

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

FORM 10-Q

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

For the quarterly period ended March 31, 2019

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 001-34166

**SUNPOWER<sup>®</sup>**  
**SunPower Corporation**  
(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation or Organization)

**77 Rio Robles, San Jose, California**

(Address of Principal Executive Offices and Zip Code)

**94-3008969**

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

**95134**

(Zip Code)

**(408) 240-5500**

(Registrant's Telephone Number, Including Area Code)

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

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

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company  Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

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

Title of each class	Trading Symbol	Name of exchange on which registered
Common Stock	SPWR	NASDAQ

The total number of outstanding shares of the registrant's common stock as of May 3, 2019 was 142,403,522.

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**PART I. FINANCIAL INFORMATION**  
**ITEM 1. FINANCIAL STATEMENTS**

**SunPower Corporation**  
**Condensed Consolidated Balance Sheets**  
**(In thousands, except share par values)**  
**(unaudited)**

	<u>March 31, 2019</u>	<u>December 30, 2018</u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 185,554	\$ 309,407
Restricted cash and cash equivalents, current portion	864	41,762
Accounts receivable, net <sup>1</sup>	156,445	175,605
Contract assets <sup>1</sup>	57,282	58,994
Inventories	334,390	308,146
Advances to suppliers, current portion	95,603	37,878
Project assets - plants and land, current portion	10,246	10,796
Prepaid expenses and other current assets	99,675	131,183
Assets held for sale <sup>2</sup>	550,073	—
Total current assets	<u>1,490,132</u>	<u>1,073,771</u>
Restricted cash and cash equivalents, net of current portion	13,345	12,594
Restricted long-term marketable securities	5,948	5,955
Property, plant and equipment, net	413,347	839,871
Operating lease right-of-use assets	32,638	—
Solar power systems leased and to be leased, net	74,134	92,557
Advances to suppliers, net of current portion	62,914	133,694
Long-term financing receivables, net - held for sale	19,044	19,592
Other intangible assets, net	10,858	12,582
Other long-term assets	185,371	162,033
Total assets	<u>\$ 2,307,731</u>	<u>\$ 2,352,649</u>
<b>Liabilities and Equity</b>		
Current liabilities:		
Accounts payable <sup>1</sup>	\$ 347,233	\$ 325,550
Accrued liabilities <sup>1</sup>	190,095	235,252
Operating lease liabilities, current portion	8,502	—
Contract liabilities, current portion <sup>1</sup>	92,621	104,130
Short-term debt	41,838	40,074
Liabilities held for sale <sup>2</sup>	619,538	—
Total current liabilities	<u>1,299,827</u>	<u>705,006</u>
Long-term debt	71,593	40,528
Convertible debt <sup>1</sup>	818,832	818,356
Operating lease liabilities, net of current portion	29,490	—
Contract liabilities, net of current portion <sup>1</sup>	75,059	99,509
Other long-term liabilities	234,386	839,136
Total liabilities	<u>2,529,187</u>	<u>2,502,535</u>
Commitments and contingencies (Note 9)		
Equity:		
Preferred stock, \$0.001 par value; 10,000 shares authorized; none issued and outstanding as of March 31, 2019 and December 30, 2018	—	—
Common stock, \$0.001 par value, 367,500 shares authorized; 153,931 shares issued, and 142,393 shares outstanding as of March 31, 2019; 152,085 shares issued, and 141,180 shares outstanding as of December 30, 2018	142	141
Additional paid-in capital	2,469,998	2,463,370
Accumulated deficit	(2,561,561)	(2,480,988)
Accumulated other comprehensive loss	(4,051)	(4,150)
Treasury stock, at cost: 11,538 shares of common stock as of March 31, 2019; 10,905 shares of common stock as of December 30, 2018	(190,940)	(187,069)

Total stockholders' deficit	(286,412)	(208,696)
Noncontrolling interests in subsidiaries	64,956	58,810
Total deficit	(221,456)	(149,886)
Total liabilities and equity	\$ 2,307,731	\$ 2,352,649

<sup>1</sup>We have related-party balances for transactions made with Total S.A. and its affiliates as well as unconsolidated entities in which we have a direct equity investment. These related-party balances are recorded within the "accounts receivable, net," "contract assets," "accounts payable," "accrued liabilities," "contract liabilities, current portion," "convertible debt," and "contract liabilities, net of current portion," financial statement line items on our condensed consolidated balance sheets (see Note 2, Note 9, Note 10, and Note 11).

<sup>2</sup>Assets and liabilities held for sale relate to the expected sale of our commercial sale-leaseback portfolio. Refer to Note 4. *Business Divestiture* for details.

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

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

	Three Months Ended	
	March 31, 2019	April 1, 2018
Revenue:		
Solar power systems, components, and other <sup>1</sup>	\$ 341,442	\$ 328,860
Residential leasing	3,884	63,028
Solar services	2,899	—
	<u>348,225</u>	<u>391,888</u>
Cost of revenue:		
Solar power systems, components, and other <sup>1</sup>	380,906	338,423
Residential leasing	3,022	42,891
Solar services	1,582	—
	<u>385,510</u>	<u>381,314</u>
Gross profit (loss)	(37,285)	10,574
Operating expenses:		
Research and development <sup>1</sup>	14,993	19,052
Sales, general and administrative	62,857	65,295
Restructuring charges (credits)	(665)	11,177
Impairment of residential lease assets	9,226	49,092
Gain on business divestiture	(6,114)	—
Total operating expenses	<u>80,297</u>	<u>144,616</u>
Operating loss	(117,582)	(134,042)
Other income (expense), net:		
Interest income	852	529
Interest expense <sup>1</sup>	(16,791)	(25,106)
Other, net	33,073	15,794
Other income (expense), net	<u>17,134</u>	<u>(8,783)</u>
Loss before income taxes and equity in earnings (losses) of unconsolidated investees	(100,448)	(142,825)
Provision for income taxes	(5,797)	(2,628)
Equity in earnings (losses) of unconsolidated investees	1,680	(2,144)
Net loss	<u>(104,565)</u>	<u>(147,597)</u>
Net loss attributable to noncontrolling interests and redeemable noncontrolling interests	14,841	31,623
Net loss attributable to stockholders	<u>\$ (89,724)</u>	<u>\$ (115,974)</u>
Basic and diluted net loss per share attributable to stockholders	<u>\$ (0.63)</u>	<u>\$ (0.83)</u>
Basic and diluted weighted-average shares	<u>141,720</u>	<u>140,212</u>

<sup>1</sup>We have related-party transactions with Total S.A. and its affiliates as well as unconsolidated entities in which we have a direct equity investment. These related-party transactions are recorded within the "revenue: solar power systems, components, and other," "cost of revenue: Solar power systems, components, and other," "operating expenses: research and development," and "other income (expense), net: interest expense" financial statement line items in our condensed consolidated statements of operations (see Note 2 and Note 10).

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

**SunPower Corporation**  
**Condensed Consolidated Statements of Comprehensive Loss**  
**(In thousands)**  
**(unaudited)**

	<b>Three Months Ended</b>	
	<b>March 31, 2019</b>	<b>April 1, 2018</b>
Net loss	\$ (104,565)	\$ (147,597)
Components of other comprehensive income (loss):		
Translation adjustment	(21)	748
Net change in derivatives (Note 12)	185	1,606
Income taxes	(65)	(243)
Total other comprehensive income	99	2,111
Total comprehensive loss	(104,466)	(145,486)
Comprehensive loss attributable to noncontrolling interests and redeemable noncontrolling interests	14,841	31,622
Comprehensive loss attributable to stockholders	\$ (89,625)	\$ (113,864)

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

**SunPower Corporation**  
**Consolidated Statements of Equity (Deficit)**  
(In thousands)

	Common Stock		Additional Paid-in Capital	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)	Noncontrolling Interests	Total Equity (Deficit)
	Shares	Value							
<b>Balances at December 30, 2018</b>	<b>141,178</b>	<b>\$ 141</b>	<b>\$2,463,370</b>	<b>\$(187,069)</b>	<b>\$ (4,150)</b>	<b>\$(2,480,988)</b>	<b>\$ (208,696)</b>	<b>\$ 58,810</b>	<b>\$(149,886)</b>
Net loss	—	—	—	—	—	(89,724)	(89,724)	(14,841)	(104,565)
Cumulative-effect upon adoption of ASC 842	—	—	—	—	—	9,151	9,151	—	9,151
Other comprehensive income	—	—	—	—	99	—	99	—	99
Issuance of restricted stock to employees, net of cancellations	1,848	2	—	—	—	—	2	—	2
Stock-based compensation expense	—	—	6,628	—	—	—	6,628	—	6,628
Contributions from noncontrolling interests	—	—	—	—	—	—	—	20,987	20,987
Purchases of treasury stock	(633)	(1)	—	(3,871)	—	—	(3,872)	—	(3,872)
<b>Balances at March 31, 2019</b>	<b>142,393</b>	<b>\$ 142</b>	<b>\$2,469,998</b>	<b>\$(190,940)</b>	<b>\$ (4,051)</b>	<b>\$(2,561,561)</b>	<b>\$ (286,412)</b>	<b>\$ 64,956</b>	<b>\$(221,456)</b>

	Redeemable Noncontrolling Interests	Common Stock		Additional Paid-in Capital	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)	Noncontrolling Interests	Total Equity (Deficit)
		Shares	Value							
<b>Balances at December 31, 2017</b>	<b>\$ 15,236</b>	<b>139,658</b>	<b>\$ 140</b>	<b>\$2,442,513</b>	<b>\$(181,539)</b>	<b>\$ (3,008)</b>	<b>\$(1,669,897)</b>	<b>\$ 588,209</b>	<b>\$ 104,179</b>	<b>\$692,388</b>
Net loss	(10,500)	—	—	—	—	—	(115,974)	(115,974)	(21,123)	(137,097)
Other comprehensive income	—	—	—	—	—	2,111	—	2,111	—	2,111
Issuance of restricted stock to employees, net of cancellations	—	1,799	2	—	—	—	—	2	—	2
Stock-based compensation expense	—	—	—	7,394	—	—	—	7,394	—	7,394
Contributions from noncontrolling interests	11,684	—	—	—	—	—	—	—	25,042	25,042
Distributions to noncontrolling interests	(2,315)	—	—	—	—	—	—	—	(4,005)	(4,005)
Purchases of treasury stock	—	(611)	(1)	—	(4,526)	—	—	(4,527)	—	(4,527)
Other	—	—	—	—	—	—	(56)	(56)	—	(56)
<b>Balances at April 1, 2018</b>	<b>\$ 14,105</b>	<b>140,846</b>	<b>\$ 141</b>	<b>\$2,449,907</b>	<b>\$(186,065)</b>	<b>\$ (897)</b>	<b>\$(1,785,927)</b>	<b>\$ 477,159</b>	<b>\$ 104,093</b>	<b>\$581,252</b>

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



**SunPower Corporation**  
**Condensed Consolidated Statements of Cash Flows**  
(In thousands)  
(unaudited)

	<b>Three Months Ended</b>	
	<b>March 31, 2019</b>	<b>April 1, 2018</b>
<b>Cash flows from operating activities:</b>		
Net loss	\$ (104,565)	\$ (147,597)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	24,190	39,833
Stock-based compensation	5,666	7,053
Non-cash interest expense	2,415	4,443
Dividend from equity method investee	—	5,399
Equity in (earnings) losses of unconsolidated investees	(1,680)	2,144
Unrealized gain on equity investment	(33,000)	—
Gain on business divestiture	(6,114)	—
Gain on sale of equity investment, net	—	(15,576)
Deferred income taxes	2,048	(344)
Impairment of residential lease assets	9,226	49,092
Other, net	—	972
Changes in operating assets and liabilities <sup>1</sup> :		
Accounts receivable	12,196	13,924
Contract assets	1,712	(23,561)
Inventories	(41,718)	(34,195)
Project assets	776	20,484
Prepaid expenses and other assets	11,727	10,885
Operating lease right-of-use assets	2,603	—
Long-term financing receivables, net	(1,611)	(38,114)
Advances to suppliers	13,055	5,149
Accounts payable and other accrued liabilities	(28,819)	(100,156)
Contract liabilities	(14,578)	(33,097)
Operating lease liabilities	(2,559)	—
Net cash used in operating activities	(149,030)	(233,262)
<b>Cash flows from investing activities:</b>		
Purchases of property, plant and equipment	(6,548)	(8,859)
Cash paid for solar power systems, leased, net	—	(23,787)
Cash paid for solar power systems	(27,600)	(2,604)
Proceeds from business divestitures	9,677	—
Dividend from equity method investee	—	2,694
Proceeds from sale of equity method investment	—	27,282
Cash paid for investments in unconsolidated investees	—	(6,349)
Net cash used in investing activities	(24,471)	(11,623)
<b>Cash flows from financing activities:</b>		
Proceeds from bank loans and other debt	67,979	49,794
Repayment of bank loans and other debt	(58,372)	(51,052)
Proceeds from issuance of non-recourse residential financing, net of issuance costs	22,255	32,687
Repayment of non-recourse residential financing	—	(3,781)
Contributions from noncontrolling interests and redeemable noncontrolling interests attributable to residential projects	20,987	36,726
Distributions to noncontrolling interests and redeemable noncontrolling interests attributable to residential projects	—	(5,422)
Proceeds from issuance of non-recourse power plant and commercial financing, net of issuance costs	—	9,104
Repayment of non-recourse power plant and commercial financing	—	(890)
Settlement of contingent consideration arrangement	(2,448)	—
Purchases of stock for tax withholding obligations on vested restricted stock	(3,872)	(4,526)
Net cash provided by financing activities	46,529	62,640

Effect of exchange rate changes on cash, cash equivalents, restricted cash and restricted cash equivalents	112	477
Net decrease in cash, cash equivalents, restricted cash and restricted cash equivalents	(126,860)	(181,768)
Cash, cash equivalents, restricted cash and restricted cash equivalents, beginning of period <sup>2</sup>	363,763	544,337
Cash, cash equivalents, restricted cash and restricted cash equivalents, end of period <sup>2</sup>	\$ 236,903	\$ 362,569

**Non-cash transactions:**

Costs of solar power systems, leased, sourced from existing inventory	\$ —	\$ 14,354
Costs of solar power systems, leased, funded by liabilities	\$ —	\$ 5,835
Costs of solar power systems sourced from existing inventory	\$ 16,406	\$ —
Costs of solar power systems funded by liabilities	\$ 4,553	\$ —
Costs of solar power systems under sale-leaseback financing arrangements, sourced from project assets	\$ —	\$ 9,791
Property, plant and equipment acquisitions funded by liabilities	\$ 10,792	\$ 12,768
Contractual obligations satisfied with inventory	\$ —	\$ 17,517
Assumption of debt by buyer upon sale of equity interest	\$ —	\$ 27,321
Right-of-use assets obtained in exchange of lease obligations <sup>3</sup>	\$ 81,525	\$ —

<sup>1</sup>"Operating assets and liabilities" balances included assets and liabilities classified as held for sale as of March 31, 2019 (see Note 4. *Business Divestiture*).

<sup>2</sup>"Cash, cash equivalents, restricted cash and restricted cash equivalents" balance consisted of "cash and cash equivalents", "restricted cash and cash equivalents, current portion" and "restricted cash and cash equivalents, net of current portion" financial statement line items on the condensed consolidated balance sheets for the respective periods. Such balances also included restricted cash and cash equivalents classified as held for sale as of March 31, 2019 (see Note 4. *Business Divestiture*).

<sup>3</sup>Amounts for the three months ended March 31, 2019 include the transition adjustment for the adoption of ASC 842 and amounts classified as held for sale.

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

## Notes to the Condensed Consolidated Financial Statements

### Note 1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### Organization

SunPower Corporation (together with its subsidiaries, "SunPower," "we," "us," and "our") is a leading global energy company that delivers complete solar solutions to residential, commercial, and power plant customers worldwide through an array of hardware, software, and financing options and through solar power solutions, operations and maintenance ("O&M") services, and "Smart Energy" solutions. SunPower's Smart Energy initiative is designed to add layers of intelligent control to homes, buildings and grids - all personalized through easy-to-use customer interfaces. Of all the solar cells commercially available to the mass market, we believe our solar cells have the highest solar power conversion efficiency, a measurement of the amount of sunlight converted by the solar cell into electricity. SunPower is a majority-owned subsidiary of Total Solar International SAS ("Total"), formerly Total Energies Nouvelles Activités USA, a subsidiary of Total S.A. ("Total S.A.") (see "Note 2. Transactions with Total and Total S.A").

#### Liquidity

Challenging industry conditions and a competitive environment extended throughout fiscal 2018 and the first quarter of fiscal 2019. Our net losses, resulting in a net use of our available cash, continued in the first quarter of fiscal 2019 and are expected to continue through the remainder of fiscal 2019. Despite the challenging industry conditions, including uncertainty around the regulatory environment, we believe that our cash and cash equivalents, including cash expected to be generated from operations, will be sufficient to meet our obligations over the next 12 months from the date of the issuance of our financial statements. We have been successful in our ability to divest certain investments and non-core assets, such as the divestiture of our equity interest in 8point3 Energy Partners LP, the sale of certain assets and intellectual property related to the production of microinverters, the sale of membership interests in our Residential Lease Portfolio, and the sale of membership interests in our Commercial Sale-Leaseback Portfolio (Note 4. *Business Divestiture*). Additionally, we have secured other sources of financing in connection with our liquidity needs, as well as realizing cash savings resulting from restructuring actions and cost reduction initiatives (Note 11. *Debt and Credit Sources*). We continue to focus on improving our overall operating performance and liquidity, including managing cash flow and working capital.

We also have the ability to enhance our available cash by borrowing up to \$95.0 million under a revolving credit facility (the "Revolver") with Credit Agricole Corporate and Investment Bank ("Credit Agricole") pursuant to a Letter Agreement executed by us and Total S.A. on May 8, 2017 (the "Letter Agreement") through August 26, 2019, the expiration date of the Letter Agreement.

Although we have historically been able to generate liquidity, we cannot predict, with certainty, the outcome of our actions to generate liquidity as planned.

#### Basis of Presentation and Preparation

##### *Principles of Consolidation*

The accompanying condensed consolidated financial statements include the accounts of SunPower and our wholly-owned subsidiaries, and have been prepared by us in accordance with generally accepted accounting principles in the United States ("United States" or "U.S.," and such accounting principles, "U.S. GAAP") for interim financial information, and include the accounts of SunPower, all of our subsidiaries and special purpose entities, as appropriate under U.S. GAAP. All intercompany transactions and balances have been eliminated in consolidation. The financial information included herein is unaudited, and reflects all adjustments which are, in the opinion of our management, of a normal recurring nature and necessary for a fair statement of the results for the periods presented. The December 30, 2018 consolidated balance sheet data were derived from SunPower's audited consolidated financial statements included in our Annual Report on Form 10-K for the fiscal year ended December 30, 2018, as filed with the Securities and Exchange Commission ("SEC") on February 13, 2019, but do not include all disclosures required by U.S. GAAP. The condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in SunPower's Annual Report on Form 10-K for the fiscal year ended December 30, 2018. The operating results for the fiscal quarter ended March 31, 2019 are not necessarily indicative of the results that may be expected for fiscal year 2019, or for any other future period.

Certain prior period balances have been reclassified to conform to the current period presentation in our condensed consolidated financial statements and the accompanying notes.

We have a 52-to-53-week fiscal year that ends on the Sunday closest to December 31. Accordingly, every fifth or sixth year will be a 53-week fiscal year. Both fiscal 2019 and 2018 are 52-week fiscal years. The first quarter of fiscal 2019 ended on March 31, 2019, while the first quarter of fiscal 2018 ended on April 1, 2018.

### *Management Estimates*

The preparation of the condensed consolidated financial statements in conformity with U.S. GAAP requires our management to make estimates and assumptions that affect the amounts reported in these condensed consolidated financial statements and accompanying notes. Significant estimates in these condensed consolidated financial statements include revenue recognition, specifically the nature and timing of satisfaction of performance obligations, standalone selling price of performance obligations and variable consideration; allowances for doubtful accounts receivable; recoverability of financing receivables related to residential leases; inventory and project asset write-downs; stock-based compensation; long-lived asset impairment, specifically estimates for valuation assumptions including discount rates and future cash flows; economic useful lives of property, plant and equipment, and intangible assets, fair value of investments including an equity investment for which we apply the fair value option and other financial instruments; residual value of solar power systems, including those subject to residential operating leases; valuation of contingencies such as accrued warranty; the incremental borrowing rate used in discounting of lease liabilities; the fair value of indemnities provided to customers and other parties, and income taxes and tax valuation allowances. Actual results could materially differ from those estimates.

## **Summary of Significant Accounting Policies**

### *Lease Accounting*

Effective December 31, 2018, we adopted Accounting Standards Update ("ASU") No. 2016-02, Leases (Topic 842), as amended ("ASC 842"). For additional information on the changes resulting from the new standard and the impact to our financial results on adoption, refer to the section *Recently Adopted Accounting Pronouncements* below.

#### *Arrangements with SunPower as a lessee*

We determine if an arrangement is a lease at inception. Our operating lease agreements are primarily for real estate and are included within operating lease right-of-use ("ROU") assets and operating lease liabilities on the consolidated balance sheets. We elected the practical expedient to combine our lease and related non-lease components for all our leases.

ROU assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. ROU assets and lease liabilities are recognized at the commencement date based on the present value of lease payments over the lease term. Variable lease payments are excluded from the ROU assets and lease liabilities and are recognized in the period in which the obligation for those payments is incurred. As most of our leases do not provide an implicit rate, we use our incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. ROU assets also include any lease prepayments made and exclude lease incentives. Many of our lessee agreements include options to extend the lease, which we do not include in our minimum lease terms unless they are reasonably certain to be exercised. Rental expense for lease payments related to operating leases is recognized on a straight-line basis over the lease term.

#### *Sale-Leaseback Arrangements*

We enter into sale-leaseback arrangements under which solar power systems are sold to third parties and subsequently leased back by us over lease terms of up to 25 years. At the end of the lease term, we have the option to purchase the systems at fair value or may be required to remove the systems and return them to the third parties.

We classify our sale-leaseback arrangements of solar power systems as operating leases or sales-type leases, in accordance with the underlying accounting guidance on leases.

For all sale-leaseback arrangements classified as operating leases, the deferred profit on the sale of the underlying systems is recognized over the term of the lease. Sale-leaseback arrangements classified as sales-type leases or failed sale, are accounted for under the financing method, the proceeds received from the sale of the solar power systems are recorded by us as financing liabilities. The financing liabilities are subsequently reduced by our payments to lease back the solar power systems, less interest expense calculated based on our incremental borrowing rate adjusted to the rate required to prevent negative amortization. Refer Note 4, *Business Divestiture*, for details of the sale of our commercial sale-leaseback portfolio during the quarter ended March 31, 2019.

## *Arrangements with SunPower as a lessor*

### *Solar Services*

We offer solar services, in partnership with third-party financial institutions, which allows our residential customers to obtain continuous access to SunPower solar systems under contracts for terms of up to 20 years. Solar services revenue is primarily comprised of revenue from such contracts wherein we provide continuous access to an operating solar system to third parties.

We begin to recognize revenue on solar services when permission to operate ("PTO") is given by the local utility company, system is interconnected and operation commences. We recognize revenue evenly over the time that we satisfy our performance obligations over the initial term of the solar services contracts. Solar services contracts typically have an initial term of 20 years. After the initial contract term, our customers may request an extension of the term of the contract on prevailing market terms, or request to remove the system. Otherwise, the contract will automatically renew and continue on a month-to-month basis.

We also apply for and receive Solar Renewable Energy Credits ("SRECs") associated with the energy generated by our solar energy systems and sell them to third parties in certain jurisdictions. SREC revenue is estimated net of any variable consideration related to possible liquidated damages if we were to deliver fewer SRECs than contractually committed, and is generally recognized upon delivery of the SRECs to the counterparty.

We typically provide a system output performance warranty, separate from our standard solar panel product warranty, to our solar services customers. In connection with system output performance warranties, we agree to pay liquidated damages in the event the system does not perform to the stated specifications, with certain exclusions. The warranty excludes system output shortfalls attributable to force majeure events, customer curtailment, irregular weather, and other similar factors. In the event that the system output falls below the warranted performance level during the applicable warranty period, and provided that the shortfall is not caused by a factor that is excluded from the performance warranty, the warranty provides that we will pay the customer an amount based on the value of the shortfall of energy produced relative to the applicable warranted performance level. Such liquidated damages represent a form of variable consideration and are estimated at contract inception and updated at each reporting period and recognized over time as customers receive and consume the benefits of the solar services.

There are rebate programs offered by utilities in various jurisdictions and are issued directly to homeowners and based on the lease agreements, the homeowners assign these rights to rebate to us. These rights to rebate are considered non-cash consideration, measured based on the utilities' rebates from the installed solar panels on the homeowners' roofs and recognized over the lease term.

We capitalize incremental costs incurred to obtain a contract in prepaid and other assets on the condensed consolidated balance sheets. These amounts are amortized on a straight-line basis over the term of the solar services contracts, and are included in cost of revenue in the consolidated statements of operations.

### **Recently Adopted Accounting Pronouncements**

In October 2018, the Financial Accounting Standard Board ("FASB") issued ASU 2018-16, *Derivatives and Hedging (Topic 815): Inclusion of the Secured Overnight Financing Rate (SOFR) Overnight Index Swap (OIS) Rate as a Benchmark Interest Rate for Hedge Accounting Purposes*, which permits the use of Overnight Index Swap Rate based on the Secured Overnight Financing Rate as a fifth U.S. benchmark interest rate for purposes of hedge accounting. The new guidance is effective for fiscal years beginning after December 15, 2018 and interim periods within those fiscal years and should be applied prospectively for qualifying new or re-designated hedging relationships entered into after December 31, 2018. We adopted the new guidance on December 31, 2018. The adoption did not have an impact on our consolidated financial statements.

In February 2016, the FASB issued ASC 842, which supersedes the existing guidance for lease accounting, *Leases (Topic 840)*. ASC 842 requires lessees to recognize a lease liability and a ROU asset for virtually all of their leases (other than leases that meet the definition of a short-term lease). ASC 842 is effective for fiscal years beginning after December 15, 2018 and interim periods within those fiscal years. In July 2018, the FASB issued several ASUs to clarify and improve certain aspects of the new lease standard including, among many other things, the rate implicit in the lease, lessee reassessment of lease classification, variable payments that depend on an index or rate, methods of transition including an optional transition method to continue recognizing and disclosing leases entered into prior to the adoption date under current GAAP ("ASC 840"). In

December 2018, the FASB issued ASU 2018-20, Leases (Topic 842) *Narrow-Scope Improvements for Lessors*, related to sales taxes and other similar taxes collected from lessees, certain lessor costs paid by lessees to third parties, and related to recognition of variable payments for contracts.

On December 31, 2018, we adopted ASC 842 using the optional transitional method for all leases that existed at or commenced before that date. We elected to apply the practical expedients in ASC 842-10-65-1 (f) and (g), and therefore:

- 1) did not reassess expired contracts for presence of lease components therein and if it was already concluded that such contracts had lease components then the classification of the respective lease components therein have not been re-assessed;
- 2) did not re-assess initial direct costs for any existing leases;
- 3) used hindsight for determining the lease term for all leases whereon ASC 842 has been applied;
- 4) elected to not separate the lease and non-lease components;
- 5) elected to not apply the recognition and measurement requirements of the new guidance to short-term leases;
- 6) did not assess whether existing or expired land easements that were not previously assessed under legacy guidance on leases are or contain a lease under the new guidance;

The adoption of ASC 842 had a material impact on our condensed consolidated balance sheet as the standard requires us to recognize an ROU asset and lease liability on our condensed consolidated balance sheet as of December 31, 2018, for all existing leases other than those to which we have applied the short-term lease practical expedient.

Upon adoption, we made the following changes to our accounting policies:

- Solar leases no longer meet the criteria for lease accounting as our contracts do not allow the customer to direct the use of the underlying solar system. Instead, we will now account for these arrangements as contracts with customers pursuant to ASC Topic 606 and recognize revenue ratably based on contractual lease cash flows over the lease term;
- All operating lease arrangements, other than short term leases, are now recorded on the balance sheet as a ROU asset with a corresponding lease liability;

Further, arrangements that involve the lease-back of solar systems sold to a financier will continue to be accounted for as a failed sale and result in the recording of a financing liability.

