / TRANSFER NOTICE

PART 1

TRANSFER CERTIFICATE

To: [AGENT] as **Senior Agent**

From: [EXISTING LENDER] (the **Existing Lender**) and [NEW LENDER] (the **New Lender**)

Date: [ ]

ANDROMEDA PV S.R.L. - Common Terms Agreement dated [l] 2010 (the Agreement)

We refer to the Agreement. Capitalised terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement. This is a Transfer Certificate.

1. In accordance with the terms of the Agreement [ ] as Existing Lender and [ ] as New Lender agree to the Existing Lender transferring to the New Lender all the rights and obligations of the Existing Lender specified in the Schedule.

2. The proposed Transfer Date is [ ].

3. Effective as of the date on which the transfer is effective, the New Lender shall become party as a Lender to the Agreement and the other Finance Documents to which the Existing Lender is a party.

4. The administrative details of the New Lender for the purposes of the Agreement are set out in the Schedule.

5. The Existing Lender assumes no responsibility for the financial condition of the Borrower or any other party to a Transaction Document or for the performance and observance by the Borrower or any such party of any of its obligations under the Agreement or any document relating thereto or referred to therein (including, without limitation, each other Transaction Document) and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.

6. Any and all rights, benefits and/or obligations of the Existing Lender under or in respect of the Security Documents are assigned to the New Lender upon this Transfer Certificate taking effect in accordance with the terms thereof. The New Lender, acting through the Senior Agent, is authorised to give any notice to the Borrower or any tax authority or file any request for the registration with any public or private register or office of the assignment of rights, benefits and obligations under any Security Document which is necessary or advisable for the purpose of perfection of such assignment.

7. By signing this Transfer Certificate [New Lender]:

   (a) irrevocably appoints the Senior Agent to act as its agent (*mandatario con rappresentanza*) under the Finance Documents;

(b) irrevocably authorises the Senior Agent to:

(i) perform the duties and to exercise the rights, powers and discretions that are specifically given to it under the Finance Documents, together with any other incidental rights, powers and discretions; and

(ii) execute in the name and on behalf of such Finance Party each Finance Document expressed to be executed by the Senior Agent on its behalf;

(c) hereby grants the Senior Agent with all widest powers to implement the mandate under paragraph (a) above, including, without limitation, the power to:

(i) negotiate and execute any amendment agreement in respect of any Finance Document;

(ii) negotiate and execute any waiver requested hereunder;

(iii) consult with the Borrower where consultation is provided for in the Finance Documents; and

(iv) provide any consent which is expressed to be provided by the Senior Agent under the Agreement or any other Finance Document,

so that no lack of power may be claimed against the Senior Agent in respect of any of the above, provided that the Senior Agent shall always be entitled to seek instructions of the Majority Lenders in accordance with Clause 16.7 of the Agreement;

(d) acknowledges and agrees that the Senior Agent may enter in its name and on its behalf into contractual arrangements pursuant to or in connection with the Finance Documents to which the Senior Agent is also a party (in its capacity as Senior Agent or otherwise) and expressly authorises the Senior Agent, pursuant to article 1395 of the Italian Civil Code. [New Lender] expressly waives any right it may have under article 1394 of the Civil Code in respect of contractual arrangements entered into by the Senior Agent in its name and on its behalf pursuant to or in connection with the Finance Documents; and

(e) The New Lender expressly acknowledges and agrees to be bound by the protective and exculpatory provisions in favour of the Senior Agent in the Agreement, including, without limitation, those set out in Clauses 15.35 and 16and the ability of the Senior Agent to seek instructions of the Majority Lenders.

8. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations in respect of this Transfer Certificate contained in the Agreement.

9. The New Lender confirms that all costs, expenses, Tax or other burden arising from the assignment of the rights and benefits under the Agreement shall be borne by the New Lender.

10. Each of the parties hereto irrevocably agree that the courts of Rome shall have exclusive jurisdiction to settle any disputes which may arise in connection with this Transfer Certificate.

11. This Transfer Certificate is governed by Italian law.

[To be executed by exchange of commercial letters]

PART 2

TRANSFER NOTICE

To: [*Borrower*]

From: [*Senior Agent*] as Senior Agent

[Date]

ANDROMEDA PV S.R.L. - Common Terms Agreement dated [l] 2010 (the Agreement)

1. We refer to the Agreement. This is a Transfer Notice. Terms defined in the Agreement have the same meaning in this Transfer Notice.

2. We hereby deliver to you the Transfer Certificate executed between [*Existing Lender*] and [*New Lender*] and an updated copy of Schedule 1 (*Original Parties*) to the Agreement.

3. The effective date of the Transfer shall be [ ].

By:

Senior Agent

Note: It is the responsibility of each individual New Lender to ascertain whether any other document or formality is required to perfect the transfer contemplated by this Transfer Certificate or to take the benefit of any interest in any security.

SCHEDULE 4

INSURANCE SCHEDULE

GENERAL

References in this Schedule to clauses, paragraphs and Exhibits shall be construed as references to the clauses of this Schedule and to paragraphs of, and Exhibits to, this Schedule unless the context otherwise requires.

1. INSURANCES TO BE EFFECTED

The Borrower shall effect and maintain the following insurances on terms, conditions and with sums insured in the form as set out in this Insurance Schedule.

1.1 Construction Phase Insurances

1.1.1 Term Sheet of the Erection All Risks / Advanced Loss of Profits (ALOP) 45,3 MW

Policy holder:	Andromeda PV S.r.l. and SunRay Italy S.r.l.
EPC Contractor:	SunPower Italia S.r.l.
Insured parties:	**EAR (Excluded ALOP)** Andromeda PV S.r.l., SunRay Italia S.r.l., Sunpower Italia S.r.l. (EPC Contractor) and its eventual sub contractors, Terna S.p.A., Engineers, suppliers for activities undertaken on site, the Sub-Contractor(s), meaning all sub-contractors, at any tier, undertaking work on the covered project, but only to the extent required by contract or agreement and the Lenders. The Insurer(s) shall waive all rights of subrogation arising out of loss or damage which the Insurer(s) may have against Cassiopea PV S.r.l., Andromeda PV S.r.l. and any other present or future beneficiary of the right of use granted under the Right of Use Agreements. Such waiver of right of subrogation shall continue in effect for Andromeda PV S.r.l., Centauro PV S.r.l. and the above mentioned other beneficiaries while each of them has a legal title in *rem* (*diritto reale*) on the Common Infrastructure. **ALOP** Andromeda PV S.r.l. and the Lenders.
Interest:	**Erection All Risk** Policy insures against Insured Events of physical loss of or physical damage, including electrical or mechanical breakdown, to all Property, as defined, while situated at the Project Site or other location offsite or while in inland transit by road, rail or waterway, whether the Property of the Insured or Property in their care, custody or control or for which the Insured are legally liable. **Advance Loss of Profits:** Policy insures the Insured Parties against the actual Loss of Advance Gross Profits and

	Increased Cost of Working sustained or incurred directly from the interruption or interference with the business during the period of indemnity due to the delay in completion of the project when such delay is caused by an Insured Event for which the Underwriters are liable, including as a consequence of an insured event to a Common Infrastructure for which Andromeda PV S.r.l. is co-insured under Cassiopea PV S.r.l. Policy for its individual interest for the purpose of the Insurance Agreement.
Common Infrastructure:	With respect to the Common Infrastructure, for loss or damage to property, Cassiopea PV S.r.l. under the terms of the Joint Insurance Agreement has undertaken to procure and maintain Erection All Risk (EAR) insurance including mechanical and electrical breakdown insurance for the benefit of Cassiopea PV S.r.l., Andromeda PV S.r.l. and the other Beneficiaries (as defined in the Joint Insurance Agreement), the proceeds of which shall be used for the reinstatement of the Common Infrastructure. Should Cassiopea PV S.r.l. fail to make a claim for damages, Andromeda PV S.r.l and the other Beneficiaries have the right under the Joint Insurance Agreement to claim under the Cassiopea PV S.r.l. insurance for repair of damages and reinstatement of the Common Infrastructure.
Insured works:	Design, erection and testing of the photovoltaic plant with a nominal capacity of 45.3 MW including inverters, trackers, transformers and all civil and electrical works.
Location:	(Italy)
Period of Insurance:	**EAR and ALOP** Coverage shall attach as of the notice to proceed and shall continue in full force and effect until delivery of the Solar Park Provisional Acceptance Certificate, including design, engineering, procurement, construction, erection, cold testing, hot testing and commissioning. Anticipated Provisional Acceptance Date 9 March 2011 or date to be advised Insurers, including 24 months of extended maintenance period.
Period of Indemnity:	ALOP: 9 months
Sum Insured:	**EAR** € 188.157.000,00 each and every occurrence **Advanced Loss of Profits** € 25.456.900,00 in the aggregate **Feed In Tariff** € 21.300.000,00
Limits of Liability:	**EAR** Natural Hazard € 188.157.000,00 **Advanced Loss of Profits** Natural Hazard € 25.456.900,00 **Feed in Tariff** Natural Hazard € 21.300.000,00

Sub-limits:	**EAR / ALOP**	
	Accountants Costs/Professional	5% each and every occurrence
	Architects, Surveyors and Other Fees	5% each and every occurrence
	Demolition and Increased Cost of Construction	5% each and every occurrence
	Documents and Computer Records	5% each and every occurrence
	Expediting Expense	5% each and every occurrence
	Inflation on Incomplete Property	5% each and every occurrence
	Leased Equipment Rental Costs	5% each and every occurrence
	Local Authorities Clause	5% each and every occurrence
	Off-site Property	5% each and every occurrence
	Pollutant Clean Up and Removal	5% each and every occurrence
	Property in Transit	5% each and every occurrence
	Removal of Debris	5% each and every occurrence
Deductibles:	**EAR**	€ 25.000 eel
	ALOP	10 aggregate waiting period

Conditions:

- Abandonment of Property;
- Appraisal;
- Arbitration Clause;
- Basis of Claims Settlement (Physical Damage);
- Books, Records and Audit;
- Carriers or Bailees;
- Due Diligence Clause;
- Escalation (125%);
- Interim Payments;
- Multiple Insured Clause (including non-vitiation);
- Non-Assignment Clause;
- Non-Contribution Clause;
- Notification of Loss Clause;
- Permission for Excess Insurance;
- Premium Payment Clause (including 15 days notice of cancellation);
- Reinstatement;
- Salvage and Recoveries;
- Series Loss Clause (revised);
- Seventy-Two (72) Hour Clause;
- Several Liability Clause (LSW1001 – Insurance);
- Subrogation
- 50/50 Clause – Erection All Risks;
- Access to Site;
- Declaration of Material Change in Progress Schedule;
- Liquidated Damages and Other Penalties;
- Warranty Recovery;
- Solar Radiation and Weather Data;
- Resumptions of Operations.
- Primary Insurance
- Good Faith

· Wilfull Act and Wilful Negligence Clause
· Waiver of Subrogation
· Cover for Theft
· Temporary repairs
· Suspension of works - Silent risk
· Extension of the period of insurance – (Pro rata basis)

Extension of Coverage

Erection All Risks

a) Architects, Surveyors and Other Fees
b) Demolition and Increased Cost of Construction
c) Documents and Computer Records
d) Expediting Expense
e) Fire Brigade and Extinguishing Expenses
f) Inflation on Incomplete Property or Works
g) Leased Equipment Rental Costs
h) Local Authorities Clause
i) Maintenance Cover
j) Off Site Property and Miscellaneous Unnamed Locations
k) Operational Testing
l) Pollutant Clean-up and Removal
m) Removal of Debris
n) Removal to Place of Safety

ALOP

a) Accountants' Costs/Professional Services and Legal Costs
b) Pre-Handover Operation
c) Prevention of Access
d) Property Away From the Premises
e) Public Utilities
f) Suppliers. Receivers and Tools

Exclusions:

a) War, invasion, acts of foreign enemies, hostilities, rebellion, civil war, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property under order of any government, public or local authority;
b) Ionizing radiation or contamination;
c) Unexplained or mysterious disappearance;
d) Shortage of inventory;
e) Penalties, damages or fines for delay or non-completion;
f) Presence of asbestos;
g) Dishonest or criminal acts by Insureds
h) Punitive, exemplary or similar damages;
i) Release, discharge or dispersal of toxic or hazardous substances, contaminants or pollutants unless caused by sudden and accidental damage by an Insured peril;
j) False or fraudulent claims;
k) Wear and tear, fatigue, gradual deterioration, inherent vice, latent defect, corrosion, rusting or oxidation, but not excluding damage caused by peril not otherwise excluded or resulting damage;
l) Cracking, shrinking, settlement, bulging or expansion of foundation, walls, ceilings, floors, roofs, roads or pavement, but not excluding damage caused by

peril not otherwise excluded or resulting damage;

m) Scratching and pitting of photovoltaic modules, but not excluding damage caused by peril not otherwise excluded or resulting damage;

n) As respects Advanced Loss of Profits

- Loss resulting from failure of Insured to use due diligence and dispatch
- Loss resulting from delay occasioned by ordinance, law, regulation, ruling or rule
- Suspension, lapse or cancellation of any lease or license, contract or order

1.1.2 - Term Sheet of the Erection All Risks / Advanced Loss of Profits (ALOP) 6,3 MW

Policy holder:	Andromeda PV S.r.l. and SunRay Italy S.r.l.
EPC Contractor:	SunPower Italia S.r.l.
Insured parties:	**EAR (Excluded ALOP)** Andromeda PV S.r.l., SunRay Italy S.r.l., Sunpower Italia S.r.l. (EPC Contractor) and its eventual sub contractors, Terna S.p.A., Engineers, suppliers for activities undertaken on site, the Sub-Contractor(s), meaning all sub-contractors, at any tier, undertaking work on the covered project, but only to the extent required by contract or agreement and the Lenders The Insurer(s) shall waive all rights of subrogation arising out of loss or damage which the Insurer(s) may have against Cassiopea PV S.r.l., Andromeda PV S.r.l. and any other present or future beneficiary of the right of use granted under the Right of Use Agreements. Such waiver of right of subrogation shall continue in effect for Andromeda PV S.r.l., Centauro PV S.r.l. and the above mentioned other beneficiaries while each of them has a legal title in rem (diritto reale) on the Common Infrastructure. **ALOP** Andromeda PV S.r.L. and the Lenders
Interest:	**Erection All Risk** Policy insures against Insured Events of physical loss of or physical damage, including electrical or mechanical breakdown, to all Property, as defined, while situated at the Project Site or other location offsite or while in inland transit by road, rail or waterway, whether the Property of the Insured or Property in their care, custody or control or for which the Insured are legally liable. **Advance Loss of Profits:** Policy insures the Insured Parties against the actual Loss of Advance Gross Profits and Increased Cost of Working sustained or incurred directly from the interruption or interference with the business during the period of indemnity due to the delay in completion of the project when such delay is caused by an Insured Event for which the Underwriters are liable.
Common Infrastructure:	With respect to the Common Infrastructure, for loss or damage to property, Cassiopea PV S.r.l. under the terms of the Joint Insurance Agreement has undertaken to procure and maintain Erection All Risk (EAR) insurance including mechanical and electrical breakdown insurance for the benefit of Cassiopea PV S.r.l., Andromeda PV S.r.l. and the other Beneficiaries (as defined in the Joint

Insurance Agreement), the proceeds of which shall be used for the reinstatement of the Common Infrastructure.

Should Cassiopea PV S.r.l. fail to make a claim for damages, Andromeda PV S.r.l and the other Beneficiaries have the right under the Joint Insurance Agreement to claim under the Cassiopea PV S.r.l. insurance for repair of damages and reinstatement of the Common Infrastructure.

Insured works: Design, erection and testing of the photovoltaic plant with a nominal capacity of 6,3 MW, including inverters, trackers, transformers and all civil and electrical works.

Location: (Italy)

Period of Insurance: **Ear and ALOP**
Coverage shall attach as of the notice to proceed and shall continue in full force and effect until Provisional Acceptance, including design, engineering, procurement, construction, erection, cold testing, hot testing and commissioning. Anticipated Provisional Acceptance Date 18 March 2011 or date to be advised Insurers, including 24 months of extended maintenance period.

ALOP: 6 months

Period of Indemnity:

Sum Insured: **EAR**
€ 24.315.000,00 each and every occurrence

Advanced Loss of Profits
€ 1.201.305,00 in the aggregate

Feed In Tariff
€ 2.600.000,00

Limits of Liability: **EAR**
Natural Hazard € 24.315.000,00

Advanced Loss of Profits
Natural Hazard € 1.201.305,00

Feed In Tariff
Natural Hazard € 2.600.000,00

Sub-limits: **EAR / ALOP**

Accountants Costs/Professional	5% each and every occurrence
Architects, Surveyors and Other Fees	5% each and every occurrence
Demolition and Increased Cost of Construction	5% each and every occurrence
Documents and Computer Records	5% each and every occurrence
Expediting Expense	5% each and every occurrence
Inflation on Incomplete Property	5% each and every occurrence
Leased Equipment Rental Costs	5% each and every occurrence
Local Authorities Clause	5% each and every occurrence
Off-site Property	5% each and every occurrence
Pollutant Clean Up and Removal	5% each and every occurrence

	Property in Transit	5% each and every occurrence
	Removal of Debris	5% each and every occurrence
Deductibles:	**EAR**	€ 25.000 eel
	ALOP	10 aggregate waiting period

Conditions:

- Abandonment of Property;
- Appraisal;
- Arbitration Clause;
- Basis of Claims Settlement (Physical Damage);
- Books, Records and Audit;
- Carriers or Bailees;
- Due Diligence Clause;
- Escalation (125%);
- Interim Payments;
- Multiple Insured Clause (including non-vitiation);
- Non-Assignment Clause;
- Non-Contribution Clause;
- Notification of Loss Clause;
- Permission for Excess Insurance;
- Premium Payment Clause (including 15 days notice of cancellation);
- Reinstatement;
- Salvage and Recoveries;
- Series Loss Clause (revised);
- Seventy-Two (72) Hour Clause;
- Several Liability Clause (LSW1001 – Insurance);
- Subrogation;
- 50/50 Clause – Erection All Risks;
- Access to Site;
- Declaration of Material Change in Progress Schedule;
- Liquidated Damages and Other Penalties;
- Warranty Recovery;
- Solar Radiation and Weather Data;
- Resumptions of Operations;
- Primary Insurance;
- Good Faith;
- Willful Act and Willful Negligence Clause;
- Waiver of Subrogation;
- Cover for Theft;
- Temporary repairs;
- Suspension of works - Silent risk;
- Extension of the period of insurance – (Pro rata basis);

Extension of Coverage: **Erection All Risks**

a) Architects, Surveyors and Other Fees
b) Demolition and Increased Cost of Construction
c) Documents and Computer Records
d) Expediting Expense
e) Fire Brigade and Extinguishing Expenses
f) Inflation on Incomplete Property or Works
g) Leased Equipment Rental Costs
h) Local Authorities Clause

	i)	Maintenance Cover
	j)	Off Site Property and Miscellaneous Unnamed Locations
	k)	Operational Testing
	l)	Pollutant Clean-up and Removal
	m)	Removal of Debris
	n)	Removal to Place of Safety
	ALOP	
	a)	Accountants' Costs/Professional Services and Legal Costs
	b)	Pre-Handover Operation
	c)	Prevention of Access
	d)	Property Away From the Premises
	e)	Public Utilities
	f)	Suppliers. Receivers and Tools
Exclusions:	a)	War, invasion, acts of foreign enemies, hostilities, rebellion, civil war, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property under order of any government, public or local authority;
	b)	Ionizing radiation or contamination;
	c)	Unexplained or mysterious disappearance;
	d)	Shortage of inventory;
	e)	Penalties, damages or fines for delay or non-completion;
	f)	Presence of asbestos;
	g)	Dishonest or criminal acts by Insureds
	h)	Punitive, exemplary or similar damages;
	i)	Release, discharge or dispersal of toxic or hazardous substances, contaminants or pollutants unless caused by sudden and accidental damage by an Insured peril;
	j)	False or fraudulent claims;
	k)	Wear and tear, fatigue, gradual deterioration, inherent vice, latent defect, corrosion, rusting or oxidation, but not excluding damage caused by peril not otherwise excluded or resulting damage;
	l)	Cracking, shrinking, settlement, bulging or expansion of foundation, walls, ceilings, floors, roofs, roads or pavement, but not excluding damage caused by peril not otherwise excluded or resulting damage;
	m)	Scratching and pitting of photovoltaic modules, but not excluding damage caused by peril not otherwise excluded or resulting damage;
	n)	As respects Advanced Loss of Profits
	-	Loss resulting from failure of Insured to use due diligence and dispatch
	-	Loss resulting from delay occasioned by ordinance, law, regulation, ruling or rule
	-	Suspension, lapse or cancellation of any lease or license, contract or order

1.1.3 Term Sheet of the Third Party Liability / Employer's Liability / Product Liability / Pollution Liability (during the Construction phase)

Policy Holder:	Andromeda PV S.r.l.
Insured Parties:	Andromeda PV S.r.l. (the Owner and "First Named Insured").

For Employer's Liability Section only

Andromeda PV S.r.l.

Under Erection All Risks (exclusive of Advance Loss of Profits):

- SunRay Italy, S.r.l., SunRay Management UK Limited, SunRay Renewable Energy and all associated, affiliated, allied and subsidiary entities now existing or hereafter created as their respective interests may appear
- the EPC Contractor;
- TERNA S.p.A., and
- The Sub-Contractor(s): meaning all sub-contractors, at any tier, undertaking work on the covered project, but only to the extent required by contract or agreement, and
- Any other person, organization or entity to whom the Named Insured(s) are contractually obligated to provide insurance such as is afforded by this policy and then only to the extent of the specific obligation and in connection with this covered project

Term:

Construction Liability

Coverage shall attach as of the notice to proceed and shall continue in full force and effect until Provisional Acceptance, including design, engineering, procurement, construction, erection, cold testing, hot testing and commissioning. Anticipated Provisional Acceptance Date in respect of (i) the 45.3MW insured works, 9 March 2011; and (ii) the 6.3MW insured words, 18 March 2011, or in each case a date to be advised Insurers.

Indemnity:

Section Public Liability:

Indemnification for and arising out of accidental Injury and/or Damage that was the direct result of a sudden, identifiable, unintended and unexpected incident occurring in its entirety at a specific time and place during the Period of Insurance.

Section Employer's liability:

Indemnity in respect of legal liability of the Insured Parties in respect of death, bodily injury and occupational disease suffered by Employees in connection with their employment

Section Pollution Liability:

Indemnification for and arising out of accidental Injury and/or Damage occurring during the Period of Insurance and arising out of Pollution provided that the Insured can demonstrate that such Pollution was the direct result of a sudden, identifiable, unintended and unexpected incident occurring in its entirety at a specific time and place during the Period of Insurance of this Insurance and was not the direct result of the Insured failing to take reasonable precautions to prevent such Pollution.

Provided always that all such Pollution that arises out of one incident shall be considered for the purposes of this Insurance to have occurred at the time such incident takes place.

Section Products Liability

Indemnification for and arising out of accidental Injury and/or Damage occurring during the Period of Insurance and arising out of or in connection with any Product.