#### **Impact to Condensed Consolidated Financial Statements**

The below table shows the impact of adoption of ASC 842 on our condensed consolidated financial statements as of December 31, 2018:

<b>(In thousands)</b>	<b>December 31, 2018</b>	<b>Adoption of ASC 842</b>	<b>December 31, 2018</b>
<b>Assets:</b>			
Prepaid expenses and other current assets	\$ 131,183	\$ (4,433)	\$ 126,750
Operating lease right-of-use assets	—	81,525	81,525
Other long-term assets	162,033	(14,028)	148,005
<b>Current Liabilities:</b>			
Accrued liabilities	235,252	(2,455)	232,797
Operating lease liabilities	—	11,499	11,499
Contract liabilities, current portion	104,130	(2,079)	102,051
<b>Non-current liabilities:</b>			
Operating lease liabilities, net of current portion	—	70,132	70,132
Contract liabilities, net of current portion	99,509	(19,928)	79,581
Other long-term liabilities	839,136	(3,256)	835,880
<b>Equity:</b>			
Accumulated deficit	\$ (2,480,988)	\$ 9,151	\$ (2,471,837)

#### **Recent Accounting Pronouncements Not Yet Adopted**

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments (ASU 2016-13)* and subsequent amendment to the initial guidance: *ASU 2018-19 (collectively, Topic 326)*. Topic 326 requires measurement and recognition of expected credit losses for financial assets held. Topic 326 is effective for us no later than the first quarter of fiscal 2020 with early adoption permitted. We are evaluating the potential impact of this ASU on our consolidated financial statements and disclosures.

In November 2018, the FASB issued ASU 2018-18, *Collaborative Arrangements (Topic 808): Clarifying the Interaction between Topic 808 and Topic 606*, which 1) clarifies that certain transactions between collaborative arrangement participants should be accounted for as revenue under Topic 606; 2) adds unit-of-account guidance in Topic 808 to align with the guidance in Topic 606; and 3) requires that in a transaction with a collaborative arrangement participant that is not directly related to sales to third parties, presenting the transaction together with revenue recognized under Topic 606 is precluded if the collaborative arrangement participant is not a customer. This ASU is effective for us no later than the first quarter of 2020 on a retrospective basis with early adoption permitted. We are evaluating the potential impact of this ASU on our consolidated financial statements and disclosures.

In October 2018, the FASB issued ASU 2018-17, *Consolidation (Topic 810): Targeted Improvements to Related Party Guidance for Variable Interest Entities*, which broadens the scope of the private company alternative to include all common control arrangements that meet specific criteria (not just leasing arrangements) and also eliminates the requirement that entities consider indirect interests held through related parties under common control in their entirety when assessing whether a decision-making fee is a variable interest. This ASU is effective for us no later than the first quarter of 2020 on a retrospective basis with a cumulative-effect adjustment to retained earnings at the beginning of the earliest period presented. We are evaluating the potential impact of this ASU on our consolidated financial statements and disclosures.

In August 2018, the FASB issued ASU 2018-15, *Intangibles — Goodwill and Other — Internal-Use Software (Subtopic 350-40)* requiring a customer in a cloud computing arrangement that is a service contract to follow the internal-use software guidance in ASC 350-40 to determine which implementation costs to capitalize as assets. This ASU is effective for us no later than the first quarter of 2020 with early adoption permitted. This ASU can be applied either retrospectively or prospectively to all implementation costs incurred after the date of adoption. We are evaluating the potential impact of this standard on our consolidated financial statements and disclosures.

In August 2018, the FASB issued ASU 2018-14, *Compensation - Retirement Benefits - Defined Benefit Plans - General (Subtopic 715-20)* to add, remove, and clarify disclosure requirements related to defined benefit pension and other postretirement plans. This ASU is effective for us no later than the first quarter of 2020 with early adoption permitted. We are evaluating the potential impact of this standard on our consolidated financial statements and disclosures.

In August 2018, the FASB issued ASU 2018-13, *Fair Value Measurement (Topic 820)* which changes the fair value measurement disclosure requirements of ASC 820. The guidance adds and clarifies certain disclosure requirements for fair value measurements with the objective of improving the effectiveness of disclosures in the notes to financial statements. This ASU is effective for us no later than the first quarter of 2020 with early adoption permitted. We are evaluating the potential impact of this standard on our consolidated financial statements and disclosures.

## **Note 2. TRANSACTIONS WITH TOTAL AND TOTAL S.A.**

In June 2011, Total completed a cash tender offer to acquire 60% of our then outstanding shares of common stock at a price of \$23.25 per share, for a total cost of approximately \$1.4 billion. In December 2011, we entered into a Private Placement Agreement with Total (the "Private Placement Agreement"), under which Total purchased, and we issued and sold, 18.6 million shares of our common stock for a purchase price of \$8.80 per share, thereby increasing Total's ownership to approximately 66% of our outstanding common stock as of that date. As of March 31, 2019, through the increase of our total outstanding common stock due to the exercise of warrants and issuance of restricted and performance stock units, Total's ownership of our outstanding common stock was approximately 55%.

### ***Supply Agreements***

In November 2016, we and Total entered into a four-year, up to 200 megawatts ("MW") supply agreement to support the solarization of certain Total facilities. The agreement covers the supply of 150 MW of Maxeon 2 (formally known as E-Series) panels with an option to purchase up to another 50 MW of P-Series solar panels. In March 2017, we received a prepayment totaling \$88.5 million. The prepayment is secured by certain of our assets located in the United States and in Mexico.

We recognize revenue for the solar panels supplied under this arrangement consistent with our revenue recognition policy for solar power components at a point in time when control of such products transfers to the customer, which generally occurs upon shipment or delivery depending on the terms of the contracts. In the second quarter of fiscal 2017, we started to supply Total with solar panels under the supply agreement and as of March 31, 2019, we had \$18.6 million of "contract liabilities, current portion" and \$41.3 million of "contract liabilities, net of current portion" on our condensed consolidated balance sheets related to the aforementioned supply agreement (see Note 9. *Commitments and Contingencies*).

In March 2018, we and Total, each through certain affiliates, entered into an agreement whereby we agreed to sell 3.42 MW of photovoltaic ("PV") modules to Total for a development project in Chile. This agreement provided for payment from Total in the amount of approximately \$1.3 million, 10% of which was paid upon execution of the agreement.

On January 7, 2019, we and Total, each through certain affiliates, entered into an agreement whereby we agreed to sell 3.7 MW of PV modules to Total for a ground-mounted PV installation in Dubai. This agreement provided for payment from Total in the amount of approximately \$1.35 million, 10% of which was received after execution of the agreement.

On March 4, 2019, we and Total, each through certain affiliates, entered into an agreement whereby we agreed to sell 10 MW of PV modules to Total for commercial rooftop PV installations in Dubai. This agreement provided for payment from Total in the amount of approximately \$3.16 million, 10% of which is paid in April 2019.

### ***Amended and Restated Credit Support Agreement***

In June 2016, we and Total S.A. entered into an Amended and Restated Credit Support Agreement (the "Credit Support Agreement"), which amended and restated the Credit Support Agreement dated April 28, 2011, by and between us and Total S.A., as amended. Under the Credit Support Agreement, Total

S.A. agreed to enter into one or more guarantee agreements (each a "Guaranty") with banks providing letter of credit facilities to us. At any time until December 31, 2018, Total S.A. will, at our request, guarantee the payment to the applicable issuing bank of our obligation to reimburse a draw on a letter of credit and pay interest thereon in accordance with the letter of credit facility between such bank and us. Such letters of credit must be issued no later than December 31, 2018 and expire no later than March 31, 2020. Total S.A. is required to issue and enter into a Guaranty requested by us, subject to certain terms and conditions. In addition, Total will not be required to enter into the Guaranty if, after giving effect to our request for a Guaranty, the sum of (a) the aggregate amount available to be drawn under all guaranteed letter of credit facilities, (b) the amount of letters of credit available to be issued under any guaranteed facility, and (c) the aggregate amount of draws (including accrued but unpaid interest) on any letters of credit issued under any guaranteed facility that have not yet been reimbursed by us, would exceed \$500.0 million in the aggregate. Such maximum amounts of credit support available to us can be reduced upon the occurrence of specified events.



In consideration for the commitments of Total S.A. pursuant to the Credit Support Agreement, we are required to pay Total S.A. a guaranty fee for each letter of credit that is the subject of a Guaranty under the Credit Support Agreement and was outstanding for all or part of the preceding calendar quarter. The Credit Support Agreement terminated on December 31, 2018, and we decided not to renew it.

In addition to the Credit Support Agreement, we and Total S.A. entered into the Letter Agreement in May 2017 to facilitate the issuance by Total S.A. of one or more guaranties of our payment obligations of up to \$100.0 million (the "Support Amount") under the Revolver; See "Note 11. *Debt and Credit Sources*" for additional information on the Revolver. In consideration for the commitments of Total S.A. pursuant to the Letter Agreement, we are required to pay a guarantor commitment fee of 0.50% per annum for the unutilized Support Amount and a guaranty fee of 2.35% per annum of the Guaranty outstanding. The maturity date of the Letter Agreement is August 26, 2019.

### ***Affiliation Agreement***

We and Total have entered into an Affiliation Agreement that governs the relationship between Total and us (the "Affiliation Agreement"). Until the expiration of a standstill period specified in the Affiliation Agreement (the "Standstill Period"), and subject to certain exceptions, Total, Total S.A., and any of their respective affiliates and certain other related parties (collectively, the "Total Group") may not effect, seek, or enter into discussions with any third party regarding any transaction that would result in the Total Group beneficially owning our shares in excess of certain thresholds, or request us or our independent directors, officers or employees, to amend or waive any of the standstill restrictions applicable to the Total Group. The Standstill Period ends when Total holds less than 15% ownership of us.

The Affiliation Agreement imposes certain limitations on the Total Group's ability to seek to effect a tender offer or merger to acquire 100% of the outstanding voting power of us and imposes certain limitations on the Total Group's ability to transfer 40% or more of the outstanding shares or voting power of us to a single person or group that is not a direct or indirect subsidiary of Total S.A. During the Standstill Period, no member of the Total Group may, among other things, solicit proxies or become a participant in an election contest relating to the election of directors to our Board of Directors.

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

The Affiliation Agreement also imposes certain restrictions with respect to the ability of us and our board of directors to take certain actions, including specifying certain actions that require approval by the directors other than the directors appointed by Total and other actions that require stockholder approval by Total.

### ***Research & Collaboration Agreement***

We and Total have entered into a Research & Collaboration Agreement (the "R&D Agreement") that establishes a framework under which the parties engage in long-term research and development collaboration ("R&D Collaboration"). The R&D Collaboration encompasses a number of different projects, with a focus on advancing our technology position in the crystalline silicon domain, as well as ensuring our industrial competitiveness. The R&D Agreement enables a joint committee to identify, plan and manage the R&D Collaboration.

### ***Upfront Warrant***

In February 2012, we issued a warrant (the "Upfront Warrant") to Total S.A. to purchase 9,531,677 shares of our common stock with an exercise price of \$7.8685, subject to adjustment for customary anti-dilution and other events. The Upfront Warrant, which was governed by a Private Placement Agreement and a Compensation and Funding Agreement, dated February 28, 2012, as amended, was exercisable at any time for seven years after its issuance, provided that, so long as at least \$25.0 million in aggregate of our convertible debt remains outstanding, such exercise would not cause any "person," including Total S.A., to, directly or indirectly, including through one or more wholly-owned subsidiaries, become the "beneficial owner" (as such terms are defined in Rule 13d-3 and Rule 13d-5 under the Securities Exchange Act of 1934, as amended) (the "Exchange Act"), of more than 74.99% of the voting power of our common stock at such time, a circumstance which would trigger the repurchase or conversion of our existing convertible debt. The Upfront Warrant expired by its terms on February 27, 2019.

### ***0.75% Debentures Due 2018***

In May 2013, we issued \$300.0 million in principal amount of the 0.75% debentures due 2018. An aggregate principal amount of \$200.0 million of the 0.75% debentures due 2018 were acquired by Total. The 0.75% debentures due 2018 were convertible into shares of our common stock at any time based on an initial conversion price equal to \$24.95 per share, which provided Total the right to acquire up to 8,017,420 shares of our common stock. The applicable conversion rate could adjust in certain circumstances, including a fundamental change, as described in the indenture governing the 0.75% debentures due 2018. On June 1, 2018, the 0.75% senior convertible debentures due 2018 were redeemed at maturity with proceeds from the Term Credit Agreement (the "Term Credit Agreement") with Credit Agricole Corporate and Investment Bank ("Credit Agricole") and as of December 30, 2018 were no longer issued or outstanding. On June 19, 2018, we completed the divestiture of our equity interest in the 8point3 Group, and received, after the payment of fees and expenses, merger proceeds of approximately \$359.9 million in cash. Immediately following the transaction, we repaid our loan under the Term Credit Agreement in full with the proceeds of the divestiture, retaining the excess proceeds.

### ***0.875% Debentures Due 2021***

In June 2014, we issued \$400.0 million in principal amount of our 0.875% senior convertible debentures due 2021 (the "0.875% debentures due 2021"). An aggregate principal amount of \$250.0 million of the 0.875% debentures due 2021 were acquired by Total. The 0.875% debentures due 2021 are convertible into shares of our common stock at any time based on an initial conversion price equal to \$48.76 per share, which provides Total the right to acquire up to 5,126,775 shares of our common stock. The applicable conversion rate may adjust in certain circumstances, including a fundamental change, as described in the indenture governing the 0.875% debentures due 2021.

### ***4.00% Debentures Due 2023***

In December 2015, we issued \$425.0 million in principal amount of our 4.00% senior convertible debentures due 2023 (the "4.00% debentures due 2023"). An aggregate principal amount of \$100.0 million of the 4.00% debentures due 2023 were acquired by Total. The 4.00% debentures due 2023 are convertible into shares of our common stock at any time based on an initial conversion price equal to \$30.53 per share, which provides Total the right to acquire up to 3,275,680 shares of our common stock. The applicable conversion rate may adjust in certain circumstances, including a fundamental change, as described in the indenture governing the 4.00% debentures due 2023.

### ***Joint Solar Projects with Total and its Affiliates***

We enter into various EPC and O&M agreements relating to solar projects, including EPC and O&M services agreements relating to projects owned or partially owned by Total and its affiliates. As of March 31, 2019, we had an insignificant amount of "Contract assets" and \$5.3 million of "Accounts receivable, net" on our Condensed Consolidated Balance Sheets related to projects in which Total and its affiliates have a direct or indirect material interest.

In connection with a co-development solar project among us, Total, and an independent third party, we sold 25% of our ownership interests in the co-development solar project to Total. The amount received from Total was immaterial in fiscal 2018. We intend to sell an additional 25% of its ownership interest to Total in 2019 and will supply PV in late 2019 to the solar project. However, recent amendments to the feed-in-tariff rules in Japan have had a significant impact on the co-development solar project's ability to secure financing and we are currently exploring alternatives to monetize our investment in the co-development solar project.

In connection with a co-development solar project between us and Total, we paid \$0.5 million to Total for development fees for the three months ended April 1, 2018.

**Related-Party Transactions with Total and its Affiliates:**

The following related-party balances and amounts are associated with transactions entered into with Total and its Affiliates. Refer to Note 10. *Equity Investments* for related-party transactions with unconsolidated entities in which we have a direct equity investment.

(In thousands)	As of	
	March 31, 2019	December 30, 2018
Accounts receivable	\$ 5,293	\$ 3,823
Contract assets	13	18
Contract liabilities, current portion <sup>1</sup>	18,585	18,408
Contract liabilities, net of current portion <sup>1</sup>	41,278	45,258

<sup>1</sup> Refer to Note 9. *Commitments and Contingencies - Advances from Customers*.

(In thousands)	Three Months Ended	
	March 31, 2019	April 1, 2018
Revenue:		
Solar power systems, components, and other	\$ 6,043	\$ 12,730
Cost of revenue:		
Solar power systems, components, and other	4,342	3,550
Research and development expense:		
Offsetting contributions received under the R&D Agreement	(158)	(37)
Interest expense:		
Guarantee fees incurred under the Credit Support Agreement	151	1,407
Interest expense incurred on the 0.75% debentures due 2018	—	375
Interest expense incurred on the 0.875% debentures due 2021	547	547
Interest expense incurred on the 4.00% debentures due 2023	1,000	1,000

**Note 3. REVENUE FROM CONTRACTS WITH CUSTOMERS**
**Disaggregation of Revenue**

The following tables represent disaggregated revenue from contracts with customers for the three months ended March 31, 2019 and April 1, 2018 along with the reportable segment for each category:

(In thousands)	Three Months Ended					
	SunPower Technologies		SunPower Energy Services		Total Revenue	
	March 31, 2019	April 1, 2018	March 31, 2019	April 1, 2018	March 31, 2019	April 1, 2018
Module and component sales	\$ 79,524	\$ 108,646	\$ 115,656	\$ 114,851	\$ 195,180	\$ 223,497
Solar power systems sales and EPC services	90,481	36,314	46,537	57,853	137,018	94,167
Operations and maintenance	—	—	9,244	11,196	9,244	11,196
Residential leasing	—	—	3,884	63,028	3,884	63,028
Solar services	—	—	2,899	—	2,899	—
Revenue	170,005	144,960	178,220	246,928	348,225	391,888

We recognize revenue for sales of modules and components at the point that control transfers to the customer, which typically occurs upon shipment or delivery to the customer, depending on the terms of the contract, and we recognize revenue for operations and maintenance and solar services over the term of the service period.

For engineering, procurement and construction ("EPC") revenue and solar power systems sales, we commence recognizing revenue when control of the underlying system transfers to the customer and continue recognizing revenue over time as work is performed based on the ratio of costs incurred to date to the total estimated costs at completion of the performance obligations.

Judgment is required to evaluate assumptions including the amount of net contract revenues and the total estimated costs to determine our progress towards contract completion and to calculate the corresponding amount of revenue to recognize. If estimated total costs on any contract are greater than the net contract revenues, we recognize the entire estimated loss in the period the loss becomes known. For contracts with post-installation systems monitoring and maintenance, we recognize revenue related to systems monitoring and maintenance over the non-cancellable contract term on a straight-line basis.

Changes in estimates for sales of systems and EPC services occur for a variety of reasons, including but not limited to (i) construction plan accelerations or delays, (ii) product cost forecast changes, (iii) change orders, or (iv) changes in other information used to estimate costs. Changes in estimates may have a material effect in our condensed consolidated statements of operations. The table below outlines the impact on revenue of net changes in estimated transaction prices and input costs for systems related sales contracts (both increases and decreases) for the three months ended March 31, 2019 and April 1, 2018 as well as the number of projects that comprise such changes. For purposes of the following table, only projects with changes in estimates that have an impact on revenue and or cost of at least \$1.0 million during the periods were presented. Also included in the table is the net change in estimate as a percentage of the aggregate revenue for such projects.

(In thousands, except number of projects)	Three Months Ended	
	March 31, 2019	April 1, 2018
Decrease in revenue from net changes in transaction prices	\$ (3,301)	\$ —
Increase in revenue from net changes in input cost estimates	2,410	1,152
Net increase (decrease) in revenue from net changes in estimates	\$ (891)	\$ 1,152
Number of projects	1	1
Net change in estimate as a percentage of aggregate revenue for associated projects	(11.3)%	0.5%

#### Contract Assets and Liabilities

Contract assets consist of (i) retainage which represents the earned, but unbilled, portion of a construction and development project for which payment is deferred by the customer until certain contractual milestones are met; and (ii) unbilled receivables which represent revenue that has been recognized in advance of billing the customer, which is common for long-term construction contracts. Contract liabilities consist of deferred revenue and customer advances, which represent consideration received from a customer prior to transferring control of goods or services to the customer under the terms of a sales contract. Refer to "Note 5. Balance Sheet Components" for further details.

During the three months ended March 31, 2019, the decrease in contract assets of \$1.7 million was primarily driven by billings for commercial projects where certain milestones had been reached. During the three months ended March 31, 2019, the decrease in contract liabilities of \$36.0 million was primarily due to utilization of customer advances, reclassification of contract liabilities related to sale-leaseback arrangements to lease liabilities, and adjustment for a portion of deferred profit on sale-leaseback arrangements to retained earnings, upon adoption of ASC 842. During the three months ended March 31, 2019, we recognized revenue of \$26.3 million that was included in contract liabilities as of December 30, 2018.

The following table represents our remaining performance obligations as of March 31, 2019 for our sales of solar power systems, including projects under sales contracts subject to conditions precedent, and EPC agreements for developed projects that we are constructing or expect to construct. We expect to recognize \$94.8 million of revenue for such contracts upon transfer of control of the projects.

<b>Project</b>	<b>Revenue Category</b>	<b>EPC Contract/Partner Developed Project</b>	<b>Expected Year Revenue Recognition Will Be Completed</b>	<b>Percentage of Revenue Recognized</b>
Joint Base Anacostia Bolling (JBAB)	Solar power systems sales and EPC services	Constellation	2019	99.9%
Various Distribution Generation Projects <sup>1</sup>	Solar power systems sales and EPC services	Various	2020	83.4%

<sup>1</sup>Denotes average percentage of revenue recognized.

As of March 31, 2019, we entered into contracts with customers for the future sale of modules and components for an aggregate transaction price of \$453.7 million, the substantial majority of which we expect to recognize as revenue through the second and third quarter of fiscal 2019. As of March 31, 2019, we had entered into O&M contracts of utility-scale PV solar power systems. We expect to recognize \$125.3 million of revenue over the service period for solar services contracts entered into as of three months ended March 31, 2019. We expect to recognize \$10.2 million of revenue during the non-cancellable term of these O&M contracts over an average period of three months.

**Note 4. BUSINESS DIVESTITURE**

*Sale of Commercial Sale-Leaseback Portfolio*

We entered into sale-leaseback arrangements under which solar power systems were sold to third parties and subsequently leased back by us over lease terms of up to 25 years. Separately, we entered into sales of energy under power purchase agreements ("PPAs") with end customers, who host the leased solar power systems and buy the electricity directly from us under PPAs with terms of up to 25 years. At the end of the lease term, we have the option to purchase the systems at fair value or may be required to remove the systems and return them to the third parties.

On March 26, 2019, we entered into a Membership Interest Purchase and Sale Agreement (the "Purchase and Sale Agreement") with a wholly-owned subsidiary of Goldman Sachs Renewable Power LLC. Pursuant to the Purchase and Sale Agreement, we agreed to sell, in exchange for cash consideration of up to \$86.9 million, membership interests in certain of our holding company subsidiaries (the "Holdco" or "Holdcos") that directly or indirectly own leasehold interests in operating solar photovoltaic electric generating projects (the "Projects") subject to sale-leaseback financing arrangements with one or more financiers (each a "Lessor") and other related subsidiaries. The Projects are located at approximately 200 sites across the United States, and represent in aggregate, approximately 233 MW of generating capacity. The portfolio of Projects financed by each lessor represents a separate asset ("Portfolio") for which the price is separately agreed and stated in the Purchase and Sale Agreement.

The consummation of the sale and purchase of each Portfolio is subject to a number of customary conditions precedent, including receipt of certain third-party consents and approvals, including those of the applicable Lessor. The completion of sale of each Portfolio will happen as the underlying conditions precedent are satisfied.

On March 29, 2019, we completed the sale of one such Portfolio in exchange for total consideration of \$7.6 million in cash. We also retained a favorable O&M contract given current market pricing, which we recorded at fair value as an other intangible asset. In evaluating the accounting treatment for this transaction, we concluded that the Portfolio meets the definition of a business. In connection with the sale transaction, we recognized a gain of \$6.1 million, which is included within "gain on business divestiture" in our condensed consolidated statements of operations for the three months ended March 31, 2019. We have also incurred approximately \$0.4 million of transaction costs related to the above transactions to date, which were expensed as incurred.

The assets and liabilities of the Portfolio on March 29, 2019 were as follows:

<b>(In thousands)</b>	<b>March 29, 2019</b>
Restricted cash and cash equivalents, current portion	\$ 811
Accounts receivable, net	336
Prepaid expenses and other current assets	5
Restricted cash and cash equivalents, net of current portion	1,746
Operating lease right-of-use assets	16,870
Other long-term assets	198
Total assets	19,966
Accounts payable	48
Operating lease liabilities, current portion	1,591
Operating lease liabilities, net of current portion	16,746
Other long-term liabilities	324
Total liabilities	18,709
Net assets sold	\$ 1,257

Net gain on sale is presented in the following table:

<b>(In thousands)</b>	
Cash received from sale	\$ 7,618
Other intangible assets	150
Net assets sold	(1,257)
Retained obligations	(397)
Net gain on sale	\$ 6,114

#### *Assets Held for Sale*

Upon execution of the Purchase and Sale Agreement, the assets and liabilities within the remaining portfolio subject to sale meet the criteria for classification as held for sale ("HFS"), since the assets are subject only to usual and customary closing conditions, and the sale is expected to be completed in less than one year from the date of the Agreement. All assets and liabilities within the portfolios for which the sale is not completed as of March 31, 2019 have accordingly been classified as HFS on the condensed consolidated balance sheet. The following table represents assets and liabilities HFS as of March 31, 2019.

<b>(In thousands)</b>	<b>March 31, 2019</b>	
<b>Assets:</b>		
Restricted cash and cash equivalents, current portion	\$	37,141
Accounts receivable, net		5,355
Prepaid expenses and other current assets		754
Property, plant and equipment, net		477,409
Operating lease right-of-use assets		29,414
Total assets held for sale		550,073
<b>Liabilities:</b>		
Accounts payable		181
Accrued liabilities		1,449
Operating lease liabilities, current portion		1,041
Operating lease liabilities, net of current portion		21,700
Long-term sale-leaseback financing		595,167
Total liabilities held for sale	\$	619,538

The remaining portfolio held for sale incurred losses of \$6.9 million and \$6.4 million for the three months ended March 31, 2019 and April 1, 2018, respectively.

**Note 5. BALANCE SHEET COMPONENTS**

**Accounts Receivable, Net**

<b>(In thousands)</b>	<b>As of</b>	
	<b>March 31, 2019</b>	<b>December 30, 2018</b>
Accounts receivable, gross <sup>1,2,3</sup>	\$ 176,027	\$ 193,980
Less: allowance for doubtful accounts	(18,321)	(16,906)
Less: allowance for sales returns	(1,261)	(1,469)
Accounts receivable, net	\$ 156,445	\$ 175,605

<sup>1</sup>Includes short-term financing receivables held for sale associated with solar power systems leased of \$1.3 million as of December 30, 2018 in connection with the sale of our residential lease portfolio.

<sup>2</sup>On December 10, 2018, we entered into a one-year factoring arrangement and sold to BPI France our Euro denominated accounts receivable related to our French customers for an amount of approximately \$26.3 million. In the three months ended March 31, 2019, we sold \$20.9 million additional Euro denominated accounts receivable to BPI. Under this arrangement, we provided the bank full recourse for any loss should customers fail to pay when payment is due. The advance payment amount under this program is limited at face value of the sold invoices. We have accounted for this arrangement as a sale of financial assets as effective control over these financial assets has been surrendered and are excluded from our condensed consolidated balance sheets. As of March 31, 2019 and December 30, 2018, uncollected accounts receivable from the end customers under this arrangement were \$8.7 million and \$21.0 million, respectively.

<sup>3</sup>We have a lien on accounts receivable of \$54.6 million out of our consolidated accounts receivable, gross, as of March 31, 2019 in connection with a Loan and Security Agreement entered into on March 29, 2019. See Note 11. *Debt and Credit Sources*.

**Inventories**

<b>(In thousands)</b>	<b>As of</b>	
	<b>March 31, 2019</b>	<b>December 30, 2018</b>
Raw materials	\$ 62,833	\$ 58,378
Work-in-process	92,561	86,639
Finished goods	178,996	163,129
Inventories <sup>1</sup>	\$ 334,390	\$ 308,146

<sup>1</sup>We have a lien on gross inventory of \$150.5 million as of March 31, 2019 in connection with a Loan and Security Agreement entered into on March 29, 2019. See Note 11.  
*Debt and Credit Sources.*



**Prepaid Expenses and Other Current Assets**

(In thousands)	As of	
	March 31, 2019	December 30, 2018
Deferred project costs	\$ 27,969	\$ 30,394
VAT receivables, current portion	8,488	9,506
Deferred costs for solar power systems	3,848	17,805
Derivative financial instruments	1,049	729
Other receivables	40,721	48,062
Prepaid taxes	—	853
Other prepaid expenses	17,421	23,568
Other current assets	179	266
Prepaid expenses and other current assets	\$ 99,675	\$ 131,183

**Property, Plant and Equipment, Net**

(In thousands)	As of	
	March 31, 2019	December 30, 2018
Manufacturing equipment	\$ 114,627	\$ 112,904
Land and buildings	161,340	161,299
Leasehold improvements	119,658	119,597
Solar power systems <sup>1</sup>	68,767	544,139
Computer equipment	98,588	98,274
Furniture and fixtures	10,626	10,594
Construction-in-process	34,775	9,678
Property, plant and equipment, gross	608,381	1,056,485
Less: accumulated depreciation	(195,034)	(216,614)
Property, plant and equipment, net	\$ 413,347	\$ 839,871

<sup>1</sup>As a result of ASC 842 adoption, all of our residential lease arrangements entered into on or after December 31, 2018 are outside of the scope of ASC 842 guidance and will be accounted for as service contracts with customers in accordance with ASC 606 going forward. The related assets are recorded as solar power systems within "Property, plant and equipment, net" as of March 31, 2019.

**Property, Plant and Equipment, Net, by Geography**

(In thousands)	As of	
	March 31, 2019	December 30, 2018
United States	\$ 151,551	\$ 575,451
Philippines	100,894	104,639
Malaysia	127,659	126,056
Mexico	21,427	21,566
Europe	11,714	12,043
Other	102	116
Property, plant and equipment, net, by geography <sup>1</sup>	\$ 413,347	\$ 839,871

<sup>1</sup>Property, plant and equipment, net, by geography is based on the physical location of the assets.

**Other Long-term Assets**

<b>(In thousands)</b>	<b>As of</b>	
	<b>March 31, 2019</b>	<b>December 30, 2018</b>
Equity investments with readily determinable fair value	\$ 69,225	\$ 36,225
Equity investments without readily determinable fair value	8,805	8,810
Equity investment with fair value option	9,454	8,831
Equity method investments	36,336	34,828
Other	61,551	73,339
Other long-term assets	<u>\$ 185,371</u>	<u>\$ 162,033</u>

**Accrued Liabilities**

<b>(In thousands)</b>	<b>As of</b>	
	<b>March 31, 2019</b>	<b>December 30, 2018</b>
Employee compensation and employee benefits	\$ 28,521	\$ 44,337
Deferred revenue <sup>1</sup>	821	4,251
Interest payable	6,604	11,786
Short-term warranty reserves	39,381	38,161
Restructuring reserve	3,484	6,310
VAT payables	9,249	8,325
Derivative financial instruments	1,088	1,161
Legal expenses	12,235	12,442
Taxes payable	17,237	19,146
Liability due to supply agreement	28,680	28,045
Other	42,795	61,288
Accrued liabilities	<u>\$ 190,095</u>	<u>\$ 235,252</u>

<sup>1</sup>Consists of advance consideration received from customers under the residential lease program for leases entered into prior to December 31, 2018, which continue to be accounted for in accordance with the superseded lease accounting guidance.

**Other Long-term Liabilities**

<b>(In thousands)</b>	<b>As of</b>	
	<b>March 31, 2019</b>	<b>December 30, 2018</b>
Deferred revenue <sup>1</sup>	\$ 53,810	\$ 55,764
Long-term warranty reserves	123,823	134,105
Long-term sale-leaseback financing	—	583,418
Unrecognized tax benefits	17,774	16,815
Long-term pension liability	2,640	2,567
Derivative financial instruments	232	152
Long-term liability due to supply agreement	26,210	28,198
Other	9,897	18,117
Other long-term liabilities	<u>\$ 234,386</u>	<u>\$ 839,136</u>

<sup>1</sup>Consists of advance consideration received from customers under the residential lease program for leases entered into prior to December 31, 2018, which continue to be accounted for in accordance with the superseded lease accounting guidance.

**Accumulated Other Comprehensive Loss**

(In thousands)	As of	
	March 31, 2019	December 30, 2018
Cumulative translation adjustment	\$ (11,142)	\$ (11,121)
Net unrealized gain (loss) on derivatives	40	(145)
Net gain on long-term pension liability adjustment	7,066	7,066
Deferred taxes	(15)	50
Accumulated other comprehensive loss	\$ (4,051)	\$ (4,150)

**Note 6. SOLAR SERVICES**

Upon adoption of ASC 842 on December 31, 2018, all arrangements under our residential lease program entered into on or after December 31, 2018 will be accounted for as contracts with customers in accordance with ASC 606. Refer to Note 1 for the impact of the adoption of ASC 842 on our financial statements and accounting policies. The disclosure below relates to the residential lease arrangements entered into before December 31, 2018, which we continue to retain and are accounted for in accordance with the superseded lease accounting guidance.

**Operating Leases**

The following table summarizes "Solar power systems leased and to be leased, net" under operating leases on our condensed consolidated balance sheets as of March 31, 2019 and December 30, 2018:

(In thousands)	As of	
	March 31, 2019	December 30, 2018
Solar power systems leased and to be leased, net <sup>1</sup> :		
Solar power systems leased	\$ 137,901	\$ 139,343
Solar power systems to be leased	—	12,158
	137,901	151,501
Less: accumulated depreciation and impairment <sup>2</sup>	(63,767)	(58,944)
Solar power systems leased and to be leased, net	\$ 74,134	\$ 92,557

<sup>1</sup>Solar power systems leased and to be leased, net, are physically located exclusively in the United States.

<sup>2</sup>For the three months ended March 31, 2019, we recognized a non-cash impairment charge of \$4.0 million on solar power systems leased and to be leased.

The following table presents our minimum future rental receipts on operating leases placed in service as of March 31, 2019:

(In thousands)	Fiscal 2019 (remaining nine months)	Fiscal 2020	Fiscal 2021	Fiscal 2022	Fiscal 2023	Thereafter	Total
Minimum future rentals on operating leases placed in service <sup>1</sup>	\$ 941	\$ 1,205	\$ 1,209	\$ 1,214	\$ 1,219	\$ 18,845	\$ 24,633

<sup>1</sup>Minimum future rentals on operating leases placed in service does not include contingent rentals that may be received from customers under agreements that include performance-based incentives.

### Sales-Type Leases

As of March 31, 2019 and December 30, 2018, our net investment in sales-type leases presented within "accounts receivable, net" and "long-term financing receivables, net" on our condensed consolidated balance sheets was as follows:

(In thousands)	As of	
	March 31, 2019	December 30, 2018
Financing receivables, held for sale:		
Minimum lease payments receivable	\$ 45,774	\$ 43,939
Unguaranteed residual value	4,683	4,450
Unearned income	(9,266)	(8,859)
Allowance for estimated losses	(20,968)	(18,656)
Net financing receivables, held for sale	\$ 20,223	\$ 20,874
Net financing receivables - current, held for sale	\$ 1,179	\$ 1,282
Net financing receivables - non-current, held for sale	\$ 19,044	\$ 19,592

As of March 31, 2019, future maturities of net financing receivables for sales-type leases were as follows:

(In thousands)	Fiscal 2019 (remaining nine months)	Fiscal 2020	Fiscal 2021	Fiscal 2022	Fiscal 2023	Thereafter	Total
Scheduled maturities of minimum lease payments receivable <sup>1</sup>	\$ 1,694	\$ 2,233	\$ 2,243	\$ 2,252	\$ 2,263	\$ 35,089	\$ 45,774

<sup>1</sup>Minimum future rentals on sales-type leases placed in service does not include contingent rentals that may be received from customers under agreements that include performance-based incentives.

### Impairment of Residential Lease Assets

On November 5, 2018, we sold 49% of our membership interest in SunStrong Capital Holdings LLC ("SunStrong"), formerly our wholly owned subsidiary that historically held and controlled the assets and liabilities comprising our residential lease business. Following the closing, we deconsolidated certain entities involved in our residential lease portfolio and retained membership units representing a 51% membership interest in SunStrong. We continue to retain certain residential assets subject to leasing arrangements on our condensed consolidated balance sheet as of March 31, 2019, which we expect to sell in fiscal 2019, and these assets have been tested for impairment as described below.

We evaluate our long-lived assets, including property, plant and equipment, solar power systems leased and to be leased, 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 under-performance 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, it records an impairment loss in the amount by which the carrying value of the assets exceeds the fair value. Fair value is generally measured based on either quoted market prices, if available, or discounted cash flow analysis.

Financing receivables are generated by solar power systems leased to residential customers under sales-type leases. Financing receivables represent gross minimum lease payments to be received from customers over a period commensurate with the remaining lease term and the system's estimated residual value, net of unearned income and allowance for estimated losses. Our evaluation of the recoverability of these financing receivables is based on evaluation of the likelihood, based on current information and events, and whether we will be able to collect all amounts due according to the contractual terms of the underlying lease agreements. In accordance with this evaluation, we recognize an allowance for losses on financing receivables based on our estimate of the amount equal to the probable losses net of recoveries. The combination of the leased solar power

systems discussed in the preceding paragraph together with the lease financing receivables is referred to as the "Residential Lease Portfolio."

We performed a recoverability test for assets in the Residential Lease Portfolio by estimating future undiscounted net cash flows expected to be generated by the assets, based on our own specific alternative courses of action under consideration. The alternative courses were either to sell or refinance the assets, or hold the assets until the end of their previously estimated useful lives. Upon consideration of the alternatives, we determined that market value, in the form of indicative purchase price from a third-party investor was available for a portion of our Residential Lease Portfolio, represented by net assets related to projects financed by a tax equity investor. As we intend to sell these assets in fiscal 2019, we used the indicative purchase price from a third-party investor as fair value of the underlying net assets in our impairment evaluation.

In accordance with the impairment evaluation, we recognized a non-cash impairment charge of \$9.2 million included in "impairment of residential lease assets" on the condensed consolidated statement of operations for the three months ended March 31, 2019. Due to the fact that the Residential Lease Portfolio assets are held in a partnership flip structure with noncontrolling interests, we allocated a portion of the impairment charge related to such noncontrolling interests through the hypothetical liquidation at book value ("HLBV") method. The allocation method applied to the noncontrolling interests and redeemable noncontrolling interests resulted in a net gain of \$0.8 million and an immaterial amount for the three months ended March 31, 2019 and April 1, 2018, respectively. As a result, the net impairment charges attributable to our stockholders totaled \$8.4 million and \$49.0 million for the three months ended March 31, 2019 and April 1, 2018, respectively, and were recorded within the SunPower Energy Services Segment.

The impairment evaluation requires us to make assumptions and to apply judgment to estimate future cash flows and assumptions. If actual results are not consistent with our estimates and assumptions used in estimating future cash flows and asset fair values, and if and when a divestiture transaction occurs, the details and timing of which are subject to change as the final terms are negotiated between us and the intended purchaser, we may be exposed to additional impairment charges in the future, which could be material to the results of operations.

**Note 7. FAIR VALUE MEASUREMENTS**

Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement (observable inputs are the preferred basis of valuation):

- Level 1 — Quoted prices in active markets for identical assets or liabilities.
- Level 2 — Measurements are inputs that are observable for assets or liabilities, either directly or indirectly, other than quoted prices included within Level 1.
- Level 3 — Prices or valuations that require management inputs that are both significant to the fair value measurement and unobservable.

**Assets and Liabilities Measured at Fair Value on a Recurring Basis**

We measure certain assets and liabilities at fair value on a recurring basis. There were no transfers between fair value measurement levels during any presented period.

The following table summarizes our assets and liabilities measured and recorded at fair value on a recurring basis as of March 31, 2019 and December 30, 2018:

(In thousands)	March 31, 2019				December 30, 2018			
	Total Fair Value	Level 3	Level 2	Level 1	Total Fair Value	Level 3	Level 2	Level 1
<b>Assets</b>								
Prepaid expenses and other current assets:								
Derivative financial instruments (Note 12)	\$ 664	\$ —	\$ 664	\$ —	\$ 729	\$ —	\$ 729	\$ —
Other long-term assets:								
Equity investment (Note 10)	9,454	9,454	—	—	8,831	8,831	—	—
Marketable equity investments (Note 10)	69,225	—	—	69,225	36,225	—	—	36,225
<b>Total assets</b>	<b>\$ 79,343</b>	<b>\$ 9,454</b>	<b>\$ 664</b>	<b>\$ 69,225</b>	<b>\$ 45,785</b>	<b>\$ 8,831</b>	<b>\$ 729</b>	<b>\$ 36,225</b>
<b>Liabilities</b>								
Accrued liabilities:								
Derivative financial instruments (Note 12)	\$ 583	\$ —	\$ 583	\$ —	\$ 1,161	\$ —	\$ 1,161	\$ —
Other long-term liabilities:								
Derivative financial instruments (Note 12)	353	—	353	—	152	—	152	—
<b>Total liabilities</b>	<b>\$ 936</b>	<b>\$ —</b>	<b>\$ 936</b>	<b>\$ —</b>	<b>\$ 1,313</b>	<b>\$ —</b>	<b>\$ 1,313</b>	<b>\$ —</b>

We have elected the fair value option ("FVO") in accordance with the guidance in ASC 825, for our investment in SunStrong joint venture, to mitigate volatility in reported earnings that results from the use of different measurement attributes. We initially computed the fair value for our investment consistent with the methodology and assumptions that market participants would use in their estimates of fair value with the assistance of a third-party valuation specialist. The fair value computation is updated on a quarterly basis. The investment is classified within Level 3 in the fair value hierarchy because we estimate the fair value of the investment using the income approach based on the discounted cash flow method which considered estimated future financial performance, including assumptions for, among others, forecasted contractual lease income, lease expenses, residual value of these lease assets and long-term discount rates, and forecasted default rates over the lease term and discount rates, some of which require significant judgment by management and are not based on observable inputs.

Other financial assets and liabilities, including our accounts receivable, accounts payable and accrued liabilities, are carried at cost, which generally approximates fair value due to the short-term nature of these financial assets and liabilities.

## Assets and Liabilities Measured at Fair Value on a Non-Recurring Basis

We measure certain investments and non-financial assets (including property, plant and equipment, and other intangible assets) at fair value on a non-recurring basis in periods after initial measurement in circumstances when the fair value of such asset is impaired below its recorded cost. As of March 31, 2019 and December 30, 2018, there were no such items recorded at fair value, with the exception of our residential lease assets (see "Note 6. *Solar Services*").

## Held-to-Maturity Debt Securities

Our debt securities, classified as held-to-maturity, are Philippine government bonds that we maintain as collateral for business transactions within the Philippines. These bonds have various maturity dates and are classified as "Restricted long-term marketable securities" on our condensed consolidated balance sheets. As of March 31, 2019 and December 30, 2018, these bonds had a carrying value of \$5.9 million and \$6.0 million, respectively. We record such held-to-maturity investments at amortized cost based on our ability and intent to hold the securities until maturity. We monitor for changes in circumstances and events that would affect our ability and intent to hold such securities until the recorded amortized costs are recovered. No other-than-temporary impairment loss was incurred during any periods presented. The held-to-maturity debt securities were categorized in Level 2 of the fair value hierarchy.

## Equity Investments

The following discusses our marketable equity investments, non-marketable equity investments and equity method investments. See Note 10. *Equity Investments*.

### Marketable Equity Investments

In connection with the divestment of our microinverter business to Enphase on August 9, 2018, we received 7.5 million shares of Enphase common stock (NASDAQ: ENPH). The common stock received was recorded as an equity investment with readily determinable fair value (Level 1), with changes in fair value recognized in net income in accordance with ASU 2016-01. For the three months ended March 31, 2019, we recorded a \$33.0 million unrealized gain within "other, net" in our condensed consolidated statement of operations.

### Non-Marketable Equity Investments

Our non-marketable equity investments are securities in privately-held companies without readily determinable market values. Prior to January 1, 2018, we accounted for the non-marketable equity investments at cost less impairment. On January 1, 2018, we adopted ASU 2016-01 and elected to adjust the carrying value of our non-marketable equity securities to cost less impairment, adjusted for observable price changes in orderly transactions for an identical or similar investment of the same issuer. Non-marketable equity securities are classified within Level 3 in the fair value hierarchy because we estimate the value based on valuation methods using a combination of observable and unobservable inputs including valuation ascribed to the issuing company in subsequent financing rounds, volatility in the results of operations of the issuers and rights and obligations of the securities we hold. As of both March 31, 2019 and December 30, 2018, we had \$8.8 million in investments accounted for under the measurement alternative method.

### Equity Method Investments

Our investments accounted for under the equity method are described in Note 10. *Equity Investments*. We monitor these investments, which are included within "other long-term assets" on our condensed consolidated balance sheets, for impairment and record reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include Level 3 measurements such as the valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market prices, and declines in the results of operations of the issuer.

As of March 31, 2019 and December 30, 2018, we had \$36.3 million and \$34.8 million, respectively, in investments accounted for under the equity method (see "Note 10. *Equity Investments*").

## Note 8. RESTRUCTURING

### February 2018 Restructuring Plan

During the first quarter of fiscal 2018, we adopted a restructuring plan and began implementing initiatives to reduce operating expenses and cost of revenue overhead in light of the known shorter-term impact of U.S. tariffs imposed on PV solar cells and modules pursuant to Section 201 of the Trade Act of 1974 and our broader initiatives to control costs and improve cash flow. In connection with the plan, which is expected to be completed by mid-2019, we expect between 150 and 250 non-manufacturing employees to be affected, representing approximately 3% of our global workforce, with a portion of those employees exiting from us as part of a voluntary departure program. The changes to our workforce will vary by country, based on local legal requirements and consultations with employee works councils and other employee representatives, as appropriate. We expect to incur restructuring charges totaling between \$20 million to \$30 million, consisting primarily of severance benefits (between \$11 million and \$16 million) and real estate lease termination and other associated costs (between \$9 million and \$14 million). We expect between \$12 million and \$20 million of the charges to be paid in cash. The actual timing and costs of the plan may differ from our current expectations and estimates. A substantial portion of such charges were incurred in fiscal 2018. Cumulative costs incurred were \$11.8 million as of March 31, 2019.

### Legacy Restructuring Plans

Prior to fiscal 2018, we implemented approved restructuring plans, related to all segments, to reduce costs and focus on improving cash flow, to realign our legacy power plant business unit, to align with changes in the global solar market, as well as actions to accelerate operating cost reduction and improve overall operating efficiency. These restructuring activities were substantially complete as of December 30, 2018, and any remaining costs to be incurred are not expected to be material. Cumulative costs incurred were \$376.7 million as of March 31, 2019.

The following table summarizes the comparative periods-to-date restructuring charges by plan recognized in our condensed consolidated statements of operations:

(In thousands)	Three Months Ended		
	March 31, 2019	April 1, 2018	Cumulative
<b>February 2018 Restructuring Plan:</b>			
Severance and benefits	\$ (349)	\$ 10,736	\$ 11,781
Other costs <sup>1</sup>	(227)	—	30
Total February 2018 Restructuring Plan	(576)	10,736	11,811
<b>Legacy Restructuring Plans:</b>			
Non-cash impairment charges	—	—	228,184
Severance and benefits	(17)	(419)	100,705
Lease and related termination costs	—	6	8,085
Other costs <sup>1</sup>	(72)	854	39,722
Total Legacy Plan	(89)	441	376,696
Total restructuring (credits) charges	\$ (665)	\$ 11,177	\$ 388,507

<sup>1</sup>Other costs primarily represent associated legal and advisory services, and costs of relocating employees.



The following table summarizes the restructuring reserve activities during the three months ended March 31, 2019:

(In thousands)	Three Months Ended			
	December 30, 2018	Charges (Benefits)	(Payments) Recoveries	March 31, 2019
<b>February 2018 Restructuring Plan:</b>				
Severance and benefits	\$ 5,449	\$ (349)	\$ (2,213)	\$ 2,887
Other costs <sup>1</sup>	—	(227)	227	—
Total February 2018 Restructuring Plan	5,449	(576)	(1,986)	2,887
Legacy Restructuring Plans	861	(89)	(175)	597
Total restructuring reserve activities	\$ 6,310	\$ (665)	\$ (2,161)	\$ 3,484

<sup>1</sup>Other costs primarily represent associated legal and advisory services, and costs of relocating employees.

**Note 9. COMMITMENTS AND CONTINGENCIES**

**Facility and Equipment Leases**

We lease certain facilities under non-cancellable operating leases from third parties. We also lease certain buildings under non-cancellable capital leases. Operating leases are subject to renewal options for periods ranging from 1 year to 10 years.

We have disclosed quantitative information related to the lease contracts we have entered into as a lessee by aggregating the information based on the nature of asset such that the assets of similar characteristics and lease terms are shown within one single financial statement line item.

The table below presents the summarized quantitative information with regard to lease contracts we have entered into:

(In thousands)	Three Months Ended March 31, 2019
<b>Operating leases:</b>	
Operating lease expense	\$ 4,888
Sublease income	(334)
<b>Rent expense</b>	<b>\$ 4,554</b>
<b>Cash paid for amounts included in the measurement of lease liabilities</b>	
Operating cash flows for operating leases	\$ 4,510
Weighted-average remaining lease term (in years) - operating leases	7.3
Weighted-average discount rate - operating leases	9%

The future minimum lease payments to be paid under non-cancelable leases in effect at March 31, 2019 including operating lease liabilities that are classified as HFS (see Note 4. *Business Divestiture*), are as follows (in thousands):

<b>As of March 31, 2019</b>	<b>Operating leases</b>	
2019 (remaining nine months)	\$	11,154
2020		13,715
2021		11,119
2022		8,625
2023		8,551
Thereafter		39,668
<b>Total lease payments</b>		<b>92,832</b>
Less: imputed interest		(32,099)
<b>Total</b>	<b>\$</b>	<b>60,733</b>

As of March 31, 2019, we have additional operating leases that have not yet commenced with future minimum lease payments amounting to \$36.7 million. These operating leases will commence in the third quarter of fiscal 2019 with lease terms ranging from 1 year to 19 years.

### Purchase Commitments

We purchase 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, we enter into agreements with contract manufacturers and suppliers that either allow them to procure goods and services based on specifications defined by us, or that establish parameters defining our requirements. In certain instances, these agreements allow us the option to cancel, reschedule or adjust our requirements based on our business needs before firm orders are placed. Consequently, purchase commitments arising from these agreements are excluded from our disclosed future obligations under non-cancellable and unconditional commitments.

We also have agreements with several suppliers, including some of our non-consolidated investees, for the procurement of polysilicon, ingots, and wafers, as well as certain module-level power electronics and related equipment, which specify future quantities and pricing of products to be supplied by three vendors for periods of up to 2 years and provide for certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that we terminate the arrangements or fail to satisfy our obligations under the agreements.

Future purchase obligations under non-cancellable purchase orders and long-term supply agreements as of March 31, 2019 are as follows:

<b>(In thousands)</b>	<b>Fiscal 2019 (remaining nine months)</b>	<b>Fiscal 2020</b>	<b>Fiscal 2021</b>	<b>Fiscal 2022</b>	<b>Fiscal 2023</b>	<b>Thereafter</b>	<b>Total<sup>1</sup></b>
Future purchase obligations	\$ 309,322	\$ 374,930	\$ 38,650	\$ 35,425	\$ 32,550	\$ —	\$ 790,877

<sup>1</sup>Total future purchase obligations were composed of \$182.8 million related to non-cancellable purchase orders and \$608.1 million related to long-term supply agreements.

We expect 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 under-performance 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. 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 is regularly compared to expected demand. We anticipate total obligations related to long-term supply agreements for inventories, some of which (in the case of polysilicon) are at purchase prices significantly above current market prices for similar materials, will be recovered because the quantities required to be purchased are expected to be utilized in the manufacture and profitable sale of solar power products in the future based on our long-term operating plans. Additionally, in order to reduce inventory and improve working capital, we have periodically elected to sell polysilicon inventory in the marketplace at prices below our purchase price, thereby incurring a loss. The terms of the long-term supply agreements are reviewed annually by us and we assess the need for any accruals for estimated losses on adverse purchase commitments, such

as lower of cost or net realizable value adjustments that will not be recovered by future sales prices, forfeiture of advanced deposits and liquidated damages, as necessary.

### Advances to Suppliers

As noted above, we have entered into agreements with various vendors, some of which are structured as "take or pay" contracts, that specify future quantities and pricing of products to be supplied. Certain agreements also provide for penalties or forfeiture of advanced deposits in the event we terminate the arrangements. Under certain agreements, we were required to make prepayments to the vendors over the terms of the arrangements. As of March 31, 2019 and December 30, 2018, advances to suppliers totaled \$158.5 million and \$171.6 million, respectively, of which \$95.6 million and \$37.9 million, respectively, is classified as Advances to suppliers, current portion on our condensed consolidated balance sheets. One supplier accounted for 99.9% and 99.6% of total advances to suppliers as of March 31, 2019 and December 30, 2018, respectively.

### Advances from Customers

The estimated utilization of advances from customers included within "Contract liabilities, current portion" and "Contract liabilities, net of current portion" on our condensed consolidated balance sheets as of March 31, 2019 is as follows:

(In thousands)	Fiscal 2019 (remaining nine months)	Fiscal 2020	Fiscal 2021	Fiscal 2022	Fiscal 2023	Thereafter	Total
Estimated utilization of advances from customers	\$ 57,032	\$ 15,352	\$ 29,773	\$ —	\$ —	\$ —	\$ 102,157

We have entered into other agreements with customers who have made advance payments for solar power products and systems. These advances will be applied as shipments of product occur or upon completion of certain project milestones. In November 2016, we and Total entered into a four-year, up to 200-MW supply agreement to support the solarization of Total facilities (see "Note 2. Transactions with Total and Total S.A."); in March 2017, we received a prepayment totaling \$88.5 million. As of March 31, 2019, the advance payment from Total was \$59.9 million, of which \$18.6 million was classified as short-term on our condensed consolidated balance sheets, based on projected shipment dates.

### Product Warranties

The following table summarizes accrued warranty activities for the three months ended March 31, 2019 and April 1, 2018:

(In thousands)	Three Months Ended	
	March 31, 2019	April 1, 2018
Balance at the beginning of the period	\$ 172,266	\$ 181,303
Accruals for warranties issued during the period	4,621	3,838
Settlements and adjustments during the period	(13,683)	(5,972)
Balance at the end of the period	\$ 163,204	\$ 179,169

In some cases, we may offer customers the option to purchase extended warranties to ensure protection beyond the standard warranty period. In those circumstances, the warranty is a distinct service and we account for the extended warranty as a performance obligation and allocates a portion of the transaction price to that performance obligation. More frequently, customers do not purchase a warranty separately. In those situations, we account for the warranty as an assurance-type warranty, which provides customers with assurance that the product complies with agreed-upon specifications, and this does not represent a separate performance obligation.

## Project Agreements with Customers

Project agreements entered into with our commercial and power plant customers often require us to undertake obligations including: (i) system output performance warranties, (ii) penalty payments or customer termination rights if the system we are constructing is not commissioned within specified time frames or other milestones are not achieved, and (iii) 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 for specified periods. Historically, our systems have performed significantly above their performance warranty thresholds, and there have been no cases in which we have had to buy back a system. As of March 31, 2019 and December 30, 2018, we had \$4.3 million and \$3.3 million, respectively, classified as "accrued liabilities," and \$6.9 million and \$6.5 million, respectively, classified as "other long-term liabilities" on our condensed consolidated balance sheets for such obligations.

## Future Financing Commitments

We are required to provide certain funding under agreements with unconsolidated investees, subject to certain conditions (see "Note 10. *Equity Investments*"). As of March 31, 2019, we have future financing obligations related to these agreements as follows:

(In thousands)	Amount
Year:	
2019 (remaining nine months)	\$ 940
2020	2,900
	<u>\$ 3,840</u>

## Liabilities Associated with Uncertain Tax Positions

Total liabilities associated with uncertain tax positions were \$17.8 million and \$16.8 million as of March 31, 2019 and December 30, 2018, respectively. These amounts are included within "other long-term liabilities" on our condensed consolidated balance sheets in their respective periods as they are not expected to be paid within the next 12 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, if any, would be made for our liabilities associated with uncertain tax positions in Other long-term liabilities.