Geographical Limits:	Anywhere in Italy and anywhere in the world in respect of visits for the purposes of the Project.
Limit of Indemnity:	**Construction Liability** **Section Public Liability** Euro 10.000.000,00 any one occurrence **Section Product Liability** Euro 10.000.000,00 in the annual aggregate **Section Employer's Liability** Euro 5.000.000,00 per occurrence Euro 1.500.000,00 each employee **Section Pollution Liability:** Euro 10.000.000,00 in the annual aggregate
Main Deductibles:	**Construction:** Euro 5.000,00
Main Extensions:	Good Faith Clause Gross Negligence Sudden and accidental pollution Waiver of subrogation No cancellation right in case of loss or damage Principal Liability Third Party business interruption Cross Liabilities Defence Costs in addition to Limits of Indemnity Employers' Liability Non-owned and Hired Automobile Liability
Main Exclusions:	Deliberate, conscious or intentional disregard by management to take steps to prevent injury or damage Liquidated damages, penalty clauses or performance warranties War, invasion, etc. Ionizing radiation or contamination Punitive or exemplary damages Insurance in other policy – non contribution Electro - Magnetic field and/or radio frequency wave incidents Asbestos Terrorism

1.1.4 Term Sheet of the Marine Cargo Insurance / Marine ALOP

Policy holder:	Andromeda PV S.r.l.
Main Contractors:	SunPower Italia S.r.l. Terna S.p.A.

Insure parties:	**Section I - Transit Marine** Andromeda PV S.r.l., SunPower Italia S.r.l. and all subcontractors and any other person, organization or entity to whom the Named Insured is contractually obligated to provide insurance such as is afforded by this policy and then only to the extent of the specific obligation and in connection with this covered project. SunRay Italy, S.r.l., SunRay Management UK Limited, SunRay Renewable Energy and all associated, affiliated, allied and subsidiary entities now existing or hereafter created as their respective interests may appear. Lenders **Section II – Advanced Loss of Profits** Andromeda PV S.r.l., Lenders.
Interest:	Solar Panels and equipment
Coverage:	**Section I – Material Damages** The insurance covers all property forming the turnkey supply of the project insured under the present contract shipped by land, by air, on sea (either on or under deck), including barge shipments on river; ocean barge shipments held covered at rate and conditions to be agreed. The coverage shall be valid from imminent commencement of transit within contractors or suppliers or sub-contractors premises, including temporary storage in the ordinary course of transit, to delivery to final erection site and including all loading and unloading operations; including also shipments to third parties processing factories, packers etc. and consequently re-shipments to suppliers and/or to the final erection site and shipments between off-site storage areas and the final erection site; also including possible shipments of damaged items to the plant for repairs and consequently re-shipment to job site. **Section II – Advanced Loss of Profit (ALOP)** This policy shall cover the economic prejudice arising from a delay in the commencement of the commercial operation of the Project as a result of loss, destruction or damage covered under the insurance referred to Marine Cargo Coverage including loss, destruction or damage which would be indemnifiable but for the application of any deductible provided by Section I Transit Including delay as a result of loss of mechanical breakdown of, or damage to the hull, machinery and/or equipment of the vessel or aircraft or any other mean of conveyance on which any of the property is being carried or is intended to be carried
Geographical Limits:	Anywhere in the world
Period of Insurance:	From the Notice to Proceed to the Solar Park Provisional Acceptance Certificate + the period of extended maintenance From the notice to proceed to the Solar Park Provisional Acceptance Certificate and the indemnity period for ALOP Coverage as indicated.
Sum insured:	**Section I – Material Damages – for phase 1&2** Euro 20.000.000,00

Replacement value of the goods/machinery/equipments including insurance and freight + 10%

Section II – Advanced Loss of Profit (ALOP) – for phase 1&2
Euro 26,658,205 €
Gross Profit

Period of Indemnity: 9 months

Conditions: **Section I – Transit Marine**

Accumulation Clause
Attachment and Termination of Cover
Certificates of Insurance
Civil Authority Clause
Concealed Damage Clause
Container Clause
Custom and/or Immigration Authority Inspection(s)
Cutting Clause
Debris Removal Clause – 10% of value of goods
Deductible Clause
Deliberate Damage Pollution Hazard Clause
Duration of Cover Clause
Fraudulent Documents
General Average Clause
Goods Purchased by Assured on Insured or Delivered Terms
Inchmaree Clause
Increased Value on Arrival Clause
Insurable Interest Clause
ISM and/or ISPS Provisions
Interruption of Transit of Damaged Goods
Letter of Credit Clause
Marine/Non-Marine 50/50 Loss Sharing
No Survey Clause (claims unlikely to exceed Euro 10,000)
Packing Clause
Payment on Account Clause
Radioactive Contamination Exclusion Clause
Refused/Returned Shipments
Control of Damaged Goods
Released Bill of Lading
Replacements by Air
Risks Covered
Shipments Clause
Shipping Expenses Clause
Sue and Labour
Termination of Transit Clause (Terrorism)
Vessels Clause
North American Classification Clause

Section II – Advanced Loss of Profit (ALOP)

Duration
Deductible Clause

Measure of Indemnity
Exclusions
Claims Clause
Special Conditions Clause
Definitions
Minimizing Losses
Avoidance of Delay
Survey Warranty
Breach of Survey Warranty

Common Conditions for Sections I and II
Arbitration Clause
Bankers Clauses – to be advised and agreed
Policy Clauses Paramount
Extra Expense Clause
Knowledge of the Assured
Local Insurance
Multiple Assureds Clause (including non-vitiation)
Notice of Loss
Other Insurance (non-contribution)
Subrogation Waiver Clause
Sue and Labour
Translation of Claims Documents
Choice of Law and Jurisdiction

Limit:

Section I – Transit Marine – for phase 1&2
€ 20.000.000 for each transport

Section II – Advance Loss of Profit (ALOP) – for phase 1&2
€ 26.658.205,00 in full

Deductible:

Section I – Transit Marine
Euro 25.000 per occurrence

Section II – Advanced Loss of Profit (ALOP)
10 days equivalent indemnity

1.2 Operational Phase Insurances

1.2.1 Term Sheet of the Operating All Risks Property/Machinery Breakdown/Business Interruption

Policy holder: Andromeda PV S.r.l. and SunRay Italy S.r.l.

O&M Contractor: SunPower Italia S.r.l.

Insured parties:

Operating All Risks

Andromeda PV S.r.l., Lenders, O&M Contractor and any other person, organization or entity to whom the Named Insured is contractually obligated to provide insurance such as is afforded by this policy and then only to the extent of the specific obligation and in connection with this covered project. SunRay Italy, S.r.l., SunRay Management UK Limited, SunRay Renewable

	Energy and all associated, affiliated, allied and subsidiary entities now existing or hereafter created as their respective interests may appear. The Insurer(s) shall waive all rights of subrogation arising out of loss or damage which the Insurer(s) may have against Andromeda PV S.r.l., Centauro PV S.r.l. and any other present or future beneficiary of the right of use granted under the Right of Use Agreements. Such waiver of right of subrogation shall continue in effect for Andromeda PV S.r.l., Centauro PV S.r.l. and the above mentioned other beneficiaries while each of them has a legal title in rem (diritto reale) on the Common Infrastructure. **Business Interruption** Andromeda PV S.r.l. and the Lenders.
Interest:	**Operating All Risk Including Mechanical and Electrical Breakdown:** Policy insures against Insured Events of physical loss of or physical damage, including electrical or mechanical breakdown, to all Property, as defined, while situated at the Project Site whether the Property of the Insured or Property in their care, custody or control or for which the Insured are legally liable. **Business Interruption:** Policy insures the Owner against the actual Loss of Gross Profits and Increased Cost of Working sustained or incurred directly from the interruption or interference with the business during the period of indemnity caused by an Insured Event for which the Underwriters are liable including as a consequence of an Insured Event to Common Infrastructure for which Andromeda PC S.r.l. is co-insured under Cassiopea PV S.r.l. Policy for its individual interest for the purpose of the Insurance Agreement.
Common Infrastructure:	With respect to the Common Infrastructure, for loss or damage to a property, Andromeda PV S.r.l. under the terms of the Joint Insurance Agreement has undertaken to procure and maintain Operating All Risk (OAR) insurance including mechanical and electrical breakdown insurance for the benefit of Cassiopea PV S.r.l., Andromeda PV S.r.l. and the other Beneficiaries (as defined in the Joint Insurance Agreement), the proceeds of which shall be used for the reinstatement of the Common Infrastructure. Should Cassiopea PV S.r.l. fail to make a claim for damages, Andromeda PV S.r.l. and the other Beneficiaries have the right under the Insurance Agreement to claim under the Cassiopea PV S.r.l. insurance for repair of damages and reinstatement of the Common Infrastructure.
Location:	(Italy)
Period of Insurance:	**Operating All Risks and Business Interruption** Coverage shall attach as Provisional Acceptance Date at 12:01 A.M. at the address of the First Named Insured and shall continue in full force and effect for a period of one year, to be renewed annually until the Lenders will no longer have any interest in the Project. **Business Interruption** Coverage shall attach as Provisional Acceptance Date at 12:01 A.M. at the address of the First Named Insured and shall continue in full force and effect

	for a period of one year to be renewed annually until the Lenders will no longer have any interest in the Project	
Sum Insured:	Phase 1: 45.3 MW Phase 2: 6.3 MW	
	Operating All Risk (Real & Personal Property Damage) Phase 1 € 188.157.000,00 each and every occurrence	
	Business Interruption € 31.645.500,00	
	Operating All Risk (Real & Personal Property Damage) Phase 2 € 24.315.000,00 each and every occurrence	
	Business Interruption € 4.196.178,00	
Limits of Liability:	**Phase 1 (45.3 MW)**	
	Operating All Risk	
	Natural Hazard	€ 188.157.000,00
	Business Interruption	€ 31.645.500,00
	Natural Hazard	
	Phase 2 (6.3 MW)	
	Operating All Risk	
	Natural Hazard	€ 24.315.000,00
	Business Interruption	
	Natural Hazard	€ 4.196.178,00
Sub-limits:	**Operating All Risks/BI**	
	Accountants Costs/Professional Services and Legal Costs	5% each and every occurrence
	Architects, Surveyors and Other Fees	5% each and every occurrence
	Demolition and Increased Cost of Construction	5% each and every occurrence
	Documents and Computer Records	5% each and every occurrence
	Expediting Expense	5% each and every occurrence
	Inflation on Incomplete Property	5% each and every occurrence
	Leased Equipment Rental Costs	5% each and every occurrence
	Local Authorities Clause	5% each and every occurrence
	Off-site Property	5% each and every occurrence
	Pollutant Clean Up and Removal	5% each and every occurrence
	Removal of Debris	5% each and every occurrence
Deductibles:	Operating All Risks	€ 25.000 eel
	B.I.	10 day waiting period eel

Conditions:

- Abandonment of Property;
- Appraisal;
- Arbitration Clause;
- Basis of Claims Settlement (Physical Damage);
- Books, Records and Audit;
- Cancellation Clause (60 days notice);
- Carriers or Bailees;
- Due Diligence Clause;
- Escalation (125%);
- Interim Payments;
- Multiple Insured Clause (including non-vitiation);
- Non-Assignment Clause;
- Non-Contribution Clause;
- Notification of Loss Clause;
- Permission for Excess Insurance;
- Premium Payment Clause (including 15 days notice of cancellation);
- Reinstatement;
- Salvage and Recoveries;
- Series Loss Clause (revised);
- Seventy-Two (72) Hour Clause;
- Several Liability Clause (LSW1001 – Insurance);
- Subrogation
- Access to Site;
- Liquidated Damages and Other Penalties;
- Warranty Recovery;
- Solar Radiation and Weather Data;
- Resumptions of Operations.
- Primary Insurance
- Good Faith
- Willful Act and Willful Negligence Clause
- Waiver of Subrogation
- Cover for Theft
- Temporary repairs

Extension of Coverage:

Operating All Risks

a) Architects, Surveyors and Other Fees
b) Demolition and Increased Cost of Construction
c) Documents and Computer Records
d) Expediting Expense
e) Fire Brigade and Extinguishing Expenses
f) Leased Equipment Rental Costs
g) Local Authorities Clause
h) Newly Acquired Property/Acquisitions
i) Off Site Property
j) Pollutant Clean-up and Removal
k) Removal of Debris

Business Interruption

a) Accountants' Costs/Professional Services and Legal Costs
b) Contingent Business Interruption
c) Mechanical and Electrical Breakdown Extension
d) Prevention of Access

e) Property Away From the Premises
f) Public Utilities
g) Suppliers. Receivers and Tools

Exclusions:

a) War, invasion, acts of foreign enemies, hostilities, rebellion, civil war, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property under order of any government, public or local authority;
b) Ionizing radiation or contamination;
c) Unexplained or mysterious disappearance;
d) Shortage of inventory;
e) Penalties, damages or fines for delay or non-completion;
f) Presence of asbestos;
g) Dishonest or criminal acts by Insureds
h) Punitive, exemplary or similar damages;
i) Release, discharge or dispersal of toxic or hazardous substances, contaminants or pollutants unless caused by sudden and accidental damage by an Insured peril;
j) False or fraudulent claims;
k) Defect in design, plan, specification or workmanship
- LEG/3 for First Named Insured and Lenders
- LEG/2 for all other Insured Parties

l) Wear and tear, fatigue, gradual deterioration, inherent vice, latent defect, corrosion, rusting or oxidation, but not excluding damage caused by peril not otherwise excluded or resulting damage;
m) Cracking, shrinking, settlement, bulging or expansion of foundation, walls, ceilings, floors, roofs, roads or pavement, but not excluding damage caused by peril not otherwise excluded or resulting damage;
n) Scratching and pitting of photovoltaic modules, but not excluding damage caused by peril not otherwise excluded or resulting damage;
o) As respects Business Interruption
– Loss resulting from failure of Insured to use due diligence and dispatch
– Loss resulting from delay occasioned by ordinance, law, regulation, ruling or rule
– Suspension, lapse or cancellation of any lease or license, contract or order
– Delay in occupancy or use due to interference by strikers or other persons with transportation or property, construction or occupancy and use of premises

1.2.2 Term Sheet of the Third Party Liability / Employer's Liability Insurance / Product Liability / Pollution Liability (during the Operating phase)

Policy Holder:

Andromeda PV S.r.l.

Insured Parties:

Andromeda PV S.r.l (the Owner and "First Named Insured").

For Employer's Liability Section only

Andromeda PV S.r.l

Under Operating All Risks

- SunRay Italy, S.r.l., SunRay Management UK Limited, SunRay Renewable Energy and all associated, affiliated, allied and subsidiary entities now existing or hereafter created as their respective interests may appear

- SunPower (the Contractor);

- TERNA S.p.A., and

- The Sub-Contractor(s): meaning all sub-contractors, at any tier, undertaking work on the covered project, but only to the extent required by contract or agreement, and

- Any other person, organization or entity to whom the Named Insured(s) are contractually obligated to provide insurance such as is afforded by this policy and then only to the extent of the specific obligation and in connection with this covered project

- The Lenders: meaning the lenders and/or lessors and/or mortgage holders, if any along with their respective officers, directors, employees and assigns.

Term:

Operational Liability

Coverage shall attach as Provisional Acceptance Date at 12:01 A.M. at the address of the First Named Insured and shall continue in full force and effect for a period of one year.

Indemnity:

Section Public Liability:

Indemnification for and arising out of accidental Injury and/or Damage that was the direct result of a sudden, identifiable, unintended and unexpected incident occurring in its entirety at a specific time and place during the Period of Insurance.

Section Employer's liability:

Indemnity in respect of legal liability of the Insured Parties in respect of death, bodily injury and occupational disease suffered by Employees in connection with their employment

Section Pollution Liability:

Indemnification for and arising out of accidental Injury and/or Damage occurring during the Period of Insurance and arising out of Pollution provided that the Insured can demonstrate that such Pollution was the direct result of a sudden, identifiable, unintended and unexpected incident occurring in its entirety at a specific time and place during the Period of Insurance of this Insurance and was not the direct result of the Insured failing to take reasonable precautions to prevent such Pollution.

Provided always that all such Pollution that arises out of one incident shall be

considered for the purposes of this Insurance to have occurred at the time such incident takes place.

Section Product Liability

Indemnification for and arising out of accidental Injury and/or Damage occurring during the Period of Insurance and arising out of or in connection with any product.

Geographical Limits: Anywhere in Italy and anywhere in the world in respect of visits for the purposes of the Project.

Limit of Indemnity:

Operational Liability

Section Public Liability
Euro 10.000.000,00 any one occurrence

Section Product Liability
Euro 10.000.000,00 in the annual aggregate

Section Employer's Liability
Euro 5.000.000,00 per occurrence
Euro 1.500.000,00 each employee

Section Pollution Liability:
Euro 10.000.000,00 in the annual aggregate

Main Deductibles:

Operational:
Euro 5.000,00

Main Extensions:

Good Faith Clause
Gross Negligence
Sudden and accidental pollution
Waiver of subrogation
No cancellation right in case of loss or damage
Principal Liability
Third Party business interruption
Cross Liabilities
Defence Costs in addition to Limits of Indemnity
Employers' Liability
Non-owned and Hired Automobile Liability

Main Exclusions:

Deliberate, conscious or intentional disregard by management to take steps to prevent injury or damage
Liquidated damages, penalty clauses or performance warranties
War, invasion, etc.
Ionizing radiation or contamination
Punitive or exemplary damages
Insurance in other policy – non contribution
Electro - Magnetic field and/or radio frequency wave incidents
Asbestos

Terrorism

1.3 Other Insurance requirements and duties

(a) Without prejudice to the other provisions of this Schedule, the Borrower shall effect and maintain throughout the period of this Agreement any insurance which:

(i) it is required to maintain by any applicable law; or

(ii) is required pursuant to paragraph 4.1 (Additional Insurances) of this Schedule.

(b) Without prejudice to the other provisions of this Schedule, the Borrower shall cause to be effected and maintained by each contractor and subcontractor working at the Project Site throughout the period of this Agreement:

(i) any insurance which is required to be maintained by any applicable law; or

(ii) an Employer’s Liability policy with a limit of indemnity of not less than Euro 5,000,000.00 with a sublimit for injured person of not less than Euro 1,500,000.00.

2. ADDITIONAL REQUIREMENTS RELATING TO INSURANCES

(a) The Borrower shall procure that all Insurances which it is required to effect or cause to be effected under this Insurance Schedule shall:

(i) be placed and maintained through such insurance brokers and with insurers and reinsurers of sound security and reputation with an insurer Standard and Poor's security rating of a minimum A- and in any case approved by the Lenders;

(ii) insure each of (A) the Borrower (B) the Finance Parties (in every capacity in which they, or any of them, may be acting under the Finance Documents) and (C) in respect of third party liability, the directors, officers, employees and agents of the Finance Parties in respect of their respective interests in the insured risks to the intent that the risks borne by the co-insured parties and required to be insured under the Insurances should be transferred to the insurers thereof;

(iii) have attached the endorsements specified in Exhibit A; and

(iv) be the subject of a notice of pledge duly given to the Insurers or of an acceptance of pledge by the Insurers pursuant to the Pledge over Receivables and Accounts;

(v) comply with the requirements and specifications of this Schedule and in particular are effected against the risks and liabilities and maintained for not less than the amounts specified in Paragraph 1 (as varied from time to time as required under this Schedule) and include only such provisions for self-insurance, whether by deductible or otherwise, as are specified in Paragraph 1;

(vi) cover the Project on a full replacement value basis, adjusted from time to time as necessary to maintain such basis; and

(vii) are primary, without right of contribution from any other insurance and shall expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if they were a separate policy with, and covering, each insured.

(b) The Borrower acknowledges that it is solely responsible to ensure that every material circumstance which is ought to be disclosed at any time to any insurer of every Insurance is fully and fairly disclosed to them without misrepresentation.

(c) The Borrower shall not effect any other insurances in addition to or supplementing those referred to elsewhere in this Schedule 4 without the prior consent of the Senior Agent except for insurances in respect of which the premium (either alone or when aggregated with any other insurances contemplated by this paragraph (c)) does not exceed € 50,000.00 (indexed) per annum.

(d) If at any time any Insurance shall not be in full force and effect for any reason, then, in addition to the other rights of the Finance Parties under the Finance Documents, the Senior Agent may, at any time whilst that situation is continuing:

(i) procure such insurance on behalf of itself and the other Finance Parties at the expense of the Borrower; and

(ii) without prejudice to any other obligations of the Borrower under the Finance Documents, require the Borrower to take all such reasonable steps within its control to minimise hazard as the Senior Agent may consider expedient or necessary.

3. ADDITIONAL UNDERTAKINGS

3.1 General Undertakings

The Borrower undertakes to:

(a) pay or procure the payment on a timely basis of all premiums as required by the terms of the Insurances, to produce to the Senior Agent on reasonable written request (such request not more than once in any twelve month period) copies of receipts (or other evidence of payment) for all premium payments and, in the case of renewals of any Insurances, to produce evidence of such renewal and the terms thereof;

(b) provide to the Senior Agent copies of all cover notes and policies (including endorsements) issued from time to time in relation to the Insurances, and of all changes requested or effected thereto and, if so requested by the Senior Agent, of placing slips in respect of the placement and maintenance of the Insurances;

(c) comply or procure compliance with the terms and conditions of all Insurances and to take all reasonable action within its power to procure that nothing is at any time done or suffered to be done whereby any Insurance or other insurance required to be maintained hereunder or under any other contract to which it is a party relating to the Project may reasonably likely to be impaired, suspended or rendered void or voidable in whole or in part, or any valid claim by it under or in respect of any Insurance becomes uncollectable in full;

(d) take or procure the taking of all reasonable risk management and risk control measures in relation to the Project, its site and facilities as a prudent developer owner and operator of such a project, financed on a limited recourse basis, would take;

(e) forthwith notify the Insurers and the Senior Agent of any increase or material change in any risk insured under any Insurance of which the Borrower is or becomes aware;

(f) not do or permit to be done anything in relation to the Insurances which is liable adversely to affect the rights of the Finance Parties under the Insurances or their interests (including security interests) in them;

3.2 Broker Undertaking Letter

The Borrower shall procure that every insurance broker who effects and handles any Insurance writes a letter to the Senior Agent in respect thereof in the form set out in Exhibit B in relation to the Insurances at their inception and on each renewal date.

4. CHANGES IN THE INSURANCES

4.1 Additional Insurances

The Borrower undertakes to purchase and maintain such additional Insurance or wider cover and higher limits of cover under existing Insurances as the Senior Agent and the Borrower agree (each acting reasonably) that a prudent developer, owner or operator of the Project, its site and facilities would purchase and maintain, if such additional or wider cover at any time is or becomes available in the European Union insurance market, and shall also do so in respect of any additional contract works to the project and any change in or increase in the insurable risks relating to the project and its facilities. In determining whether a prudent developer, owner or operator of the Project would purchase such insurance the Senior Agent and the Borrower shall have regard to the scope of such insurance, and its cost in the context of the finances of the Project and the interests of the Finance Parties under the Finance Documents.

4.2 Material variations in Cover

Any material variation proposed by the Borrower to be made to the terms of any Insurance shall be approved in writing by the Senior Agent.

4.3 Change in Insurance Market Conditions

The Borrower shall not be in breach of its obligations under this Schedule to purchase and maintain any Insurance to the extent that, and for so long as:

(a) cover for a risk required to be maintained is not available to the Borrower in the European Union insurance market place on terms and from insurers meeting the requirements of clause 2 on what are reasonable commercial terms. In determining whether such cover is available on reasonable commercial terms on-going regard shall be had to the nature of the risk concerned, the cost of maintaining insurance against that risk with suitable insurers in the context of the finances of the Project, and the direct and indirect interests of the Finance Parties under the Finance Documents; or

(b) the Senior Agent agrees in writing to waive such requirement (such agreement not to be unreasonably withheld or delayed).

4.4 Disputes over availability of Cover

Any disagreement between the Borrower and the Senior Agent over the availability of cover in the European Union insurance market shall be referred on the application of either party for determination to the Insurance Adviser, acting as an independent expert. The expert's decision shall be final and binding on the parties hereto. The expert's fees and disbursements shall be borne by the Borrower.

4.5 Amendment, cancellation or cessation of Cassiopea PV Srl Insurance

If the Insurance taken out by Cassiopea PV Srl in respect of the Common Infrastructure, of which the Borrower is a beneficiary, is amended, cancelled or ceases to be in full force and effect for whatever reason, the Borrower undertakes, at the request of the Majority Lenders (in consultation with the Insurance Adviser), to purchase and maintain additional Insurance in respect of the Common Infrastructure which shall have the same coverage (i) during the construction phase, as set out in paragraph 1.1.1 of this Schedule and (ii) during the operational phase, as set out in paragraph 1.2.1 of this Schedule.

5. MINIMISING HAZARD

If any required Insurance is for any reason at any time not in force, the Borrower shall (without prejudice to any other obligations of the Borrower hereunder or under the Finance Documents) take or procure the taking of all such steps to minimise hazards which are within its power and which a prudent person in the position of the Borrower would take in the circumstances.

6. CLAIMS

6.1 Pursuing Claims against Insurers

The Borrower shall notify to insurers any matter for which it may be entitled to claim under the Insurances, and shall diligently pursue any valid claim.

6.2 Claims Conduct and Reporting

The Borrower undertakes to promptly inform the Senior Agent on becoming aware of any claim made, or upon becoming aware that it has become entitled to make a claim, under any Insurance where the claim is for a sum in excess of €200,000 (before deductibles) or where the amount of the claim when aggregated with all other amounts claimed under any Insurance during the previous six months exceeds €500,000.

Subject to paragraph 6.3 (Rights following Relevant Event) the Borrower shall have the sole conduct of its claims under the Insurances arising out of any one loss, but shall upon request keep the Senior Agent informed at any time in reasonable details of the notification and progress of any claim relating to a loss in excess of €500,000 (indexed to the ISTAT CPI) (before any deductible or excess) or to a loss that, aggregated with all other losses in respect of which a claim has been laid under any Insurance during the previous six months, exceeds €1,000,000 (indexed to the ISTAT CPI) and the application of the resulting Insurance Proceeds. The Borrower shall not negotiate, compromise or settle any such claim without the prior consent of the Senior Agent.

6.3 Rights following Relevant Event

Notwithstanding any other provision of this paragraph 6 (Claims), in relation to claims under the Insurances, if a Relevant Event has occurred and is continuing:

(a) the Senior Agent shall have the right by notice in writing to the Borrower to take over sole conduct of the Borrower's claims; and

(b) the Senior Agent shall be entitled by notice in writing to the Borrower to require all Insurance Proceeds (including funds relating to Insurances Proceeds in the Compensation Account) other than the Common Infrastructure Insurance Proceeds to be applied in accordance with the Accounts Agreement.

EXHIBIT A

INSURANCE POLICY ENDORSEMENTS

Insurances set out in this Schedule shall contain the following provisions or endorsements. In particular:

(a) Erection All Risks / ALOP effected by the Borrower as per point 1.1(a) shall be endorsed with clauses provided under point (A);

(b) Marine Cargo / ALOP effected by the Borrower as per point 1.1(c) shall be endorsed with clauses provided under point (A);

(c) All Risks Property / Machinery Breakdown / Business Interruption effected by the Borrower as per point 1.2.1 shall be endorsed with clauses provided under point (A);

(d) Third Party / Employer's / Product / Pollution Liability (during the construction phase and the operating phase) effected by the Borrower as per points 1.1.3 and 1.2.2 shall be endorsed with clauses provided under point (B).

A. Insurance Policy Endorsement type (A)

1. In this endorsement:

Senior Agent means Deutsche Bank AG, London Branch acting in that capacity for the Finance Parties and includes its successors from time to time in that capacity.

Borrower means Andromeda PV S.r.l.

Finance Parties means Lenders, and other institutions who are co-insureds hereunder and are involved in providing credit and hedging facilities to the Borrower in relation to the Project. The phrase includes any assignee, transferee, successor or novated, replacement or additional creditor of or in relation to any of the foregoing.

Insureds means each entity or person insured under this policy severally.

2. The Insurers acknowledge that they have been notified that the Borrower has pledged in favour of the Finance Parties all its rights title and interest in this insurance and in the subject matter of this insurance and consent thereto, and confirm that they have not been notified of any other pledge, assignment of or other security interest in the Borrower's interest in this insurance.

3. The Insurers acknowledge that the Finance Parties and their respective officers, directors, employees and assigns are each additional insureds under this policy and that the premium specified in this policy provides consideration for their being additional insured parties. Responsibility for the payment of premium is the obligation of the First Named Insured (Borrower) and not that of the additional insureds (or Finance Parties).

4. The Insurers hereby waive all rights:

(a) of subrogation or action howsoever arising which they may have or acquire arising out of any occurrence in respect of which any claim is admitted hereunder:

(i) against any of the Finance Parties or their officers, directors, employees and agents; and

(ii) against the Borrower until all its financial indebtedness to the Finance Parties has been discharged; and/or

(iii) involving the exercise of rights or powers vested in the Borrower or any Finance Party (acting in any capacity) under or by virtue of any agreement relating to the Project; and/or

(b) of contribution and of average against any other insurance effected by the Finance Parties or their directors, officers or employees.

5. The Insurers acknowledge receipt of consideration for the insurance of the Finance Parties hereunder and acknowledge that the Finance Parties are not liable for payment of any premium payable by any other insured under this insurance.

6. The Insurers shall not be entitled to offset any sums payable to the Finance Parties against premium or other monies owing by the Borrower, nor any sums owing to the Borrower under this Policy against any monies owing by the Borrower under any other policy or contract.

7. The insurance provided by this policy is primary insurance. The amount of the insurers' liability shall not be reduced by the existence of other insurance of the same risk. The Insurers waive any claim for average or contribution in respect of any other insurance of the insured risks.

8. It is agreed that the inclusion of one or more Insured in this policy shall not affect the rights of any Insured as respects any claim, demand, law suit or judgment made or brought by or for any other Insured or by or for any employee of any Insured. This policy shall protect each Insured in the same manner as though a separate policy has been issued to each, but the inclusion herein of more than one Insured shall not serve to increase the limit of the insurers' liability. The liability of the Insurers under this Policy to any one Insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this Policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.

9. The Insurers acknowledge that (a) they have received adequate information in order to evaluate the risk of insuring the Borrower in respect of the risks hereby insured, on the assumption that such information is not materially misleading, and (b) there is no information which has been relied on or is required by Insurers in respect of their decision to co-insure the Finance Parties or their directors, officers, employees agents or advisers.

10. Notwithstanding any other provisions of this policy, Insurers agree not to avoid this insurance, or any valid claim under it on the grounds that the risk or claim was not adequately disclosed, or that it was misrepresented, unless deliberate or fraudulent non-disclosure or misrepresentation is established in relation thereto. Non-disclosure or misrepresentation by one Insured shall not be attributable to any other insured party who did not actively participate in that non-disclosure or misrepresentation knowing it to be such.

11. The Insurers acknowledge and agree that notwithstanding the lapse of any such policy (except by reason of expiry in accordance with its terms) or any cancellation by the Insurers or by the Borrower whether voluntary or involuntary, it shall continue in force for the benefit of the Finance Parties for at least 30 Business Days after written notice of such cancellation has been given to the Finance Parties and that no reduction in limits or coverage shall be made in any such policy or any part thereof.

12. The Insurers acknowledge and accept that they shall insure the respective interests of the Finance Parties up to the limits of such policy regardless of any act, or neglect, error, omission, fraud or

breach of either of the Borrower or any other insured party or any breach or non fulfilment by the Borrower or any other insured party of any provision contained in such policy.

13. **Loss Payee Clause:** By way of loss payment agreement, the Insurers undertake that until the Senior Agent shall otherwise have notified and directed the Insurers, all monies due under this policy to any Insured, whether by way of Insurance Proceeds, Relevant Insurance Proceeds, claims, return premiums, ex gratia settlements or otherwise, shall be paid as follows, or to such other account or accounts as the Senior Agent so notifies to the Insurers:

    (a) in the case of Insurance Proceeds in respect of delay in start up, business interruption, anticipated loss in revenue, payment shall be made to the Borrower's Proceeds Account no. IBAN *** opened with Deutsche Bank S.p.A at its office of Piazza del Calendario 3, 20126 Milan, Italy; and

    (b) in the case of all other monies due under this policy, payment shall be made to the Borrower's Compensation Account no. IBAN *** with Deutsche Bank S.p.A at its office of Piazza del Calendario 3, 20126 Milan, Italy.

14. The Senior Agent is not agent of any party other than the Finance Parties for receipt of any notice or any other purpose in relation to this insurance.

15. The Insurers shall give to the Senior Agent at least 20 days notice in writing, save in respect of paragraph 15(b), for which at least 10 days notice in writing shall be given:

    (a) if any Insurer intends to cancel or suspend this insurance or any cover under this insurance for any reason;

    (b) before avoiding for non payment of any overdue premium in order to give an opportunity for that premium to be paid within the notice period;

    (c) of any act or omission or of any event of which the Insurer has knowledge and which the Insurer considers may invalidate or render unenforceable in whole or in part this insurance or any claim under it or which might entitle the Insurer to terminate, rescind or repudiate this policy in whole or part, or treat it as avoided, terminated or suspended, against any insured party; and

    (d) if they have not agreed to renew this Insurance at its next expiry date (or been invited to do so).

16. All notices or other communications under or in connection with this policy will be given in writing or by fax. Any such notice will be deemed to be given as follows:

    (a) if in writing, when delivered;

    (b) if by fax, on the date on which it is transmitted but only if (i) immediately after the transmission, the sender's fax machine records the correct answerback (ii) the transmission date is a normal business day in the country of the recipient at the time of transmission and is recorded as received before 5 p.m. on that date in the recipient's time zone, failing which it shall be deemed to be given on the next normal business day in the recipient's country.

The address and fax number of the Agent for all notices under or in connection with this policy are those notified from time to time by the Agent for this purpose to the Borrower. The initial address and fax number of the Agent are as follows:

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

The Senior Agent:

Facsimile number:
For the attention of:

17. This endorsement changes the policy. It overrides any conflicting provision in any policy or prior endorsement to which it applies.

Notwithstanding any other provision of this insurance contract, this insurance contract shall be governed and interpreted in accordance with Italian law. The insurer submits irrevocably to the jurisdiction of the Italian courts for the determination of any and all issues arising out of or in connection with this contract (including its validity and enforceability).

B. Insurance Policy Endorsement type (B)

The same wording proposed as per point A. with the exception of point 13 "Loss Payee Clause".

EXHIBIT B

BROKERS' LETTER OF CONFIRMATION AND UNDERTAKING

To: ***Deutsche Bank AG, London Branch (the Senior Agent)***

[date]

Dear Sirs,

1. In this letter:

Borrower means Andromeda PV S.r.l..

Finance Parties means Lenders, and other institutions who are co-insureds hereunder and are involved in providing credit and hedging facilities to the Borrower in relation to the Project. The phrase includes any assignee, transferee, successor or novated, replacement or additional creditor of or in relation to any of the foregoing.

Insurances means each of those insurances (including any renewals or replacements of them) which the Borrower has agreed in the Agreement to procure and maintain in relation to the Project and which are from time to time arranged by ourselves or by other companies within our group of companies.

Project means the design, development, financing, construction, testing, commissioning, operation and maintenance of the Plant.

Other terms defined in the Agreement have the same meaning in this letter.

2. We have effected the following Insurances [***Insert description of all policies required***]. Copies of the policies of Insurances effected by us are attached to this letter.

3. Pursuant to instructions received from the Borrower and in consideration of your approving our appointment or continuing appointment on behalf of the Finance Parties to arrange maintain and monitor the Insurances covered by this letter, we confirm that:

(a) the Insurances are in full force and effect as evidenced by the attached policies or, failing those, cover notes confirming that the relevant risks are duly covered, and comply with the Borrower's obligations under the Finance Documents;

(b) the Insurances all contain loss payee provisions complying with the requirements of the Agreement as per Exhibit A of Insurance Schedule;

(c) the premia due at that time in accordance with the terms of credit agreed with the insurers in relation thereto have been paid;

(d) we have disclosed to each Insurer every material circumstance in relation to the Insurances which we, as agents to insure, are required by law to disclose to them and no such information disclosed by us was known by us to be potentially inaccurate, incomplete or misleading and we are not aware (after making reasonable enquiry) of any information which should have been disclosed to insurers in order to constitute proper disclosure of the risks insured, or that any information disclosed was inaccurate or misleading; and

(e) we are not aware (after making reasonable enquiry) of any reason why the Borrower or any Insurer may be unwilling or unable to honour its obligations in relation to the Insurances, or to avoid the Insurances or any claim, in whole or in part.

4. We hereby undertake in respect of the interests of the Borrower and the Finance Parties in the Insurances arranged by us:

(a) before any contract of Insurance is entered into, renewed or renegotiated, to advise you promptly in writing if, in our professional opinion, that contract would not, if so entered into, renewed or renegotiated, in any respect comply with the provisions of the Agreement;

(b) to notify you:

(i) promptly when we are informed of any proposed changes in the terms of the Insurances which we reasonably believe would, if effected, result in any material reduction in limits or alteration in coverage (including those resulting from extensions) or increase in deductibles or excesses, exclusions or exceptions;

(ii) at least 30 days prior to the expiry of these Insurances with all reasonable information regarding their renewal arrangements, including premiums, insurers and terms and conditions of renewal cover;

(iii) at least 30 days prior to the expiry of these Insurances if no notice of renewal has been received from the Borrower;

(iv) promptly if any premium due has not been paid when due, or if any Insurer gives notice of cancellation non-renewal or avoidance of any Insurance or threatens to do so;

(v) promptly of any act or omission or of any event of which we have actual knowledge and which might reasonably be foreseen as invalidating any Insurance or claim, or rendering any Insurance void, avoidable, suspended or unenforceable in whole or in part; and

(vi) promptly in the event of our becoming aware of any purported assignment of or the creation of any security interest over the Borrower's interest or rights in any of the Insurances;

(c) to disclose to you any fact, change of circumstance or occurrence which we know to be material to the risks insured against under the Insurances arranged by us promptly when we become aware of such fact, change of circumstance or occurrence, and if so requested by you to disclose the same to affected Insurers;

(d) to hold all Insurance policies received by us to your order, free from any lien, if any, in respect of monies owing to us in respect of any Insurance;

(e) to pay promptly to insurers all premium received from the Borrower or for which we are liable in order to ensure that each Insurance is valid and enforceable in accordance with its terms;

(f) to procure payment of any claim collected by us on behalf of the Borrower or the Finance Parties in accordance with the Loss Payment clause (if any) within any Insurance;

(g) promptly to pass on to you copies of any notice given by any Insurer under or in respect of the Insurances to or affecting the Borrower or the Finance Parties;

(h) to make available to you on reasonable request our placing and claims files, and provide you with copies of any documents from those files;

(i) to inform you in writing immediately if we receive or give notice that we are to cease to act as insurance brokers to the Borrower or insurers for the purpose of arranging, maintaining and/or monitoring any Insurances previously arranged by us. Paragraphs 4(a) – (h) above are subject to our continuing appointment as insurance brokers in relation to the Insurances concerned and the handling of claims in relation to them;

(j) to inform you if, according to our knowledge, the Borrower have not effected and/or maintained any insurance requested by law as per point 1.3(a) of this Schedule; and

(k) to verify and to inform you promptly about the compliance of the contractors and sub-contractors Insurances as per point 1.3(b) of this Schedule.

5. We acknowledge that the Finance Parties have a direct interest in the Insurances as co-insureds and an indirect interest in them arising from their security interest in them and in the claims proceeds deriving from them. In respect of our services during the term of our appointment, we accept responsibility for acting as insurance broker on behalf of the Finance Parties in respect of the co-insurance of the Finance Parties (or the Senior Agent on their behalf) under the Insurances on policy terms (including lender endorsements) agreed from time to time by you.

6. Save insofar as we have given undertakings or assurances in this letter, it is to be understood by the Finance Parties that they may not rely on any advice which we have given to the Borrower, and we do not represent that the Insurances are suitable or sufficient to meet the needs of the Finance Parties, who must take such steps and advice of their own as they consider necessary in order to protect their own position.

7. This letter shall be governed by and construed in all respects in accordance with Italian law.

Yours faithfully

Attachments: [policies of insurance]

SCHEDULE 5

RESERVED DISCRETIONS

AMENDMENTS SUBJECT TO REVIEW AND CONFIRMATION BY SUNRAY

A. NOTES

1. If a clause referred to in this Schedule contains more than one right or discretion exercisable by the Borrower, this Schedule controls only the right, rights, discretion or discretions identifiable by reference to the wording opposite the reference to the relevant clause.

2. (a) The Borrower must notify the Senior Agent promptly upon a Reserved Discretion becoming exercisable, stating:

   (i) the Reserved Discretion;

   (ii) that the Borrower wishes to exercise the Reserved Discretion and how it wishes to exercise it; and

   (iii) the Relevant Date.

   (b) In relation to any Reserved Discretion marked in this Schedule with a level of control "A":

   (i) the Senior Agent (acting on the instructions of the Majority Lenders) must, on or before the Relevant Date, inform the Borrower whether and how the Borrower must exercise the right/discretion the subject of that Reserved Discretion; and

   (ii) subject to Subclause 13.10(e) (Project Documents) the Borrower must exercise he right/discretion in accordance with the Senior Agent's instructions.

   (c) In relation to any Reserved Discretion marked in this Schedule with a level of control "B":

   (i) the Majority Lenders must, on or before the Relevant Date, inform the Borrower whether it may exercise the right/discretion the subject of that Reserved Discretion; and

   (ii) subject to Subclause 13.10(e) (Project Documents) the Borrower must not exercise the right/discretion unless the Majority Lenders give their consent under paragraph (i) above, such consent not to be unreasonably withheld.

   (d) In relation to any Reserved Discretion marked in this Schedule with a level of control "C":

   (i) all the Lenders must, on or before the Relevant Date, inform the Borrower whether it may exercise the right/discretion the subject of that Reserved Discretion; and

   (ii) subject to Subclause 13.10(e) (Project Documents) the Borrower must not exercise the right/discretion unless all the Lenders give their consent under paragraph (i) above, such consent not to be unreasonably withheld.

(e) For the purposes of this Schedule:

Relevant Date means, in relation to a Reserved Discretion which is:

(i) a Time Critical Reserved Discretion, the date that is one Business Day before the date upon which, by reason of effluxion of time, that Time Critical Reserved Discretion ceases to be exercisable under the terms of the relevant Project Document; and

(ii) not a Time Critical Reserved Discretion, the date that is 20 Business Days after the Borrower has notified the Senior Agent in accordance with paragraph 2(a) above.

Time Critical Reserved Discretion means a Reserved Discretion which the relevant Project Document states is exercisable only within a specified time period.

B. PLANT EPC CONTRACTS

Clause	Borrower Discretion	Level of Control
3.1	To request any change in the Scope of Work (as defined under the Plant EPC Contracts)	B
3.2	To approve any change in the Scope of Work (as defined under the Plant EPC Contracts) upon request by the Plant EPC Contractor	B
3.2(g)	To terminate the Plant EPC Contracts if a change in the Scope of Works (as defined under the Plant EPC Contracts) would result in an increase of the Price (as defined under the Plant EPC Contracts) of more than five % or an extension of the relevant completion dates of more than six months.	B
4.9	To approve any subcontractor (other than SunPower Italia S.r.l) to which the Plant EPC Contractor intends to subcontract a portion exceeding five % of the Price (as defined under the Plant EPC Contracts)	B
4.19(d)	To terminate the Plant EPC Contracts if the Contractor fails to provide a replace or modify an item in connection with a breach of intellectual property rights	B
7.1(d)	To terminate the Plant EPC Contracts if the Conditions Precedent (as defined under the Plant EPC Contracts) are not satisfied 180 days from the date of the Plant EPC Contracts	B
8.2(b)	To perform the Minor Finishing Works directly or through third parties at the expense of the Contractor in case of default by the Plant EPC Contractor	B
9(d)	To approve a change in the Scope of Work and extension of the Guaranteed Work Completion Date and the Delivery Deadline (as defined under the Plant EPC Contracts) in case	B

Clause	Borrower Discretion	Level of Control
	a force majeure event occurs	
9(e)	To reduce the price in case the Borrower is not entitled to receive the 2010 feed-in tariff due to a Force Majeure event.	A
10.5(b)	To terminate the Plant EPC Contracts if the Maximum Peak Power Price Adjustment (as defined under the Plant EPC Contracts) exceeds ten % of the Price (as defined under the Plant EPC Contracts)	B
10.5(d)	To verify the results of Contractor's Flash Test Procedure (as defined under the Plant EPC Contracts) by way of performance of a flash counter-test at a pre-agreed independent laboratory (chosen from either Fraunhofer or TUV)	A
10.5(d)(iv)(C)	To reject the corresponding Shipment in the event that the difference between the average of the Counter-Test Flash Data and the average of the Contractor's flash test data is greater than two times the UTOT Price (as defined under the Plant EPC Contracts)	B
10.6(c)	To terminate the Plant EPC Contracts if the Maximum Nominal Capacity Price Adjustment is exceeded (as defined under the Plant EPC Contracts)	B
11.1(b)	To enforce, in whole or in part, the Performance Bank Guarantee (as defined under the Plant EPC Contracts) in the event of any breach by the Plant EPC Contractor of any of its obligations under the Plant EPC Contracts	A
11.2(b)	To enforce, in whole or in part, the Warranty Bank Guarantee (as defined under the Plant EPC Contracts) in the event of any breach by the Plant EPC Contractor of any of its obligations under the Plant EPC Contracts	A
11.3	To enforce, in whole or in part, the Parent Company Guarantee (as defined under the Plant EPC Contracts) in the event of any breach by the Plant EPC Contractor of any of its relevant obligations under the Plant EPC Contracts	A
11.5(c)	To enforce the Performance Bank Guarantee or Warranty Bank Guarantee (as defined under the Plant EPC Contracts) if either expires before the required expiry date.	A
11.5(d)	To enforce any equivalent guarantee under the Related EPC Contract (as defined under the Plant EPC Contracts) where the Borrower has already enforced a Guarantee (as defined under the Plant EPC Contracts) in whole for the maximum amount permitted under the other Plant EPC Contract.	A

Clause	Borrower Discretion	Level of Control
12.1(c)/12.2(f)	To perform Defect (as defined under the Plant EPC Contracts) rectification work or procure that such work is performed where the Plant EPC Contractor fails to do so, or to enforce the Warranty Bank Guarantee (as defined under the Plant EPC Contracts) upon the expiration of the Warranty Period (as defined under the Plant EPC Contracts).	A
12.3(g)	To terminate the Plant EPC Contracts if the Maximum Production Compensation (as defined under the Plant EPC Contracts) is exceeded.	B
12.3(c)(i)	To enforce the Production Liquidated Damages (as defined under the Plant EPC Contracts)	A
12.3(c)(ii)	To (i) return the entire Solar Park to the Contractor or (ii) return the Solar Facilities causing the failure to achieve the Minimum Guaranteed Yield to the Contractor, if the Actual Weather Adjusted Yield of the Solar Park measured is less than the Minimum Guaranteed Yield on an average basis for the entire Production Warranty Period (as defined under the Plant EPC Contracts)	B
12.3(f)	To enforce the Production Liquidated Compensation (as defined under the Plant EPC Contracts)	A
12.4	To advance any claims for warranty against the Contractor.	A
12.5	To enforce the Delay Liquidated Damages (as defined under the Plant EPC Contracts)	A
12.5(d)	To terminate the Plant EPC Contracts if the Maximum Delay Liquidated Damages (as defined under the Plant EPC Contracts) is exceeded	B
12.6	To enforce the Missing Tariff Liquidated Damages (as defined under the Plant EPC Contracts)	A
12.6(a)	To terminate the Plant EPC Contracts if the Maximum Missing Tariff Liquidated Damages (as defined under the Plant EPC Contracts) is exceeded	B
15.1(a)	To terminate the Plant EPC Contracts in accordance with article 1456 of the Italian Civil Code in the event of any breach by the Plant EPC Contractor to any of its material obligations	B
15.1(c)	To terminate the Related EPC Contracts (as defined under the Plant EPC Contracts).	B
15.1(d)	To (i) return the Solar Park or the applicable Solar Facilities to which the termination refers, to the Plant EPC Contractor;	C