## Indemnifications

We are a party to a variety of agreements under which we may be obligated to indemnify the counterparty with respect to certain matters. Typically, these obligations arise in connection with contracts and license agreements or the sale of assets, under which we customarily agree to hold the other party harmless against losses arising from a breach of warranties, representations and covenants related to such matters as title to assets sold, negligent acts, damage to property, validity of certain intellectual property rights, non-infringement of third-party rights, and certain tax related matters including indemnification to customers under Section 48(c) of the Internal Revenue Code of 1986, as amended, regarding solar commercial investment tax credits ("ITCs") and U.S. Treasury Department ("U.S. Treasury") cash grant payments under Section 1603 of the American Recovery and Reinvestment Act (each a "Cash Grant"). In each of these circumstances, payment by us is typically subject to the other party making a claim to us that is contemplated by and valid under the indemnification provisions of the particular contract, which provisions are typically contract-specific, as well as bringing the claim under the procedures specified in the particular contract. These procedures usually allow us 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, our 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 or amount. In some instances, we may have recourse against third parties or insurance covering certain payments made by us.

In certain circumstances, we have provided indemnification to customers and investors under which we are contractually obligated to compensate these parties for losses they may suffer as a result of reductions in benefits received under ITCs and U.S. Treasury Cash Grant programs. We apply for ITCs and Cash Grant incentives based on guidance provided by the Internal Revenue Service ("IRS") and the U.S. Treasury, which include assumptions regarding the fair value of the qualified solar power systems, among others. Certain of our development agreements, sale-leaseback arrangements, and financing arrangements with tax equity investors, incorporate assumptions regarding the future level of incentives to be received, which in some instances

may be claimed directly by our customers and investors. Generally, such obligations would arise as a result of reductions to the value of the underlying solar power systems as assessed by the IRS. At each balance sheet date, we assess and recognize, when applicable, the potential exposure from these obligations based on all the information available at that time, including any audits undertaken by the IRS. The maximum potential future payments that we could have to make under this obligation would depend on the difference between the eligible basis claimed on the tax filing for the solar energy systems sold or transferred to indemnified parties and the values that the IRS may re-determine as the eligible basis for the systems for purposes of claiming ITCs or Cash Grants. We use the eligible basis for tax filing purposes determined with the assistance of independent third-party appraisals to determine the ITCs that are passed-through to and claimed by the indemnified parties. For sales contracts that have such indemnification provisions, we recognize a liability under ASC 460, "Guarantees," for the estimated premium that would be required by a guarantor to issue the same guarantee in a standalone arm's-length transaction with an unrelated party. We recognize such liabilities at the greater of the fair value of the indemnity or the contingent liability required to be recognized under ASC 450, "Contingencies," and reduce the revenue recognized in the related transaction. We initially estimate the fair value of any such indemnities provided based on the cost of insurance policies that cover the underlying risks being indemnified and may purchase such policies to mitigate our exposure to potential indemnification payments. After an indemnification liability is recorded, we derecognize such amount typically upon expiration or settlement of the arrangement. Changes to any such indemnification liabilities provided are recorded as adjustments to revenue.

As of March 31, 2019, and December 30, 2018, our provision was \$4.5 million and \$4.2 million, respectively, primarily for tax related indemnifications.

### **Defined Benefit Pension Plans**

We maintain defined benefit pension plans for certain of our non-U.S. employees. Benefits under these plans are generally based on an employee's years of service and compensation. Funding requirements are determined on an individual country and plan basis and are subject to local country practices and market circumstances. The funded status of the pension plans, which represents the difference between the benefit obligation and fair value of plan assets, is calculated on a plan-by-plan basis. The benefit obligation and related funded status are determined using assumptions as of the end of each fiscal year. We recognize the overfunded or underfunded status of our pension plans as an asset or liability on our condensed consolidated balance sheets. As of both March 31, 2019 and December 30, 2018, the underfunded status of our pension plans presented within "other long-term liabilities" on our condensed consolidated balance sheets was \$2.6 million. The impact of transition assets and obligations and actuarial gains and losses are recorded within "accumulated other comprehensive loss" and are generally amortized as a component of net periodic cost over the average remaining service period of participating employees. Total other comprehensive loss related to our benefit plans was zero for the three months ended March 31, 2019 and April 1, 2018.

### **Legal Matters**

We are a party to various 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 us, their outcomes are not determinable and negative outcomes may adversely affect our financial position, liquidity, or results of operations.

### **Note 10. EQUITY INVESTMENTS**

Our equity investments consist of equity method investments, equity investments with readily determinable fair value and equity investments without readily determinable fair value.

Our share of earnings (losses) from equity investments accounted for under the equity method is reflected as "Equity in earnings (losses) of unconsolidated investees" in our condensed consolidated statements of Operations. Unrealized gains and losses on equity investments are reflected as "other, net" under other income (expense), net in our condensed consolidated statements of operations. The carrying value of our equity investments, classified as "other long-term assets" on our condensed consolidated balance sheets, are as follows:

(In thousands)	As of	
	March 31, 2019	December 30, 2018
<b>Equity method investments:</b>		
Dongfang	\$ 34,302	\$ 32,784
Project entities	2,034	2,044
Total equity method investments	36,336	34,828
<b>Equity investments with readily determinable fair value:</b>		
Enphase	69,225	36,225
Total equity investments with readily determinable fair value	69,225	36,225
<b>Equity investment with fair value option:</b>		
SunStrong Capital Holdings, LLC <sup>1</sup>	9,454	8,831
Total equity investment with fair value option	9,454	8,831
<b>Equity investments without readily determinable fair value:</b>		
Project entities	2,946	2,951
Other equity investments without readily determinable fair value	5,859	5,859
Total equity investments without readily determinable fair value	8,805	8,810
Total equity investments	\$ 123,820	\$ 88,694

<sup>1</sup>We have elected the FVO in accordance with the guidance in ASC 323, for our investment in SunStrong joint venture.

### Summarized Financial Statements

The following table presents summarized financial statements for SunStrong Capital Holdings, LLC, a significant investee, based on unaudited information provided to us by the investee:

(In thousands)	Three Months Ended,
	March 31, 2019
<b>Summarized statements of operations information:</b>	
Revenue	22,626
Gross loss	(1,209)
Net income	3,256

(In thousands)	As of	
	March 31, 2019	December 30, 2018
<b>Summarized balance sheet information:</b>		
Current assets	47,019	103,413
Long-term assets	867,082	868,185
Current liabilities	23,696	85,154
Long-term liabilities	662,765	660,065

### Related-Party Transactions with Investees

Related-party transactions with investees are as follows:

(In thousands)	As of	
	March 31, 2019	December 30, 2018
Accounts receivable	\$ 15,939	\$ 19,062
Accounts payable	44,424	7,982
Accrued liabilities	14,804	22,364

  

(In thousands)	Three Months Ended	
	March 31, 2019	April 1, 2018
Payments made to investees for products/services	\$ 23,521	\$ 8,419
Revenues and fees received from investees for products/services <sup>1</sup>	900	1,757

<sup>1</sup>Includes a portion of proceeds received from tax equity investors in connection with 8point3 Energy Partners transactions.

#### Note 11. DEBT AND CREDIT SOURCES

The following table summarizes our outstanding debt on our condensed consolidated balance sheets:

(In thousands)	March 31, 2019				December 30, 2018			
	Face Value	Short-term	Long-term	Total	Face Value	Short-term	Long-term	Total
Convertible debt:								
4.00% debentures due 2023	\$ 425,000	\$ —	\$ 420,269	\$ 420,269	\$ 425,000	\$ —	\$ 419,958	\$ 419,958
0.875% debentures due 2021	400,000	—	398,563	398,563	400,000	—	398,398	398,398
CEDA loan	30,000	—	29,083	29,083	30,000	—	29,063	29,063
Non-recourse financing and other debt <sup>1</sup>	82,747	41,218	40,572	81,790	49,073	39,500	9,273	48,773
	<u>\$ 937,747</u>	<u>\$ 41,218</u>	<u>\$ 888,487</u>	<u>\$ 929,705</u>	<u>\$ 904,073</u>	<u>\$ 39,500</u>	<u>\$ 856,692</u>	<u>\$ 896,192</u>

<sup>1</sup>Other debt excludes payments related to capital leases, which are disclosed in "Note 9. Commitments and Contingencies."

As of March 31, 2019, the aggregate future contractual maturities of our outstanding debt, at face value, were as follows:

(In thousands)	Fiscal 2019 (remaining nine months)	Fiscal 2020	Fiscal 2021	Fiscal 2022	Fiscal 2023	Thereafter	Total
Aggregate future maturities of outstanding debt	\$ 41,328	\$ 4,037	\$ 431,973	\$ 694	\$ 425,732	\$ 33,983	\$ 937,747

## Convertible Debt

The following table summarizes our outstanding convertible debt:

(In thousands)	March 31, 2019			December 30, 2018		
	Carrying Value	Face Value	Fair Value <sup>1</sup>	Carrying Value	Face Value	Fair Value <sup>1</sup>
Convertible debt:						
4.00% debentures due 2023	\$ 420,269	\$ 425,000	\$ 350,808	\$ 419,958	\$ 425,000	\$ 341,968
0.875% debentures due 2021	398,563	400,000	339,664	398,398	400,000	306,904
	<u>\$ 818,832</u>	<u>\$ 825,000</u>	<u>\$ 690,472</u>	<u>\$ 818,356</u>	<u>\$ 825,000</u>	<u>\$ 648,872</u>

<sup>1</sup>The fair value of the convertible debt was determined using Level 2 inputs based on quarterly market prices as reported by an independent pricing source.

Our outstanding convertible debentures are senior, unsecured obligations ranking equally with all of our existing and future senior unsecured indebtedness.

### ***4.00% Debentures Due 2023***

In December 2015, we issued \$425.0 million in principal amount of our 4.00% debentures due 2023. Interest is payable semi-annually, beginning on July 15, 2016. Holders may exercise their right to convert the debentures at any time into shares of our common stock at an initial conversion price approximately equal to \$30.53 per share, subject to adjustment in certain circumstances. If not earlier repurchased or converted, the 4.00% debentures due 2023 mature on January 15, 2023.

### ***0.875% Debentures Due 2021***

In June 2014, we issued \$400.0 million in principal amount of our 0.875% debentures due 2021. Interest is payable semi-annually, beginning on December 1, 2014. Holders may exercise their right to convert the debentures at any time into shares of our common stock at an initial conversion price approximately equal to \$48.76 per share, subject to adjustment in certain circumstances. If not earlier repurchased or converted, the 0.875% debentures due 2021 mature on June 1, 2021.

## Other Debt and Credit Sources

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

In 2010, we 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 Bonds mature on April 1, 2031, bear interest at a fixed rate of 8.50% through maturity, and include customary covenants and other restrictions on us. As of March 31, 2019, the fair value of the Bonds was \$32.4 million, determined by using Level 2 inputs based on quarterly market prices as reported by an independent pricing source.

### ***Revolving Credit Facility with Credit Agricole***

On June 23, 2017, we entered into an Amended and Restated Revolving Credit Agreement (the "Revolver") with Credit Agricole, as administrative agent, and the other lenders party thereto, which amends and restates the Revolving Credit Agreement dated July 3, 2013, as amended.

The Revolver was entered into in connection with the Letter Agreement, to facilitate the issuance by Total S.A. of one or more guaranties of our payment obligations of up to \$100.0 million under the Revolver. The maturity date of the Letter Agreement and the Revolver is August 26, 2019. In consideration for the commitments of Total S.A. pursuant to the Letter Agreement, we are required to pay a guarantor commitment fee of 0.50% per annum for the unutilized support amount and a guaranty fee of 2.35% per annum of the Guaranty outstanding. Available borrowings under the Revolver are \$300.0 million; provided that the aggregate principal amount of all amounts borrowed under the facility cannot exceed 95.0% of the amounts guaranteed by Total under the Letter Agreement. Amounts borrowed may be repaid and reborrowed until the maturity date.

We are required to pay (a) interest on outstanding borrowings under the facility of (i) with respect to any LIBOR rate loan, an amount equal to 0.6% plus the LIBOR rate divided by a percentage equal to one minus the stated maximum rate of all



reserves required to be maintained against "Eurocurrency liabilities" as specified in Regulation D; and (ii) with respect to any alternate base rate loan, an amount equal to 0.25% plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.50%, and (3) the one-month LIBOR rate plus 1%; and (b) a commitment fee of 0.06% per annum on funds available for borrowing and not borrowed. The Revolver includes representations, covenants, and events of default customary for financing transactions of this type. As of both March 31, 2019 and December 30, 2018, we had no outstanding borrowings under the Revolver.

#### ***September 2011 Letter of Credit Facility with Deutsche Bank and Deutsche Bank Trust Company Americas (together, "Deutsche Bank Trust")***

In September 2011, we entered into a letter of credit facility with Deutsche Bank Trust which provides for the issuance, upon our request, of letters of credit to support our obligations in an aggregate amount not to exceed \$200.0 million. Each letter of credit issued under the facility is fully cash-collateralized and we have entered into a security agreement with Deutsche Bank Trust, granting them a security interest in a cash collateral account established for this purpose.

As of March 31, 2019 and December 30, 2018, letters of credit issued and outstanding under the Deutsche Bank Trust facility totaled \$2.6 million and \$3.0 million, respectively, which were fully collateralized with restricted cash on the condensed consolidated balance sheets.

#### ***Other Facilities***

##### ***Asset-Backed Loan with Bank of America***

On March 29, 2019, we entered in a Loan and Security Agreement with Bank of America, N.A, which provides a revolving credit facility secured by certain inventory and accounts receivable in the maximum aggregate principal amount of \$50.0 million. The Loan and Security Agreement contains negative and affirmative covenants including maintaining \$5.0 million of cash in a designated account, events of default and repayment and prepayment provisions customarily applicable to asset-backed credit facilities. The facility bears a floating interest rate of LIBOR plus an applicable margin, and matures on the earlier of March 29, 2022, a date that is 91 days prior to the maturity of our 2021 convertible debentures, or the termination of the commitments thereunder. As of March 31, 2019, we had drawn \$9.0 million under this facility.

##### ***SunTrust Facility***

On June 28, 2018, we entered in a Financing Agreement with SunTrust Bank, which provides a revolving credit facility in the maximum aggregate principal amount of \$75.0 million. Each draw down from the facility bears either a base rate of federal funds rate plus an applicable margin or a floating interest rate of LIBOR plus an applicable margin, and matures no later than three years. As of March 31, 2019, we had \$75.0 million in borrowing capacity under this limited recourse construction financing facility.

#### ***Non-recourse Financing and Other Debt***

In order to facilitate the construction, sale or ongoing operation of certain solar projects, including our residential leasing program, we regularly obtain project-level financing. These financings are secured either by the assets of the specific project being financed or by our equity in the relevant project entity and the lenders do not have recourse to our general assets for repayment of such debt obligations, and hence the financings are referred to as non-recourse. Non-recourse financing is typically in the form of loans from third-party financial institutions, but also takes other forms, including partnership flip structures, sale-leaseback arrangements, or other forms commonly used in the solar or similar industries. We may seek non-recourse financing covering solely the construction period of the solar project or may also seek financing covering part or all of the operating life of the solar project. We classify non-recourse financings on our condensed consolidated balance sheets in accordance with their terms; however, in certain circumstances, we may repay or refinance these financings prior to stated maturity dates in connection with the sale of the related project or similar such circumstances. In addition, in certain instances, the customer may assume the loans at the time that the project entity is sold to the customer. In these instances, subsequent debt assumption is reflected as a financing outflow and operating inflow on our condensed consolidated statements of cash flows to reflect the substance of the assumption as a facilitation of customer financing from a third party.

The following presents a summary of our non-recourse financing arrangements, including arrangements that are not classified as debt:

(In thousands)	Aggregate Carrying Value <sup>1</sup>		Balance Sheet Classification
	March 31, 2019	December 30, 2018	
<b>Solar Services:</b>			
Tax equity partnership flip facilities	64,956	58,810	Non-controlling interests in subsidiaries
Credit Agricole warehouse facility	22,303	—	Long-term debt
<b>Commercial Projects:</b>			
Arizona loan	6,599	6,650	Short-term debt and Long-term debt

<sup>1</sup> Based on the nature of the debt arrangements included in the table above, and our intention to fully repay or transfer the obligations at their face values plus any applicable interest, we believe their carrying value materially approximates fair value, which is categorized within Level 3 of the fair value hierarchy.

**Note 12. DERIVATIVE FINANCIAL INSTRUMENTS**

The following tables present information about our hedge instruments measured at fair value on a recurring basis as of March 31, 2019 and December 30, 2018, all of which utilize Level 2 inputs under the fair value hierarchy:

(In thousands)	Balance Sheet Classification	March 31, 2019	December 30, 2018
<b>Assets:</b>			
Derivatives designated as hedging instruments:			
Foreign currency option contracts	Prepaid expenses and other current assets	\$ 392	\$ —
		\$ 392	\$ —
Derivatives not designated as hedging instruments:			
Foreign currency forward exchange contracts	Prepaid expenses and other current assets	\$ 272	\$ 729
		\$ 272	\$ 729
<b>Liabilities:</b>			
Derivatives designated as hedging instruments:			
Foreign currency forward exchange contracts	Accrued liabilities	\$ 121	\$ —
Interest rate contracts	Other long-term liabilities	232	152
		\$ 353	\$ 152
Derivatives not designated as hedging instruments:			
Foreign currency forward exchange contracts	Accrued liabilities	\$ 583	\$ 1,161
Interest rate contracts	Other long-term liabilities	—	—
		\$ 583	\$ 1,161

March 31, 2019

(In thousands)	Gross Amounts Recognized	Gross Amounts Offset	Net Amounts Presented	Gross Amounts Not Offset in the Condensed Consolidated Balance Sheets, but Have Rights to Offset		
				Financial Instruments	Cash Collateral	Net Amounts
Derivative assets	\$ 664	\$ —	\$ 664	\$ 663	\$ —	\$ 1
Derivative liabilities	\$ 936	—	936	663	—	273

December 30, 2018

(In thousands)	Gross Amounts Recognized	Gross Amounts Offset	Net Amounts Presented	Gross Amounts Not Offset in the Condensed Consolidated Balance Sheets, but Have Rights to Offset		
				Financial Instruments	Cash Collateral	Net Amounts
Derivative assets	\$ 729	\$ —	\$ 729	\$ 729	\$ —	\$ —
Derivative liabilities	1,313	—	1,313	729	—	584

The following table summarizes the pre-tax amount of unrealized gain or loss recognized in "accumulated other comprehensive income" ("OCI") in "stockholders' equity" on our condensed consolidated balance sheets:

(In thousands)	Three Months Ended	
	March 31, 2019	April 1, 2018
Derivatives designated as cash flow hedges:		
Loss in OCI at the beginning of the period	\$ (164)	\$ (561)
Unrealized gain recognized in OCI (effective portion)	188	1,635
Less: Gain reclassified from OCI to revenue (effective portion of FX trades)	—	(35)
Less: (Gain) loss reclassified from OCI to interest expense (effective portion of interest rate swaps)	(3)	6
Net gain on derivatives	185	1,606
Gain in OCI at the end of the period	\$ 21	\$ 1,045

The following table summarizes the amount of gain or loss recognized in "other, net" in our condensed consolidated statements of operations in the three months ended March 31, 2019 and April 1, 2018:

(In thousands)	Three Months Ended	
	March 31, 2019	April 1, 2018
Derivatives designated as cash flow hedges:		
Gain recognized in "Other, net" on derivatives (ineffective portion and amount excluded from effectiveness testing)	\$ —	\$ —
Derivatives not designated as hedging instruments:		
Gain recognized in "Other, net"	\$ 909	\$ 1,339

## Foreign Currency Exchange Risk

### *Designated Derivatives Hedging Cash Flow Exposure*

Our cash flow exposure primarily relates to anticipated third-party foreign currency revenues and expenses and interest rate fluctuations. We derive a portion of our revenues in foreign currencies, predominantly in Euro, as part of our ongoing business operations. In addition, a portion of our assets are held in foreign currencies. We enter into foreign currency forward and option contracts designated as cash flow hedges to hedge certain forecasted revenue transactions denominated in currencies other than our functional currency. In the first quarter of fiscal 2019, we entered into foreign currency option contracts to manage volatility related to transactions that are denominated in Euros. We plan to continue entering into these contracts on a quarterly basis. Our foreign currency forward and option contracts are entered into for periods consistent with the related underlying exposures and do not constitute positions that are independent of those exposures.

As of March 31, 2019 and December 30, 2018, we had designated outstanding cash flow hedge forward contracts with a notional value of \$44.9 million and zero, respectively. As of March 31, 2019, we also had designated outstanding cash flow hedge option contracts with a notional value of \$101.5 million. We designate either gross external or intercompany revenue up to our net economic exposure. These derivatives have a maturity of three months or less and consist of foreign currency forward and option contracts. The effective portion of these cash flow hedges is reclassified into revenue when third-party revenue is recognized in our condensed consolidated statements of operations.

### *Non-Designated Derivatives Hedging Transaction Exposure*

Derivatives not designated as hedging instruments consist of forward and option contracts used to hedge re-measurement of foreign currency denominated monetary assets and liabilities primarily for intercompany transactions, receivables from customers, and payables to third parties. Changes in exchange rates between our subsidiaries' functional currencies and the currencies in which these assets and liabilities are denominated can create fluctuations in our reported condensed consolidated financial position, results of operations and cash flows. As of March 31, 2019, to hedge balance sheet exposure, we held forward contracts with an aggregate notional value of \$17.4 million. These contracts have maturity of three months or less and consist of foreign currency forward contracts. As of December 30, 2018, to hedge balance sheet exposure, we held forward contracts with an aggregate notional value of \$11.4 million. These contracts matured in January 2019.

## Interest Rate Risk

We also enter into interest rate swap agreements to reduce the impact of changes in interest rates on our project specific non-recourse floating rate debt. As of March 31, 2019 and December 30, 2018, we had interest rate swap agreements designated as cash flow hedges with aggregate notional values of \$6.6 million and \$6.7 million, respectively. These swap agreements allow us to effectively convert floating-rate payments into fixed rate payments periodically over the life of the agreements. These derivatives have a maturity of more than 12 months. The effective portion of these swap agreements designated as cash flow hedges is reclassified into interest expense when the hedged transactions are recognized in our condensed consolidated statements of operations. We analyze our designated interest rate swaps quarterly to determine if the hedge transaction remains effective or ineffective. We may discontinue hedge accounting for interest rate swaps prospectively if certain criteria are no longer met, the interest rate swap is terminated or exercised, or if we elect to remove the cash flow hedge designation. If hedge accounting is discontinued, and the forecasted hedged transaction is considered possible to occur, the previously recognized gain or loss on the interest rate swaps will remain in accumulated other comprehensive loss and will be reclassified into earnings during the same period the forecasted hedged transaction affects earnings or is otherwise deemed improbable to occur. All changes in the fair value of non-designated interest rate swap agreements are recognized immediately in current period earnings.

## Credit Risk

Our option and forward contracts do not contain any credit-risk-related contingent features. We are exposed to credit losses in the event of nonperformance by the counterparties to these option and forward contracts. We enter into derivative contracts with high-quality financial institutions and limit the amount of credit exposure to any single counterparty. In addition, we continuously evaluate the credit standing of our counterparties.

## Note 13. INCOME TAXES

In the three months ended March 31, 2019, our income tax provision of \$5.8 million on a loss before income taxes and equity in earnings of unconsolidated investees of \$100.4 million was primarily due to the projected tax expense in foreign jurisdictions that are profitable, and a net change in valuation allowance from a foreign jurisdiction. Our income tax benefit of \$2.6 million in the three months ended April 1, 2018 on a loss before income taxes and equity in earnings of unconsolidated investees of \$142.8 million was primarily due to projected tax expense in foreign jurisdictions that are profitable.

In the three months ended March 31, 2019, in accordance with FASB guidance for interim reporting of income tax, we have computed our provision for income taxes based on a projected annual effective tax rate while excluding loss jurisdictions which cannot be benefited.

Total liabilities associated with uncertain tax positions were \$17.8 million and \$16.8 million as of March 31, 2019 and December 30, 2018, respectively. There have not been any material changes to our uncertain tax position as of March 31, 2019 as compared to our full year positions as of December 30, 2018.

**Note 14. NET LOSS PER SHARE**

We calculate basic net loss per share by dividing earnings allocated to common stockholders by the basic weighted average number of common shares outstanding for the period.

Diluted weighted average shares is computed using basic weighted average number of common shares outstanding plus any potentially dilutive securities outstanding during the period using the treasury-stock-type method and the if-converted method, except when their effect is anti-dilutive. Potentially dilutive securities include stock options, restricted stock units, the Upfront Warrants held by Total, and the outstanding senior convertible debentures.

The following table presents the calculation of basic and diluted net loss per share attributable to stockholders:

(In thousands, except per share amounts)	Three Months Ended	
	March 31, 2019	April 1, 2018
Numerator:		
Net loss attributable to stockholders	\$ (89,724)	\$ (115,974)
Denominator <sup>1</sup> :		
Basic and diluted weighted-average common shares	141,720	140,212
Basic and diluted net loss per share attributable to stockholders	\$ (0.63)	\$ (0.83)

<sup>1</sup>As a result of our net loss attributable to stockholders for the three months ended March 31, 2019 and April 1, 2018, the inclusion of all potentially dilutive stock options, restricted stock units, and common shares under noted warrants and convertible debt would be anti-dilutive. Therefore, those stock options, restricted stock units and shares were excluded from the computation of the weighted-average shares for diluted net loss per share for such periods.

The following is a summary of outstanding anti-dilutive potential common stock that was excluded from diluted net loss per share attributable to stockholders in the following periods:

(In thousands)	Three Months Ended	
	March 31, 2019	April 1, 2018
Restricted stock units	7,294	3,038
Upfront warrants (held by Total)	—	9,532
4.00% debentures due 2023	13,922	13,922
0.75% debentures due 2018	—	12,026
0.875% debentures due 2021	8,203	8,203

**Note 15. STOCK-BASED COMPENSATION**

The following table summarizes the consolidated stock-based compensation expense by line item in our condensed consolidated statements of operations:

(In thousands)	Three Months Ended	
	March 31, 2019	April 1, 2018
Cost of SunPower Energy Services revenue	\$ 168	\$ 361
Cost of SunPower Technologies revenue	—	580
Research and development	593	2,878
Sales, general and administrative	4,905	4,939
Total stock-based compensation expense	\$ 5,666	\$ 8,758

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

(In thousands)	Three Months Ended	
	March 31, 2019	April 1, 2018
Restricted stock units	\$ 6,628	\$ 9,209
Change in stock-based compensation capitalized in inventory	(962)	(451)
Total stock-based compensation expense	\$ 5,666	\$ 8,758

#### Note 16. SEGMENT AND GEOGRAPHICAL INFORMATION

In the fourth quarter of 2018, in connection with our efforts to improve operational focus and transparency, drive overhead accountability into segment operating results, and increase strategic agility across the value chain from our upstream business' core strength in manufacturing and technology to our downstream business' core strength in offering complete solutions in residential and commercial markets, we reorganized our segment reporting to an upstream and downstream structure. Previously, we operated under three end-customer segments comprised of our (i) Residential Segment, (ii) Commercial Segment, and (iii) Power Plan Segment. Historically, the Residential Segment referred to sales of solar energy solutions to residential end-customers, the Commercial Segment referred to sales of energy solutions to commercial and public entity end-customers, and the Power Plant Segment referred to our large-scale solar products and systems and component sales.

Under the new segmentation, SunPower Energy Services Segment ("SunPower Energy Services" or "Downstream") refers to sales of solar energy solutions in the North America region previously included in the legacy Residential Segment and Commercial Segment (collectively previously referred to as "Distributed Generation" or "DG") including direct sales of turn-key engineering, procurement and construction ("EPC") services, sales to our third-party dealer network, sales of energy under power purchase agreements ("PPAs"), storage solutions, cash sales and long-term leases directly to end customers, and sales to resellers. SunPower Energy Services Segment also includes sales of our global O&M services. SunPower Technologies Segment ("SunPower Technologies" or "Upstream") refers to our technology development, worldwide solar panel manufacturing operations, equipment supply to resellers and commercial and residential end-customers outside of North America ("International DG"), and worldwide power plant project development and project sales. Upon reorganization, some support functions and responsibilities, which previously resided within the corporate function, have been shifted to each segment, including financial planning and analysis, legal, treasury, tax and accounting support and services, among others.

The reorganization provides our management with a comprehensive financial overview of our key businesses. The application of this structure permits us to align our strategic business initiatives and corporate goals in a manner that best focuses our businesses and support operations for success.

Our Chief Executive Officer, as the chief operating decision maker ("CODM"), reviews our business, manages resource allocations and measures performance of our activities between the SunPower Energy Services Segment and the SunPower Technologies Segment.

Reclassifications of prior period segment information have been made to conform to the current period presentation. These changes did not materially affect our previously reported Consolidated Financial Statements.

#### Adjustments Made for Segment Purposes

##### Adjustments Based on International Financial Reporting Standards ("IFRS")

###### 8point3 Energy Partners

We include adjustments related to the sales of projects contributed to 8point3 Energy Partners based on the difference between the fair market value of the consideration received and the net carrying value of the projects contributed, of which, a portion was deferred in proportion to our retained equity interest in 8point3 Energy Partners, at the time. Prior to the adoption of ASC 606, these sales were recognized under either real estate, lease, or consolidation accounting guidance depending upon the nature of the individual asset contributed, with outcomes ranging from no, partial, or full profit recognition. We adopted ASC 606 on January 1, 2018, using the full retrospective method, which required us to restate each prior period presented. We recorded a material amount of deferred profit associated with projects sold to 8point3 Energy Partners in 2015, the majority of which had previously been deferred under real estate accounting. Accordingly, our carrying value in the 8point3 Group materially increased upon adoption which required us to evaluate our investment in 8point3 Energy Partners for other-than-temporary impairment ("OTTI"). In accordance with such evaluation, we recognized an OTTI charge on the 8point3 investment balance in fiscal 2017. On June 19, 2018, we sold our equity interest in the 8point3 Group.

###### Legacy utility and power plant projects

We include adjustments related to the revenue recognition of certain legacy utility and power plant projects based on the ratio of costs incurred to date to the total estimated costs at completion of the performance obligations and, when relevant, the allocation of revenue and margin to our project development efforts at the time of initial project sale.

###### Legacy sale-leaseback transactions

We include adjustments related to the revenue recognition on certain legacy sale-leaseback transactions entered into before December 31, 2018, based on the net proceeds received from the buyer-lessor. Under U.S. GAAP, these transactions were accounted for under the financing method in accordance with the applicable accounting guidance. Under such guidance, no revenue or profit is recognized at the inception of the transaction, and the net proceeds from the buyer-lessor are recorded as a financing liability. Imputed interest is recorded on the liability equal to our incremental borrowing rate adjusted solely to prevent negative amortization. Under IFRS, revenue and profit are recognized at the time of sale to the buyer-lessor if certain criteria are met.

###### Unrealized gain on equity investments

We recognize adjustments related to the fair value of equity investments with readily determinable fair value based on the changes in the stock price of these equity investments at every reporting period. Under GAAP, unrealized gains and losses due to changes in stock prices for these securities are recorded

in earnings while under IFRS, an election can be made to recognize such gains and losses in other comprehensive income. Such an election was made by Total S.A.. Management believes that excluding the unrealized gain or loss on the equity investments is consistent with our internal reporting process as part of its status as a consolidated subsidiary of Total S.A. and better reflects our ongoing results.

## ***Other Adjustments***

### ***Intersegment Gross Margin***

To increase efficiencies and the competitive advantage of our technologies, SunPower Technologies sells solar modules to SunPower Energy Services based on transfer prices determined based on management's assessment of market-based pricing terms. Such intersegment sales and related costs are eliminated at the corporate level to derive our condensed consolidated financial results.

### ***Impairment of residential lease assets***

In the fourth quarter of fiscal 2017, we made the decision to sell or refinance our interest in the Residential Lease Portfolio and as a result of this triggering event, determined it was necessary to evaluate the potential for impairment in our ability to recover the carrying amount of the Residential Lease Portfolio. In accordance with such evaluation, we recognized a non-cash impairment charge on our solar power systems leased and to be leased and an allowance for losses related financing receivables. In connection with the impairment loss, the carrying values of our solar power systems leased and to be leased were reduced which resulted in lower depreciation charges. In the fourth quarter of fiscal 2018, we sold membership units representing a 49% membership interest in our residential lease business and retained a 51% membership interest. The loss on divestment and the remaining unsold residential lease assets impairment with its corresponding depreciation savings are excluded from our segment results as they are non-cash in nature and not reflective of ongoing operating results.

### ***Construction revenue on solar services contracts***

Upon adoption of the new lease accounting guidance ("ASC 842") in the first quarter of fiscal 2019, revenue and cost of revenue on solar services contracts with residential customers are recognized ratably over the term of those contracts, beginning when the projects are placed in service. For segment reporting purposes, we recognize revenue and cost of revenue upfront based on the expected cash proceeds to align with the legacy lease accounting guidance. Management believes it is appropriate to recognize revenue and cost of revenue upfront based on total expected cash proceeds, as it better reflects our ongoing results as such method aligns revenue and costs incurred most accurately in the same period.

### ***Cost of above-market polysilicon***

As described in "Note 9. *Commitments and Contingencies*," we have entered into multiple long-term, fixed-price supply agreements to purchase polysilicon for periods of up to ten years. The prices in select legacy supply agreements, which include a cash portion and a non-cash portion attributable to the amortization of prepayments made under the agreements, significantly exceed current market prices. Additionally, in order to reduce inventory and improve working capital, we have periodically elected to sell polysilicon inventory in the marketplace at prices below our purchase price, thereby incurring a loss. We have excluded the impact of our above-market cost of polysilicon, including the effect of above-market polysilicon on product costs, losses incurred on sales of polysilicon to third parties, and inventory reserves and project asset impairments recorded as a result of above-market polysilicon, from our segment results.

### ***Stock-based compensation***

We incur stock-based compensation expense related primarily to our equity incentive awards. We exclude this expense from our segment results.

### ***Amortization of intangible assets***

We incur amortization expense on intangible assets as a result of acquisitions, which include patents, project assets, purchased technology, in-process research and development and trade names. We exclude this expense from our segment results.

### ***Depreciation of idle equipment***

We changed the deployment plan for our next generation of solar cell technology, and revised our depreciation estimates to reflect the use of certain assets over their shortened useful life. Such asset depreciation is excluded from our operating results as it is non-cash in nature and not reflective of ongoing operating results.

### ***Gain on business divestiture***

On March 26, 2019, we entered into a transaction pursuant to which we sold membership interest in certain of our subsidiaries that own leasehold interests in projects subject to sale-leaseback financing arrangements. In connection with this sale, we recognized a gain relating to this business divestiture. Management believes that it is appropriate to exclude this gain from our segment results as it is not reflective of ongoing operating results.

### ***Transaction-related costs***

In connection with material transactions such as acquisition or divestiture of a business, we incurred transaction costs including legal and accounting fees. Management believes that it is appropriate to exclude these costs from our segment results as they would not have otherwise been incurred as part of its business operations and are therefore not reflective of ongoing operating results.

### ***Business reorganization costs***

In connection with the reorganization of our business into an upstream and downstream business unit structure, we incurred and expect to continue incurring expenses in the upcoming quarters associated with reclassifying prior period segment information, reorganization of corporate functions and responsibilities to the business units, updating accounting policies and processes and implementing systems to fulfill the requirements of the master supply agreement between the segments. We believe that it is appropriate to exclude these from our segment results as they would not have otherwise been incurred as part of its business operations and are therefore not reflective of ongoing operating results.

**Restructuring charges (credits)**

We incur restructuring expense related to reorganization plans aimed towards realigning resources consistent with our global strategy and improving our overall operating efficiency and cost structure. We exclude this expense from our segment results.

**Non-cash interest expense**

We incur non-cash interest expense related to the amortization of items such as original issuance discounts on certain of our convertible debt. We exclude this expense from our segment results.

**Segment and Geographical Information**

The following tables present segment results for the three months ended March 31, 2019 and April 1, 2018 for revenue, gross margin, and adjusted EBITDA, each as reviewed by the CODM, and their reconciliation to our condensed consolidated GAAP results, as well as information about significant customers and revenue by geography based on the destination of the shipments, and property, plant and equipment, net by segment.

<b>(In thousands):</b>	<b>Three Months Ended March 31, 2019</b>		<b>Three Months Ended April 1, 2018</b>	
	<b>SunPower Energy Services</b>	<b>SunPower Technologies</b>	<b>SunPower Energy Services</b>	<b>SunPower Technologies</b>
Revenue from external customers:				
North America Residential	\$ 166,647	\$ —	\$ 145,945	\$ —
North America Commercial	65,125	—	96,895	—
Operations and maintenance	9,953	—	12,548	—
International DG	—	79,523	—	61,771
Module sales	—	89,417	—	46,333
Development services and legacy power plant	—	894	—	35,456
Intersegment revenue	—	60,800	—	108,874
<b>Total segment revenue as reviewed by CODM</b>	<b>\$ 241,725</b>	<b>\$ 230,634</b>	<b>\$ 255,388</b>	<b>\$ 252,434</b>
<b>Segment gross profit as reviewed by CODM</b>	<b>\$ 17,873</b>	<b>\$ (858)</b>	<b>\$ 35,634</b>	<b>\$ (3,222)</b>
<b>Adjusted EBITDA</b>	<b>\$ (13,911)</b>	<b>\$ (8,500)</b>	<b>\$ 42,005</b>	<b>\$ 5,845</b>

**Reconciliation of Segment Revenue to Condensed Consolidated GAAP Revenue**

<b>(In thousands):</b>	<b>Three Months Ended</b>	
	<b>March 31, 2019</b>	<b>April 1, 2018</b>
Total segment revenue as reviewed by CODM	\$ 472,359	507,822
Adjustments to segment revenue:		
Intersegment elimination	(60,800)	(108,874)
8point3 Energy Partners	—	251
Legacy utility and power plant projects	171	1,792
Legacy sale-leaseback transactions	—	(9,103)
Construction revenue on solar services contracts	(63,505)	—
<b>Condensed Consolidated GAAP revenue</b>	<b>\$ 348,225</b>	<b>\$ 391,888</b>



**Reconciliation of Segment Gross Profit to Condensed Consolidated GAAP Gross Profit**

<b>(In thousands):</b>	<b>Three Months Ended</b>	
	<b>March 31, 2019</b>	<b>April 1, 2018</b>
Segment gross profit	\$ 17,015	\$ 32,412
Adjustments to segment gross profit:		
Intersegment elimination	7,636	(6,144)
Legacy utility and power plant projects	(116)	268
Legacy sale-leaseback transactions	823	3,039
Construction revenue on solar services contracts	(11,386)	—
Impairment of residential lease assets <sup>1</sup>	125	3,853
Cost of above-market polysilicon	(49,428)	(18,700)
Stock-based compensation expense	(168)	(941)
Amortization of intangible assets	(1,786)	(2,492)
Depreciation of idle equipment	—	(721)
Condensed Consolidated GAAP gross profit	<u>\$ (37,285)</u>	<u>\$ 10,574</u>

**Reconciliation of Segments EBITDA to Loss before income taxes and equity in earnings (losses) of unconsolidated investees**

<b>(In thousands):</b>	<b>Three Months Ended</b>	
	<b>March 31, 2019</b>	<b>April 1, 2018</b>
Segment adjusted EBITDA	\$ (22,411)	\$ 47,850
Adjustments to segment adjusted EBITDA:		
8point3 Energy Partners	—	177
Legacy utility and power plant projects	(116)	268
Legacy sale-leaseback transactions	(4,911)	(1,373)
Unrealized gain on equity securities	33,000	—
Construction revenue on solar services contracts	3,740	—
Impairment of residential lease assets <sup>1</sup>	(8,313)	(45,139)
Cost of above-market polysilicon	(49,428)	(18,700)
Stock-based compensation expense	(5,666)	(8,758)
Amortization of intangible assets	(1,786)	(2,492)
Depreciation of idle equipment	—	(721)
Gain on business divestiture	6,114	—
Transaction-related costs	(1,422)	—
Business reorganization costs	(2,649)	—
Restructuring credits (charges)	665	(11,177)
Non-cash interest expense	(10)	(22)
Equity in earnings (losses) of unconsolidated investees	(1,680)	2,144
Net loss attributable to noncontrolling interests	(14,841)	(31,623)
Cash interest expense, net of interest income	(10,206)	(20,165)
Depreciation	(19,181)	(37,576)
Corporate	(1,347)	(15,518)
Loss before income taxes and equity in earnings (losses) of unconsolidated investees	<u>\$ (100,448)</u>	<u>\$ (142,825)</u>

<sup>1</sup> For the three months ended March 31, 2019 and April 1, 2018, we recorded in aggregate a loss on sale and impairment of residential lease assets of \$9.2 million and \$49.1 million, respectively. As a result of the partnership flip structures with noncontrolling interests where these assets are held in, we allocated \$0.8 million and an insignificant amount to the noncontrolling interest using the HLBV method for the three months ended March 31, 2019 and April 1, 2018, respectively. The net impairment charges attributable to us totaled \$8.3 million and \$49.0 million for the three months ended March 31, 2019 and April 1, 2018, respectively. For the three months ended March 31, 2019 and April 1, 2018, we also recorded \$0.1 million and \$3.9 million of depreciation savings as a result of the impairment charge recognized in the prior periods, respectively.

(As a percentage of total revenue):	Three Months Ended	
	March 31, 2019	April 1, 2018
<b>Revenue by geography:</b>		
United States	51%	69%
France	12%	10%
Rest of World	37%	21%
	100%	100%

**Note 17. SUBSEQUENT EVENTS**

On April 12, 2019, we entered into a Loan Agreement with Hannon Armstrong under which we can borrow a subordinated, mezzanine loan of up to approximately \$37.3 million. The initial draw down on April 12, 2019 was \$15.6 million. We received \$10.9 million cash, net of issuance cost and certain holdback in the amount of \$4.4 million subject to anticipated future refinancing.

On April 30, 2019, we completed the sale of one additional Portfolio in exchange of a total consideration of \$10.3 million, pursuant to the Purchase and Sale Agreement relating to the sale of our commercial sale-leaseback portfolio (see Note 4. *Business Divestiture*). We received net consideration of \$9.9 million on closing, net of fees, expenses, and holdback amounts pertaining to certain retained obligations.

On May 3, 2019, we completed the sale of another Portfolio in exchange of a total consideration of \$24.0 million, pursuant to the Purchase and Sale Agreement relating to the sale of our commercial sale-leaseback portfolio (see Note 4. *Business Divestiture*). We received net consideration of \$22.9 million on closing, net of fees, expenses, and holdback amounts pertaining to certain retained obligations.

## ITEM 2: MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Cautionary Statement Regarding Forward-Looking Statements

You should read the following discussion of our financial condition and results of operations in conjunction with the condensed consolidated financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q and the consolidated financial statements and the notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 30, 2018 filed with the Securities and Exchange Commission ("SEC") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act").

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements that do not represent historical facts or the assumptions underlying such statements. We use words such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "plan," "predict," "project," "potential," "seek," "should," "will," "would," and similar expressions to identify forward-looking statements. Forward-looking statements in this Quarterly Report on Form 10-Q include, but are not limited to, our plans and expectations regarding future financial results, expected operating results, business strategies, the sufficiency of our cash and our liquidity, projected costs and cost reduction measures, development of new products and improvements to our existing products, the impact of recently adopted accounting pronouncements, our manufacturing capacity and manufacturing costs, the adequacy of our agreements with our suppliers, our ability to monetize utility projects, legislative actions and regulatory compliance, competitive positions, management's plans and objectives for future operations, our ability to obtain financing, our ability to comply with debt covenants or cure any defaults, our ability to repay our obligations as they come due, our ability to continue as a going concern, our ability to complete certain divestiture transactions, trends in average selling prices, the success of our joint ventures and acquisitions, expected capital expenditures, warranty matters, outcomes of litigation, our exposure to foreign exchange, interest and credit risk, general business and economic conditions in our markets, industry trends, the impact of changes in government incentives, expected restructuring charges, risks related to privacy and data security, and the likelihood of any impairment of project assets, long-lived assets, and investments. These forward-looking statements are based on information available to us as of the date of this Quarterly Report on Form 10-Q and current expectations, forecasts and assumptions and involve a number of risks and uncertainties that could cause actual results to differ materially from those anticipated by these forward-looking statements. Such risks and uncertainties include a variety of factors, some of which are beyond our control. Factors that could cause or contribute to such differences include, but are not limited to, those identified above, those discussed in the section titled "Risk Factors" included in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the fiscal year ended December 30, 2018, and our other filings with the SEC. 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.

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 quarter or year, which end on the Sunday closest to the calendar month end.

### Overview

SunPower Corporation (together with its subsidiaries, "SunPower," "we," "us," or "our") is a leading global energy company that delivers solar solutions to customers worldwide through an array of hardware, software, and financing options and through utility-scale solar power system construction and development capabilities, operations and maintenance ("O&M") services, and "Smart Energy" solutions. Our Smart Energy initiative is designed to add layers of intelligent control to homes, buildings and grids—all personalized through easy-to-use customer interfaces. Of all the solar cells commercially available to 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. For more information about our business, please refer to the section titled "Part I. Item 1. Business" in our Annual Report on Form 10-K for the fiscal year ended December 30, 2018.

### Recent Developments

Effective December 31, 2018, we adopted Accounting Standards Update ("ASU") No. 2016-02, Leases (Topic 842), as amended ("ASC 842") using the optional transition method as discussed in "Part I-Item 1. Financial Statements-Notes to the Consolidated Financial Statements-Note 1. Organization and Summary of Significant Accounting Policies" of this Quarterly Report on Form 10-Q. All amounts and disclosures set forth in this Form 10-Q reflect these changes.

Key transactions during the fiscal quarter ended March 31, 2019 include the following:

#### *Sale of Commercial Sale-Leaseback Portfolio*

We enter into sale-leaseback arrangements under which solar power systems are sold to third parties and subsequently leased back by us over lease terms of up to 25 years. Separately, we enter into sales of energy under power purchase agreements ("PPAs") with end customers, who host the leased solar power systems and buy the electricity directly from us under PPAs with terms of up to 25 years. At the end of the lease term, we have the option to purchase the systems at fair value or may be required to remove the systems and return them to the third parties.

On March 26, 2019, we entered into a Membership Interest Purchase and Sale Agreement (the "Purchase and Sale Agreement") with a wholly-owned subsidiary of Goldman Sachs Renewable Power LLC. Pursuant to the Purchase and Sale Agreement, we agreed to sell, in exchange for cash consideration of up to \$86.9 million, membership interests in certain of our holding company subsidiaries (the "Holdco" or "Holdcos") that directly or indirectly own leasehold interests in operating solar photovoltaic electric generating projects (the "Projects") subject to sale-leaseback financing arrangements with one or more financiers (each a "Lessor") and other related subsidiaries. The Projects are located at approximately 200 sites across the United States, and represent in aggregate, approximately 233 MW of generating capacity. The portfolio of Projects financed by each lessor represents a separate asset ("Portfolio") for which the price is separately agreed and stated in the Purchase and Sale Agreement.

The consummation of the sale and purchase of each Portfolio is subject to a number of customary conditions precedent, including receipt of certain third-party consents and approvals, including those of the applicable Lessor. The completion of sale of each Portfolio will happen as the underlying conditions precedent are satisfied.

On March 29, 2019, we completed the sale of one such Portfolio in exchange for total consideration of \$7.6 million in cash. We also retained a favorable O&M contract given current market pricing, which we recorded at fair value as an other intangible asset. In evaluating the accounting treatment for this transaction, we concluded that the Portfolio meets the definition of a business. In connection with the sale transaction, we recognized a gain of \$6.1 million, which is included within "gain on business divestiture" in our condensed consolidated statements of operations for the three months ended March 31, 2019.

On April 30, 2019, we completed the sale of one additional Portfolio in exchange of a total consideration of \$10.3 million, pursuant to the Purchase and Sale Agreement relating to the sale of our commercial sale-leaseback portfolio (see Note 4. *Business Divestiture*). We received net consideration of \$9.9 million on closing, net of fees, expenses, and holdback amounts pertaining to certain retained obligations.

On May 3, 2019, we completed the sale of another Portfolio in exchange of a total consideration of \$24.0 million, pursuant to the Purchase and Sale Agreement relating to the sale of our commercial sale-leaseback portfolio (see Note 4. *Business Divestiture*). We received net consideration of \$22.9 million on closing, net of fees, expenses, and holdback amounts pertaining to certain retained obligations.

#### ***Segments Overview***

In the fourth quarter of fiscal 2018, in connection with our efforts to improve operational focus and transparency, drive overhead accountability into segment operating results, and increase strategic agility across the value chain from our upstream business' core strength in manufacturing and technology to our downstream business's core strength in offering complete solutions in residential and commercial markets, we reorganized our segment reporting to an upstream and downstream structure. Previously, we operated under three end-customer segments, comprised of our (i) Residential Segment, (ii) Commercial Segment, and (iii) Power Plant Segment. Historically, the Residential Segment referred to sales of solar energy solutions to residential end-customers, the Commercial Segment referred to sales of energy solutions to commercial and public entity end-customers, and the Power Plant Segment referred to our large-scale solar products and systems and component sales.

Under the new segmentation, SunPower Energy Services Segment ("SunPower Energy Services" or "Downstream") refers to sales of solar energy solutions in the North America region previously included in the legacy Residential Segment and Commercial Segment (collectively previously referred to as "Distributed Generation" or "DG"), including direct sales of turn-key engineering, procurement and construction ("EPC") services, sales to our third-party dealer network, sales of energy under power purchase agreements ("PPAs"), storage solutions, cash sales and long-term leases directly to end customers, and sales to resellers. The SunPower Energy Services Segment also includes sales of our global Operations and Maintenance ("O&M") services. The SunPower Technologies Segment ("SunPower Technologies" or "Upstream") refers to our technology

development, worldwide solar panel manufacturing operations, equipment supply to resellers and commercial and residential end-customers outside of North America ("International DG"), and worldwide power plant project development and project sales. Upon reorganization, some support functions and responsibilities, which previously resided within the corporate function, have been shifted to each segment, including financial planning and analysis, legal, treasury, tax and accounting support and services, among others.

The reorganization provides our management with a comprehensive financial overview of our key businesses. The application of this structure permits us to align our strategic business initiatives and corporate goals in a manner that best focuses our businesses and support operations for success.

Our Chief Executive Officer, as the chief operating decision maker ("CODM"), reviews our business, manages resource allocations and measures performance of our activities between the SunPower Energy Services Segment and SunPower Technologies Segment.

For more information about our business segments, see the section titled "Part I. Item 1. Business" of our Annual Report on Form 10-K for the fiscal year ended December 30, 2018. For more segment information, see "Item 1. Financial Statements—Note 16. *Segment Information and Geographical Information*" in the Notes to the condensed consolidated financial statements in this Quarterly Report on Form 10-Q.

## Outlook

### *Demand*

During fiscal 2018, we faced market challenges, including competitive solar product pricing pressure including the impact of tariffs imposed pursuant to Section 201 and Section 301 of the Trade Act of 1974. On January 23, 2018, the President of the United States issued Proclamation 9693, which approved recommendations to provide relief to U.S. manufacturers and imposed safeguard tariffs on imported solar cells and modules, based on the investigations, findings, and recommendations of the International Trade Commission. The tariffs went into effect on February 7, 2018. While solar cells and modules based on interdigitated back contact ("IBC") technology, like our Maxeon 3, Maxeon 2 and related products, were granted exclusion from these safeguard tariffs on September 19, 2018, our solar products based on other technologies continue to be subject to the safeguard tariffs. Additionally, the Office of the United States Trade Representative ("USTR") initiated an investigation under Section 301 of the Trade Act of 1974 into the government of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The USTR imposed additional import duties of up to 25% on certain Chinese products covered by the Section 301 remedy. These tariffs include certain solar power system components and finished products, including those purchased from our suppliers for use in our products and used in our business. In the near term, imposition of these tariffs - on top of anti-dumping and countervailing duties on Chinese solar cells and modules, imposed under the prior administration - is likely to result in a wide range of impacts to the U.S. solar industry, global manufacturing market and our business. Such tariffs could cause market volatility, price fluctuations, and demand reduction. Uncertainties associated with the Section 201 and Section 301 trade cases prompted us to adopt a restructuring plan and implement initiatives to reduce operating expenses and cost of revenue overhead and improve cash flow. During fiscal 2018, we incurred total tariffs charges of approximately \$42.5 million.

In fiscal 2019, we continue to focus on investments that we expect will offer the best opportunities for growth including our industry-leading Maxeon 5 cell and panel technology, solar-plus-storage solutions and digital platform to improve customer service and satisfaction in our SunPower Energy Services offerings. We believe that our strategic decision to re-segment our business into an upstream and downstream structure, to focus our downstream efforts on our leading U.S. DG business while growing global sales of our upstream solar panel business through our SunPower Solutions group, will improve transparency and enable us to regain profitability in 2019.

In late fiscal 2015, the U.S. government enacted a budget bill that extended the solar commercial investment tax credit (the "Commercial ITC") under Section 48(c) of the Internal Revenue Code of 1986, as amended (the "Code"), and the individual solar investment tax credit under Section 25D of the Code (together with the Commercial ITC, the "ITC") for five years, at rates gradually decreasing from 30% through 2019 to 22% in 2021. After 2021, the Commercial ITC is retained at 10%. During December 2017, the current administration and Congress passed comprehensive reform of the Code which resulted in the reduction or elimination of various industry-specific tax incentives in return for an overall reduction in corporate tax rates. These changes are likely to result in a wide range of impacts to the U.S. solar industry and our business. For more information about the ITC and other policy mechanisms, please refer to the section titled "Item 1. Business—Regulations—*Public Policy Considerations*" of our Annual Report on Form 10-K for the fiscal year ended December 30, 2018. For more information about how we avail ourselves of the benefits of public policies and the risks related to public policies, please see

the risk factors set forth under the caption "Part I. Item 1A. Risk Factors—Risks Related to Our Sales Channels," including "*—The reduction, modification or elimination of government 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*" of our Annual Report on Form 10-K for the fiscal year ended December 30, 2018.

### **Supply**

We are focused on delivering complete solar power generation solutions to our customers. As part of our solutions-focused approach, we launched our SunPower Helix product for our commercial business customers during fiscal 2015 and our SunPower Equinox product for our residential business customers during fiscal 2016. The Equinox and Helix systems are pre-engineered modular solutions for residential and commercial applications, respectively, that combine our high-efficiency solar module technology with integrated plug-and-play power stations, cable management systems, and mounting hardware that enable our customers to quickly and easily complete system installations and manage their energy production. Our Equinox systems utilize our latest Maxeon Gen 3 cell and ACPV technology for residential applications, where we are also expanding our initiatives on storage and Smart Energy solutions. During fiscal 2016 we also launched our next generation technology for our existing Oasis modular solar power blocks for power plant applications. With the addition of these modular solutions in our residential and commercial applications, we are able to provide complete solutions across all end-customers. Additionally, we continue to focus on producing our new lower cost, high efficiency P-Series product line, which will enhance our ability to rapidly expand our global footprint with minimal capital cost.

We continue to see significant and increasing opportunities in technologies and capabilities adjacent to our core product offerings that can significantly reduce our customers' CCOE, including the integration of energy storage and energy management functionality into our systems, and have made investments to realize those opportunities, enabling our customers to make intelligent energy choices by addressing how they buy energy, how they use energy, and when they use it. We have added advanced module-level control electronics to our portfolio of technology designed to enable longer series strings and significant balance of system components cost reductions in large arrays. We currently offer solar panels that use microinverters designed to eliminate the need to mount or assemble additional components on the roof or the side of a building and enable optimization and monitoring at the solar panel level to ensure maximum energy production by the solar system.

We continue to improve our unique, differentiated solar cell and panel technology. We emphasize improvement of our solar cell efficiency and LCOE and CCOE performance through enhancement of our existing products, development of new products and reduction of manufacturing cost and complexity in conjunction with our overall cost-control strategies. We are now producing our solar cells with over 25% efficiency in the lab and have reached production panel efficiencies over 24%.