Clause	Borrower Discretion	Level of Control
	or (ii) terminate the Plant EPC Contracts without rejection of the Solar Park (as defined under the Plant EPC Contracts)	
15.2	To terminate the Plant EPC Contracts in accordance with article 1454 of the Italian Civil Code in the event of any breach by the Plant EPC Contractor to any of its material obligations	B
15.3	To order the suspension of the performance of the Work (as defined under the Plant EPC Contracts)	B
15.6	To terminate the Plant EPC Contracts in the event of occurrence of a Force Majeure Event (as defined under the Plant EPC Contracts)	B
15.7	To withdraw from the Plant EPC Contracts	B
18	To authorise the Plant EPC Contractor to assign its right and obligations under the Plant EPC Contracts	B
20.2/20.3	To resolve any Dispute (as defined under the Plant EPC Contracts), in the event that such Dispute is for amount equal or higher than €100,000.00 per year	B
General Provision	To modify the provisions and/or the terms and conditions of the Plant EPC Contracts in the event that the amendment implies an adjustment of the price for an amount equal or higher than €500,000.00 per year	B
General Provision	To extend the Delivery Deadline and/or the Guaranteed Work Completion Date	B
General Provision	To extend, pursuant to terms and conditions of the Plant EPC Contracts, any time period provided under the Plant EPC Contracts (other than the Delivery Deadline and/or the Guaranteed Work Completion Date) in the event that such extension is overall longer than two weeks	B

C. SUBSTATION EPC CONTRACTS

Clause	Borrower Discretion	Level of Control
3/F	To request that Terna undertakes activities not included in its scope of work, upon the payment of a consideration premium of 16%	B
7/B	To enforce the bank guarantee delivered by Terna	A
8/A/1	To withdraw from the Substation EPC Contracts	B

Clause	Borrower Discretion	Level of Control
8/A/2/1	To enforce the liquidated damages for Terna's delay	A
8/A/2/1	To terminate the Substation EPC Contracts in the event of Terna's default	B
General Provision	To approve any change to the Scope of Work (as defined under the Substation EPC Contracts)	B
General Provision	To modify the provisions and/or the terms and conditions of the Substation EPC Contracts in the event that amendment implies an adjustment of the price for an amount equal to or higher than €50,000.00 per year	B
General Provision	To extend any Milestone (as defined in the "*Cronoprogramma*" attached to the Substation EPC Contracts) provided under the Substation EPC Contracts	B
General Provision	To resolve any question, dispute or claim arising out of or in connection with the Substation EPC Contracts, in the event that such Dispute is for an aggregate amount equal to or higher than €50,000.00 per year	B

D. PLANT O&M AGREEMENTS

Clause	Borrower Discretion	Level of Control
2.2(4)	To agree a different plan for the replacement and substitution of any Component Part (as defined in the Plant O&M Agreement) other than pursuant to the capital replacement plan.	B
2.3(2)	To propose any change to the Scope of Work (as defined under the Plant O&M Agreements)	B
2.3(3)	To approve any change to the Scope of Work (as defined under the Plant O&M Agreements) upon request by the Plant O&M Contractor	B
4.1(viii)	To arrange for the procurement of Spare Parts (as defined under the Plant O&M Agreements), if the Plant O&M Contractor fails to comply with its replenishing obligation	A
4.1(x)	To take any necessary disposition, either by itself or by any contractor it may choose, in case of the Plant O&M Contractor's default in removing materials and hazardous substances from the Site.	A
4.3(i)	To enforce in whole or in part the Parent Company Guarantee (as defined under the Plant O&M Agreements) in	A

Clause	Borrower Discretion	Level of Control
	the event of any breach by the Plant O&M Contractor of any of its obligations, or if the Plant O&M Contractor fails to replace the Parent Company Guarantee (as defined under the Plant O&M Agreements) when required	
6.(3)	To give notice of non-renewal of the Plant O&M Agreements to the Plant O&M Contractor	B
7.1(1)	To enforce the liquidated damages and, if applicable, to terminate the Plant O&M Agreements, in the event of non-compliance of the calculation under clause 7.1 of the Plant O&M Agreements with the availability period indicated therein	A
7.2(1)	To enforce the liquidated damages, if the Availability ratio of the Solar Park (as defined and measured in accordance with the calculation set forth in Annex 5 of the Plant O&M Agreements) during each consecutive three month period during the Availability Warranty Period is less than the Availability Guarantee (both as defined under clause 7.1 of the Plant O&M Agreements)	A
10.1(1)	To terminate the Plant O&M Agreements in accordance with article 1454 of the Italian Civil Code in the event of any breach by the Plant O&M Contractor of any of its material obligations	B
10.1(2)	To terminate the Plant O&M Agreements in accordance with article 1456 of the Italian Civil Code in the event of breach by the Plant O&M Contractor of any of its obligations indicated therein	B
10.1(3)	To enforce the liquidated damages in the event of termination due to causes attributable to the Plant O&M Contractor	A
10.3	To withdraw from the Plant O&M Agreements in the event of the occurrence of a Force Majeure Event (as defined under the Plant O&M Agreements)	B
10.3(a)(iv)	To require the assignment of the agreements with subcontractors in case of termination due to Force Majeure	B
10.4	To order the suspension in whole or in part of the performance of the Work (as defined under the Plant O&M Agreements) or terminate the Plant O&M Agreements under Article 1456 of the Italian Civil Code	B
10.5/10.6	To withdraw from the Plant O&M Agreements	B
11(1)	To authorise the Plant O&M Contractor to assign its right and obligations under the Plant O&M Agreements	B

Clause	Borrower Discretion	Level of Control
16.5	To resolve any Dispute (as defined under the Plant O&M Agreements), in the event that such Dispute is for an aggregate amount equal to or higher than €50,000.00 per year	B
16.13	To authorise the Plant O&M Contractor to subcontract a portion of the Work (as defined under the Plant O&M Agreements)	B
General Provision	To modify the provisions and/or the terms and conditions of the O&M Agreement in the event that the amendment implies an adjustment of the Price by an amount equal to or higher than €50,000.00 per year	B
General Provision	To extend any time period provided under the O&M Agreement in the event that such extension is longer than two weeks overall.	B

E. SUBSTATION O&M AGREEMENTS

Clause	Borrower Discretion	Level of Control
4.4	To authorise Terna to execute the restoration activities ("*attività di ripristino*")	A
8.3	To notify its intention to withdraw therefrom no later than 12 months prior to the Termination Date ("*Data di Scadenza*")	B
9.1	To authorise Terna to subcontract part of the activities to be carried out under the Substation O&M Agreements	B
10.1	To withdraw from the Substation O&M Agreements	B
11.1	To terminate the Substation O&M Agreements pursuant to Article 1454 of the Italian Civil Code	B
11.2	To enforce any penalties payable by Terna as a result of its default under the Substation O&M Agreements	A
11.5	To enforce the first demand bank guarantee delivered by Terna pursuant to the Substation O&M Agreements	A
11.5	To terminate the Substation O&M Agreements pursuant to Article 1456 of the Italian Civil Code	B
16	To resolve any Dispute (as defined under the Substation O&M Agreements), in the event that such Dispute is for an aggregate amount equal to or higher than €50,000.00 per	B

Clause	Borrower Discretion	Level of Control
	year	
General Provision	To modify the provisions and/or the terms and conditions of the Substation O&M Agreements in the event that the amendment implies an adjustment of the Price by an amount equal to or higher than €50,000.00 per year	B

F. INTERCONNECTION AGREEMENTS

Clause	Borrower Discretion	Level of Control
16	To enforce the liquidated damages for Terna's delay	A
21	To terminate the Interconnection Agreements in the event of Terna's default	B
General Provision	To approve any change in the Scope of Work (as defined under the Interconnection Agreements)	B
General Provision	To modify the provisions and/or the terms and conditions of the Interconnection Agreements in the event that the amendment implies an adjustment of the price by an amount equal to or higher than €50,000.00 per year	B
General Provision	To extend any time period provided under the Substation EPC Contracts for an overall period longer than two weeks	B
General Provision	To resolve any question, dispute or claim arising out or in connection with the Interconnection Agreements, in the event that such Dispute is for an aggregate amount equal to or higher than €50,000.00 per year	B

G. MANAGEMENT SERVICES AGREEMENT

Clause	Borrower Discretion	Level of Control
3.3	To authorise the Manager to subcontract part of the Services (as defined under Management Services Agreement) to any Subcontractor (as defined under Management Services Agreement) other than SunRay Project Management S.r.l., SunRay Italy S.r.l. or SunRay Management UK Limited	B
8.2	To give notice of non-renewal of the Management Services Agreement to the Manager	B

Clause	Borrower Discretion	Level of Control
9.1(a)	To terminate the Management Services Agreement in accordance with article 1454 of the Italian Civil Code in the event of any breach by the Manager of any of its obligations	B
9.1(b)	To terminate the Management Services Agreement in accordance with article 1456 of the Italian Civil Code in the event of breach by the Manager of any of its obligations indicated therein	B
9.1(c)	To terminate the agreement only in respect of a portion of services	B
9.2	To give its consent to the Manager for the prosecution of the Management Services Agreement notwithstanding the bankruptcy thereof	B
9.3	To withdraw from the Management Services Agreement	B
9.4	To make a payment or provide security to the Manager to prevent termination of the Management Services Agreement	A
9.5	To order the suspension in whole or in part of the performance of the Services (as defined under Management Services Agreement)	B
14.1	To authorise the Manager to assign its rights and obligations under the Management Services Agreement	B
16.8	To resolve any Dispute (as defined under the Management Services Agreement), in the event that such Dispute is for an aggregate amount equal to or higher than €50,000.00 per year	B
General Provision	To approve any change in the scope of work pursuant to the Management Services Agreement	B
General Provision	To modify the provisions and/or the terms and conditions of the Management Services Agreement in the event that the amendment implies an adjustment of the by an amount equal to or higher than €50,000.00 per year	B
General Provision	To extend any time period provided under the Management Services Agreement in the case that such extension is longer than two weeks overall	B

H. RIGHT OF USE AGREEMENT

Clause	Borrower Discretion	Level of Control
9.1	To nominate a further beneficiary for the full or part of the right of use.	C
15	To assign the Right of Use Agreement to third parties or to allied companies.	C
16.2	To terminate the Right of Use Agreement, following the default of Cassiopea of its obligations under the agreement.	C
General Provision	To modify the provisions and/or the terms and conditions of the Right of Use Agreement.	B
General Provision	To resolve any dispute	B
General Provision	To modify the confidentiality provisions	B
General Provision	To modify any provisions relating to access to the Common Infrastructure	B

I. CO-INSURANCE AGREEMENT

Clause	Borrower Discretion	Level of Control
1.6	To pay the insurance premium if Cassiopea fails or is likely to fail to do so.	A
2.2	To submit a Request for Transfer (as defined in the Joint Insurance Account Trust Deed) to the Trustee (as defined in the Joint Insurance Account Trust Deed) pursuant to the conditions of the Co-Insurance Agreement.	A
General Provision	To resolve any dispute	B
General Provision	To modify the confidentiality provisions	B

SCHEDULE 6

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT dated [●]

BETWEEN:

(1) **ANDROMEDA PV S.R.L.**, a company incorporated under the laws of Italy, whose registered office is at Piazza Filippo Meda 3, 20121 Milan, Italy, and whose registration number with the Companies' Registry of Milan, tax code and VAT No. is 06293700966 (the **Borrower**);

(2) **[l]**, a company incorporated under the laws of [l], having its registered office at [l], with a fully paid-up corporate capital of €[l], registered with the [l] under No. [l], [which acts for the purposes hereof through its Italian branch], whose offices are located in [l], VAT code and registration number at the Companies Registry of [l] [l], enrolled in the register of the banks held by Bank of Italy under No. [l] (the **Disclosing Party**);

(3) [l], a company incorporated under the laws of [l], having its registered office at [l], with a fully paid-up corporate capital of €[l], registered with the [l] under No. [l], [which acts for the purposes hereof through its Italian branch], whose offices are located in [l], VAT code and registration number at the Companies Registry of [l] [l], enrolled in the register of the banks held by Bank of Italy under No. [l] (the **Receiving Party**)

The Borrower, the Disclosing Party and the Receiving Party, collectively, the Parties.

WHEREAS:

(A) For their mutual benefit the Disclosing Party and the Receiving Party wish to exchange certain information for the purpose agreed and specified in this agreement (**Confidentiality Agreement**).

(B) The Disclosing Party and the Receiving Party wish to define their rights with respect to the said information and to protect the confidentiality thereof and the proprietary features contained therein.

(C) The Borrower, by entering into this Confidentiality Agreement, acknowledges and accepts all provisions of this Confidentiality Agreement.

IT IS AGREED:

1. In this Confidentiality Agreement the following expressions shall have the following meanings:

Confidentiality Agreement	means this agreement including any schedules attached hereto.
Purpose	for clarification this Confidentiality Agreement only relates to the exchange of Proprietary Information. Nothing in this Confidentiality Agreement shall prevent either Party from exploiting commercially or otherwise its own Proprietary Information without using, in whole or in part, the other Party's Proprietary Information.
Project	means the design, development, financing, construction, testing, commissioning, operation and maintenance of a combined 52 MWp solar photovoltaic power plant in Montalto

	di Castro, Viterbo Province, Lazio, Italy.
Proprietary Information	means all information relating to the Project, including, without limitation, all documents, papers, drawings, diagrams, discs, tapes, computer software and documentation or other records whether in physical form or otherwise disclosed by the Disclosing Party to the Receiving Party.

2. The Receiving Party will receive and hold all Proprietary Information subject to the following conditions:

   (a) The Receiving Party shall only disclose Proprietary Information to its employees who have a need to know; and any employee to whom Proprietary Information is disclosed shall be informed of this Confidentiality Agreement and the confidential nature of the information.

   (b) The Receiving Party will not disclose to any third party the Proprietary Information or any part thereof except with the express prior written consent of the Disclosing Party and the Borrower; and where such consent is given, the Receiving Party shall ensure that such third party (i) is bound by a professional duty of confidentiality, or (ii) shall be bound by an enforceable written agreement that covers Proprietary Information and contains restrictions with respect thereto that are at least as restrictive as those set forth herein.

   (c) The Receiving Party will not copy, reproduce or reduce to written form any part of the Proprietary Information, unless such copies are required for back-up data storage or compliance purposes or as may be reasonably necessary for the Purpose; and it shall apply no lesser security measures and degree of care than those which it applies to its own proprietary information, which, in any event, shall be no less than a reasonable degree of care.

   (d) The Receiving Party shall keep all documents and all other material incorporating any of the Proprietary Information at the usual place of business of the Receiving Party.

   (e) The Receiving Party acknowledges that the Proprietary Information may have commercial value and unauthorised disclosure may be injurious to the Disclosing Party's or the Borrower's commercial interests. Accordingly, the Receiving Party agrees not to use the Proprietary Information for any commercial purpose(s) including the development, marketing or selling of any new products and/or services.

3. The obligations of confidentiality shall last for a period of two years from the date of the last of the Parties' signature to this Confidentiality Agreement or such extended period as the Parties may agree to in writing, but shall not apply to Proprietary Information disclosed which:

   (a) at the time of such disclosure by the Disclosing Party is already in the public domain by publication or otherwise through no act or default of the Receiving Party; or

   (b) the Receiving Party can conclusively establish by written evidence predating the disclosure of the Proprietary Information that it was in its unrestricted possession prior to the time of the disclosure of it by the Disclosing Party and was not otherwise acquired directly or indirectly from the Disclosing Party or any of its or their employees or agents under any obligations of confidence; or

   (c) is at any time after the date of this Confidentiality Agreement acquired by the Receiving Party from a third party having the right to fully disclose the same to the Receiving Party

without breach of obligation owed by that third party to the Disclosing Party and/or the Borrower; or

(d) is developed independently by the Receiving Party without making use of the Proprietary Information and which independent development can be substantiated by documentary proof; or

(e) the Receiving Party is required to disclose by law, an order of a court of competent jurisdiction or other tribunal, government or market regulator competent to require such disclosure, always provided that the Disclosing Party and the Borrower are notified of such a requirement prior to such disclosure being made to the extent legally possible; or

(f) is approved for disclosure into the public domain upon the written permission of the Disclosing Party and the Borrower.

4. It is understood and agreed that a combination of two or more parts of the Proprietary Information is not public knowledge merely because each part is separately available to the public.

5. All Proprietary Information (and the rights therein) disclosed under this Confidentiality Agreement shall remain the sole property of the Disclosing Party and the Receiving Party shall obtain no right thereto or licence of any kind by reason of this Confidentiality Agreement.

6. It is understood that this Confidentiality Agreement implies no obligation on any of the Parties to enter into any further agreement with the other party or Parties and that each Party's obligations under this Confidentiality Agreement are in addition to those under the general law.

7. None of the Parties make any representations with respect to, and do not warrant the accuracy of, any Proprietary Information.

8. At any time upon written request from the Disclosing Party, the Receiving Party will promptly deliver or procure the delivery of all Proprietary Information in its possession or control to the Disclosing Party, or confirm in writing that all copies of the Proprietary Information have been destroyed and that all copies of the Proprietary Information recorded on magnetic media or in any electronic or any other format have been irretrievably deleted save in the case of back-up storage where such deletion depends on a back-up deletion process and except that the Receiving Party may retain one copy to determine the extent of its obligations in the event of a dispute with the Disclosing Party and for the purpose of complying with any applicable rule, regulation or compliance procedure. Each party may return Proprietary Information, or any part thereof, to the Disclosing Party at any time.

9. This Confidentiality Agreement is personal to the Parties, who shall not assign the same without the prior written consent of the other Parties.

10. This Confidentiality Agreement contains the entire understanding between the Parties as to the protection of the Proprietary Information disclosed only under this Confidentiality Agreement and supersedes all prior and collateral communications, reports and understandings between the Parties in respect thereof. No change, modification, alteration or addition to any provision hereof shall be binding unless in writing and signed by authorised representatives of all Parties.

11. For the duration of this Confidentiality Agreement and one year thereafter neither party will directly or indirectly solicit or entice away any key or senior employee of the other party who has been directly or indirectly involved in any aspect of this Confidentiality Agreement, provided that nothing shall preclude a party from employing any such employee (i) who responds to a general public

advertisement or (ii) who is identified by an employment firm engaged by such party in connection with a search to fill a position where it has not directed the search firm to such employee.

12. This Confidentiality Agreement, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with the laws of Italy and shall be subject to the exclusive jurisdiction of the Italian courts.

SCHEDULE 7

RESERVATIONS

Reservations means that:

(a) reference to a document being enforceable in accordance with its terms is to such terms not as read literally but as they would be likely to be construed by a court;

(b) the validity, effectiveness, performance and enforceability of an obligation may be limited or affected by, or by law applicable in, an insolvency, administration, liquidation, voluntary arrangement, scheme of arrangement or reorganisation procedure or by other laws affecting creditors' rights generally (including, without limitation, the provision of the Bankruptcy Law; "insolvency…or reorganisation procedure" includes a solvent winding-up, a voluntary arrangement, a scheme of arrangement and their counterparts in other countries);

(c) the validity, effectiveness, performance and enforceability of an obligation may be limited or affected by the laws of limitation affecting a person's obligations generally;

(d) judgments in currencies other than the currency of the court of the proceedings may have to be converted for the purpose of enforcement or for claiming in a liquidation;

(e) where any party to the Finance Documents and/or the Project Documents is vested with a discretion or may determine a matter in its opinion, Italian law invalidates such provisions in the event they are unfettered or may require that such discretion is exercised in good faith or that such opinion is based on reasonable grounds and such law may, as a matter of public policy, be applied by the Italian courts notwithstanding that the law governing the relevant agreement is a law other than Italian law;

(f) a court may set aside a determination or the exercise of a power or discretion which has been made or exercised unreasonably or on a basis which is incorrect; this is so even if a document provides that the relevant determination or certificate shall be conclusive, or that a person's choice to exercise (or not exercise) a power shall be absolute;

(g) a contractual provision that a party will pay certain costs, charges and expenses may not cover costs unreasonably incurred or unreasonable in amount nor override a court's discretion. Moreover, costs may be subject to quantification by a court;

(h) article 1419 of the Italian Civil Code may, in certain circumstances, impair the effects of a severability clause;

(i) the effectiveness of any provision which allows an invalid provision to be severed in order to save the remainder of a document may be determined by the courts in their discretion;

(j) any provision of a document requiring any person to pay amounts or forfeit rights or property imposed in circumstances of breach or default may be held to be unenforceable on the grounds that is a penalty;

(k) no representation is given as to a provision which provides that a variation or waiver is ineffective unless in writing;

(l) there are limited cases where an Italian court may order specific performance of an obligation. Therefore an Italian court might make an award of damages even where specific performance of an obligation is sought;

(m) claims may be or become subject to the defence of set-off or counterclaim and their enforcement may become barred through lapse of time;

(n) any security created by the Privilegio Speciale over the relevant subject matter (as defined in the Privilegio Speciale) does not prevent the Borrower from disposing of, and pursuant to article 1153 of the Italian civil code will not affect any rights acquired in good faith by third parties on, the subject of the Privilegio Speciale although the Privilegio Speciale would apply to the proceeds thereof;

(o) any re-registration of the Privilegio Speciale following a transfer of a bank participation by assignment or subrogation may prove ineffective if, at the time such re-registration is sought, the Borrower is subject to bankruptcy procedure;

(p) there could be circumstances in which Italian law would not treat as conclusive or *prima facie* those certificates and determinations which the Finance Documents and/or Project Documents state are to be so treated;

(q) a party may be prevented from enforcing a written provision which may be deemed amended or waived orally or by course of conduct notwithstanding provisions to the contrary;

(r) pursuant to article 1229 of the Italian Civil Code, the effectiveness of terms exempting a party from liability or duties otherwise owed is prevented by law in the event of fraud, gross negligence or violation of mandatory provisions;

(s) notwithstanding the provisions of the Finance Documents and/or Project Documents, certain claims are mandatorily preferred by law;

(t) there could be circumstances in which Italian law would not give effect to provisions concerning advance waivers of forfeitures;

(u) the capitalisation of interest or accrual of interest on interest in case of default or otherwise may not be enforceable and be subject to (Inter-ministerial Committee for Credit and Saving) Resolution of 9 February 2000 as far as banks are concerned and subject to the limitation set forth by law n. 108/1996;

(v) with reference to the provisions of the Finance Documents, insofar as they relate to:

(i) any and all additional quotas and equity interests in the Borrower which may, from time to time, come into the possession of the pledgor in any manner howsoever (including, without limitation, by virtue of a capital increase) after the date of execution of the Pledge over Quotas;

(ii) any and all credits arising out of any new receivables arising from a new contract entered into after the date of execution of the Pledge over Receivables and Accounts,

(each a future asset and, collectively, the future assets)

(iii) in the case of paragraph (i) above, the formalities provided for in the Pledge of Quotas will have to be perfected in relation to the future asset and the security interest created on the newly issued quotas (including those issued upon the occurrence of a capital increase of the Borrower) will take priority as against the other creditors of the pledgor starting from the date of perfection of the above mentioned formalities; and