We monitor and change our overall solar cell manufacturing output in an ongoing effort to match profitable demand levels, with increasing bias toward our highest efficiency Maxeon 3 product platform, which utilizes our latest solar cell technology, and our P-Series product, which utilizes conventional cell technology that we purchase from third parties in low-cost supply chain ecosystems such as China. We previously closed our Fab 2 cell manufacturing facility and our panel assembly facility in the Philippines and are focusing on our latest generation, lower cost panel assembly facilities in Mexico. As part of this realignment, we are also increasing production of our new P-Series technology, including our newly-acquired U.S. manufacturing capabilities.

We are focused on reducing the cost of our solar panels and systems, including 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 and reducing manufacturing cost and complexity in conjunction with our overall cost-control strategies. We believe that the global demand for solar systems is highly elastic and that our aggressive, but achievable, cost reduction roadmap will reduce installed costs for our customers across both of our business segments and drive increased demand for our solar solutions.

We also work with our suppliers and partners to ensure the reliability of our supply chain. We have contracted with some of our suppliers for multi-year supply agreements, under which we have annual minimum purchase obligations. For more information about our purchase commitments and obligations, see "Liquidity and Capital Resources—*Contractual Obligations*" and "Item 1. Financial Statements—Note 4. *Divestiture*" and "Note 9. *Commitments and Contingencies*" in the Notes to the condensed consolidated financial statements in this Quarterly Report on Form 10-Q.

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; however, we face the risk that the pricing of our long-term supply contracts may exceed market value. For example, we purchase our polysilicon under fixed-price long-term supply agreements. When the pricing under these agreements significantly exceeds market value, they may result in inventory write-downs based

on expected net realizable value. Additionally, existing arrangements from prior years have resulted in above current market pricing for purchasing polysilicon, resulting in inventory losses we have realized. For several years now, we have elected to sell polysilicon inventory in excess of short-term needs to third parties at a loss, and may enter into further similar transactions in future periods. For more information about these risks, see the risk factors set forth under the caption "Part 1. Item 1A. Risk Factors—Risks Related to Our Supply Chain," including "*Our long-term, firm commitment supply agreements could result in excess or insufficient inventory, place us at a competitive disadvantage on pricing, or lead to disputes, each of which could impair our ability to meet our cost reduction roadmap, and in some circumstances may force us to take a significant accounting charge*" and "*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 and could in turn result in sales and installation delays, cancellations, penalty payments and loss of market share*" of our Annual Report on Form 10-K for the fiscal year ended December 30, 2018.

## Results of Operations

### Revenue

(In thousands, except percentages)	Three Months Ended		
	March 31, 2019	April 1, 2018	% Change
SunPower Energy Services	\$ 178,221	\$ 246,928	(28)%
SunPower Technologies	230,804	253,834	(9)%
Intersegment eliminations	(60,800)	(108,874)	(44)%
Total revenue	\$ 348,225	\$ 391,888	(11)%

#### **Total Revenue:**

Our total revenue decreased by 11% during the three months ended March 31, 2019 as compared to the three months ended April 1, 2018, primarily due to decrease in our SunPower Energy Services Segment attributed to lower solar services revenue as a result of ASC 842 adoption, which now precludes upfront revenue recognition on sales-type leases and lower volume sold to our commercial dealers. Decline in our SunPower Technologies Segment revenue for the three months ended March 31, 2019 compared to the three months ended April 1, 2018 is primarily attributable our decision to cease the development of large-scale solar power projects beginning in fiscal 2018.

We did not have significant customers that accounted for greater than 10% of total revenue in the three months ended March 31, 2019 and April 1, 2018.

#### **SunPower Energy Services Segment Revenue:**

Revenue from residential customers decreased 29% during the three months ended March 31, 2019 as compared to the three months ended April 1, 2018, primarily due to the adoption of new lease standards (ASC 842). Revenue from sales-type leases placed in service in the first quarter of fiscal 2018 was recognized upfront under the legacy lease accounting guidance. Such revenue is now recognized over the service period in accordance with revenue accounting guidance. Revenue from our commercial business decreased 26% during the three months ended March 31, 2019 as compared to the three months ended April 1, 2018 primarily because of lower volume of systems and components sold to dealers.

#### **SunPower Technologies Segment Revenue:**

Revenue for the segment decreased by 9% during the three months ended March 31, 2019, primarily due to reduced revenues from power plant development projects as we ceased the development of large-scale solar power projects, which was partially offset by increased module sales outside of the U.S. The intersegment revenue from module sales also decreased due to lower sales to SunPower Energy Services Segment Revenue.

## Cost of Revenue

(In thousands, except percentages)	Three Months Ended		
	March 31, 2019	April 1, 2018	% Change
SunPower Energy Services	\$ 171,078	\$ 206,003	(17)%
SunPower Technologies	282,868	278,041	2 %
Intersegment eliminations	(68,436)	(102,730)	(33)%
Total cost of revenue	\$ 385,510	\$ 381,314	1 %
Total cost of revenue as a percentage of total revenue	111 %	97%	
Total gross margin percentage	(11)%	3%	

### *Total Cost of Revenue:*

Our total cost of revenue increased 1% during the three months ended March 31, 2019 as compared to the three months ended April 1, 2018, primarily due to loss on ancillary sale of above-market polysilicon, higher inventory reserve charges related to certain end-of-life products, and pre-operating capacity charges on new product developments. This increase was partially offset by impairment charges on certain solar power development projects during the three months ended April 1, 2018, and lower volume in U.S. residential and commercial sales.

## Gross Margin

	Three Months Ended	
	March 31, 2019	April 1, 2018
SunPower Energy Services	4 %	17 %
SunPower Technologies	(23)%	(10)%

### *SunPower Energy Services Segment Gross Margin:*

Gross margin for our SunPower Energy Services Segment decreased 13% during the three months ended March 31, 2019 as compared to the three months ended April 1, 2018, primarily as a result of no upfront recognition of gross margin on sales-type leases subsequent to the adoption of ASC 842, change in product mix, and fewer EPC projects compared to the three months ended April 1, 2018.

### *SunPower Technologies Segment Gross Margin:*

Gross margin for our SunPower Technologies Segment decreased 13% during the three months ended March 31, 2019 as compared to the three months ended April 1, 2018, primarily due to loss on ancillary sale of above-market polysilicon, higher inventory reserve charges related to certain end-of-life products, and pre-operating capacity charges on new product developments, partially offset by impairment charges on certain solar power development projects during the three months ended April 1, 2018.

## Research and Development ("R&D")

(In thousands, except percentages)	Three Months Ended		
	March 31, 2019	April 1, 2018	% Change
R&D	\$ 14,993	\$ 19,052	(21)%
As a percentage of revenue	4%	5%	

R&D expense decreased by \$4.1 million during the three months ended March 31, 2019 as compared to the three months ended April 1, 2018. The decrease was primarily due to a decrease in labor costs as a result of reductions in headcount driven by our February 2018 restructuring plan.



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

(In thousands, except percentages)	Three Months Ended		
	March 31, 2019	April 1, 2018	% Change
SG&A	\$ 62,857	\$ 65,295	(4)%
As a percentage of revenue	18%	17%	

SG&A expense decreased by \$2.4 million during the three months ended March 31, 2019 as compared to the three months ended April 1, 2018 primarily due to reductions in headcount and salary expenses driven by our February 2018 restructuring plan and ongoing cost reduction efforts.

**Restructuring Charges**

(In thousands, except percentages)	Three Months Ended		
	March 31, 2019	April 1, 2018	% Change
Restructuring (credits) charges	\$ (665)	\$ 11,177	(106)%
As a percentage of revenue	—%	3%	

Restructuring charges decreased \$11.8 million during the three months ended March 31, 2019 as compared to the three months ended April 1, 2018, primarily because we have already incurred the majority of severance and benefits charges in connection with the February 2018 restructuring plan in prior periods. See "Item 1. Financial Statements—Note 8. *Restructuring*" in the Notes to the condensed consolidated financial statements in this Quarterly Report on Form 10-Q for further information regarding our restructuring plans. As a result of the February 2018 restructuring plan, we expect to generate annual cost savings of approximately \$20.5 million in operating expenses, largely cash savings, primarily from a reduction in global workforce; the savings commenced in the first quarter of fiscal 2018.

**Impairment of residential lease assets**

(In thousands, except percentages)	Three Months Ended		
	March 31, 2019	April 1, 2018	% Change
Impairment of residential lease assets	\$ 9,226	\$ 49,092	(81)%
As a percentage of revenue	3%	13%	

In the fourth quarter of fiscal 2017, in conjunction with our efforts to generate more available liquid funds in the near-term, we made the decision to sell a portion of our interest in our Residential Lease Portfolio. As a result, in the fourth quarter of fiscal 2017, we determined it was necessary to evaluate the potential for impairment in our ability to recover the carrying amount of our Residential Lease Portfolio. As a result of our evaluation, we recognized non-cash impairment charges of \$49.1 million within "impairment of residential lease assets" on the condensed consolidated statements of operations for the three months ended April 1, 2018. In November 2018, we completed the sale of the majority of our Residential Lease Portfolio to Hannon Armstrong through sale of partial equity interests in SunStrong Capital Holdings LLC ("SunStrong"), our wholly-owned subsidiary at that time. The transaction resulted in deconsolidation of SunStrong from our books, as we and Hannon Armstrong exercised joint control after the sale. In the first fiscal quarter of 2019, we continued recording additional non-cash impairment charges of \$9.2 million for the remaining assets in the Residential Lease Portfolio that has yet to be sold.

**Gain on business divestiture**

(In thousands, except percentages)	Three Months Ended		
	March 31, 2019	April 1, 2018	% Change
Gain on business divestiture	\$ (6,114)	\$ —	100%
As a percentage of revenue	(2)%	—%	

In the first quarter of fiscal 2019, we completed the sale of a commercial sale-leaseback portfolio and recognized a gain of \$6.1 million, which is included within "gain on business divestiture" on our condensed consolidated statements of operations for the three months ended March 31, 2019.

**Other Expense, Net**

(In thousands, except percentages)	Three Months Ended		
	March 31, 2019	April 1, 2018	% Change
Interest income	\$ 852	\$ 529	61 %
Interest expense	(16,791)	(25,106)	(33)%
Other Income (expense):			
Other, net	33,073	15,794	109 %
Other expense, net	\$ 17,134	\$ (8,783)	(295)%
As a percentage of revenue	5%	(2)%	

Interest expense decreased \$8.3 million in the three months ended March 31, 2019 as compared to the three months ended April 1, 2018 primarily due to deconsolidation of the non-recourse residential financing obligations in connection with the sale of the Residential Lease Portfolio in November 2018.

Other income increased by \$17.3 million in the three months ended March 31, 2019 as compared to the three months ended April 1, 2018, primarily due to a \$33.0 million unrealized gain on a marketable equity investment in the first quarter of 2019 as compared to a gain of \$14.3 million on sale of an equity method investment during the three months ended April 1, 2018.

## Income Taxes

(In thousands, except percentages)	Three Months Ended		
	March 31, 2019	April 1, 2018	% Change
Provision for income taxes	\$ (5,797)	\$ (2,628)	121%
As a percentage of revenue	(2)%	(1)%	

In the three months ended March 31, 2019, our income tax provision of \$5.8 million on a loss before income taxes and equity in earnings of unconsolidated investees of \$100.4 million was primarily due to the related tax expense in foreign jurisdictions that were profitable, and a net change in valuation allowance from foreign jurisdiction. The income tax provision of \$2.6 million in the three months ended April 1, 2018 on a loss before income taxes and equity in earnings of unconsolidated investees of \$142.8 million, was primarily due to the related tax expense in foreign jurisdictions that were profitable.

A material 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. Because of the one-time transition tax related to the Tax Cuts and Jobs Act enacted in 2017, the accumulated foreign earnings were deemed to have been taxed and were no longer subject to the U.S. federal deferred tax liability. Foreign withholding taxes have not been provided on the existing undistributed earnings of our non-U.S. subsidiaries as of March 31, 2019 as these are intended to be indefinitely reinvested in operations outside the United States.

We record a valuation allowance to reduce our deferred tax assets in the U.S., Malta, South Africa, Spain, and Mexico to the amount that is more likely than not to be realized. In assessing the need for a valuation allowance, we consider historical levels of income, expectations and risks associated with the estimates of future taxable income and ongoing prudent and feasible tax planning strategies. In the event we determine that we would be able to realize additional deferred tax assets in the future in excess of the net recorded amount, or if we subsequently determine that realization of an amount previously recorded is unlikely, we would record an adjustment to the deferred tax asset valuation allowance, which would change income tax in the period of adjustment.

On July 27, 2015, in *Altera Corp. v. Commissioner*, the U.S. Tax Court issued an opinion related to the treatment of stock-based compensation expense in an intercompany cost-sharing arrangement. On July 24, 2018, the Ninth Circuit Court of Appeal reversed the Tax Court's decision made in year 2015. On August 7, 2018, the Ninth Circuit Court of Appeal withdrew the issued decision to allow for additional time to confer on the appeal. We confirmed that there were no changes to the decision and will continue to monitor for ongoing developments and potential impacts to our condensed consolidated financial statements.

## Equity in Earnings (Losses) of Unconsolidated Investees

(In thousands, except percentages)	Three Months Ended		
	March 31, 2019	April 1, 2018	% Change
Equity in earnings (losses) of unconsolidated investees	\$ 1,680	\$ (2,144)	(178)%
As a percentage of revenue	—%	(1)%	

Our equity in earnings (losses) of unconsolidated investees increased \$3.8 million in the three months ended March 31, 2019 as compared to the three months ended April 1, 2018, primarily driven by an increase in our share of earnings generated by certain equity investment as compared to a decrease in our share of earnings generated by the activities of the 8point3 Energy Partners and its affiliates (the "8point3 Group") during the first quarter of fiscal 2018.

## Net Loss Attributable to Noncontrolling Interests and Redeemable Noncontrolling Interests

(In thousands, except percentages)	Three Months Ended		
	March 31, 2019	April 1, 2018	% Change
Net loss attributable to noncontrolling interests and redeemable noncontrolling interests	\$ 14,841	\$ 31,623	(53)%

We have entered into facilities with third-party tax equity investors under which the investors invest in a structure known as a partnership flip. We determined that we hold controlling interests in these less-than-wholly-owned entities and therefore we

have fully consolidated these entities. We apply the HLBV method in allocating recorded net income (loss) to each investor based on the change in the reporting period, of the amount of net assets of the entity to which each investor would be entitled to under the governing contractual arrangements in a liquidation scenario.

In the three months ended March 31, 2019 and April 1, 2018, we attributed \$14.8 million and \$31.6 million, respectively, of net losses primarily to the third-party investors as a result of allocating certain assets, including tax credits and accelerated tax depreciation benefits, to the investors. The \$16.8 million decrease in net loss attributable to noncontrolling interests and redeemable noncontrolling interests is primarily due to deconsolidation of majority of residential lease assets in the last quarter of fiscal 2018.

## **Critical Accounting Estimates**

We prepare our condensed consolidated financial statements in conformity with U.S. generally accepted accounting principles, which requires management to make estimates and assumptions that affect the amounts of assets, liabilities, revenues, and expenses recorded in our financial statements. 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 and conditions.

There were no significant changes in our critical accounting estimates during the fiscal quarter ended March 31, 2019 compared to those previously disclosed in “Critical Accounting Estimates” in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in the 2018 Annual Report on Form 10-K.

## Liquidity and Capital Resources

### Cash Flows

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

(In thousands)	Three Months Ended	
	March 31, 2019	April 1, 2018
Net cash used in operating activities	\$ (149,030)	\$ (233,262)
Net cash used in investing activities	\$ (24,471)	\$ (11,623)
Net cash provided by financing activities	\$ 46,529	\$ 62,640

#### Operating Activities

Net cash used in operating activities for the three months ended March 31, 2019 was \$149.0 million and was primarily the result of: (i) net loss of \$104.6 million; (ii) \$41.7 million increase in inventories to support the construction of our solar energy projects; (iii) \$33.0 million unrealized gain on equity investments with readily determinable fair value; (iv) \$28.8 million decrease in accounts payable and other accrued liabilities, primarily attributable to payments of accrued expenses; (v) \$14.6 million decrease in contract liabilities driven by construction activities; (vi) \$6.1 million gain on business divestiture; (vii) \$1.7 million decrease in equity in earnings of unconsolidated investees; (viii) \$1.6 million increase in long-term financing receivables related to our net investment in sales-type leases; and (ix) \$2.6 million decrease in operating lease liabilities. This was partially offset by: (i) net non-cash charges of \$32.3 million related to depreciation, stock-based compensation and other non-cash charges; (ii) \$13.1 million increase in advance payments made to suppliers; (iii) \$12.2 million decrease in accounts receivable, primarily driven by billings; (iv) impairment of residential lease assets of \$9.2 million; (v) \$11.7 million decrease in prepaid expenses and other assets, primarily related to the receipt of prepaid inventory; (vi) \$2.6 million decrease in operating lease right-of-use assets; (vii) \$2.0 million net change in income taxes; (viii) \$1.7 million decrease in contract assets driven by construction activities; and (ix) \$0.8 million decrease in project assets, primarily related to the construction of our Commercial solar energy projects.

Net cash used in operating activities in the three months ended April 1, 2018 was \$233.3 million and was primarily the result of: (i) a net loss of \$147.6 million; (ii) a \$100.2 million decrease in accounts payable and other accrued liabilities, primarily attributable to the procurement of polysilicon and vendor payments; (iii) \$38.1 million increase in long-term financing receivables related to our net investment in sales-type leases; (iv) \$34.2 million increase in inventories to support the construction of our solar energy projects; (v) \$33.1 million decrease in contract liabilities driven by construction activities; (vi) \$23.6 million increase in contract assets driven by construction activities; (vii) \$15.6 million gain on the sale of equity method investment; (viii) a \$0.3 million net change in income taxes. This was partially offset by: (i) net non-cash charges of \$52.3 million related to depreciation, stock-based compensation and other non-cash charges; (ii) the impairment of residential lease assets of \$49.1 million; (iii) a \$20.5 million decrease in project assets, primarily related to the write-downs in Power Plant solar energy development projects; (iv) \$13.9 million decrease in accounts receivable; (v) a \$10.9 million decrease in prepaid expenses and other assets, primarily related to the receipt of prepaid inventory; (vi) \$5.4 million dividend from 8point3 Energy Partners; (vii) a \$5.1 million decrease in advance payments made to suppliers; (viii) \$2.1 million decrease in equity in earnings of unconsolidated investees.

#### Investing Activities

Net cash provided by investing activities in the three months ended March 31, 2019 was \$24.5 million, which included \$34.1 million in capital expenditures primarily related to the expansion of our solar cell manufacturing capacity and costs associated with solar power systems. This was partially offset by proceeds of \$9.7 million from business divestiture.

Net cash used in investing activities in the three months ended April 1, 2018 was \$11.6 million, which included (i) \$35.3 million in capital expenditures primarily related to the expansion of our solar cell manufacturing capacity and costs associated with solar power systems, leased and to be leased; (ii) \$6.3 million paid for investments in consolidated and unconsolidated investees. This was partially offset by proceeds from the sale of investment in joint ventures of \$27.3 million and a \$2.7 million dividend from 8point3 Energy Partners.

## **Financing Activities**

Net cash provided by financing activities in the three months ended March 31, 2019 was \$46.5 million, which included: (i) \$22.3 million in net proceeds from the issuance of non-recourse residential financing, net of issuance costs; (ii) \$21.0 million of net contributions from noncontrolling interests and redeemable noncontrolling interests related to residential lease projects; and (iii) \$9.6 million in net proceeds of bank loans and other debt. This was partially offset by: (i) \$3.9 million in purchases of treasury stock for tax withholding obligations on vested restricted stock; (ii) \$2.4 million in settlement of a contingent consideration arrangement.

Net cash provided by financing activities in the three months ended April 1, 2018 was \$62.6 million, which included: (i) \$31.3 million of net contributions from noncontrolling interests and redeemable noncontrolling interests primarily related to residential lease projects; and (ii) \$28.9 million in net proceeds from the issuance of non-recourse residential financing, net of issuance costs. (iii) \$8.2 million in net proceeds from the issuance of non-recourse power plant and commercial financing, net of issuance costs. This was partially offset by \$4.5 million in purchases of treasury stock for tax withholding obligations on vested restricted stock and a \$1.3 million in net repayments of bank loans and other debt.

## **Debt and Credit Sources**

### **Convertible Debentures**

As of March 31, 2019, an aggregate principal amount of \$425.0 million of the 4.00% senior convertible debentures due 2023 (the "4.00% debentures due 2023") remained issued and outstanding. The 4.00% debentures due 2023 were issued on December 15, 2015. Interest on the 4.00% debentures due 2023 is payable on January 15 and July 15 of each year, beginning on July 15, 2016. Holders are able to exercise their right to convert the debentures at any time into shares of our common stock at an initial conversion price approximately equal to \$30.53 per share, subject to adjustment in certain circumstances. If not earlier repurchased or converted, the 4.00% debentures due 2023 mature on January 15, 2023. Holders may require us to repurchase all or a portion of their 4.00% debentures due 2023, upon a fundamental change, as described in the related indenture, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. If we undergo a non-stock change of control, as described in the related indenture, the 4.00% debentures due 2023 will be subject to redemption at our option, in whole but not in part, for a period of 30 calendar days following a repurchase date relating to the non-stock change of control, at a cash redemption price equal to 100% of the principal amount plus accrued and unpaid interest. Otherwise, the 4.00% debentures due 2023 are not redeemable at our option prior to the maturity date. In the event of certain events of default, Wells Fargo Bank, National Association ("Wells Fargo"), the trustee, or the holders of a specified amount of then-outstanding 4.00% debentures due 2023 will have the right to declare all amounts then outstanding due and payable.

As of March 31, 2019, an aggregate principal amount of \$400.0 million of the 0.875% senior convertible debentures due 2021 (the "0.875% debentures due 2021") remained issued and outstanding. The 0.875% debentures due 2021 were issued on June 11, 2014. Interest on the 0.875% debentures due 2021 is payable on June 1 and December 1 of each year. Holders are able to exercise their right to convert the debentures at any time into shares of our common stock at an initial conversion price approximately equal to \$48.76 per share, subject to adjustment in certain circumstances. If not earlier repurchased or converted, the 0.875% debentures due 2021 mature on June 1, 2021. Holders may require us to repurchase all or a portion of their 0.875% debentures due 2021, upon a fundamental change, as described in the related indenture, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. If we undergo a non-stock change of control, as described in the related indenture, the 0.875% debentures due 2021 will be subject to redemption at our option, in whole but not in part, for a period of 30 calendar days following a repurchase date relating to the non-stock change of control, at a cash redemption price equal to 100% of the principal amount plus accrued and unpaid interest. Otherwise, the 0.875% debentures due 2021 are not redeemable at our option prior to the maturity date. In the event of certain events of default, Wells Fargo, the trustee, or the holders of a specified amount of then-outstanding 0.875% debentures due 2021 will have the right to declare all amounts then outstanding due and payable.

### ***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. Certain of our obligations under the loan agreement were contained in a promissory note dated December 29, 2010 issued by us to CEDA, which assigned the promissory note, along with all right, title and interest in the loan agreement, to Wells Fargo, as trustee, with respect to the Bonds for the benefit of the holders of the Bonds. The Bonds bear interest at a fixed-rate of 8.50% per annum. As of March 31, 2019, the fair value of the Bonds was \$32.4 million, determined by using Level 2 inputs based on quarterly market prices as reported by an independent pricing source.

As of March 31, 2019, the \$30.0 million aggregate principal amount of the Bonds was classified as "Long-term debt" in our condensed consolidated balance sheets.

### ***Revolving Credit Facility with Credit Agricole***

On June 23, 2017, we entered into an Amended and Restated Revolving Credit Agreement with Credit Agricole, as administrative agent, and the other lenders party thereto (the "Revolver"), which amends and restates the Revolving Credit Agreement dated July 3, 2013, as amended.

The Revolver was entered into in connection with a letter agreement between us and Total S.A. dated May 8, 2017 (the "Letter Agreement"), to facilitate the issuance by Total S.A. ("Total S.A.") of one or more guaranties of our payment obligations of up to \$100.0 million under the Revolver. The maturity date of the Letter Agreement and the Revolver is August 26, 2019. In consideration for the commitments of Total S.A. pursuant to the Letter Agreement, we are required to pay a guarantor commitment fee of 0.50% per annum for the unutilized Support Amount and a guaranty fee of 2.35% per annum of the guaranteed amount outstanding.

Available borrowings under the Revolver are \$300.0 million; provided that the aggregate principal amount of all amounts borrowed under the facility cannot exceed 95.0% of the amounts guaranteed by Total S.A. under the Letter Agreement. Amounts borrowed under the facility may be repaid and re-borrowed until the maturity date.

We are required to pay (a) interest on outstanding borrowings under the facility of (i) with respect to any LIBOR rate loan, an amount equal to 0.6% plus the LIBOR rate divided by a percentage equal to one minus the stated maximum rate of all reserves required to be maintained against "Eurocurrency liabilities" as specified in Regulation D; and (ii) with respect to any alternate base rate loan, an amount equal to 0.25% plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.50%, and (3) the one-month LIBOR rate plus 1%; and (b) a commitment fee of 0.06% per annum on funds available for borrowing and not borrowed. The Revolver includes representations, covenants, and events of default customary for financing transactions of this type. As of March 31, 2019, we had no outstanding borrowings under the revolving credit facility.

### ***September 2011 Letter of Credit Facility with Deutsche Bank and Deutsche Bank Trust Company Americas (together, "Deutsche Bank Trust")***

On September 27, 2011, we entered into a letter of credit facility with Deutsche Bank Trust which provides for the issuance, upon request by us, of letters of credit to support our obligations in an aggregate amount not to exceed \$200.0 million. Each letter of credit issued under the facility is fully cash-collateralized and we have entered into a security agreement with Deutsche Bank Trust, granting them a security interest in a cash collateral account established for this purpose.

As of March 31, 2019, letters of credit issued under the Deutsche Bank Trust facility totaled \$2.6 million, which was fully collateralized with restricted cash as classified on the condensed consolidated balance sheets.

### ***Other Facilities***

#### ***Asset-Backed Loan with Bank of America***

On March 29, 2019, we entered in a Loan and Security Agreement with Bank of America, N.A., which provides a revolving credit facility secured by certain inventory and accounts receivable in the maximum aggregate principal amount of \$50.0 million. The Loan and Security Agreement contains negative and affirmative covenants, events of default and repayment and prepayment provisions customarily applicable to asset-backed credit facilities. The facility bears a floating interest rate of LIBOR plus an applicable margin, and matures on the earlier of March 29, 2022, a date that is 91 days prior to the maturity of



our 2021 convertible debentures, or the termination of the commitments thereunder. As of March 31, 2019, we had drawn \$9.0 million under this facility.

#### *SunTrust Facility*

On June 28, 2018, we entered in a Financing Agreement with SunTrust Bank, which provides a revolving credit facility in the maximum aggregate principal amount of \$75.0 million. Each draw down from the facility bears either a base rate of federal funds rate plus an applicable margin or a floating interest rate of LIBOR plus an applicable margin, and matures no later than three years. As of March 31, 2019, we had \$75.0 million in borrowing capacity under this limited recourse construction financing facility.

#### *Non-recourse Financing and Other Debt*

In order to facilitate the construction, sale or ongoing operation of certain solar projects, including our residential leasing program, we regularly obtain project-level financing. These financings are secured either by the assets of the specific project being financed or by our equity in the relevant project entity and the lenders do not have recourse to our general assets for repayment of such debt obligations, and hence the financings are referred to as non-recourse. Non-recourse financing is typically in the form of loans from third-party financial institutions, but also takes other forms, including "flip partnership" structures, sale-leaseback arrangements, or other forms commonly used in the solar or similar industries. We may seek non-recourse financing covering solely the construction period of the solar project or may also seek financing covering part or all of the operating life of the solar project. We classify non-recourse financings in our condensed consolidated balance sheets in accordance with their terms; however, in certain circumstances, we may repay or refinance these financings prior to stated maturity dates in connection with the sale of the related project or similar such circumstances. In addition, in certain instances, the customer may assume the loans at the time that the project entity is sold to the customer. In these instances, subsequent debt assumption is reflected as a financing outflow and operating inflow in the condensed consolidated statements of cash flows to reflect the substance of the assumption as a facilitation of customer financing from a third party.

#### **Liquidity**

As of March 31, 2019, we had unrestricted cash and cash equivalents of \$185.6 million as compared to \$309.4 million as of December 30, 2018. Our cash balances are held in numerous locations throughout the world, and as of March 31, 2019, we had approximately \$52.4 million held outside of the United States. This offshore cash is used to fund operations of our business in the Europe and Asia Pacific regions as well as non-U.S. manufacturing operations, which require local payment for product materials and other expenses. The amounts held outside of the United States represent the earnings of our foreign subsidiaries which under the enacted Tax Act, incurred a one-time transition tax (such amounts were previously tax deferred), however, would not result in a cash payment due to our cumulative net operating loss position. We expect total capital expenditures related to purchases of property, plant and equipment of approximately \$72.3 million in fiscal 2019 in order to increase our manufacturing capacity for our highest efficiency Maxeon 3 product platform and our new P-Series technology, improve our current and next generation solar cell manufacturing technology, and other projects. In addition, while we have begun the transition away from our project development business, we still expect to invest capital to develop solar power systems and plants for sale to customers. The development of solar power plants can require long periods of time and substantial initial investments. Our efforts in this area may consist of all stages of development, including land acquisition, permitting, financing, construction, operation and the eventual sale of the projects. We often choose to bear the costs of such efforts prior to the final sale to a customer, which involves significant upfront investments of resources (including, for example, large transmission deposits or other payments, which may be non-refundable), land acquisition, permitting, legal and other costs, and in some cases the actual costs of constructing a project, in advance of the signing of PPAs and EPC contracts and the receipt of any revenue, much of which is not recognized for several additional months or years following contract signing. Any delays in disposition of one or more projects could have a negative impact on our liquidity.

Certain of our customers also require performance bonds issued by a bonding agency or letters of credit issued by financial institutions, which are returned to us upon satisfaction of contractual requirements. If there is a contractual dispute with the customer, the customer may withhold the security or make a draw under such security, which could have an adverse impact on our liquidity. Obtaining letters of credit may require adequate collateral. All letters of credit issued under our 2016 Guaranteed LC Facilities are guaranteed by Total S.A. pursuant to the Credit Support Agreement. Our September 2011 letter of credit facility with Deutsche Bank Trust is fully collateralized by restricted cash, which reduces the amount of cash available for operations. As of March 31, 2019, letters of credit issued under the Deutsche Bank Trust facility amounted to \$2.6 million which were fully collateralized with restricted cash on our condensed consolidated balance sheets.

In fiscal 2011, we launched our residential lease program with dealers in the United States, in partnership with a third-party financial institution, which allows customers to obtain SunPower systems under lease agreements up to 20 years, subject to financing availability. We have entered into facilities with financial institutions that will provide financing to support additional residential solar lease projects. Under the terms of certain programs, we receive upfront payments for periods under which the third-party financial institution has agreed to assume collection risk for certain residential leases. Changes in the amount or timing of upfront payments received from the financial institutions may have an impact on our cash position within the next twelve months. The normal collection of monthly rent payments for leases placed in service is not expected to have a material impact on our cash position within the next twelve months. We have entered into multiple facilities with third-party investors under which both parties will invest in entities that hold SunPower solar power systems and leases with residential customers. In the fourth quarter of fiscal 2017, in conjunction with our efforts to generate more available liquid funds in the near-term, we made the decision to sell a portion of our interest in the Residential Lease Portfolio. As a result, we determined it was necessary to evaluate our Residential Lease Portfolio for potential impairment. For additional information, see "Item 1. Financial Statements—Note 6. *Solar Services*" in the Notes to the condensed consolidated financial statements in this Quarterly Report on Form 10-Q. During the three months March 31, 2019, we received \$21.0 million in contributions from investors under the related facility agreements. During the fourth quarter of fiscal 2018, we successfully sold a portion of our interest in the Residential Lease Portfolio. In conjunction with our sale of the residential lease assets, we deconsolidated these less-than-wholly-owned entities in which we previously held a controlling interest. For further information, see "Item 8. Financial Statements and Supplementary Data—Note 4. *Business Combinations and Divestitures*" in our Annual Report on Form 10-K for the fiscal year ended December 30, 2018.

In fiscal 2019, we drew down \$22.3 million of proceeds, net of issuance costs, under the loan agreements. During the fourth quarter of fiscal 2018, in conjunction with the sale of our interest in our residential lease assets portfolio we repaid these loans in full. We are actively arranging additional third-party financing for our continuing residential lease program; however, the credit markets are unpredictable, and if they become challenging, we may be unable to arrange additional financing partners for our residential lease program in future periods, which could have a negative impact on our sales. In the unlikely event that we enter into a material number of additional leases without promptly obtaining corresponding third-party financing, our cash and working capital could be negatively affected. Additionally, we have approximately 3.9 million of cash and cash equivalents within our remaining consolidated residential leasing subsidiaries that is used by those subsidiaries for their working capital needs. This cash is typically not available to us to use for general corporate purposes unless certain financial obligations are first settled. In the event that we choose to transfer cash out of these subsidiaries for general corporate purposes in the future, we would first be required to distribute a portion of the cash to lender debt reserves and investors who hold noncontrolling interests in the relevant subsidiaries. For further information, see "Item 1. Financial Statements—Note 6. *Solar Services*" in the Notes to the condensed consolidated financial statements" in this Quarterly Report on Form 10-Q.

Solar power plant projects often require significant up-front investments. These include payments for preliminary engineering, permitting, legal, and other expenses before we can determine whether a project is feasible. We often make arrangements with third-party financiers to acquire and build solar power systems or to fund project construction using non-recourse project debt. As of March 31, 2019, outstanding amounts related to our project financing totaled \$6.5 million.

On June 23, 2017, we entered into an Amended and Restated Revolving Credit Agreement with Credit Agricole, as administrative agent, and the other lenders party thereto, which amends and restates the Revolving Credit Agreement dated July 3, 2013 by and between us, the Administrative Agent and the other parties thereto, as amended to date. The Revolver was entered into in connection with the Letter Agreement between us and Total S.A. dated May 8, 2017, which was entered into to facilitate the issuance by Total S.A. of one or more guaranties of our payment obligations of up to \$100.0 million under the Revolver. The maturity date of the facility under the Revolver remains August 26, 2019, and amounts borrowed under the facility may be repaid and reborrowed until the Maturity Date. Available borrowings under the Revolver remain \$300.0 million; provided that the aggregate principal amount of all amounts borrowed under the facility cannot exceed 95.0% of the amounts guaranteed by Total Solar International SAS ("Total"), formerly Total Energies Nouvelles Activités USA, a subsidiary of Total S.A., under the Letter Agreement, effectively allowing us to borrow up to a maximum of \$95.0 million under the Revolver. As of March 31, 2019, \$300.0 million remained undrawn under our revolving credit facility with Credit Agricole.

There are no assurances, however, that we will have sufficient available cash to repay our indebtedness or that we will be able to refinance such indebtedness on similar terms to the expiring indebtedness. If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity investments or debt securities or obtain other debt financing. The current economic environment, however, could 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 in the amounts that would be required to supplement cash flows to support operations. The sale of additional equity investments or convertible debt securities would result in additional dilution to our stockholders (and the potential for further dilution upon the exercise of warrants or the conversion of convertible debt) and may not be available on favorable terms or at all, particularly in light of the current

conditions in the financial and credit markets. Additional debt would result in increased expenses and would likely impose new restrictive covenants which may be similar or different than those restrictions contained in the covenants under our current loan agreements and debentures. In addition, 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.

Challenging industry conditions and a competitive environment extended throughout fiscal 2018 and first quarter of fiscal 2019. Our net losses, resulting in a net use of our available cash, continued in the first quarter of fiscal 2019 and are expected to continue through the remainder of fiscal 2019. Despite the challenging industry conditions, including uncertainty around the regulatory environment, we believe that our cash and cash equivalents, including cash expected to be generated from operations, will be sufficient to meet our obligations over the next 12 months from the date of the issuance of our financial statements. We have been successful in our ability to divest certain investments and non-core assets, such as the divestiture of our equity interest in 8point3 Energy Partners LP, the sale of certain assets and intellectual property related to the production of microinverters, the sale of membership interests in our Residential Lease Portfolio, and the sale of membership interests in our Commercial Sale-Leaseback Portfolio (Note 4. *Business Divestiture*). Additionally, we have secured other sources of financing in connection with our liquidity needs, as well as realizing cash savings resulting from restructuring actions and cost reduction initiatives. We continue to focus on improving our overall operating performance and liquidity, including managing cash flow and working capital.

We also have the ability to enhance our available cash by borrowing up to \$95.0 million under a revolving credit facility (the "Revolver") with Credit Agricole Corporate and Investment Bank ("Credit Agricole") pursuant to a Letter Agreement executed by us and Total S.A. on May 8, 2017 (the "Letter Agreement") through August 26, 2019, the expiration date of the Letter Agreement.

Although we have historically been able to generate liquidity, we cannot predict, with certainty, the outcome of our actions to generate liquidity as planned.

### Contractual Obligations

The following table summarizes our contractual obligations as of March 31, 2019:

(In thousands)	Total	Payments Due by Fiscal Period			
		2019 (remaining nine months)	2020-2021	2022-2023	Beyond 2023
Convertible debt, including interest <sup>1</sup>	\$ 893,676	\$ 12,000	\$ 438,968	\$ 442,708	\$ —
CEDA loan, including interest <sup>2</sup>	61,875	2,550	5,100	5,100	49,125
Other debt, including interest <sup>3</sup>	89,588	43,330	39,542	2,069	4,647
Future financing commitments <sup>4</sup>	3,840	940	2,900	—	—
Operating lease commitments <sup>5</sup>	129,484	12,332	29,879	22,219	65,054
Sale-leaseback financing <sup>6</sup>	492,671	21,574	59,546	57,936	353,615
Finance lease commitments <sup>7</sup>	2,559	465	1,266	828	—
Non-cancellable purchase orders <sup>8</sup>	182,819	182,819	—	—	—
Purchase commitments under agreements <sup>9</sup>	608,058	126,503	413,580	67,975	—
Deferred purchase consideration in connection with acquisition <sup>10</sup>	60,000	30,000	30,000	—	—
<b>Total</b>	<b>\$ 2,524,570</b>	<b>\$ 432,513</b>	<b>\$ 1,020,781</b>	<b>\$ 598,835</b>	<b>\$ 472,441</b>

<sup>1</sup>Convertible debt, including interest, relates to the aggregate of \$825.0 million in outstanding principal amount of our senior convertible debentures on March 31, 2019. For the purpose of the table above, we assume that all holders of the outstanding debentures will hold the debentures through the date of maturity, and upon conversion, the values of the senior convertible debentures will be equal to the aggregate principal amount with no premiums.

<sup>2</sup>CEDA loan, including interest, relates to the proceeds of the \$30.0 million aggregate principal amount of the Bonds. The Bonds mature on April 1, 2031 and bear interest at a fixed rate of 8.50% through maturity.

<sup>3</sup>Other debt, including interest, primarily relates to non-recourse finance projects and solar power systems and leases under our residential lease program as described in "Item 1. Financial Statements—Note 9. *Commitments and Contingencies*" in the Notes to the condensed consolidated financial statements in this Quarterly Report on Form 10-Q.

<sup>4</sup>In connection with purchase and joint venture agreements with non-public companies, we will be required to provide additional financing to such parties of up to \$3.8 million, subject to certain conditions.

<sup>5</sup>Operating lease commitments primarily relate to certain solar power systems leased from unaffiliated third parties over minimum lease terms of up to 20 years which are classified as held-for-sale as of March 31, 2019 and various facility lease agreements including leases entered in that have not yet commenced.

<sup>6</sup>Sale-leaseback financing relates to future minimum lease obligations for solar power systems under sale-leaseback arrangements which were accounted for under the financing method and have been classified as held-for-sale as of March 31, 2019.

<sup>7</sup>Finance lease commitments primarily relate to certain buildings, manufacturing and equipment under capital leases in Europe for terms of up to 6 years.

<sup>8</sup>Non-cancellable purchase orders relate to purchases of raw materials for inventory and manufacturing equipment from a variety of vendors.

<sup>9</sup>Purchase commitments under agreements primarily relate to arrangements entered into with several suppliers, including some of our non-consolidated investees, for polysilicon, ingots, wafers, and module-level power electronics and alternating current cables, among others. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 5 years and there are certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event we terminate these arrangements.

<sup>10</sup>In connection with the acquisition of AUO SunPower Sdn. Bhd. in 2016, we are required to make noncancellable annual installment payments during 2019 and 2020.

#### **Liabilities Associated with Uncertain Tax Positions**

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. As of March 31, 2019 and December 30, 2018, total liabilities associated with uncertain tax positions were \$17.8 million and \$16.8 million, respectively, and are included within "Other long-term liabilities" in our condensed consolidated balance sheets as they are not expected to be paid within the next twelve months.

#### **Off-Balance Sheet Arrangements**

As of March 31, 2019, we did not have any significant off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K.

### **ITEM 3: QUANTITATIVE AND QUALITATIVE 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 8% and 6% of our total revenue in the three months ended March 31, 2019 and April 1, 2018, respectively. A 10% change in the Euro exchange rate would have impacted our revenue by approximately \$2.9 million and \$2.5 million in the three months ended March 31, 2019 and April 1, 2018.

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. 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/or forward currency contracts that are designed to address our exposure to changes in the foreign exchange rate between the U.S. dollar and other currencies. As of March 31, 2019 and December 30, 2018, we had designated outstanding cash flow hedge forward contracts with a notional value of \$44.9 million and zero, respectively. As of March 31, 2019, we also had designated outstanding cash flow hedge option contracts with a notional value of \$101.5 million. As of March 31, 2019 and December 30, 2018, we had non-designated outstanding forward currency contracts with aggregate notional values of \$17.4 million and \$11.4 million, respectively. Because we hedge some of our expected future foreign exchange exposure, if associated revenues do not materialize we could experience a reclassification of gains or losses into earnings. Such a reclassification could adversely impact our revenue, margins and results of operations. We cannot predict the impact of future exchange rate fluctuations on our business and operating results.

#### **Credit Risk**

We have certain financial and derivative instruments that subject us to credit risk. These consist primarily of cash and cash equivalents, restricted cash and cash equivalents, investments, accounts receivable, notes receivable, advances to suppliers, foreign currency option contracts, foreign currency forward contracts, bond hedge and warrant transactions. We are exposed to credit losses in the event of nonperformance by the counterparties to our financial and derivative instruments. Our investment policy requires cash and cash equivalents, restricted cash and cash equivalents, and investments to be placed with high-quality financial institutions and limits the amount of credit risk from any one issuer. We additionally perform ongoing credit evaluations of our customers' financial condition whenever deemed necessary and generally do not require collateral.

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 March 31, 2019 and December 30, 2018, advances to suppliers totaled \$158.5 million and \$171.6 million, respectively. One supplier accounted for 99.9% and 99.6% of total advances to suppliers as of March 31, 2019 and December 30, 2018, respectively.

We enter into foreign currency derivative contracts and convertible debenture hedge transactions with high-quality financial institutions and limit the amount of credit exposure to any single counterparty. The foreign currency derivative contracts are limited to a time period of a month or less. We regularly evaluate the credit standing of our counterparty financial institutions.

#### **Interest Rate Risk**

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

Our interest expense would increase to the extent interest rates rise in connection with our variable interest rate borrowings. During the fourth quarter of fiscal 2018, we repaid all of our variable interest rate borrowings. We do not believe that an immediate 10% increase in interest rates would have a material effect on our financial statements under potential future borrowings. In addition, lower interest rates would have an adverse impact on our interest income. Due to the relatively short-term nature of our investment portfolio, we do not believe that an immediate 10% decrease in interest rates would have a material effect on the fair market value of our money market funds. Since we believe we have the ability to liquidate substantially all of this portfolio, we do not expect our operating results or cash flows to be materially affected to any significant degree by a sudden change in market interest rates on our investment portfolio.

### **Equity Price Risk Involving Minority Investments in Joint Ventures and Other Non-Public Companies**

Our investments held in joint ventures and other non-public companies expose us to equity price risk. As of March 31, 2019 and December 30, 2018, investments of \$36.3 million and \$34.8 million, respectively, are accounted for using the equity method. As of both March 31, 2019 and December 30, 2018, investments of \$8.8 million are accounted for using the measurement alternative method.

On August 9, 2018, we completed the sale of certain assets and intellectual property related to the production of microinverters to Enphase in exchange for \$25.0 million in cash and 7.5 million shares of Enphase common stock (NASDAQ: ENPH). We received the common stock and a \$15.0 million cash payment upon closing, and received the final \$10.0 million cash payment of the purchase price on December 10, 2018. The common stock was recorded as an equity investment with readily determinable fair value (Level 1), with changes in fair value recognized in net income. For the three months ended March 31, 2019, we recognized an unrealized gain of \$33.0 million within "Other, net" under other income (expense), net, on the condensed consolidated statement of operations. These strategic equity investments in third parties are subject to risk of changes in market value could result in realized impairment losses. We generally do not attempt to reduce or eliminate our market exposure in equity investments. We monitor these investments for impairment and record reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include the valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market prices and declines in operations of the issuer. There can be no assurance that our equity investments will not face risks of loss in the future.

### **Interest Rate Risk and Market Price Risk Involving Debt**

As of March 31, 2019, we held outstanding convertible debentures with an aggregate face value of \$825.0 million, comprised of \$425.0 million of 4.00% debentures due in 2023 and \$400.0 million of 0.875% debentures due in 2021. The aggregate estimated fair value of our outstanding convertible debentures was \$690.5 million and \$648.9 million as of March 31, 2019 and December 30, 2018, respectively. Estimated fair values are based on quoted market prices as reported by an independent pricing source. The fair market value of our 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. When our common stock price is in-the-money relative to these fixed stock price conversion rates, the fair market value of the debentures will generally increase as the market price of our common stock increases, and decrease as our common stock's market price falls, based on each debenture's respective fixed conversion rate. 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 common stock may provide the holders the right to convert such debentures into stock, or cash, in certain instances, but only applicable during periods when our common stock is in-the-money relative to such conversion rights. As our common stock price is significantly below the conversion price for both debentures and therefore unlikely to be exercised by the holders, a 10% increase or decrease in our common stock will not impact our financial statements.

We also have interest rate risk relating to our other outstanding debt, besides debentures, all of which bear fixed rates of interest (Refer Note 11. *Debt and Credit Sources*). The interest and market value changes affect the fair market value of these debts, but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligations. A hypothetical 10 basis points increase or decrease on market interest rates related to these debts would have an immaterial impact on the fair market value of these debts.

## **ITEM 4: CONTROLS AND PROCEDURES**

### **Evaluation of Disclosure Controls and Procedures**

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

Based on their evaluation as of the end of the period covered by this Quarterly Report on Form 10-Q, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of March 31, 2019 at a reasonable assurance level.

### **Changes in Internal Control over Financial Reporting**

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

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

## **PART II. OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

The disclosure under "Item 1. Financial Statements—Note 9. *Commitments and Contingencies—Legal Matters*" in the Notes to the condensed consolidated financial statements in this Quarterly Report on Form 10-Q is incorporated herein by reference.

### **ITEM 1A. RISK FACTORS**

*There have been no material changes to the risk factors we previously disclosed in our Annual Report on Form 10-K for the fiscal year ended December 30, 2018.*

### **ITEM 2: UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

**Issuer Purchases of Equity Securities**

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

<b>Period</b>	<b>Total Number of Shares Purchased<sup>1</sup></b>	<b>Average Price Paid Per Share</b>	<b>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</b>	<b>Maximum Number of Shares That May Yet Be Purchased Under the Publicly Announced Plans or Programs</b>
December 31, 2018 through January 27, 2019	109,337	\$ 5.39	—	—
January 28, 2019 through February 24, 2019	3,585	\$ 5.86	—	—
February 25, 2019 through March 31, 2019	520,244	\$ 6.47	—	—
	<u>633,166</u>	<u>\$ 6.28</u>	<u>—</u>	<u>—</u>

<sup>1</sup> The shares purchased represent shares surrendered to satisfy tax withholding obligations in connection with the vesting of restricted stock issued to employees.



**ITEM 6: EXHIBITS**

**Index to Exhibits**

Exhibit Number    Description

<a href="#">10.4*</a>	Membership Interest Purchase Agreement, dated as of March 26, 2019, by and among SunPower Corporation, SunPower AssetCo, LLC, and Elizabeth Cady Lessee Holdco LLC.
<a href="#">31.1*</a>	Certification by Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a).
<a href="#">31.2*</a>	Certification by Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a).
<a href="#">32.1**</a>	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 - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL 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 an asterisk (\*) are filed herewith.

Exhibits marked with two asterisks (\*\*) are furnished and not filed herewith.

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

May 10, 2019

**SUNPOWER CORPORATION**

By: \_\_\_\_\_ /s/ MANAVENDRA S. SIAL

**Manavendra S. Sial  
Executive Vice President and  
Chief Financial Officer**

**MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT**

dated as of March 26, 2019

between

SUNPOWER ASSETCO, LLC

as Seller

and

ELIZABETH CADY LESSEE HOLDCO LLC,

as Buyer

and, solely for purposes of Section 3.2.3, Article 4, Section 6.9, Section 6.13, Section 6.14 and Article 7 hereof,

SUNPOWER CORPORATION

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## MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT

This **MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT** (this “Agreement”) is made as of March 26, 2019 (the “Agreement Date”) by and between SunPower AssetCo, LLC, a Delaware limited liability company (“Seller”), and Elizabeth Cady Lessee Holdco LLC, a Delaware limited liability company (“Buyer”) (Seller and Buyer being sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties”), and, solely for purposes of Section 3.2.3, Article 4, Section 6.9, Section 6.13, Section 6.14 and Article 7 of this Agreement, SunPower Corporation, a Delaware corporation (“SunPower Corporation”).

### RECITALS

A. As of the Agreement Date:

(i) Seller owns (1) 100% of the limited liability company interests (the “Regions Bank Equity Interests”) of SunPower Commercial Holding Company IV Parent, LLC, a Delaware limited liability company (“Regions Bank HoldCo”), which in turn owns 100% of the limited liability company interests of SunPower Commercial Holding Company IV, LLC, a Delaware limited liability company (“Regions Bank Pledgor”), which in turns owns 100% of the equity interests of (A) each the Regions Bank SPEs (as defined below), (B) LA Basin Solar II, LLC, a Delaware limited liability company (“Regions Bank ESA Company”) and (C) Solar Star Plano I, LLC, a Delaware limited liability company (“Regions Bank Toyota PPA Provider”), (2) 100% of the limited liability company interests (the “Sulphur Springs Equity Interests”) of SunPower Commercial Holding Company V, LLC, a Delaware limited liability company (“Sulphur Springs HoldCo”), which in turns owns 100% of the equity interests of the Sulphur Springs SPE (as defined below), (3) 100% of the limited liability company interests (“SunTrust Parent Equity Interests”) of SunPower Commercial Holding Company VI, LLC, a Delaware limited liability company (“SunTrust Parent”), which in turns owns 100% of the equity interests of each the SunTrust SPEs (as defined below), (4) 100% of the limited liability company interests (the “SunTrust ESA 1 Equity Interests”) of LA Basin Solar III, LLC, a Delaware limited liability company (“SunTrust ESA Company 1”), (5) 100% of the limited liability company interests (the “SunTrust ESA 2 Equity Interests”) of Solar Star California XXXIV, LLC, a Delaware limited liability company (“SunTrust ESA Company 2”), (6) 100% of the limited liability company interests (the “Wells Fargo ESA 1 Equity Interests”) of Solar Star California XXXIX, LLC, a Delaware limited liability company (“Wells Fargo ESA Company 1”) and (7) 100% of the limited liability company interests (the “Wells Fargo ESA 2 Equity Interests”) of Solar Star California XXXVII, LLC, a Delaware limited liability company (“Wells Fargo ESA Company 2”),

(ii) SunPower Corporation, Systems, a Delaware corporation (“SunPower Systems”) and an affiliate of Seller, owns (1) 100% of the limited liability company interests of each of the PNC SPEs (as defined below) and (2) 100% of the limited liability company interests (the “MetLife Equity Interests”) of Solar Star California XV Parent, LLC, a Delaware limited liability company (“MetLife HoldCo”), which in turn owns 100% of the limited liability company interests of the MetLife SPE (as defined below), and



(iii) SunPower Corporation, an affiliate of Seller, owns 100% of the limited liability interests (the “Wells Fargo Parent Equity Interests”) of Whippletree Solar, LLC, a Delaware limited liability company (“Wells Fargo Parent”), which in turn directly owns 100% of the limited liability company interests of each of the Wells Fargo SPEs.

B. Immediately prior to the occurrence of the Closing on the Closing Date with respect to the MetLife Project, Seller will own directly the MetLife Equity Interests.

C. Immediately prior to the occurrence of the Closing on the Closing Date with respect to the PNC Project, Seller will own directly the PNC Equity Interests.

D. Immediately prior to the occurrence of the Closing on the Closing Date with respect to the SunTrust Project, Seller will own directly the SunTrust Equity Interests.

E. Immediately prior to the occurrence of the Closing on the Closing Date with respect to the Wells Fargo Project, Seller will own directly the Wells Fargo Equity Interests.

F. Subject to the terms and conditions hereof, Seller desires to sell the Regions Bank Equity Interests, the Sulphur Springs Equity Interests, the SunTrust Equity Interests, the PNC Equity Interests, the MetLife Equity Interests and the Wells Fargo Equity Interests (collectively, the “Equity Interests”) to Buyer, and Buyer wishes to purchase the Equity Interests from Seller.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Agreement and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Defined Terms. Capitalized terms used in this Agreement (including in the recitals hereto) without other definition shall have the following meanings, unless the context clearly requires otherwise:

“Acquired Ownership Interests” has the meaning given in Section 4.4.1.2(f).

“Acquired Portfolio” means, as of any date of determination, collectively, the Individual Portfolio or Individual Portfolios with respect to which a Closing has already occurred.

“Acquired Portfolio Entity” means each Portfolio Entity that is part of the Acquired Portfolio.

“Action” means any litigation, cause of action, arbitration, audit, hearing, suit, investigation or proceeding (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Additional Portfolio Entity” means the Regions Bank Toyota PPA Provider.

“Affiliate” means, as applied to any Person, each Person that, (a) directly or indirectly, owns or Controls, is Controlled by or is under common Control with such Person, and (b) each of such Person’s officers, directors, joint venturers, managers and partners. Notwithstanding the foregoing, (i) each Portfolio Entity shall be considered an Affiliate of Seller with respect to all periods prior to and at the Closing with respect to the Individual Portfolio to which such Portfolio Entity belongs, and each Portfolio Entity shall be considered an Affiliate of Buyer only with respect to periods after the Closing with respect to the Individual Portfolio to which such Portfolio Entity belongs, (ii) with respect to Buyer, only Subsidiaries of Goldman Sachs Renewable Power LLC shall be considered Affiliates of Buyer and no Person that would otherwise be considered an Affiliate of Buyer, which is not a Subsidiary of Goldman Sachs Renewable Power LLC, shall be considered an Affiliate of Buyer and (iii) with respect to Seller, only Subsidiaries of SunPower Corporation shall be considered Affiliates of Seller and no Person that would otherwise be considered an Affiliate of Seller, which is not a Subsidiary of SunPower Corporation, shall be considered an Affiliate of Seller.

“Agreement” means this Membership Interest Purchase and Sale Agreement, including all Exhibits, Schedules and other attachments hereto, as amended, restated or otherwise modified from time to time.

“Agreement Date” has the meaning given in the preamble.

“AMAs” means, with respect to each Project, the applicable Asset Management Agreement set forth on Schedule 4.5.

“Anti-Corruption Laws” has the meaning set forth in Section 4.29.

“ARRA” means the American Recovery and Reinvestment Tax Act of 2009.

“Asset Register” means a register of assets in respect of the entire Portfolio, which is attached to this Agreement as Schedule 1.4.

“Assignment Agreement” has the meaning set forth in Section 3.1.2.1.

“Books and Records” means all documents, instruments, books and records (or portions thereof) related to the ownership, operation, business or condition of any Portfolio Entity or any Project, including, where applicable, financial statements, Tax Returns and related work papers and letters from accountants, budgets, ledgers, journals, minute books, membership interest certificates and books, and membership interest transfer ledgers.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in San Francisco, California or New York, New York are required or authorized by Law to close.