(iv) in the case of paragraph (ii) above, a new pledge over receivables will have to be executed in order to perfect a valid, legal and binding security interest on such future asset and all the

formalities indicated in the relevant pledge over receivables will have to be perfected and the security interest created on the future asset will take priority as against the other creditors of the relevant pledgor starting from the date of perfection of the above mentioned formalities;

(w) in the event bankruptcy proceedings are commenced against the Borrower or the Quotaholder, credits and future receivables which come into existence after the commencement of such proceedings are deemed not to form part of the secured assets, but instead are considered to be part of the general bankruptcy estate available for distribution to all the creditors of the Borrower or the Quotaholder, as the case may be;

(x) the perfection of the Finance Documents does not prevent any third party creditor of the Borrower from seeking attachment or execution against the secured assets to satisfy its unpaid claims against it. Third party creditors may seek the forced sale of the secured assets of the Borrower through a judicial proceeding, although the relevant beneficiaries will remain entitled to priority over the proceeds of such sale;

(y) any provisions of the Finance Documents and/or Project Documents to the effect that certifications or determinations of any party thereto will be conclusive and binding will not necessarily prevent judicial enquiry into the merits of any claim by an aggrieved party;

(z) the amount of expenses incurred for the enforcement and collection of a secured claim which may be recovered from the sale or through the appropriation of the secured asset is subject to the assessment of the competent court;

(aa) under Italian law the priority rights of claims for interest against the relevant obligor arising under any pledge and special privilege included in the Finance Documents are limited as follows:

(i) only in respect of interest accrued during the year in which the enforcement procedure is commenced, either through attachment notice ("*pignoramento*") or notice to pay, as applicable;

(ii) after the end of such year and until the judicial sale of the asset which is subject to the pledge is made, only up to the rate determined by law ("*tasso legale*"), currently 1%, per annum;

(bb) with regard to the security or guarantees granted in favour of third parties, it is required under Italian law that a corporate provider of security be acting in its own interest. Such interest must be verified in light of the specific circumstances. It is a duty of the directors to verify such interest and the benefit deriving from the transaction to their own company. The concept of corporate benefit does not imply necessarily cash consideration and may be assessed by the directors with reference to the global transaction. The breach of such duty could lead to a claim by the quotaholders or the creditors of the Borrower against the directors or the relevant controlling company to an action to challenge the validity of the transaction entered into by the Borrower in the absence of a corporate benefit (in which case the plaintiff would have to prove that the banks were aware of the absence of the corporate benef it);

(cc) contractual provisions which may alter the ranking of creditors provided by law in case of bankruptcy might be interpreted by a court of competent jurisdiction as to be in violation of mandatory provisions of law;

(dd) the enforcement in Italy of the obligations provided in the Finance Documents and/or Project Documents will be subject to the Italian law in force at the time enforcement is sought, the jurisdiction of Italian courts, the nature and scope of the available remedies and the power to stay proceedings. Where only part of a contract may be enforceable, Italian law may limit the

enforceability of that part of the contract to the circumstances in which the unenforceable portion is not an essential part of the contract;

(ee) under Italian law a preventive waiver to the right of defence is invalid;

(ff) Italian law, as at the date of this Agreement, does not expressly regulate first demand autonomous guarantees. Italian Courts, as of the date of this Agreement, recognise first demand autonomous guarantees as guarantee agreements that cannot be qualified as *fideiussione* pursuant to Articles 1936 and following of the Italian Civil Code. However we cannot exclude the risk of recharacterisation of the guarantee as a *fideiussione* and the application of Articles 1936 and following of the Italian Civil Code;

(gg) a derogation to article 1939 of the Italian Civil Code may not be upheld by a court of competent jurisdiction; and

(hh) the enforceability of the Direct Agreements is subject to full compliance with the actions and steps required under Italian law to give it effect thereunder.

SCHEDULE 8

TECHNICAL ADVISER'S WITHDRAWAL CERTIFICATE

To: [l] as Senior Agent

From: [name of the Technical Adviser]

Facility agreement dated [l], [l] (the Agreement)

1. This certificate is delivered to you in connection with request No. [l] being delivered to you by Andromeda PV S.r.l. (the Borrower) pursuant to the Agreement for review of construction costs connected to the request No. [l] dated [l].

2. Terms defined in the Agreement have the same meaning in this certificate.

3. We certify, after due enquiry, that, as of the date of this certificate:

   (a) based on the information made available to us by the Borrower and the Plant EPC Contractor and the Substation Contractor, our review as of [l] and our most recent site inspection as of [l] of the construction progress to date, in our reasonable judgement, that:

      (i) in relation to the following amounts identified in the Borrower's request as construction related items, the relevant payments appear reasonable and are consistent with the relevant contract, and correspond to works correctly completed:

Amounts under the Plant EPC Contracts	Amounts under the Substation EPC Contracts	Amounts under the Interconnection Agreements
[l]	[l]	[l]

      (ii) the total amounts which are the subject of this certificate are [l]. We are not aware of any disputes in relation to the above sums.

   (b) the construction works are not delayed or interrupted by more than 6 months with respect to the timing provided under the relevant contract; and

   (c) the remaining Construction Costs expected to be incurred prior to the latest Project Completion Date are [l].

Yours faithfully,

[l]

By _____

Title: _____

SCHEDULE 9

FORM OF ASSIGNMENT OF VAT RECEIVABLES

/s/ Margareth Carducci

ANDROMEDA PV S.R.L.
as Borrower

/s/ Marco Germani

BNP PARIBAS, MILAN BRANCH
as Arranger and Original Lender

/s/ Leonardo Pecciarini

SOCIÉTÉ GÉNÉRALE, MILAN BRANCH
as Arranger and Original Lender

/s/ Davide Pluchino

DEUTSCHE BANK AG, LONDON BRANCH
as Senior Agent

LOAN AGREEMENT

Between

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

and

SUNPOWER CORPORATION,
as Borrower

Dated as of December 1, 2010

Relating to

$30,000,000
California Enterprise Development Authority
Recovery Zone Facility Revenue Bonds
(SunPower Corporation - Headquarters Project)
Series 2010

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LOAN AGREEMENT

This LOAN AGREEMENT (this "Agreement" or "Loan Agreement") is entered into as of December 1, 2010, by and between the CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (the "Issuer"), a public entity duly organized and validly existing under the laws of the State of California, and SUNPOWER CORPORATION, a Delaware corporation (the "Borrower");

W I T N E S S E T H:

WHEREAS, the Issuer was established for the purpose of financing projects needed to implement economic development within the State of California (the "State") and is authorized to issue taxable and Tax-exempt revenue bonds to provide financing for economic development projects pursuant to the provisions of the Joint Powers Act, comprising Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State, as amended, (the "Act"); and

WHEREAS, the Issuer was established pursuant to the provisions of the Act and a Joint Exercise of Powers Agreement, dated June 1, 2006 (the "Joint Powers Agreement"), among the cities of Eureka, Lancaster and Selma and other public agencies who have and may subsequently become associate members of Issuer; and

WHEREAS, Issuer is authorized by the Joint Powers Agreement and the Act to issue bonds, notes or other evidences of indebtedness, or certificates of participation in leases or other agreements, or enter into loan agreements to, among other things, finance and refinance projects needed to implement economic development within the State; and

WHEREAS, pursuant to the provisions of the Act, the public agencies which are members of Issuer are authorized to jointly exercise any power common to such public agency members, including, without limitation, the power to acquire and dispose of property, both real and personal; and

WHEREAS, pursuant to the provisions of the Act, Issuer may, at its option, issue bonds, rather than certificates of participation, and enter into a loan agreement for the purposes of promoting economic development; and

WHEREAS, Borrower desires to finance the Project (as defined in Article I hereof) owned and to be operated by the Borrower; and

WHEREAS, pursuant to and in accordance with the provisions of the Act, the Issuer has authorized and undertaken the issuance of its California Enterprise Development Authority Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 in the aggregate principal amount of $30,000,000 (the "Bonds") to provide funds to pay a portion of the cost of the Project and to fund a reserve fund and a portion of the costs of issuance of the Bonds; and

WHEREAS, the Issuer proposes to loan the proceeds of the Bonds to the Borrower, and the Borrower desires to borrow the proceeds of the Bonds upon the terms and conditions set forth herein; and

WHEREAS, for and in consideration of such loan, Borrower agrees, inter alia, to make Loan Payments sufficient to pay on the dates specified in Section 4.02 hereof, the principal of, premium, if any, and interest on, the Bonds as well as Additional Payments (as hereinafter defined);

WHEREAS, as security for the full and prompt payment and performance of all its obligations under the Indenture, including, specifically, without limiting the generality of the foregoing, its obligation to make payment of principal of, premium, if any, interest on and purchase price of the Bonds, when due, the Issuer has, pursuant to the provisions of the Indenture, assigned to the Trustee all of its right, title and interest in, to and under this Agreement (except the Reserved Rights), including without limitation, the right to receive loan payments payable by the Borrower hereunder; and

WHEREAS, in order to assure full and prompt payment of the Bonds while the Bonds bear interest in certain Modes, the Borrower, among other things, has caused the Bank to issue a Letter of Credit to support payment of principal and purchase price of, and interest on, the Bonds when due (subject to reduction and reinstatement as provided therein) while in the initial Weekly Mode, according to the terms of the Indenture.

WHEREAS, the Issuer and the Borrower each has duly authorized the execution and delivery of this Agreement;

NOW, THEREFORE, THIS LOAN AGREEMENT WITNESSETH:

That the parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, DO HEREBY AGREE to all the terms and conditions set forth in this Agreement.

ARTICLE I

DEFINITIONS AND CERTAIN RULES OF INTERPRETATION

Section 1.1. Definitions. In addition to the words and terms elsewhere defined herein, the following words and terms as used herein shall have the following meanings unless the context or use clearly indicates another or different meaning or intent, and any other words and terms defined in the Indenture shall have the same meanings when used herein as assigned to them in the Indenture unless the context or use clearly indicates another or different meaning or intent:

"Act" means Chapter 5 of Division 7 of Title 1 of the California Government Code (commencing with Section 6500), as amended.

"Application" means, collectively, the application of the Borrower to the Issuer and the to the California Debt Limit Allocation Committee seeking financial assistance for the Project, and all attachments, exhibits, correspondence and modifications submitted in writing to the Issuer and/or the to the California Debt Limit Allocation Committee in connection with said application.

"Bank Representative" means each person at the time designated to act on behalf of the Bank by written certificate furnished to the Borrower and the Trustee containing the specimen signature of each such person and signed on behalf of the Bank by a Vice President or its President. Such certificate may designate an alternate or alternates.

"Bond Counsel" means, with respect to the original issuance of the Bonds, Jones Hall, A Professional Law Corporation, and thereafter such other firm of nationally recognized attorneys at law appointed by the Borrower and acceptable to the Remarketing Agent, the Trustee and the Issuer, and if a Letter of Credit shall then be in effect with respect to the Bonds, approved by the Bank, and experienced in issuing opinions with respect to tax exempt bonds under the exemptions provided in the Code.

"Bonds" means the $30,000,000 California Enterprise Development Authority Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 issued pursuant to the Indenture. Any percentage of Bonds specified herein for any purpose is to be figured on the aggregate principal amount of Bonds then Outstanding.

"Borrower" means SunPower Corporation, a Delaware corporation, including its successors and assigns.

"Borrower Documents" means this Loan Agreement, the Note, the Bond Purchase Agreement, the Tax Agreement, the Remarketing Agreement and the Bank Documents.

"Borrower's Completion Certificate" means the certificate described in Section 3.3, in the form attached hereto as Exhibit C.

"Code" means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bonds, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

"Completion Date" means the date the Project has been completed and placed in service as that date shall be certified as provided in Section 3.3 of this Agreement.

"Costs of Project" with respect to the Project, means the costs of all items permitted to be financed under the provisions of the Recovery Zone program.

"Counsel" means an attorney, or firm thereof, admitted to practice law before the highest court of the State of California.

"Default" means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default hereunder.

"Determination of Taxability" means the occurrence of any of the following enumerated events:

(a) the issuance of an adverse determination by the Internal Revenue Service, delivered to the Issuer, the Borrower or any Owner of any Bonds (but only if (i) the Borrower has been afforded an opportunity to contest such determination in a writing filed with the Internal Revenue Service, and (ii) the Borrower has decided not to contest such determination);

(b) the delivery of a Statement of Bond Counsel delivered at the request of the Borrower; or

(c) the delivery of a final judicial decision of a court of competent jurisdiction to (i) the Issuer or one or more Owners of any Bonds in a proceeding in which the Borrower materially participated or (ii) the Borrower,

in each case to the effect that the interest paid or to be paid on the Bonds is not Tax-exempt (including determinations under the provisions of Section 150(b)(4) of the Code), or in the case of (b) above, due to Internal Revenue Service action or other events that could be asserted by the Internal Revenue Service, the interest paid or to be paid on the Bonds is not Tax-exempt.

"Event of Default" means one of the events so denominated and described in Section 6.1.

"Indemnified Parties" shall have the meaning set forth in Section 5.2.

"Indenture" means that Indenture of Trust, dated as of December 1, 2010, between the Issuer and the Trustee, including any indentures supplemental to the Indenture, with respect to the Bonds.

"Issuer" means the California Enterprise Development Authority, including its successors and assigns.

"Loan Agreement" means this Loan Agreement as it now exists and as it may hereafter be amended in accordance with Section 2.4 and Section 8.10.

"Net Proceeds" means the Sale Proceeds of the Bonds less any Proceeds deposited in a reasonably required reserve or replacement fund within the meaning of Section 148 of the Code.

"Note" means the note in the principal amount of the Bonds executed by the Borrower in favor of the Issuer evidencing the loan of the proceeds of the Bonds hereunder and assigned to the Trustee, including any amendment or supplement thereto or substitution therefor.

"Outstanding", when used with reference to the Bonds, has the meaning set forth in Article I of the Indenture.

"Payment in Full of the Bonds" specifically encompasses the situations referred to in Article X of the Indenture.

"Person" means any natural person, firm, association, corporation, partnership, limited liability company, joint stock company, joint venture, trust, unincorporated organization or firm, or a government or any agency or political subdivision thereof or other public body.

"Pledged Revenues" means and shall include:

(a) the payments required to be made by or on behalf of the Borrower under this Loan Agreement except (i) payments to the Trustee for services rendered as Trustee under the Indenture and payments to be made to any co-trustee for services rendered under the Indenture and (ii) expenses, indemnification, rebate payments and other payments required to be made pursuant to Sections 4.4, 5.2, 5.6, 5.7 and 6.4, or otherwise to or for the Trustee or the Issuer, and

(b) any proceeds which arise with respect to any disposition or lease of any of the property, money, securities and interests granted by the Issuer to the Trustee under the Granting Clauses of the Indenture.

"Proceeds" means the gross proceeds of the Bonds within the meaning of Section 148 of the Code.

"Project" means the acquisition of land and the acquisition, construction and equipping of tenant improvements and other improvements to comprise a corporate headquarters facility on improved real property leased by Borrower at 51, 77 and 145 Rio Robles Drive, San Jose, California, as more fully described in Schedule A to this Agreement.

"Rebate Amount" means the excess of the future value, as of a date, of all receipts on nonpurpose investments over the future value, as of that date, of all payments on nonpurpose investments, as more fully described in Section 148(f) of the Code and Section 1.148-3 of the Treasury Regulations.

"Sale Proceeds" means any amounts actually or constructively received by the Issuer from the sale (or other disposition) of the Bonds, including any amounts used to pay underwriters' discount or compensation and accrued interest other than pre-issuance accrued interest.

"Secretary" means the Secretary or an Assistant Secretary of the Issuer.

"State" means the State of California.

"Statement of Bond Counsel" means a written statement of Bond Counsel addressed to the Trustee to the effect that (i) due to Internal Revenue Service action or other events, legal counsel is not able on the date of such statement to deliver its opinion that, under present law, interest paid or to be paid on the Bonds is Tax-exempt; or (ii) without a redemption of the Bonds, due to Internal Revenue Service action or other events, legal counsel would not be able to deliver its opinion to the effect that the interest paid or to be paid on the Bonds or a portion thereof is Tax-exempt.

"Tax Agreement" means, collectively, the Certificate as to Arbitrage and the Use of Proceeds Certificate dated as of the Closing Date and entered into by the Borrower and the Issuer.

"Treasury Regulations" means the applicable proposed, temporary or final Income Tax Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

"Trustee Fees" means the periodic fees and expenses, including, without limitation, counsel fees, charged by the Trustee in order to serve as Trustee under the Indenture.

Section 1.2. Certain Rules of Interpretation. The definitions set forth in Section 1.1 shall be equally applicable to both the singular and plural forms of the terms therein defined and shall cover all genders.

"Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Loan Agreement and not solely to the particular Article, Section or subdivision hereof in which such word is used.

Reference herein to an Article number (e.g., Article IV) or a Section number (e.g., Section 6.2) shall be construed to be a reference to the designated Article number or Section number hereof unless the context or use clearly indicates another or different meaning or intent.

Section 1.3. Other Defined Terms. Capitalized terms used herein and not otherwise defined in this Loan Agreement shall have the meanings given such terms in the Indenture.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the Issuer. The Issuer makes the following representations as the basis for the undertakings on its part herein contained:

(a) is a public entity duly organized and validly existing under the laws of the State. Under the provisions of the Act, the Issuer has the power to enter into the transactions contemplated by this Agreement and the Indenture and to carry out its obligations hereunder. By proper action, the Issuer has been duly authorized to execute, deliver and duly perform its obligations under this Agreement and the Indenture.

(b) The Issuer is not in default under any of the provisions of the laws of the State which default would affect its existence or its powers referred to in Section 2.1(a).

(c) The Issuer has found and determined and hereby finds and determines that (i) the Loan to be made hereunder with the proceeds of the Bonds will promote the purposes of the Act by providing funds to finance the Project; and (ii) said Loan is in the public interest, serves the public purposes and meets the requirements of the Act.

(d) The execution and delivery of this Agreement and the Indenture and the consummation of the transactions herein and therein contemplated will not in any material respect conflict with or constitute on the part of the Issuer a breach of or default under any agreement or other instrument to which the Issuer is a party or by which it is bound or any existing law, regulation, court order or consent decree to which it is subject which breach or default would have a material adverse effect on the Issuer's ability to perform its obligation under the Indenture or this Agreement.

Section 2.2. No Representation or Warranty by Issuer as to the Project. The Issuer makes no representation or warranty concerning the suitability of the Project for the purpose for which it was undertaken by the Borrower or concerning the feasibility or creditworthiness of the Borrower. The Issuer has not made any independent investigation as to the feasibility or creditworthiness of the Borrower.

Section 2.3. Representations by the Borrower. The Borrower makes the following representations as the basis for the undertakings on their part herein contained:

(a) Organization and Power. (i) The Borrower is duly organized, validly existing and in good standing under the laws of the State of Delaware, (ii) the Borrower has all requisite corporate power and authority, and the legal right to own and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted.

(b) Pending Litigation. Except as otherwise disclosed to the Issuer, there are no proceedings pending, or to the knowledge of the Borrower, threatened in writing against or affecting the Borrower in any court or before any governmental authority, arbitration board or tribunal which, would reasonably be expected to result in a material adverse effect on the transactions contemplated by this Loan Agreement, the Bond Purchase Agreement, the Remarketing Agreement, the Indenture or any of the Borrower Documents or which, in any way, would reasonably be expected to result in a material adverse effect on the properties, business, or condition (financial or otherwise) of the Borrower, or the abili ty of the Borrower to perform its obligations under the Borrower Documents. The Borrower is not in default with respect to an order of any court, governmental authority, arbitration board or tribunal.

(c) Agreements are Legal and Authorized. The execution and delivery by the Borrower of each of the Borrower Documents and the compliance by the Borrower with all of the provisions hereof and thereof (i) are within the corporate power of the Borrower, (ii) will not materially conflict with or result in any material breach of any of the provisions of, or constitute a material default under, or result in the creation of any lien, charge or encumbrance upon any property of the Borrower under the provisions of, any agreement, or other instrument to which the Borrower is a party or by which it is bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or

governmental agency or body having jurisdiction over the Borrower or any of its activities or properties and (iii) have been duly authorized by all action on the part of the Borrower.

(d) Governmental Consent. Neither the Borrower nor any of its business or properties, nor any relationship between the Borrower and any other person, nor any circumstances in connection with the execution, delivery and performance by the Borrower of the Borrower Documents or the offer, issue, sale or delivery by the Issuer of the Bonds, is such as to require the consent, approval or authorization of, or the filing, registration or qualification with, any governmental authority on the part of the Borrower other than (i) those already obtained; and (ii) those the failure of which to obtain or make would not reasonably be expected to result in a material adverse effect on the properties, busi ness, or condition (financial or otherwise) of the Borrower; provided, however, that no representation is made as to any consents, approvals or authorizations required by the Issuer to issue the Bonds.

(e) No Defaults. No event has occurred and no condition exists with respect to the Borrower that would constitute an "event of default" beyond any applicable grace period under any of the Borrower Documents or which, with the lapse of time or with the giving of notice or both, would become such an "event of default." The Borrower is not in violation in any material respect of any material agreement or other material instrument to which it is a party or by which it is bound, except where such violation or default would not reasonably be expected to result in a material adverse effect on the properties, business, or condition (financial or otherwise) of the Borrower.

(f) Compliance with Law. The Borrower is not in material violation of any material laws, ordinances, governmental rules or regulations to which it is subject and has not failed to obtain any licenses, permits, franchises or other governmental authorizations necessary to the ownership of its properties or to the conduct of its business in each case, except where such violation or failure would not reasonably be expected to result in a material adverse effect on the properties, business, or condition (financial or otherwise) of the Borrower.

(g) Governmental Filings and Permits. The Borrower has made or will make prior to the date required therefor all filings with and has obtained or will obtain prior to the date required therefor all approvals, permits, authorizations and consents from all federal, state and local regulatory agencies having jurisdiction to the extent, if any, required by applicable laws and regulations to be made or to be obtained in connection with the (a) acquisition, construction, renovation and equipping of the Project and (b) execution and delivery by the Borrower of, and performance by the Borrower of its obligations under, the Borrower Documents., except where the failure to make such filings or obtain such approvals, permits, authorizations and consents would not reasonably be expected to result in a material adverse effect on the properties, business, or condition (financial or otherwise) of the Borrower.

(h) Estimated Time of Completion of the Project. The Project is estimated to be completed by March 2012.

(i) Location of the Project. The Project is wholly located in the City of San Jose, Santa Clara County, California (the "City") and within the boundaries of a Recovery Zone. On December 8, 2009, the City designated the area of the entire City (the "Designated Area") as a Recovery Zone pursuant to Resolution No. 75216, dated

December 8, 2009, which Resolution is contained in the transcript for the Bonds. Pursuant to Resolution No. 10-44, dated December 8, 2010 and included elsewhere in the transcript for the Bonds, the Authority acknowledged the Designated Area as a Recovery Zone and adopted and ratified the City's designation of the Recovery Zone effective as of the date of designation of said Recovery Zone by the City.

(j) Date of Construction or Acquisition of Project. The Project is to be constructed, renovated or acquired by the Borrower after December 8, 2009.

(k) Commencement of Original Use of Project. The original use of the Project commences with the Borrower.

(l) Borrower's Use of Project. Substantially all of the use of the Project is in the active conduct of business by the Borrower in the Recovery Zone. The Borrower will not sell, convey, or transfer Project to any person or entity or otherwise discontinue using the project in an active trade or business within the Recovery Zone, unless it receives an opinion of Bond Counsel that such action will not adversely affect the tax-exempt status of the Bonds.

Section 2.4. Modification and Termination of Special Tax Covenants. Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), neither this Loan Agreement nor the Note may be amended, changed, modified, altered or terminated except as permitted herein and by the Indenture and with the written consent of the Borrower, the Issuer, the Trustee and the Bank, if any (to the extent the amendment or modification would adversely affect or alter the obligations or rights of the Bank thereunder). The Issuer and the Borrower hereby agree to amend this Loan Agreement to the extent required or permitted, in the reasonable opinion of Bond Counsel, in order to maintain the Tax-exempt status of the Bonds. The party requesting such amendment shall notify, in writing, the other party to this Loan Agreement and the Trustee of the proposed amendment, with a copy of such requested amendment to Bond Counsel. After review of the proposed amendment, Bond Counsel shall render to the Trustee an Opinion of Counsel, prior to such proposed amendment becoming effective, that such proposed amendment shall not adversely affect the Tax-exempt status of the Bonds.

Section 2.5. Purchase of Bonds by Issuer. Except for purchases to retire Bonds pursuant to the Indenture, the Issuer agrees that it shall not purchase any Bonds, directly or indirectly.

ARTICLE III

ISSUANCE OF THE BONDS; ACQUISITION, CONSTRUCTION, INSTALLATION AND FINANCING OF THE PROJECT

Section 3.1. Agreement to Acquire, Construct, Renovate and Equip the Project; Other Covenants.

(a) The Borrower will acquire, construct, renovate and equip, or cause to be acquired, constructed, renovated and equipped, the Project. In the event of any material change in the Project there shall be filed with the Issuer and the Trustee a Favorable Opinion of Bond Counsel. The Borrower will obtain all licenses, permits and consents required for the acquisition, construction, renovation and equipping of the Project, and the Issuer shall have no responsibility therefor.

(b) The Borrower at all times shall do or cause to be done and performed all acts and things necessary in order to assure that the Project is operated as an authorized project for a purpose and use as provided for under the Act and as set forth in its Application until the expiration or earlier termination of this Agreement.

(c) The Borrower will not make any changes to the Project or to the operation thereof or of the classification of the Project to the extent such change or changes would affect the qualification of the Project under the Act or adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(d) The Borrower will not make any changes to the Project or the operation thereof which would result in the Project being materially different than presented in the Application or violate any of the Borrower's covenants in this Agreement without the prior written consent of the Issuer.

Section 3.2. Agreement to Issue Bonds; Application of Proceeds; Project Fund. In order to provide funds to make the loan to the Borrower to finance the Project, the Issuer agrees that as soon as possible it will authorize, validate, sell and cause to be delivered to the initial purchaser or purchasers thereof, the Bonds, bearing interest and maturing as set forth in Article II of the Indenture, at a price to be approved by the Borrower, and it will thereupon make the loan of the proceeds of the Bonds received from said sale by depositing said proceeds in the Project Fund, Costs of Issuance Fund and Reserve Fund established under the Indenture, subject to disposition thereof in accordance with the terms of this Agreement, including Section 3.6 hereof. &# 160;The moneys in the Project Fund shall be used to pay the Costs of Project.

Section 3.3. Completion. Immediately after the Completion Date, the Borrower shall deliver to the Trustee a certificate signed by a Borrower Representative substantially in the form provided in Exhibit C to this Agreement. Any amount remaining in the Project Fund thereafter (except for amounts therein sufficient to cover the Costs of Project not then due and payable or not then paid) shall be applied by the Trustee in the manner set forth in Section 5.3 of the Indenture. To the extent required under the Code, the Borrower shall give the Trustee investment instructions with respect to the Project Fund which would not result in such funds being invested at a yield materially higher than the yield on the Bonds.

Section 3.4. Limitation of Issuer's Liability. NEITHER THE STATE OF CALIFORNIA NOR ANY POLITICAL CORPORATION, SUBDIVISION OR AGENCY OF THE STATE OF

CALIFORNIA SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, THE INTEREST ON, OR THE PURCHASE PRICE OF THE BONDS, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA, THE ISSUER, OR ANY OTHER POLITICAL CORPORATION, SUBDIVISION, OR AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, INTEREST ON, OR THE PURCHASE PRICE OF THE BONDS.

Section 3.5. Disclaimer of Warranties. The Borrower recognizes that since the Project will be acquired, constructed and equipped by the Borrower and by contractors and suppliers selected by the Borrower, NEITHER THE ISSUER NOR THE TRUSTEE MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE PURPOSES OF THE BORROWER OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL PAY THE COST TO BE INCURRED IN CONNECTION THEREWITH.

Section 3.6. Payments from Project Fund. The Trustee shall use moneys in the Project Fund solely to pay the Costs of Project. Before any payment shall be made from the Project Fund other than the Costs of the Project payable to Borrower on the Closing Date pursuant to Section 5.1(b)(i) of the Indenture, there shall be filed with the Trustee:

(a) A requisition, in the form attached hereto as Exhibit B, signed by the Borrower Representative, stating to whom the payment is to be made, the amount of payment, the purpose in reasonable detail for which the obligation to be paid was incurred, that the obligation stated on the requisition has been incurred by the Borrower in or about the acquisition, construction, consummation or equipping of the Project, each item is a proper charge against the Project Fund and the obligation has not been the basis for a prior requisition which has been paid and containing the additional statements set forth in Exhibit B.

(b) An invoice (if the obligation is greater than $20,000) of the obligation described in the requisition required by subsection (a) above.

The Costs of the Project payable to Borrower on the Closing Date pursuant to Section 5.1(b)(i) of the Indenture are costs that were paid or incurred by the Borrower on or after October 8, 2010 or were for reimbursement costs as described in the Tax Agreement (or were paid prior to October 8, 2010 and do not exceed $100,000 or constitute a preliminary expenditure (e.g., engineering, surveying, soil testing) under Section 1.150-2(f)(2) of the Treasury Regulations and do not exceed 20 percent of the aggregate issue price of the Bonds) and have been used to finance the acquisition, construction, renovation improving and/or equipping of the Project after October 8, 2010. Such costs are a proper charge against the Project Fund, including without limitation in accordance with the provisions of the Tax Agreement, and such costs are or were necessary in connection with the acquisition, installation or construction of the Project.

Section 3.7. Investment of Funds. Except for amounts on deposit in the Purchase Fund and the Rebate Fund, any moneys held in the Project Fund, the Bond Fund, or any other fund created under the Indenture shall be invested or reinvested by the Trustee as set forth in Section 5.5 of the Indenture, to the extent permitted by law, in the Permitted Investments, at the specific written direction of the Borrower Representative. Amounts on deposit in the Rebate Fund shall be invested in a manner that creates no violation of Section 148(f) of the Code and

Section 1.148-3, of the Treasury Regulations. Amounts on deposit in the Purchase Fund will be held uninvested. All such investments shall at all times be a part of the fund (the Project Fund, the Bond Fund or such other fund created under the Indenture, as the case may be) from where the moneys used to acquire such investments shall have come, and all investment income and profits on such investments shall be credited to such funds as provided in the Indenture.

Section 3.8. Depositories of Moneys and Security for Deposit. All moneys received by the Issuer in connection with the issuance of the Bonds shall be deposited as provided in Section 5.1(b) of the Indenture. All such moneys deposited shall be applied in accordance with the terms and for the purposes herein set forth and shall not be subject to lien or attachment by any creditor of the Issuer.

The Issuer and the Borrower agree for the benefit of each other and for the benefit of the Trustee and the holders of the Bonds that the Net Proceeds of the Bonds will not be used in any manner that would affect the Tax-exempt status of the Bonds.

ARTICLE IV

PROVISIONS FOR PAYMENT

Section 4.1. Security for Bonds. The Issuer acknowledges that the only security for the Bonds will be the Pledged Revenues and any other moneys deposited in the funds and accounts created under the Indenture (except the Rebate Fund and the Purchase Fund) and, when required by the terms of the Indenture, the Letter of Credit. Pursuant to Section 4.3 hereof, at the election of the Borrower, the Borrower may cause a Credit Facility to be delivered to the Trustee to secure the Bonds.

Section 4.2. Payment Obligations of the Borrower.

(a) As consideration for the issuance of the Bonds and the lending of the proceeds of the Bonds to the Borrower by the Issuer in accordance with the provisions of this Loan Agreement, the Borrower agrees to execute and deliver to the Issuer the Note. In addition, the Borrower agrees (i) except as provided in subsection (b) of this Section and subject to the credit against payment provided in subsection (b) hereof or Section 5.5 of the Indenture, to make prompt payment to the Trustee, as assignee and pledgee of the Issuer, for deposit in the Bond Fund, of all payments on the Note as and when the same shall be due and payable and (ii) to pay pursuant hereto and the Note sums sufficient to pay the principal and purchase price of, premium, if any, or intere st on the Bonds (whether at maturity, upon redemption or acceleration, or otherwise) when and as the same shall be due and payable. All such payments shall be made to the Trustee, in lawful money of the United States of America, in immediately available funds.

(b) In order to initially support and provide for the payments required in subsection (a) of this Section, the Borrower shall cause the Bank to deliver the Letter of Credit, which shall not expire later than six months from the date of initial delivery of the Bonds, to the Trustee simultaneously with the original issue and delivery of the Bonds, and hereby authorizes and directs the Trustee to draw moneys under the Letter of Credit in accordance with the provisions of the Indenture to the extent necessary to make any payments of principal and purchase price of, and interest on the Bonds as and when the same become due. The Borrower shall receive as a credit against its obligations to

make the payments described in subsection (a) of this Section all payments made by the Bank under the Letter of Credit and all other amounts described in Section 5.2 of the Indenture. The Borrower hereby covenants and agrees to cause a Letter of Credit to be delivered to the Trustee to secure the Bonds in accordance with the requirements of the Indenture. Additionally, the Borrower covenants that no renewal or extension to the Letter of Credit beyond the initial six month term of the Letter of Credit shall be accepted by Borrower unless a Favorable Opinion of Bond Counsel has been delivered to the Trustee and the Issuer to the effect that such extension will not adversely affect the Tax-exempt status of the Bonds.

(c) If any of the payments required in subsection (a) and (b) above are not made, the item or installment which has not been made shall continue as an obligation of the Borrower until the same shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent permitted by law, at the rate per annum borne by the Bonds until paid in full.

(d) In addition, the Borrower agrees to pay the Costs of Issuance in connection with the Bonds, which Costs of Issuance shall be paid from the Costs of Issuance Fund held by the Trustee or directly by the Borrower.

(e) The Borrower agrees to pay, or cause to be paid, all costs and expenses related to or associated with the Project which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

(f) The Borrower agrees to maintain the Reserve Fund at the amount of the Reserve Fund Requirement.

(g) Notwithstanding any provision to the contrary contained in this Agreement or in any of the other Borrower Documents, it is expressly provided that in no case or event shall the aggregate of (a) all interest on the unpaid balance of the Note, accrued or paid from the date hereof and (b) the aggregate of any other amounts accrued or paid pursuant to the Note or any of the other Borrower Documents, which under applicable laws are or may be deemed to constitute interest upon the Note or any other indebtedness due hereunder or under the Note (the "Debt") from the date hereof, ever exceed the maximum rate of interest which could lawfully be contracted for, charged or received on the unpaid principal balance of the Debt. In this connection, it is expressly stipulated and agreed that it is the intent of the Borrower, the Issuer, and the Trustee to contract in strict compliance with the applicable usury laws of the State of California and of the United States (whichever permit the higher rate of interest) from time to time in effect. In furtherance thereof, none of the terms of this Agreement or any of the other Borrower Documents shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the Maximum Rate. The Borrower or other Persons now or hereafter becoming liable for payment of the Debt shall never be liable for interest in excess of the Maximum Rate. If under any circumstances the aggregate amounts paid on the Debt include amounts which by law are deemed interest which would exceed the Maximum Rate, the Borrower stipulates that such amounts will be deemed to have been paid as a result of an error on the part of the Borrow er, the Issuer, and the Trustee, and the Person receiving such excess payment shall promptly, upon discovery of such error or upon written notice thereof from the Person making such payment, refund the amount of such excess or credit such excess against the unpaid principal balance of the Debt, which remedies

under this Section 4.2 shall be the sole remedies of the Borrower and any other parties. In addition, all sums paid or agreed to be paid to the holder or holders of the Debt for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the Debt. The provisions of this section shall control all agreements, whether now or hereafter existing and whether written or oral, among the Borrower, the Issuer, and the Trustee.

Section 4.3. Letter of Credit; Alternate Letter of Credit.

(a) The initial Letter of Credit issued by the Bank supporting the Bonds constitutes an irrevocable obligation of the Bank to pay to the Trustee, upon request and in accordance with the terms thereof, up to an amount equal to the sum of (i) the principal amount of the Bonds then Outstanding and (ii) an amount equal to interest for thirty-eight (38) days on the principal amount of each Bond then Outstanding at the rate of twelve per centum (12%) per annum.

(b) The Borrower shall have the option from time to time to provide the Trustee with an Alternate Letter of Credit in accordance with the provisions of Section 4.11(e) of the Indenture provided that the Borrower shall so notify the Trustee and the Remarketing Agent in writing at least forty-five (45) days prior to the Substitution Date. If at any time there shall have been delivered to the Trustee an Alternate Letter of Credit and the other documents and opinions required by Section 4.11(e) of the Indenture, then the Trustee shall accept such Alternate Letter of Credit and, after making any necessary draws under the Letter of Credit to pay the Purchase Price of the Bonds pursuant to the Indenture, promptly surrender the previously held Letter of Credit to the issuer thereof for cancellation, in accordance with the terms of such Letter of Credit. If at any time there shall cease to be any Bonds Outstanding under the Indenture, the Trustee shall promptly surrender the Letter of Credit, if any, to the issuer thereof, in accordance with the terms of such Letter of Credit, for cancellation. The Trustee shall comply with the procedures set forth in the Letter of Credit relating to the termination thereof.

(c) The Borrower shall notify the Trustee in writing at least forty-five (45) days prior to the Expiration Date that the Letter of Credit will terminate or be extended on such Expiration Date and as to whether the Borrower will provide the Trustee with an Alternate Letter of Credit.

(d) The Borrower hereby reserves the right to cause a Credit Facility to be delivered to the Trustee with respect to Bonds in the Term Rate Mode or Fixed Rate Mode; provided that, no amendment to the Indenture, the Loan Agreement or the Note relating to such Credit Facility shall be made unless any such amendment is made in accordance with the Indenture and this Agreement.

Section 4.4. Administrative Expenses. All reasonable expenses in connection with the preparation, execution, delivery, recording and filing of this Loan Agreement, the Note and other collateral documents and in connection with the preparation, issuance and delivery of the Bonds, the Issuer's fees, the fees and expenses of Bond Counsel, the fees and expenses of the Trustee, the fees and expenses of Trustee's counsel and the fees and expenses of counsel to the initial beneficial owners of the Bonds shall be paid directly by the Borrower. The Borrower shall also pay throughout the term of the Bonds the Trustee's annual and reasonable fees and expenses under the Indenture, this Loan Agreement and the Note, including, but not limited to,

reasonable attorney's fees and expenses and all costs of issuing, marketing, collecting payment on and redeeming the Bonds thereunder.

Section 4.5. Obligations of the Borrower Absolute and Unconditional. Subject to the provisions of Section 6.5, the obligations of the Borrower to make or, in the case of Section 4.2(b), to cause (pursuant to the Letter of Credit) to be made the payments required in Sections 4.2 and 4.4 and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional and shall not be subject to diminution by set off, counterclaim, abatement or otherwise by reason of any action or inaction of the Trustee, the Issuer or any third party. Until such time as the principal and purchase price of, premium and redemption price, if any, on and the interest on, the Bonds shall have been paid in full as provided in the Indenture, the Borrower (a) will not suspend or discontinue any payments provided for in Sections 4.2 and 4.4 except to the extent the same have been prepaid, (b) will perform and observe all their other agreements contained herein and (c) except as provided in Article VII, will not terminate this Loan Agreement for any cause, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, sale, loss, eviction or constructive eviction, destruction of or damage to the Project, condemnation, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either, or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection herewith or with the Indenture.

Nothing contained herein shall be construed as a waiver of any rights which the Borrower may have against the Issuer under this Loan Agreement, or against any person under this Loan Agreement, the Indenture or otherwise, or under any provision of law; provided, however, that the Borrower shall pursue any rights or remedies against the Issuer, the Trustee, any Bondholder or any third party in connection herewith, or in connection with the Indenture, the Borrower Documents or otherwise relating to the Bonds and security therefor only in a separate action, and not by way of any set-off, counterclaim, cross-claim or third party action in any suit brought to enforce the rights of the Bondholders, the Trustee or the Issuer under this Loan Agreement, the Indenture, the Borrower Documents or otherwise in connection herewith or therewith; and provided further, that in order to preserve the right of the Borrower to raise such issues in any separate suit, any claim of the Borrower which, but for this Section 4.5, would be a compulsory counterclaim, shall be identified as such in the first responsive pleading filed by the Borrower to any action brought by the Issuer, the Trustee, any Bondholder or any person.

Section 4.6. Borrower's Consent to Assignment of Loan Agreement and Execution of Indenture. The Borrower understands that the Issuer will, pursuant to the Indenture and as security for the payment of the principal and purchase price of, premium, if any, and the interest on the Bonds, assign and pledge to the Trustee, and create a security interest in favor of the Trustee in certain of its rights, title and interest in and to this Loan Agreement (including all Pledged Revenues) reserving, however, the Reserved Rights; and the Borrower hereby agrees and consents to such assignment and pledge. The Borrower acknowledges that it has received a copy of the Indenture and consents to the execution of the same by the Issuer; provided, however, such c onsent does not constitute a representation as to the accuracy of any representations or warranties made by the Issuer thereunder.

Section 4.7. Borrower's Performance Under Indenture. The Borrower agrees, for the benefit of the Bondholders, to do and perform all acts and things required in the Indenture to be done or performed by it.

ARTICLE V

PARTICULAR AGREEMENTS

Section 5.1. Public Purpose Covenants of the Borrower. The Borrower hereby covenants as follows:

(a) Inducement. The availability of financial assistance from the Issuer as provided herein has been an important inducement to the Borrower to undertake the Project.

(b) No Untrue Statements. As of the date hereof, to the Borrower's knowledge, there is no fact, which has had or would reasonably be expected to have a material and adverse effect on the transactions contemplated by this Loan Agreement, the Bond Purchase Agreement, the Remarketing Agreement, the Indenture or any of the Borrower Documents which has not been described in this Loan Agreement, the Bond Purchase Agreement, the Remarketing Agreement, the Indenture, any of the Borrower Documents or in the other documents, certificates and written statements, including the Application, furnished to the Issuer by the Borrower prior to the date hereof in connection with the transactions contem plated hereby or thereby. As of the Closing Date, to the best knowledge of the Borrower, all written statements furnished to the Issuer by, or as directed by, the Borrower (other than any information that was provided by the Borrower or any of its representatives prior to the date hereof and which contains "forward looking statements"), taken as a whole, including written updated or supplemented information delivered on or prior to the date hereof, are true and correct in all material respects. The Borrower understands that all such written information and statements have been relied upon as an inducement by the Issuer to issue the Bonds.

(c) Project Users. The Borrower shall not permit any leasing, subleasing or assigning of leases of all or any part of the Project that would adversely affect the Tax-exempt status of the Bonds, or that would impair the ability of the Borrower to operate the Project in violation of any provision of the Tax Agreement. Notwithstanding such lease, sublease or assignment of lease, the Borrower shall be liable for the loan payments hereunder.

(d) Maintain Existence; Merge, Sell, Transfer.

(1) Except as provided in subsection (2) of this Section 5.1(d) and in the Tax Agreement, the Borrower shall maintain its existence as a legal entity and shall not sell, assign, transfer or otherwise dispose of the Project without the written consent of the Issuer; provided, however, that the Borrower, without the consent or approval of the Issuer, may merge with or into or consolidate with another entity, or the Project or this Agreement may be sold, assigned, transferred or otherwise disposed of and the Borrower released from its obligations under this Agreement and the Note without violating this subsection, provided that (A) the Borrower causes the proposed surviving, resulting or transferee company to furnish the Issuer with a change of ownership information form prescribed by the Issuer; (B) the Borrower files with the Issuer a nd the Trustee an Opinion of Counsel delivered by Bond Counsel to the effect that the

merger, consolidation, sale or transfer shall not adversely affect the Tax-exempt status of the Bonds; (C) the surviving, resulting or transferee company assumes in writing the obligations of the Borrower under this Agreement and the Note; (D) in connection with any such merger, consolidation, sale or transfer, and, provided the Letter of Credit remains outstanding, the Bank shall expressly ratify and affirm that the Letter of Credit remains in full force and effect; (E) the surviving, resulting or transferred entity shall preserve and keep in full force and effect all licenses and permits necessary to the proper conduct of its business; and (F) after the merger, consolidation or transfer, the Project shall continue to be operated as an authorized project under the Act, including, without limitation, for the creation or retention of p rimary jobs by a company which meets the qualifications thereof contained in the Act.

(2) The Borrower shall have the right to sell, exchange, transfer or otherwise dispose of a portion of the Borrower's undivided ownership interest in the Project; provided, however, the Borrower shall deliver to the Issuer and the Trustee a Favorable Opinion of Bond Counsel prior to such sale, exchange, transfer or other disposition.

(e) Relocate Project. While the Bonds are outstanding, the Borrower shall not relocate the Project or any part thereof outside of the Recovery Zone within the City of San Jose designated in Resolution No. 75216 of the City Council of the City of San Jose.

(f) Operation of Project. The Borrower shall operate or cause the Project to be operated as an authorized project for a purpose and use as provided for under the Act until the expiration or earlier termination of this Loan Agreement. The Borrower shall not fail to operate or cause the Project to be operated in accordance with this Section unless the Borrower obtains the prior written consent of the Issuer and delivers to the Issuer and the Trustee a Favorable Opinion of Bond Counsel prior to such failure.

(g) Annual Certification. Within 90 days of the last day of each fiscal year of the Borrower, the Borrower shall furnish to the Issuer the following:

(1) a certification indicating whether or not the Borrower is aware of any condition, event or act which constitutes an Event of Default as of the last day of such fiscal year of the Borrower, or which would constitute an Event of Default with the giving of notice or passage of time, or both, under any of the documents executed by the Borrower in connection with the issuance of the Bonds; and

(2) a written description of the present use of the Project and a description of any anticipated material change in the use of the Project or in the number of employees employed at the Project.

(h) Maintenance, Operation and Insuring of the Project; Taxes; No Operation of the Project by Issuer. The Borrower will at all times preserve and protect the Project in good repair, working order and safe condition, and from time to time will make, or will cause to be made, all needed and proper repairs, renewals, replacements, betterments and improvements thereto including those required after a casualty loss to which Section 7.2 hereof does not apply. The Borrower shall pay, or cause to be paid, all

operating costs, utility charges and other costs and expenses arising out of ownership, possession, use or operation of the Project. The Issuer shall have no obligation and makes no warranties respecting the condition or operation of the Project. This Loan Agreement does not prevent the Borrower from merging or consolidating with another entity as permitted by Section 5.1(d). The Borrower further agrees that, except for taxes contested in good faith, it will pay or cause to be paid all taxes levied with respect to the Project and that it will keep, or cause to be kept, the Project properly insured against loss or damage from such perils usually insured against by businesses operating or owning like properties and maintain public liability insurance and all such worker's compensation or other similar insuran ce as may be required by law. Nothing contained in this Loan Agreement shall be deemed to authorize or require the Issuer to operate the Project or to conduct any business enterprise in connection therewith.

(i) Additional Information. Until payment in full of the Bonds shall have occurred, the Borrower shall promptly, from time to time, deliver to the Issuer such information and materials relating to the Project and the Borrower as the Issuer may reasonably request for purposes of determining compliance with this Agreement. An authorized Issuer representative shall also be permitted, at all reasonable times upon furnishing of notice that is reasonable under the circumstances, to examine the books and records of the Borrower with respect to the Project and the obligations of the Borrower hereunder, but such representative shall not be entitled to access to trade secrets or other pro prietary information (other than financial information of the Borrower).

(j) State Sales or Use Tax. By virtue of the Project being financed under the Act, the Borrower has not and will not maintain that the Borrower is entitled to an exemption from California sales or use taxes on personal property acquired in connection with the Project.

Section 5.2. Indemnity Against Claims.

(a) The Borrower hereby releases and agrees to and do hereby at all times indemnify and hold harmless the Issuer and any person who "controls" the Issuer (within the meaning of Section 15 of the Securities Act of 1933, as amended), the Trustee, and any member, officer, director, official, employee and attorney of the Issuer or the Trustee (collectively called the "Indemnified Parties") against any and all claims by third parties for costs, damages, expenses and liabilities of whatsoever nature (including but not limited to attorney's fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments collectively, the "Indemnified Claims") directly or indirectly resulting from, arising out of, or related to (a) the issuance, offering, sale, delivery, or payment of the Bonds and interest thereon; or (b) the design, construction, installation, operation, use, occupancy, maintenance and ownership of the Project or any part thereof including the payment of rebate to the federal government; or (c) any untrue or alleged untrue statement of a material fact contained in information provided by the Borrower with respect to the transactions contemplated hereby; or (d) any omission of a material fact necessary to be stated in information provided by the Borrower with respect to the transactions contemplated hereby in order to make such information not misleading or incomplete or (e) the performance by the Indemnified Parties (except for the Trustee) of their rights and obligations under the Indenture and this Loan Agreement; provided, however, that the Borrower shall not be liable for Indemnified Claims of an Indemnified Party to the extent arising from the sole or concurrent willful misconduct or negli gence of such Indemnified Party. In case any action shall be brought against one

or more of the Indemnified Parties based upon any of the above and in respect to which indemnity may be sought against the Borrower, such Indemnified Party shall promptly notify the Borrower in writing, and except where the Borrower is the claimant, the Borrower shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party, the payment of all reasonable costs and expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ only one counsel at the Borrower's expense in any such action and to participate in the defense thereof. The Borrower shall not be liable for any settlement of any such action effected without the Borrower's consent, which consent shall not be unreason ably withheld, but if settled with the consent of the Borrower, or if there is a final judgment for the claimant on any such action, the Borrower agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(b) The Borrower agrees to and does hereby indemnify and hold harmless the Indemnified Parties against any and all claims by third parties for Indemnified Claims suffered by any of the Indemnified Parties and caused by, relating to, arising out of, resulting from, or in any way connected to an examination, investigation or audit of the Bonds by the Internal Revenue Service; provided, however, that the Borrower shall not be liable for Indemnified Claims of an Indemnified Party to the extent arising from the sole or concurrent willful misconduct or negligence of such Indemnified Party. In the event of such examination, investigation or audit, the Indemnified Parties shall have the right to employ one counsel at the Borrower's expense. In such event, the Borrower shall assume the primary role in responding to and negotiating with the Internal Revenue Service, but shall inform the Indemnified Parties of the status of the investigation. In the event the Borrower fails to respond promptly to the Internal Revenue Service, the Issuer shall have the right to assume the primary role in responding to and negotiating with the Internal Revenue Service and shall have the right to enter into a closing agreement, for which the Borrower shall be liable.

(c) Notwithstanding anything in this Agreement to the contrary which may limit recourse to the Borrower or may otherwise purport to limit the Borrower's liability, the provisions of this Section 5.2 shall control the Borrower's obligations and shall survive repayment of the Bonds.

Section 5.3. Agreement of Issuer not to Assign or Pledge. The Issuer covenants that it will not pledge the amounts derived from this Agreement other than as contemplated by the Indenture and the Bonds.

Section 5.4. Redemption of Bonds. The Trustee, as assignee of the Issuer pursuant to the Indenture, agrees at the written request at any time of the Borrower and if the same are then redeemable, to forthwith take all steps that may be necessary under the applicable redemption provisions of the Indenture to effect redemption of all or any portion of the Bonds, as may be specified in writing by the Borrower, on the earliest redemption date on which such redemption may be made under such applicable provisions or upon the date set for the redemption by the Borrower pursuant to Article VII. As long as the Borrower is not in default hereunder and the Issuer is not obligated to call Bonds pursuant to the terms of the Indenture, neither the Issuer nor the Trustee shall redeem any Bond prior to its stated maturity unless requested to do so in writing by the Borrower.

Section 5.5. Reference to Bonds Ineffective After Bonds Paid. Upon Payment in Full of the Bonds and all fees and charges of the Trustee and the Issuer, all references herein to the Bonds and the Trustee shall be ineffective and neither the Issuer, the Trustee nor the holders of any of the Bonds shall thereafter have any rights hereunder and the Borrower shall have no further obligation hereunder, saving and excepting those that shall have theretofore vested and any right of any Indemnified Party (as defined in Section 5.2) to indemnification under Section 5.2, and the Borrower's obligations under Sections 4.2(d), 4.4, 5.6, 5.7 and 6.4, which right and obligations shall survive the payment of the Bonds and the termination of this Loan Agreement. &# 160;Reference is hereby made to Article X of the Indenture which sets forth the conditions upon the existence or occurrence of which Payment in Full of the Bonds shall be deemed to have been made.

Section 5.6. Tax Related Covenants. It is the intention of the parties hereto that interest on the Bonds shall be and remain Tax-exempt so long as the Bonds are Outstanding, and to that end the representations, covenants, and agreements of the Borrower in this Section and the following Section are for the benefit of the Trustee and each and every Registered Owner of the Bonds. The Issuer and the Borrower hereby covenant to comply with the provisions of the Code applicable to the Bonds and not to take any action or fail to take any action that would cause the interest on the Bonds to lose their Tax-exempt status. The Issuer and the Borrower agree that they shall at all times do or cause to be done and perform or cause to be performed all acts and t hings necessary or desirable in order to assure that interest paid on the Bonds shall, for purposes of federal income taxation, be and remain Tax-exempt and that they will refrain from doing or performing any act or thing that will cause such interest not to be Tax-exempt; provided, however, that this provision shall in no way limit the obligation of the Borrower to comply with its federal tax law related covenants contained in this Agreement and the Tax Agreement.

The Borrower represents, warrants, covenants and agrees as follows:

(a) Limitation on Issuance Costs. The Borrower covenants that, no Proceeds of the Bonds and investment earnings thereon, in an amount in excess of two percent (2%) of the Proceeds of the sale of the Bonds, will be used to pay costs of issuing of the Bonds. If the fees of the original purchaser are retained as a discount on the purchase of the Bonds, such retention shall be deemed to be an expenditure of Proceeds of the Bonds for said fees.

(b) Limitation of Expenditure of Proceeds. The Borrower covenants that not less than 95 percent of the face amount of the Bonds, plus accrued interest and premium (if any) and less original discount (if any) paid on the purchase of the Bonds by the original purchaser from the Issuer, plus investment earnings on said amounts are paid for Recovery Zone Property.

(c) Limitation on Land. The Borrower covenants that no Proceeds of the Bonds shall be used, directly or indirectly, for the acquisition of land.

(d) Existing Facilities Limit. The Borrower covenants that no Proceeds of the Bonds shall be used for the acquisition of any tangible property or an interest therein, unless the first use of such property is pursuant to such acquisition.

(e) Financing Capital Expenditures; No Working Capital. All proceeds of the Bonds (other than amounts used to pay costs of issuance and to fund a reserve fund)

will be spent on capital expenditures with a reasonably expected economic life of one year or more.

(f) Certain Uses Prohibited. The Borrower covenants that no Proceeds of the Bonds shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(g) No Arbitrage Bonds. The Borrower covenants with the Issuer, the Trustee and the owners from time to time of the Bonds that so long as any Bond remains Outstanding, moneys on deposit in any fund or account in connection with the Bonds, whether or not such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner which will cause the Bonds to be "arbitrage bonds," within the meaning of Section 148 of the Code and the Treasury Regulations thereunder.

(h) Yield Restriction of Collateral. The Borrower covenants and agrees that all Collateral as defined in that certain Cash Collateral Account Pledge Agreement dated as of December __, 2010, given by the Borrower to Barclays Bank PLC, a copy of which is included elsewhere in the transcript for the Bonds, will be invested at a yield not in excess of the yield of the Bonds (yield reduction payments within the meaning of Section 148 of the Code may not be made in order to comply with this requirement). In this regard, each investment of the Collateral will be treated as a separate class of investments and the investment earnings thereon will not be commingled with other investments for purposes of complying with this yield restriction requirement, all within the meani ng of Treasury Regulation Section 1.148-10(b)(1)(ii).

Section 5.7. Acknowledgement of Tax Covenants of Issuer. Borrower acknowledges that in the Indenture the Issuer has entered into the following covenants related to establishment and maintenance of the Tax-exempt status of the Bonds. Borrower agrees to take all such action as is necessary or desirable to facilitate Issuer's compliance with such covenants.

(a) Arbitrage Covenant. The Issuer hereby covenants not to take or omit to take any action so as to affect the Tax-exempt status of the Bonds and to otherwise comply with the requirements of Sections 103 and 141 through 150 of the Code, and all applicable Treasury Regulations with respect thereto and with respect to the designation of the Bonds as Recovery Zone Bonds, throughout the term of the Bonds. The Issuer further covenants that it shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Bonds would have caused the Bonds to be "arbitrage bonds" within the meaning of section 148 of the Code.

(b) Rebate Requirement. The Issuer shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Bonds.

(c) Federal Guarantee Prohibition. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

(d) Maintenance of Tax Exemption. The Issuer shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Bonds. In furtherance thereof, the Issuer covenants that it will comply with the Tax Agreement.

Section 5.8. Inspection of Project. The Borrower covenants that the Issuer, by its duly authorized representatives, at reasonable times and with reasonable notice, for purposes of determining compliance with this Agreement, may, but shall not be required to, inspect any part of the Project facilities. The Borrower also agrees that the Issuer and its duly authorized agents shall have the right, at all reasonable times and upon prior written notice, to enter upon and to examine and inspect the premises of the Project and to examine the books and records of the Borrower with respect to the Project for the purpose of determining compliance with this Agreement. The Borrower also agrees to provide the Issuer with such information and materials relating to the Project or the Borrower as are reasonably requested by the Issuer from time to time for the purpose of determining compliance with this Agreement.

Section 5.9. Filing of Other Documents. The parties hereto shall execute, at the request of the Borrower, and the Borrower shall file financing statements, continuation statements, notices and such other documents necessary to perfect all security interests created pursuant to the terms of this Loan Agreement and the Indenture and to preserve and protect the rights of the Trustee in the granting by the Issuer of certain rights of the Issuer, pursuant to the Indenture, under this Loan Agreement and the Note and the Issuer shall have no responsibilities for such filings whatsoever, other than executing the documents requested by the Borrower. Notwithstanding anything to the contrary contained herein, the Trustee shall have no responsibility for the preparing, recording, filing, re-recording, or re-filing of any financing statement, continuation statement or other instrument in any public office.

Section 5.10. Continuing Disclosure. The Borrower agrees to enter into a continuing disclosure agreement with the Trustee, in form satisfactory to Bond Counsel, the Trustee and counsel to the Underwriter so as to satisfy the continuing disclosure requirements of Section (b)(5) of Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended and supplemented. The Borrower hereby covenants and agrees with the Owners that it will comply with and carry out all of the provisions of such continuing disclosure agreement, as amended from time to time, applicable to it. The Borrower also understands and agrees that the Issuer shall have no liability to any Owner or any Person with respect to any reports, notices or disclosures required by or provided pursuant to this Section 5.10. Notwithstanding any other provision of this Agreement, failure of the Borrower to comply with such continuing disclosure agreement shall not be considered a default or an event of default under this Agreement and the rights and remedies provided by this Agreement upon the occurrence of an Event of Default shall not apply to any such failure, but the continuing disclosure agreement may be enforced only as provided therein.

Section 5.11. Covenants Established in Connection with Conversion to Fixed Rate.

In the event the Bonds are to be converted to a Fixed Rate Mode pursuant to Section 2.11 of the Indenture, not later than 12:00 noon, New York City time, on the Business Day prior to the Mode Change Date for such conversion, the Remarketing Agent shall determine covenants, if any which will be applicable to the Bonds so converted. Upon acceptance of the covenants by the Borrower in accordance with Section 2.11 of the Indenture and conversion of the Mode to the Fixed Rate Mode, this Loan Agreement, the Note and/or the Indenture shall be amended in accordance with Section 2.11(a)(ix) of the Indenture to reflect such determination to include new covenants provided there is delivered to the Trustee a Favorable Opinion of Bond Counsel with respect to such amendments.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.1. Events of Default Defined. The following shall be "Events of Default" hereunder and the term "Event of Default" shall mean, whenever it is used herein, any one or more of the following events:

(a) failure by the Borrower to make any payment required to be made under the Note or Section 4.2(a) when the same becomes due and payable;

(b) failure by the Borrower to comply with the prepayment provisions of Section 7.2;

(c) failure by the Borrower to observe or perform any agreement, covenant or condition hereunder or on its part to be observed or performed, other than as referred to in subsection (a) or (b) of this Section, within thirty (30) days after written notice, specifying such failure and requesting that it be remedied, has been delivered to the Borrower and the Bank, if any, by the Issuer or the Trustee, unless the Issuer and the Trustee shall agree in writing to an extension of such time; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Issuer and the Trustee will not unreasonably withhold their consent to an extension of such time if it is possible to correct such failure and corrective action is instituted b y the Borrower or the Bank, if any, within the applicable period and diligently pursued until the failure is corrected; or in the case of any such default which can be cured with due diligence but not within such thirty-day period, the Borrower's or the Bank's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence;

(d) the Borrower applies for or consents to the appointment of any receiver, trustee, or similar officer for it or for all or any substantial part of its property or admits in writing its inability to pay its debts as they mature; or such a receiver, trustee or similar officer is appointed without the application or consent of the Borrower and such appointment continues undischarged for a period of sixty (60) days; or the Borrower institutes (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding is instituted (by petition, application or otherwise) against the Borro wer and remains undischarged for a period of sixty (60) days; or the Borrower makes a general assignment for the benefit of creditors;

(e) if any representation or warranty by or on behalf of the Borrower made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Loan Agreement proves to be false or misleading in any material respect when made and such representation or warranty is not corrected within thirty (30) days after written notice has been delivered to the Borrower by the Issuer or the Trustee; provided, however, that an event described in this clause (e) shall not be an Event of Default if proceedings for the redemption of the Bonds shall have commenced; and

(f) an "Event of Default", as defined in the Indenture, occurs and is continuing under the Indenture beyond any applicable grace period;

provided, however, for so long as the Bank is not in default of its obligations under the Letter of Credit, an Event of Default (other than an "Event of Default" under Section 7.1(f) of the Indenture) shall not be deemed to have occurred without the prior written direction of the Bank, if any, and the Trustee shall not provide any notice of default (except to the Bank) or take any remedial action in consequence thereof without such written direction; provided, further, however, that the Issuer shall in all cases be entitled in its sole discretion to enforce its Reserved Rights.

Notwithstanding anything in this Agreement or in the Indenture to the contrary, a Determination of Taxability or a nonperformance or breach by the Borrower of a covenant relating to federal tax matters shall not be an event of default or an Event of Default hereunder.

The Borrower and the Issuer hereby authorize the Bank, if any, to do any and all things necessary to correct any default described in paragraph (c) above on behalf of the Borrower.

The foregoing provisions of subsection (c) of this Section are subject to the following limitations: if by reason of force majeure, the Borrower is unable in whole or in part to carry out the agreements on its part therein referred to, the failure to perform such agreements due to such inability shall not constitute an event of default nor shall it become an event of default upon appropriate notification to the Borrower or the passage of the stated period of time. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or offici als, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Borrower. The Borrower agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Borrower, and the Borrower shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Borrower, unfavorable to the Borrower.

Section 6.2. Remedies. Whenever an Event of Default shall have happened and be continuing, including, where applicable, at the written direction by the Bank, the Trustee, as the assignee of the Issuer under the Indenture, shall take any one or more of the following remedial steps:

(a) If an Event of Default shall occur (except for an "Event of Default" under Section 7.1(e) or (f) of the Indenture), with the written consent of the Bank, if any, so long as the Bank is not in default of its obligations under the Letter of Credit, the Trustee may, or if such Event of Default is described in Section 7.1(e) or (f) of the Indenture, the Trustee shall, declare all payments of principal and accrued interest required to be made under Section 4.2(a) and the Note to be immediately due and payable, whereupon the same shall become immediately due and payable. If the Trustee elects, or is required, as applicable, to exercise the remedy afforded in this subsection (a) and accelerates all

payments required to be made under Section 4.2(a), the amount then due and payable by the Borrower as accelerated payments shall be the sum of (i) the aggregate principal amount of the Outstanding Bonds, (ii) all interest on the Bonds then due and to become due to the date of payment of the principal of the Bonds and (iii) all other amounts due and payable to the Issuer, if any, to the Bondholders or to the Trustee with respect to the payment of the Bonds, including reasonable Counsel fees actually incurred. Notwithstanding any provisions hereof to the contrary, simultaneously with exercising the remedy afforded in this subsection (a) the Trustee shall accelerate payments with respect to the Bonds.

(b) Subject to the provisions of Section 6.5, the Trustee may take whatever action at law or in equity that may appear necessary or desirable to collect any sums then due and thereafter to become due hereunder or to enforce performance and the observance of any agreement of the Borrower hereunder or under the Note, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect the Pledged Revenues, purchase price payments and loan payments, and to apply the revenue from the Project in accordance with the terms hereof and of the Indenture.

(c) The Trustee may exercise any remedies provided under the Indenture.

Any amounts collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture.

The Borrower hereby authorizes the Trustee to draw moneys under the Letter of Credit, if any, in accordance with the Indenture upon a declaration of acceleration of principal of the Bonds in an amount equal to (i) the aggregate principal amount of all Outstanding Bonds and (ii) all interest on the Bonds due and to become due to the date fixed for payment. The obligation of the Borrower to accelerate payment of all amounts required to be paid by the Borrower pursuant to Section 4.2(a) upon a declaration of acceleration of principal of the Bonds shall be deemed satisfied and discharged by a corresponding drawing and payment under the Letter of Credit.

Section 6.3. No Remedy Exclusive. Subject to the provisions of Section 6.5, no remedy herein conferred upon or reserved to the Trustee, or the Issuer pursuant to its Reserved Rights, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. The Trustee and the holders of the Bonds, subject to the provisions of the Indenture, shall be entitled to the benefit of all agreements herein contained.

Section 6.4. Agreement to Pay Counsel Fees and Expenses. If there should occur a Default or an Event of Default by the Borrower hereunder and the Trustee or the Issuer should employ Counsel or incur other expenses for the collection of sums due hereunder or the enforcement of performance or observance of any agreement on the part of the Borrower herein contained, the Borrower agrees that it will on demand therefor pay to the Trustee or the Issuer the reasonable fee of such Counsel and such other reasonable expenses so incurred by the Trustee or the Issuer.

If the Borrower should fail to make any payments required in this Section, such item shall continue as an obligation of the Borrower until the same shall have been paid in full, with interest thereon, to the extent permitted by law, from the date such payment was due at the rate per annum borne by the Bonds until paid in full.

Section 6.5. Waiver of Events of Default and Rescission of Acceleration. If, in accordance with the Indenture, the Trustee shall waive any event of default as therein defined with the written consent of the Bank, if any, and its consequences or rescind any declaration of acceleration of the principal of and interest on the Bonds, such waiver shall also waive any Event of Default hereunder and its consequences and such rescission of a declaration of acceleration of the principal of and interest on the Bonds shall also rescind any declaration of any acceleration of all payments required to be made under Section 4.2. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Borrower, the Trustee, the Bank, if any, and the holders of the Bonds shall be restored to their former positions and rights hereunder, but no such waiver or rescission shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

Section 6.6. Additional Remedies. In addition to the above remedies, if the Borrower commits a material breach, or threatens to commit a breach of this Agreement, or of any other document executed by the Borrower in connection herewith, the Issuer or the Trustee shall have the right and remedy, without posting bond or other security, to have the provisions of this Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause immediate and irreparable injury to the Issuer and the Trustee and that money damages will not provide an adequate remedy therefor.

ARTICLE VII

PREPAYMENT UNDER AGREEMENT

Section 7.1. Option to Prepay the Note. The Borrower shall have, and is hereby granted, the option to prepay the Note prior to maturity in whole or in part in the amounts, at the times and in the manner required to effectuate the optional redemption of the Bonds in accordance with the optional redemption provisions of the Indenture. To exercise the option granted in this Section 7.1, the Borrower shall, not less than thirty (30) days (or such lesser time as is acceptable to the Trustee) prior to the redemption date on which the Borrower elects to cause such prepayment, deliver a written notice to the Trustee, the Issuer, the Bank, if any, and the Remarketing Agent of its intention to prepay such installment payments and shall specify therein the p rincipal amount of Bonds to be redeemed upon such date. Upon the exercise of any such option, the Borrower shall direct the Trustee to redeem the Bonds in whole or in part on the date specified in such notice and shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption of the Bonds. On or before the redemption date, sufficient moneys shall be deposited in the Bond Fund to redeem the Bonds as provided in Article III of the Indenture and at the redemption price provided in Article III of the Indenture; provided, however, that the obligation of the Borrower to make any such payment shall be deemed to be satisfied and discharged to the extent of the corresponding drawing and payment made under the Letter of Credit. It shall not be a condition to the sending of a notice of redemption by the Trustee that such moneys be on deposit in the Bond Fund to redeem Bonds prior to the sending of such notice. In addition, if the Borrow er elects to prepay the installment payments hereunder in full, it shall pay to the Trustee and the Issuer, respectively, or make provision for the payment satisfactory to the Trustee of an amount of money equal to the Trustee's fees and expenses accrued and to accrue through such redemption date.

Section 7.2. Obligation to Prepay the Note in Whole Under Agreement Under Certain Circumstances.

(a) The Borrower shall be obligated to prepay in whole, together with interest accrued and to accrue to the redemption date of the Bonds, the Note within thirty (30) days after receipt of a written notice from the Trustee relating to the occurrence of any one of the following events:

(i) The occurrence of a Determination of Taxability;

(ii) The occurrence of an Extraordinary Redemption Event; or

(iii) That the Trustee has received a written notice from the Bank in accordance with Section 3.1(b) of the Indenture that an Event of Default, as defined in the Reimbursement Agreement, has occurred, has not been cured or waived, and is continuing and the Bank either (A) has exercised its option to terminate the Letter of Credit, or (B) has elected to cause the Bonds secured by the Letter of Credit to be redeemed.

The Issuer shall give written notice to the Borrower and the Trustee of such occurrence; whereupon the Trustee shall give notice to the Bondholders of the redemption of the Bonds pursuant to Article III of the Indenture and will set a Redemption Date in accordance therewith. Payment on the Note by the Borrower pursuant to this Section shall be in amount sufficient,

together with other funds on deposit with the Trustee which are available for such purpose, to redeem the Bonds then Outstanding, and to pay (i) all administrative expenses accrued and to accrue through the Redemption Date and (ii) any other expenses and fees required to satisfy and discharge the Indenture.

(b) The Borrower hereby authorizes the Trustee to draw moneys under the Letter of Credit, if any, in accordance with the Indenture to the extent necessary to redeem the Bonds (which, with respect to the initial Letter of Credit, shall include only the principal of and interest on the Bonds) in whole or in part upon the occurrence of any of the events described in subsection (a) above obligating the Borrower to prepay the Note in whole or in part under this Section 7.2. The obligation of the Borrower to make payments to the Trustee sufficient to redeem the Bonds upon the occurrence of any of the events under this Section 7.2 shall be deemed satisfied and discharged to the extent of any corresponding drawing and payment under the Letter of Credit.< /div>

The Borrower shall also pay, from funds other than moneys drawn under the Letter of Credit, all expenses of redemption and the fees and expenses of the Trustee. Said prepayments shall also include expenses of redemption and the fees and expenses of the Trustee accrued and to accrue until such redemption of the Bonds and any other expenses and fees required to satisfy and discharge the Indenture, if applicable.

The Borrower shall give prompt written notice to the Issuer and the Trustee of its receipt of any written advice from the Internal Revenue Service or court that an event constituting a Determination of Taxability has occurred.

Section 7.3. Obligations After Payment of Note and Termination of Loan Agreement. Notwithstanding anything contained herein to the contrary, the obligations of the Borrower contained in Sections 4.2(d), 4.4, 5.2, 5.6, 5.7 and 6.4 shall survive and continue after payment of the Note and termination of this Loan Agreement.

Section 7.4. No Prepayment of Note for Purchase in Lieu of Redemption. Notwithstanding any other provision of this Article VII to the contrary, the Borrower shall not be obligated to prepay the Note in the event the Borrower elects to purchase Bonds in lieu of redemption in accordance with Section 3.11 of the Indenture.

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Term of Agreement. Except as provided in Sections 5.2 and 7.3, this Agreement shall terminate when Payment in Full of the Bonds has been made.

Section 8.2. Notices. All notices, approvals, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been given (i) when delivered by hand or sent by overnight courier or (ii) when mailed by first-class registered or certified mail, return receipt requested, postage prepaid, and addressed as follows or (unless specifically prohibited) when telexed or telecopied to the telex or telecopy numbers as follows:

If to the Issuer: California Enterprise Development Issuer
550 Bercut Drive, Suite G
Sacramento, California 95814
Attention: Executive Director

If to the Borrower: SunPower Corporation
3939 North First Street
San Jose, California 95134
Attention: Chief Financial Officer

if to the Trustee: Wells Fargo Bank, National Association
Corporate Trust Services
MAC N9311-110
625 Marquette Avenue
Minneapolis, MN 55479
Attention: SunPower Account Manager

if to the Purchaser: Barclays Capital Inc.
745 Seventh Avenue, 2nd Floor
New York, New York 10019
Attention: Public Finance

If to the Remarketing Agent: Barclays Capital Inc.
745 Seventh Avenue, 2nd Floor
New York, New York 10019
Attention: Short-term Desk

A duplicate copy of each notice, approval, consent, request or other communication given hereunder by the Issuer, the Borrower, the Trustee, the Remarketing Agent or the Bank to any one of the others shall also be given to all of the others. The Issuer, the Borrower, the Trustee and the Bank may, by notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests or other communications shall be sent or persons to whose attention the same shall be directed.

Section 8.3. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower and their respective successors and assigns.

Section 8.4. Severability. If any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 8.5. Amounts Remaining in Funds. Subject to Section 5.2 of this Agreement, it is agreed by the parties hereto that any amounts remaining in the Funds created under the Indenture upon expiration or sooner termination of this Loan Agreement, after Payment in Full of the Bonds, payment of the fees, charges and expenses of the Trustee, the Issuer, the Remarketing Agent and the Bank (including, without limitation, the fees and expenses of their respective Counsel), and payment of all other amounts required to be paid under the Indenture (and to the extent provided for in the Indenture, the Reimbursement Agreement), including payment of Rebate Amount, shall be paid promptly to the Borrower by the Trustee, upon the Borrower's written request.

Section 8.6. Reliance by Issuer. The Issuer shall have the right at all times to act in reliance upon the authorization, representation or certification of the Borrower Representative or a Responsible Officer of the Trustee.

Section 8.7. No Personal Liability of the Issuer. Neither the members of the Issuer nor any person executing bonds for the Issuer shall be liable personally on said Bonds by reason of the issuance thereof.

Notwithstanding anything in this Loan Agreement to the contrary, it is expressly understood and agreed by the parties hereto that (a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by a Responsible Officer of the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer; (b) the Issuer shall not be under any obligation hereunder to perform any record keeping or to provide any legal services, it being understood that such services shall be performed either by the Trustee or the Borrower; and (c) none of the provisions of this Loan Agreement shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or i n the exercise of any of its rights or powers hereunder, unless it shall first have been adequately indemnified to its satisfaction against the cost, expenses and liability which may be incurred thereby.

Section 8.8. Immunity of Directors, Officers and Employees of Issuer. No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained in the Indenture, this Loan Agreement or in any Bond issued under the Indenture for any claim based thereon or otherwise in respect thereof, against any director, officer, employee or agent, as such, in his individual capacity, past, present or future, of the Issuer or of any successor corporation, either directly or through the Issuer or any successor corporation, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assignment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever sh all attach to, or be incurred by, any director, officer, employee or agent, as such, past, present or future, of the Issuer or of any successor corporation, either directly or through the Issuer or any successor corporation, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Borrower whether contained in this Loan Agreement or any other documents executed in connection therewith or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such director, officer, employee or agent is, by the execution of this

Loan Agreement and the Indenture, and as a condition of, and as part of the consideration for, the execution of this Loan Agreement and the Indenture, expressly waived and released.

Section 8.9. Payments by Bank. The Bank shall, to the extent of any payments made by the Bank pursuant to the Letter of Credit, be subrogated to all rights of the Issuer or its assigns (including, without limitation, the Trustee) as to all obligations of the Borrower with respect to which such payments shall be made by the Bank, but, so long as any of the Bonds remain Outstanding under the terms of the Indenture, such right of subrogation on the part of the Bank shall be in all respects subordinate to all rights and claims of the Issuer for all payments which are then due and payable under the Indenture or otherwise arising under this Loan Agreement, the Indenture or the Bonds. The Trustee will, upon written request, execute and deliver any instru ment reasonably requested by the Bank to evidence such subrogation and the Trustee shall assign to the Bank its rights in any obligations of the Borrower with respect to which payment of the entire principal balance and accrued interest thereon shall be made by the Bank.

Section 8.10. Amendments, Changes and Modifications. Except as otherwise provided herein or in the Indenture, subsequent to the date of issuance and delivery of the Bonds and prior to their Payment in Full, this Loan Agreement and the Note may not be effectively amended or terminated without the written consent of the Borrower, the Issuer and the Bank (to the extent the amendment or modification would adversely affect or alter the duties or obligations or rights of the Bank hereunder or under the Indenture), and without complying with Section 9.6 of the Indenture.

Section 8.11. Counterparts. This Loan Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 8.12. Captions. The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions hereof.

Section 8.13. Law Governing Construction of Agreement. This Loan Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State.

Section 8.14. Third Party Beneficiaries. Subject to the rights of the Trustee and the Issuer under the Indenture, the Bank, if any, is an express third party beneficiary with respect to the Borrower's covenants and representations in this Loan Agreement. It is specifically agreed between the parties executing this Loan Agreement that neither this Loan Agreement nor any of the provisions hereof are intended to establish in favor of the public or any member thereof, other than as expressly provided herein, including assignment of the Issuer's rights under this Loan Agreement to the Trustee pursuant to the Indenture, the rights of a third party beneficiary hereunder, as to authorize any one not a party to this Loan Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Loan Agreement. The duties, obligations and responsibilities of the parties to this Loan Agreement with respect to third parties shall remain as imposed by law.

Section 8.15. Further Assurances and Corrective Instruments. The Issuer and the Borrower hereby agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further acts, instruments, conveyances, transfers and assurances, as the owners of the Bonds reasonably deem

necessary or advisable for the implementation, correction, confirmation or perfection of this Agreement or the Tax Agreement and any rights of the Issuer hereunder.

Section 8.16. Personal Liability of Borrower. No present or future director, officer, employee or agent of the Borrower or other person owning any direct or indirect interest in the Borrower shall be liable personally under this Loan Agreement or the Note for the payment of amounts owing under this Loan Agreement or the Note.

(SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Loan Agreement to be executed in their respective names and, if applicable, their respective corporate seals to be affixed hereto and attested by their authorized officers, all as of the date first above written.

CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY

By: /s/ Wayne Schell
Name: Wayne Schell
Title: Chair

SUNPOWER CORPORATION

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

Schedule A

Description of Project

EXHIBIT A

FORM OF NOTE

$30,000,000 _____ , 2010

SUNPOWER CORPORATION (the "Borrower") acknowledges itself indebted to, and for value received hereby promise to pay to the order of, the CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (the "Issuer") and its successors and assigns, the principal sum of Thirty Million and 00/100 dollars ($30,000,000) and to pay interest on the unpaid principal amount hereof from the date of this Note calculated on the same basis as interest is calculated on the Bonds (as hereinafter defined) and the purchase price of the Bonds tendered or deemed tendered for purchase and not remarketed. The unpaid principal amount hereof shall be equal to the outstanding aggregate principal amount of the Bonds.

This Note is issued to evidence the obligation of the Borrower pursuant to, and shall be governed by and construed in accordance with, the terms and conditions of the Loan Agreement, dated as of December 1, 2010, by and between the Borrower and the Issuer (the "Loan Agreement") for the repayment of the loan in the amount of $30,000,000 made by the Issuer to the Borrower thereunder from the proceeds of the Issuer's $30,000,000 Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (the "Bonds") and the payment of interest thereon, including provision for repayment of the loan in certain cases. All capitalized words and terms not defined herein shall have the respective meanings and be construed herein as provided in the Loan Agreement. 0;The Borrower further agrees to pay all other obligations pursuant to the Loan Agreement.

The Issuer has assigned the Loan Agreement (together with this Note) to the Trustee pursuant to the Indenture of Trust, dated as of December 1, 2010 (the "Indenture") by and between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee"), reserving certain of its rights thereunder. Such assignment is made as security for the payment of the Bonds.

This Note is entitled to all of the benefits and is subject to all of the provisions of the Loan Agreement, which provisions are hereby incorporated herein by reference thereto including provisions relating to credits on payments due under the Loan Agreement, which shall also become credits under this Note. Subject to the provisions hereof, the obligations of the Borrower to make or cause to be made the payments required hereunder shall be absolute and unconditional without defense or set-off as more fully set forth in the Loan Agreement.

This Note is subject to prepayment in whole or in part as provided in the Loan Agreement.

If an "Event of Default" occurs under the Loan Agreement, the principal of this Note may be declared due and payable in the manner and with the effect provided in the Loan Agreement.

Whenever payment or provision thereof has been made in respect of the principal of, premium, if any, and interest on all Bonds in accordance with the Loan Agreement and all other amounts due under the Loan Agreement, this Note shall be deemed paid in full and shall be canceled and returned to the Borrower.

All payments of principal, premium, if any, purchase price and interest shall be made to the Trustee in immediately available funds in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. All payments shall be in the full amount required hereunder unless and to the extent the Borrower is entitled to a credit under the Loan Agreement or the Indenture.

Payment of the redemption price of any of the Bonds pursuant to the provisions for redemption in the Indenture shall constitute payment of principal, or any portion thereof, any premium thereon and accrued interest thereon due on this Note. Any payment of interest or principal on the Bonds pursuant to the Loan Agreement shall constitute a corresponding interest or principal payment on this Note.

In case the Trustee or the Issuer shall have proceeded to enforce its rights under this Note, the Loan Agreement and/or the Indenture and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Issuer or in the case of any waiver of an event of default or any rescission of any declaration of acceleration, then and in every case the Borrower and the Trustee or the Issuer shall be restored respectively to their respective positions and rights hereunder, and all rights, remedies and powers of the Borrower and the Trustee or the Issuer shall continue as though no such proceedings had been taken.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Borrower under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Borrower or in the case of any other similar judicial proceedings relating to the Borrower, or to the creditors or property of the Borrower, the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and provide a claim or claims for the amounts owing and unpaid in respect of this Note and, in case of any judicial proceedings relative to the Borrower, its creditors or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and ex penses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including counsel fees incurred by it up to the date of such distribution.

This Note shall be governed by the laws of the State of California.

THE UNDERSIGNED AND ALL ENDORSERS, SURETIES AND GUARANTORS HEREOF, JOINTLY, SEVERALLY AND INDIVIDUALLY WAIVE PRESENTMENT, DEMAND FOR PAYMENT, NOTICE OF DISHONOR, NOTICE OF PROTEST AND PROTEST AND ALL OTHER NOTICES AND DEMANDS IN CONNECTION WITH THE DELIVERY, ACCEPTANCE, PAYMENT, PERFORMANCE, DEFAULT, ENDORSEMENT OR GUARANTEE OF THIS NOTE, AND HEREBY AUTHORIZE THE HOLDER, WITHOUT NOTICE, TO GRANT EXTENSIONS IN THE TIME OF PAYMENT HEREOF OR CHANGES IN THE RATE OF INTEREST ON ANY MONIES OWING ON THIS NOTE.

Notwithstanding any provision to the contrary contained in this Note or in any of the other Borrower Documents, it is expressly provided that in no case or event shall the aggregate of (a) all interest on the unpaid balance of this Note, accrued or paid from the date hereof and (b) the aggregate of any other amounts accrued or paid pursuant to this Note or any of the other Borrower Documents, which under applicable laws are or may be deemed to constitute interest upon this Note or any other indebtedness due hereunder or under the other Borrower

Documents (the "Debt") from the date hereof, ever exceed the maximum rate of interest which could lawfully be contracted for, charged or received on the unpaid principal balance of the Debt. In this connection, it is expressly stipulated and agreed that it is the intent of the Borrower, the Issuer, and the Trustee to contract in strict compliance with the applicable usury laws of the State of California and of the United States (whichever permit the higher rate of interest) from time to time in effect. In furtherance thereof, none of the terms of this Note or any of the other Borrower Documents shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the Maximum Rate (as defined in the Loan Agreement). 60;The Borrower or other Persons now or hereafter becoming liable for payment of the Debt shall never be liable for interest in excess of the Maximum Rate. If under any circumstances the aggregate amounts paid on the Debt include amounts which by law are deemed interest which would exceed the Maximum Rate, the Borrower stipulates that such amounts will be deemed to have been paid as a result of an error on the part of the Borrower, the Issuer, and the Trustee, and the Person receiving such excess payment shall promptly, upon discovery of such error or upon written notice thereof from the Person making such payment, refund the amount of such excess. In addition, all sums paid or agreed to be paid to the holder or holders of the Debt for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the Debt. The provisions of this paragraph shall control all agreements, w hether now or hereafter existing and whether written or oral, among the Borrower, the Issuer, and the Trustee.

SUNPOWER CORPORATION

By: _____

Name:

Title: _____

EXHIBIT B

PROJECT FUND REQUISITION

Date:_____ Requisition No. _____

Wells Fargo Bank, National Association
Corporate Trust Services
MAC N9311-110
625 Marquette Avenue
Minneapolis, MN 55479
Attention: SunPower Account Manager

Attention: Municipal Finance Group

Re: California Enterprise Development Authority Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (the "Bonds")

To the Addressee:

The undersigned, on behalf of SunPower Corporation (the "Borrower"), hereby requests payment, from the Project Fund established under the Indenture (the "Indenture") pursuant to which the Bonds identified above are issued and outstanding, the total amount shown below to the order of the payee or payees named below, as payment or reimbursement for costs incurred or expenditures made in connection with the Project (as defined in the Indenture). The payee(s) to which, the purpose(s) for which, and the amount(s) in which the disbursement(s) are requested are set forth on the attached Schedule B-1.

The undersigned hereby certifies as follows:

1. Each payment and/or reimbursement requested constitutes costs that (i) were paid or incurred by the Borrower on or after October 8, 2010 or were for reimbursement costs as described in the Tax Agreement, (ii) have been used to finance the acquisition, construction, renovation improving and/or equipping of a headquarters facility project after October 8, 2010, (iii) the original use of the facilities acquired, constructed, renovated improved and/or equipped commences with the Borrower, and (iii) substantially all of the use of the facilities acquired, constructed, renovated improved and/or equipped is in the active conduct of Borrower's business within San Jose, California.

2. Each obligation mentioned herein has been properly incurred and is a proper charge against the Project Fund, including without limitation in accordance with the provisions of the Tax Agreement, and each item for which payment is requested is or was necessary in connection with the acquisition, installation or construction of such Project. None of the items for which payment is requested has been reimbursed previously from the Project Fund, and none of the payments and/or reimbursements herein requested will result in a breach of the representations and agreements in Section 5.6 and 5.7 of the Loan Agreement relating to the Project or constitutes a Cost of Issuance.

3. Notwithstanding paragraph 1(i) above, any cost paid prior to October 8, 2010 may be reimbursed if (a) such cost, together with any other costs paid prior to October 8, 2010 and reimbursed with Proceeds of the Bonds, does not exceed $100,000 or (b) such cost constitutes a preliminary expenditure (e.g., engineering, surveying, soil testing) under Section 1.150-2(f)(2) of the Treasury Regulations and such cost, together with any other preliminary expenditure costs reimbursed with proceeds of the Bonds, does not exceed 20 percent of the aggregate issue price of the Bonds.

4. No Event of Default under the Loan Agreement or under the Indenture or event which after notice or lapse of time or both would constitute an Event of Default under the Loan Agreement or under the Indenture has occurred and not been waived or cured.

5. If the terms of the Reimbursement Agreement require moneys from the Project Fund to be remitted to the Bank, or to an agent acting for the benefit of or on behalf of the Bank, and for the Bank or such agent to remit such moneys to the payee(s) identified in Schedule B-1 attached hereto, the Borrower shall identify the ultimate payee(s) in Schedule B-1 and shall include an instruction to the Trustee for such moneys to be remitted to the Bank or such agent.

6. The Borrower has received all necessary approvals from the Bank for the payments or reimbursements set forth in Schedule B-1 hereto.

Terms which are used herein as defined terms shall have the meanings specified in the Indenture or in the Loan Agreement defined therein.

Dated: _____

SUNPOWER CORPORATION

By: _____

Authorized Representative

Attachment: Schedule B-1 – Schedule of Disbursements

SCHEDULE B-1

SCHEDULE OF DISBURSEMENTS

PAYEE	PURPOSE	AMOUNT

EXHIBIT C

BORROWER'S COMPLETION CERTIFICATE

Wells Fargo Bank, National Association
Corporate Trust Services
MAC N9311-110
625 Marquette Avenue
Minneapolis, MN 55479
Attention: SunPower Account Manager

Re: California Enterprise Development Authority Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010

To the Addressee:

Pursuant to Section 3.3 of the Loan Agreement by and between the Issuer and SunPower Corporation (the "Borrower") dated as of December 1, 2010 (the "Loan Agreement"), the undersigned, an authorized representative of the Borrower (all undefined terms used herein shall have the same meaning ascribed to them in the Loan Agreement), as of the date hereof, certifies that:

(i) the construction of the Project was completed as of _____;

(ii) the cost of all labor, services, materials and supplies used in the Borrower's undivided ownership interest in the Project have been paid, or will be paid from amounts retained by Wells Fargo Bank National Association (the "Trustee") at the Borrower's direction for any Costs of Project not now due and payable or, if due and payable, not presently paid;

(iii) the Project is being operated as an authorized "project" under the Act and substantially as proposed in the Application;

I acknowledge that any amount hereafter remaining in the Project Fund (except amounts therein sufficient to cover Costs of Project not now due and payable or not presently paid) shall be used by the Trustee in accordance with Section 5.3(b) of the Indenture and the proceeds of the Bonds shall not be invested at a yield materially higher than the yield on the Bonds.

This certificate is given without prejudice to any rights against third parties which exist on the date hereof or which may subsequently come into being.

SUNPOWER CORPORATION

By: _____
Name: _____
Title: _____

Dated: _____

EXHIBIT 21.1

Subsidiaries of SunPower Corporation

Subsidiary Name	**Jurisdiction**
Pluto Acquisition Company LLC	Delaware
SunPower Bermuda Holdings	Bermuda
SunPower Corporation Malta Holdings Limited	Malta
SunPower Corporation, Systems	Delaware
SunPower France SAS	France
Sunpower GmbH	Germany
SunPower Italia S.r.l.	Italy
SunPower North America, LLC	Delaware
SunPower Philippines Manufacturing Ltd.	Cayman Islands
SunPower Systems Sarl	Switzerland
SunPower Technology Ltd.	Cayman Islands

SunPower Corporation does business under the following names

Company	**dba**
SunPower Corporation	California SunPower Corporation
SunPower Corporation	SPWR Solar Corporation
SunPower Corporation	SPWR Solar
SunPower Corporation	SPWR Energy

SunPower Corporation, Systems does business under the following names

Subsidiary	**dba**
SunPower Corporation, Systems	California SunPower Energy Corporation
SunPower Corporation, Systems	SunPower Energy Corporation

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-140198, 333-140272, and 333-153409) and Form S-8 (Nos. 333-130340, 333-140197, 333-142679, and 333-150789) of SunPower Corporation of our report dated February 25, 2011 relating to the financial statements, financial statement schedule and the effectiveness of internal contro l over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

San Jose, California
February 25, 2011

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENT: That the undersigned officers and directors of SunPower Corporation do hereby constitute and appoint Thomas H. Werner, Dennis V. Arriola, and Bruce R. Ledesma, and each of them, the lawful attorney and agent or attorneys and agents with power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, or either of them, determine may be neces sary or advisable or required to enable SunPower Corporation to comply with the Securities and Exchange Act of 1934, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with its annual report on Form10-K for the fiscal year ended January 2, 2011 (the "Report"). Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to the Report or amendments or supplements thereto, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or either of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated opposite the name.

Signature	Title		Date
/S/ THOMAS H. WERNER Thomas H. Werner		President, Chief Executive Officer and Director (Principal Executive Officer)	February 25, 2011
/S/ DENNIS V. ARRIOLA Dennis V. Arriola		Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	February 25, 2011
/S/ T.J. RODGERS T.J. Rodgers		Chairman of the Board of Directors	February 23, 2011
/S/ W. STEVE ALBRECHT W. Steve Albrecht	< font style="font-family:inherit;font-size:10pt;">	Director	February 24, 2011
/S/ BETSY S. ATKINS Betsy S. Atkins		Director	February 24, 2011
/S/ UWE-ERNST BUFE Uwe-Ernst Bufe		Director	February 24, 2011
&n bsp; /S/ THOMAS R. MCDANIEL Thomas R. McDaniel		Director	February 24, 2011
/S/ PATRICK WOOD III Patrick Wood III		Director	February 25, 2011

EXHIBIT 31.1

CERTIFICATIONS

I, Thomas H. Werner, certify that:

1 I have reviewed this Annual Report on Form 10-K of SunPower Corporation;

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

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

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

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

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
&nb sp;
(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

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

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

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

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

Date: February 25, 2011

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/S/ THOMAS H. WERNER

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

EXHIBIT 31.2

CERTIFICATIONS

I, Dennis V. Arriola, certify that:

1 I have reviewed this Annual Report on Form 10-K of SunPower Corporation;

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

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

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

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

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

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

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

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

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

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

Date: February 25, 2011

/S/ DENNIS V. ARRIOLA

Dennis V. Arriola

Executive Vice President and Chief Financial Officer

(Principal Financial and Accounting Officer)

EXHIBIT 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND
CHIEF FINANCIAL OFFICER PURSUANT TO
< font style="font-family:inherit;font-size:10pt;font-weight:bold;">18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of SunPower Corporation (the "Company") on Form 10-K for the period ended January 2, 2011 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of Thomas H. Werner and Dennis V. Arriola certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

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

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

Dated: February 25, 2011

/S/ THOMAS H. WERNER
Thomas H. Werner
President and Chief Executive Officer
(Principal Executive Officer)

/S/ DENNIS V. ARRIOLA
Dennis V. Arriola
Executive Vice President and Chief Financial Officer
(Princip al Financial and Accounting Officer)

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