“Buyer” has the meaning given in the preamble.

“Buyer Confidentiality Agreement” means the Nondisclosure Agreement, dated as of February 4, 2019, entered into between The Private Credit Group of Goldman Sachs Asset Management, L.P. and SunPower Corporation.

“Buyer Parent” means Goldman Sachs Renewable Power LLC, a company managed by Goldman Sachs Asset Management, L.P.

“Buyer Parent Guaranty” means a guaranty made by Buyer Parent to Seller on the Agreement Date guaranteeing the payment of Purchase Price by Buyer under this Agreement.

“Buyer Indemnified Group” has the meaning given in Section 7.2.

“Buyer’s Knowledge” means the actual knowledge, after reasonable due inquiry, of the persons set forth for Buyer on Schedule 1.1 and expressly excluding the knowledge of any other shareholder, partner, member, trustee, beneficiary, director, officer, manager, employee, agent or representative of Buyer or any of its Affiliates.

“C corporation” means any entity taxable as a corporation for U.S. federal income tax purposes, other than a regulated investment company within the meaning of Section 851 of the Code, a real estate investment trust within the meaning of Section 856 of Code or an entity described in Section 593 of the Code.

“Cash Grant” means a grant from the U.S. Treasury Department provided for by Section 1603 of ARRA.

“Charter Documents” means, with respect to any Person, all organizational documents (including all articles and certificates of formation or incorporation and other constituent documents) and all limited liability company agreements, member agreements, shareholder agreements, voting agreements or similar Contracts relating to the ownership or governance of such Person.

“Claiming Party” has the meaning given to that term in Section 7.4.

“Closing” has the meaning given in Section 3.1.1.

“Closing Actions” has the meaning given in Section 3.1.2.

“Closing Date” has the meaning given in Section 3.1.1.

“Closing Notice” means a notice of an anticipated Closing in respect of one or more Individual Portfolios in the form of Exhibit D.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Company Policies” has the meaning given in Section 4.11.

“Confidential Information” has the meaning set forth in Section 9.7.2.

“Continuing SPWR Project Contracts” means, with respect to any Portfolio Entity, the AMA(s), the O&M Agreement(s), the Performance Guarantee(s) (if any) , to the extent that any obligations of the contractor thereunder remain outstanding, the EPC Contract, any warranties that remain in effect, and any guarantees that remain in effect or for which obligations remain outstanding

following the Closing Date with respect to the applicable Individual Portfolio of which such Portfolio Entity is part, in each case relating to such Portfolio Entity to which SunPower Corporation or an Affiliate thereof (other than a Portfolio Entity) is a party or has otherwise issued or provided.

“Contract” means any written agreement, license, sublicense, assignment, purchase agreement, indenture, lease, sublease, instrument of Indebtedness, security agreement, offer to sell, option, right of first refusal, distribution agreement, maintenance agreement or undertaking or instrument of any kind, obligation or other arrangement or agreement, including any amendments and other modifications thereto.

“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 ownership of voting securities or its capacity as sole or managing member or general partner, by contract or otherwise. The term “Control” when used as a verb shall have a correlative meaning.

“Damages” has the meaning given in Section 7.2.

“Data Room” means the folder named “Bang-Livewire SunPower” on the SunPower Corporation Sharefile.com file server as of the Agreement Date.

“Dental Clinics Project” means a 141.26 kW rooftop-mounted solar generation project owned by the Dental Clinics Project SPE.

“Dental Clinics Project SPE” means Solar Star Bay City I, LLC, a Delaware limited liability company, one of the Regions Bank SPEs.

“Disqualified Person” means (a) any federal, state or local government (including any political subdivision, agency or instrumentality thereof) and including any Indian tribal government described in Section 7701(a)(40) of the Code, (b) any organization described in Section 501(c) of the Code and exempt from tax under Section 501(a) of the Code, (c) any entity referred to in paragraph (4) of Section 54(j) of the Code, (d) any “foreign person or entity” as that term is defined in Section 168(h)(2)(C) of the Code, (e) any regulated investment company or real estate investment trust within the meaning of Sections 851 or 856 of the Code, (f) any entity described in Section 593 of the Code, or (g) any Pass-Through Entity, any direct or indirect partner (or other direct or indirect holder of an equity or profits interest) of which is described in clauses (a) through (f) above, unless such Person holds its interest in the partnership or other Pass-Through Entity indirectly through a C corporation; provided, that, if and to the extent the list of persons that are ineligible for a grant under Section 1603(g) of ARRA or the Treasury Guidance is amended after the Agreement Date, the definition of “Disqualified Person” hereunder shall be interpreted to conform to such amendment and further Treasury Guidance.

“Draft Allocation” has the meaning given in Section 2.4.

“Drop-Dead Date” means September 30, 2019.

“EAR” has the meaning set forth in Section 4.30.1.1.

“Enforceability Exceptions” has the meaning given in Section 4.2.2.

“Environmental Attributes” means RECs and any other rights, credits, benefits, reductions, any other reductions or other transferable indicia: (i) denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility, offsets and allowances and entitlements of any kind, known or unknown at the time of this Agreement, that are or become available to from the environmental attributes of any of the Projects or the generation of the energy output, or otherwise from the development or installation of the Projects or the production, sale, purchase, consumption or use of the energy output of the Projects, including, but not limited to carbon credits, allowances and emission reduction credits and offsets and (ii) related to the capacity of the Projects, whether arising under federal, state or local law, international treaty, trade association membership or the like, and the right to apply for any such credits, but not including ITCs.

“Environmental Law” means any Law relating to (i) the use, handling, treatment, storage, disposal, release, threatened release, remediation of, removal of, or exposure to, any Hazardous Material, (ii) the protection of the environment, conservation or land use (including with respect to air, surface or subsurface land and waters, cultural resources and natural resources), or (iii) the prevention of pollution or the remediation of contamination.

“EPC Contract” means, with respect to each Project, the applicable engineering, procurement and construction agreement, if any, set forth on Schedule 4.5.

“Equity Interests” has the meaning given in the recitals.

“ERISA” means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder.

“ESA” means, with respect to each applicable Project, the applicable Energy Savings Agreements or equivalent agreements pursuant to which such Project sells energy savings, set forth on Schedule 4.5.

“ESA Purchaser” means the entity that purchases energy savings and/or related services under any ESA.

“Estimated Closing Date Working Capital Adjustment” means the positive difference, if any, as of any date of determination, of (a) the share of the Target Date Working Capital Amount allocated to the applicable Individual Portfolio, as set forth in Annex 5, minus (b) the Estimated Deemed Closing Date Working Capital Amount for the applicable Individual Portfolio.

“Estimated Deemed Closing Date Balance Sheet” has the meaning given in Section 2.3.1.

“Estimated Deemed Closing Date Working Capital Amount” means the working capital amount determined with respect to the applicable Individual Portfolio as of February 28, 2019, based on the applicable Estimated Deemed Closing Date Balance Sheet delivered under Section

2.3.1 or Section 2.3.2, as applicable, and in accordance with the same accounting principles, policies and methods used to prepare Annex 4 to this Agreement.

“Existing Litigation” means the matters and circumstances relating to litigation identified on Schedule 4.8.4 and any litigation, proceeding, dispute or settlement arising therefrom or relating thereto.

“Expiration Date” has the meaning given in Section 7.1.

“FERC” means the Federal Energy Regulatory Commission or any successor agency thereto.

“Final Working Capital Adjustment” has the meaning given in Section 2.3.3.

“Final Determination” means (a) a decision, judgment, decree or other order by any court of competent jurisdiction, which decision, judgment, decree or other order has become final after all allowable appeals (other than appeals to the United States Supreme Court) by the Parties to the action have been exhausted or the time for filing such appeals has expired, (b) a closing agreement entered into under Section 7121 of the Code or any other settlement agreement entered into in connection with an administrative or judicial proceeding entered into in accordance with this Agreement, (c) the expiration of the time for instituting suit with respect to a claimed deficiency or (d) the expiration of the time for instituting a claim for refund, or if such a claim was filed, the expiration of the time for instituting suit with respect thereto.

“Financial Statements” means (i) (A) the audited consolidated (if applicable) financial statements (including the consolidated (if applicable) balance sheet and the related consolidated (if applicable) statements of operations, members’ equity and cash flows thereof) of each of (1) the MetLife SPE, (2) Regions Bank Pledgor, (3) SunTrust Parent, (4) Sulphur Springs SPE and (5) Wells Fargo Parent, in each case, as of and for the annual period ended December 31, 2017, and (B) the unaudited financial statements (including the balance sheet and related statements of operations, members’ equity and cash flows thereof) of each of the PNC SPEs, as of and for the annual period ended December 31, 2018; and (ii) the unaudited consolidated (if applicable) financial statements (including the consolidated (if applicable) balance sheet and the related consolidated (if applicable) statements of operations, members’ equity and cash flows thereof) of each of (A) the MetLife SPE, (B) Regions Bank Pledgor, (C) SunTrust Parent, (D) Sulphur Springs SPE, (E) Wells Fargo Parent and (F) each of the PNC SPEs, in each case, as of and for the quarterly period ended September 30, 2018 (collectively, in the case of this clause (ii), the “Most Recent Financial Statements”).

“FPA” means the Federal Power Act and the regulations promulgated thereunder.

“Fundamental Representations” has the meaning given in Section 7.1.

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Approval” means any authorization, approval, consent, license, ruling, permit, tariff, certification, exemption, order, recognition, grant, confirmation, clearance, filing or registration by or with any Governmental Authority.

“Governmental Authority” means any foreign, federal, national, regional, state, municipal or local government authority, tribunal, court, agency, authority, body, board or instrumentality, or any regulatory, administrative or other department, bureau or agency, or any political or other subdivision, department or branch of the foregoing, including any independent system operator or electric reliability organization, or other governmental authority.

“Hazardous Material” means (i) petroleum or any petroleum product, radioactive material, radon, urea formaldehyde, or polychlorinated biphenyls (PCBs) or PCB-containing material or fluid; (ii) any chemical, material, waste, or substance, regulated, defined, listed, classified or described under any Environmental Law as radioactive, toxic, hazardous, acutely hazardous, a contaminant, a hazardous or toxic pollutant, including all substances listed as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or defined as a hazardous waste pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended; and (iii) any asbestos or any material containing any hydrated mineral silicate, including chrysotile, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether friable or non-friable.

“Holdback Amount” means, individually or in the aggregate, as the context may require, the Wells Fargo Holdback Amount, the Sulphur Springs Holdback Amount, the SunTrust Holdback Amount, the Regions Bank Holdback Amount, the PNC Holdback Amount and the MetLife Holdback Amount.

“Holdback Amount Release Date” means, individually or collectively, as the context may require, the Wells Fargo Holdback Amount Release Date, the Sulphur Springs Holdback Amount Release Date, the SunTrust Holdback Amount Release Date, the Regions Bank Holdback Amount Release Date, the PNC Holdback Amount Release Date and the MetLife Holdback Amount Release Date.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

“Indebtedness” means, with respect to any Person, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business not overdue for more than sixty (60) days), (iv) all capital lease obligations of such Person, (v) all obligations of such Person to reimburse any Person with respect to amounts paid under a letter of credit or similar instrument, (vi) all obligations of such Person under interest rate hedge agreements, (vii) all Indebtedness of other Persons secured by a Lien on any property of such Person, whether or not such Indebtedness is assumed by such Person, and (viii) all Indebtedness of other Persons guaranteed by such Person. For purposes of this definition, the amount of the obligations of such Person with respect to any interest rate hedge agreement at any

time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Person would be required to pay if such interest rate hedge agreement were terminated at such time.

“Indemnifying Party” has the meaning given to that term in Section 7.4.1.

“Individual Portfolio” means each of the Wells Fargo Project, the Sulphur Springs Project, the SunTrust Project, the Regions Bank Project, the PNC Project and the MetLife Project.

“Intellectual Property” means all intellectual property rights and technology, including the following as well as the rights therein or associated therewith: (a) patents, patent applications, continuations, continuations-in-part, divisions, reissues, patent disclosures, inventions (whether patentable or unpatentable and whether or not reduced to practice) and improvements thereto, (b) trademarks, service marks, trade dress, logos, trade names, brand names and corporate names, and any other source-identifying designations or devices, including Internet domain names and registrations thereof, along with the goodwill associated with the foregoing and registrations and applications for registration thereof, (c) works of authorship (whether or not copyrightable and whether or not published) including all product manuals, marketing brochures, training materials and web site content, and all copyrights and registrations and applications for registration thereof, (d) mask works and registrations and applications for registration thereof, (e) computer software, data and documentation, (f) trade secrets and confidential business information (including ideas, formulas, and compositions, know-how, manufacturing and production processes and techniques, research and development information, software products in development, drawings, specifications, designs, plans, proposals, technical data, financial, marketing, and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information) and other proprietary information and (g) copies and tangible embodiments of the foregoing (in whatever form or medium).

“Interconnection Agreement” means, with respect to each Project, the agreement or document reasonably providing for interconnection services relating to such Project provided to the Project SPE by the interconnecting electrical utility pursuant to applicable Law, in each case, as set forth on Schedule 4.5.

“IRS” means the United States Internal Revenue Service.

“ITC” means the “energy credit” available under Section 48 of the Code or any successor provision.

“ITC Recapture Liability” means any reduction in, or any obligation to repay, all or any portion of the ITC or the Cash Grant relating to any Project resulting from the breach or violation by Seller, any of its Affiliates (except for any Portfolio Entity) or any Portfolio Entity of any representations or warranties of any such Person, as applicable, in the Material Contracts or the violation of any covenant of the Seller, any of its Affiliates (except for any Portfolio Entity) or any Portfolio Entity, as applicable, under the Material Contracts attributable to periods prior to each Closing, except as a result of (a) any action of Buyer or any Affiliate of Buyer, (b) any tax status or classification of Buyer or any Affiliate of Buyer or (c) any event or circumstance occurring or arising after the Closing Date with respect to such Project.



“ITAR” has the meaning set forth in Section 4.30.1.1.

“Law” means any foreign, federal, national, regional, state, municipal or local law, statute, treaty, rule, regulation, ordinance, order, code, judgment, decree, directive, injunction, writ or similar action or decision duly implementing any of the foregoing by any Governmental Authority.

“Lease Documents” means the “Sale-Leaseback Documents” set forth in Schedule 4.5 and any other “Lease Documents” as defined in the applicable Sale-Leaseback Documents for each respective Project.

“Lessor” means each of the entities identified as a “Lessor” as set forth on Schedule 4.9.2.

“Liability” means any, direct or indirect, Indebtedness, obligation, loss, claim, expense, or liability of any nature or kind whatsoever (whether known, unknown, disclosed, undisclosed, matured, unmatured, accrued, unaccrued, asserted, unasserted, liquidated, unliquidated, absolute, contingent, direct, indirect, conditional, unconditional, secured, unsecured, vicarious, derivative, due, joint, several or secondary).

“Lien” means any mortgage, pledge, deed of trust, lien, charge, claim, option, equitable interest, security interest, third party right, assignment, hypothecation, encumbrance, restriction on voting, sale, transfer, or disposition, assessment, easement, variance, encroachment or other restriction on title or property interest.

“Material Adverse Effect” means any condition, effect, circumstance, event or change that, individually or in the aggregate, (i) materially impairs Seller’s or its Affiliates’ authority, right or ability to consummate the transactions contemplated by this Agreement or any other Transaction Documents to which they are a party, (ii) would be materially adverse, or would reasonably be expected to be materially adverse, to the assets, liabilities, business, operation or condition (financial or otherwise), or the ownership or leasehold interest, operation and maintenance of any Project or (iii) when referring to a Person, would be materially adverse, or would reasonably be expected to be materially adverse, to the assets, liabilities, business, operation or condition (financial or otherwise) of such Person; provided, however, that in no event shall any effect that arises out of or relates to any of the following be deemed to constitute, or be taken into account in determining whether there has been, a Material Adverse Effect: (a) changes in international, national, regional, state or local wholesale or retail markets for power, power transmission, fuel supply or related products, (b) any condition, circumstance, event or change generally applicable to the industries in which any of the Portfolio Entities or the Portfolio may operate or relate (including the solar or electric generating industries), whether international, national, regional or local, (c) any condition, circumstance, event or change in general regulatory or political conditions, including any acts of war or terrorist activities, (d) any condition, circumstance, event or change that is cured (including by the payment of money) by Seller before the earlier of the applicable Closing Date and the termination of this Agreement, (e) any change, financial or otherwise, to the business, affairs or operations of Buyer or any of its Affiliates (other than as a result of any impact which any Individual Portfolio may have on Buyer or its Affiliates), (f) any Portfolio Entity’s failure to meet any budgets, projections, forecasts or predictions of financial performance or estimates of revenue, earnings, cash flow or cash position for any period solely to the extent any such failure does not result or

arise from any breach of any representations, warranties or covenants of the Seller expressly set forth in this Agreement, (g) seasonal fluctuations in the respective businesses of the Portfolio Entities or (h) any change or development in any of the economy, financial markets, commodity markets, foreign exchange, financial, banking or securities market (including any increased interest rates or other costs for, or reduction in the availability of, financing or suspension of trading in, or limitation on prices for, securities on a securities market (including an over-the-counter market, exchange or trading platform)) or the economy in general, provided, that with respect to clauses (a), (b), (c), or (h), any events that disproportionately affected the applicable Person or Project relative to other companies or assets in the solar or electric generating industries may be considered in determining whether a Material Adverse Effect has occurred.

“Material Contract” means, with respect to each Portfolio Entity, (a) any Contract to which such Portfolio Entity is a party, or by the terms of which such Portfolio Entity is bound, that is material to the Portfolio or any such Portfolio Entity and as to which the expected annual cost of performing such contract in the ordinary course by such Portfolio Entity exceeds \$250,000, (b) any interconnection agreement relating to a Project to which such Portfolio Entity is a party, (c) any PPA or ESA to which such Portfolio Entity is a party, (d) any REC Sale Agreement to which such Portfolio Entity is a party, (e) any local capacity requirement or other revenue or incentive related to the production of energy, (f) any AMA, O&M Agreement or Performance Guarantee relating to such Portfolio Entity, (g) to the extent that any obligations of the contractor thereunder remain outstanding, any EPC Contract related to such Portfolio Entity, (h) any Site Lease Agreement relating to such Portfolio Entity, (i) any Lease Document relating to such Portfolio Entity and (j) the Material Equipment Warranties.

“Material Equipment Warranties” has the meaning given in Section 4.5.1.

“MetLife Equity Interests” has the meaning given in the recitals.

“MetLife HoldCo” has the meaning given in the recitals.

“MetLife Holdback Amount” means the amount required to be held back from the MetLife Purchase Price in accordance with Annex 2.

“MetLife Holdback Amount Release Date” means the date on which each of the conditions precedent set forth on Annex 2 necessary for the MetLife Holdback Amount to be released shall have been satisfied.

“MetLife Project” means MetLife HoldCo and the MetLife SPE.

“MetLife Purchase Price” has the meaning given on Annex 3.

“MetLife SPE” means the entity listed as a “Project Company” under the “MetLife Project” as set forth on Schedule 4.5.

“Most Recent Financial Statements” has the meaning given in the definition of “Financial Statements”.

“O&M Agreement” means, with respect to each Project, the applicable Operation and Maintenance Agreement set forth on Schedule 4.5.

“OFAC” has the meaning set forth in Section 4.30.1.1.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment, settlement, stipulation or award of any Governmental Authority.

“Ownership Interest” means, with respect to any Person, any share, capital stock, partnership, membership or similar interest or other indicia of equity ownership (including any option, warrant, profits interests or similar right or right or security convertible, exchangeable or exercisable therefor or other instrument or right the value of which is based on any of the foregoing) in such Person.

“Party” or “Parties” has the meaning given in the preamble.

“Pass-Through Entity” means an entity treated for U.S. federal income tax purposes as a partnership or entity disregarded as separate from its owner.

“Pearblossom CfD Reserve” means the cash reserve deposited in the CfD Reserve Account (as defined in the Lease Documents to which Solar Star California XLIV, LLC is a party), as described in more detail on Schedule 4.27.

“Performance Guarantee” means, with respect to each Project, the applicable Performance Guarantee set forth on Schedule 4.5.

“Permitted Encumbrances” means (a) those restrictions on transfer imposed by applicable securities Laws, (b) restrictions imposed on transfers set forth in the Charter Documents of the Portfolio Entities, (c) Liens and rights of the lessors and any collateral or security agents or like representatives acting for Lessors under the Lease Documents, (d) any Liens created by or through Buyer or its Affiliates or Representatives, and (e) the rights and options of the Power Purchasers, if any, under the applicable PPAs.

“Permitted Investor” means (a) any C corporation or (b) any Pass-Through Entity, of which, all of the direct beneficial owners of such Pass-Through Entity are C corporations.

“Permitted Lien” means, whether now or hereafter in existence and solely to the extent permitted under the relevant Material Contracts, (a) Liens created pursuant to and securing any Lease Document, (b) Liens imposed by any Governmental Authority for Taxes (i) not yet due or (ii) being contested in good faith and by appropriate proceedings and in respect of which appropriate reserves have been established and are maintained by the applicable taxpayer in accordance with GAAP, (c) carriers’, warehousemen’s, mechanics’, materialmen’s and repairmen’s or other like Liens (i) arising in the ordinary course of business and (ii) with respect to which no enforcement action has commenced by or on behalf of the lien holder, (d) (i) rights, easements, rights-of-way, restrictions, encroachments, protrusions and other similar charges or encumbrances, minor title deficiencies and other similar non-monetary encumbrances or (ii) zoning, planning, land use and other similar limitations and restrictions and all rights of any Governmental Authority to regulate

real property and interests in real property, in either case, that do not impair any Project Entity's rights or interests in any Real Property and which do not interfere with the access, operation, interconnection or maintenance of any Project as contemplated by this Agreement, or interfere with or otherwise limit or constrain the sale of electricity or other commodities generated by any Project, interfere with or otherwise limit the performance of any Project Entity's obligations under any Material Contract, (e) Permitted Encumbrances and (f) purchase-money Liens securing indebtedness permitted under the applicable Lease Documents that do not encumber any property other than the property financed thereby.

"Person" means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability partnership, limited liability company, trust, unincorporated association, institution, Governmental Authority or any other entity.

"PNC Equity Interests" means 100% of the limited liability company interests of PNC HoldCo.

"PNC HoldCo" means a limited liability company to be established by Seller to which 100% of the limited liability company interests of each of the PNC SPEs shall have been transferred prior to the occurrence of the Closing on the Closing Date with respect to the PNC Project.

"PNC Holdback Amount" means the amount required to be held back from the PNC Purchase Price in accordance with Annex 2.

"PNC Holdback Amount Release Date" means the date on which each of the conditions precedent set forth on Annex 2 necessary for the PNC Holdback Amount to be released shall have been satisfied.

"PNC Project" means PNC HoldCo and the PNC SPEs.

"PNC Purchase Price" has the meaning given on Annex 3.

"PNC SPEs" means each of entities listed as a "Project Company" under the "PNC Project" as set forth on Schedule 4.5.

"Portfolio" means the Wells Fargo Project, the Sulphur Springs Project, the SunTrust Project, the Regions Bank Project, the PNC Project and the MetLife Project.

"Portfolio Entity" means the Project Holding Companies, the Project Parent Companies, the Project ESA Companies, the Additional Portfolio Entity and the Project SPEs.

"Portfolio Entity IP" has the meaning given in Section 4.21.

"Power Purchaser" means the entity that purchases electric power and/or related services under any PPA.

"PPA" means, with respect to each Project, the applicable Power Purchase Agreements or equivalent offtake agreements pursuant to which such Project sells energy, set forth on Schedule 4.5.

“Pre-Closing Taxable Period” means a taxable period ending on or before any Closing Date and that portion of any Straddle Taxable Period ending on such Closing Date.

“Prohibitive Order” has the meaning given in Section 3.1.3.6.

“Project” means all of the tangible assets, including (as applicable) one or more rooftop-, canopy-, ground- or wall-mounted solar electric generating and/or energy storage systems consisting of photovoltaic panels, batteries (if applicable), mounting racks, wiring and other electrical devices, conduit, weatherproof housings, hardware, one or more inverters, remote monitoring systems, connectors, meters, transformer(s), panelboards, grounding, signage, disconnects and over current devices leased and operated by a Project SPE as set forth in more detail on Schedule 4.9.2.

“Project Costs” has the meaning given in Section 3.1.3.9(b).

“Project ESA Companies” means SunTrust ESA Company 1, SunTrust ESA Company 2, Regions Bank ESA Company, Wells Fargo ESA Company 1 and Wells Fargo ESA Company 2.

“Project Holding Companies” means Regions Bank HoldCo, Sulphur Springs HoldCo, SunTrust HoldCo, Wells Fargo HoldCo, MetLife HoldCo and PNC HoldCo.

“Project Parent Companies” means Regions Bank Pledgor, SunTrust Parent and Wells Fargo Parent.

“Project Related Assets” means all of the rights and other assets associated with a Project other than the tangible assets of such Project, including (i) contractual rights pursuant to the related Material Contracts (except for the applicable Lease Documents); (ii) any Governmental Approvals and rights (contractual or otherwise) necessary for the operation of the System and the sale of electricity pursuant to the related PPAs; and (iii) all plans, drawings, designs, reports, manuals, petitions, work product and data related to the development, construction, operation or maintenance of the System, or any components thereof.

“Project SPE” means each of the entities identified as a “Project Company” as set forth on Schedule 4.5.

“PTO Work” has the meaning given in Section 6.13.

“PUHCA” means the Public Utility Holding Company Act of 1935.

“Purchase Price” means individually, collective or in the aggregate, as the context may require, each of the MetLife Purchase Price, the PNC Purchase Price, the Regions Bank Purchase Price, the Sulphur Springs Purchase Price, the SunTrust Purchase Price and the Wells Fargo Purchase Price.

“Purchase Price Allocation” has the meaning given in Section 2.4.

“QE” means a “qualifying small power production facility” as that term is defined in 16 U.S.C. §796(17)(C) and 18 C.F.R. §§ 292.203 and 292.204.

“Real Property” has the meaning given in Section 4.18.1.

“Rebates” means any rebates or incentives payable to Seller or any of its Affiliates, or any of their respective agents, contractors or subcontractors, as a result of the purchase, development or operation of the Projects, from the state or local government or utility to which any of the Projects is interconnected or otherwise. For the avoidance of doubt, Rebates shall in no circumstances include credit or payment for Environmental Attributes.

“RECs” means any renewable energy credits under any state renewable portfolio standard or federal renewable energy standard, pollution allowances, carbon credits and similar environmental allowances or credits and green tag or other reporting rights under Section 1605(b) of The Energy Policy Act of 1992 and any federal, state, or local law, regulation or bill, and subsidies, grants, utility rebates, or similar benefits or incentives, but the term does not include any Rebates, ITCs, production tax credits or other federal, state or local tax benefits.

“REC Sale Agreements” means, with respect to each Project, the agreement(s), if any, pursuant to which such Project sells renewable energy credits energy, as set forth on Schedule 4.5.

“Regions Bank Equity Interests” has the meaning given in the recitals.

“Regions Bank ESA Company” has the meaning given in the recitals.

“Regions Bank HoldCo” means has the meaning given in the recitals.

“Regions Bank Holdback Amount” means the amount required to be held back from the Regions Bank Purchase Price in accordance with Annex 2.

“Regions Bank Holdback Amount Release Date” means the date on which each of the conditions precedent set forth on Annex 2 necessary for the Regions Bank Holdback Amount to be released shall have been satisfied.

“Regions Bank UCSF PTO Holdback Amount” has the meaning given in Annex 2.

“Regions Bank UCSF PTO Holdback Amount—PV Portion” has the meaning given in Annex 2.

“Regions Bank UCSF PTO Holdback Amount Release Date” has the meaning given in Annex 2.

“Regions Bank UCSF PTO Holdback Amount—SLV Portion” has the meaning given in Annex 2.

“Regions Bank Pledgor” means has the meaning given in the recitals.

“Regions Bank Project” means Regions Bank HoldCo, Regions Bank Pledgor, Regions Bank ESA Company, Regions Bank Toyota PPA Provider and the Regions Bank SPEs.

“Regions Bank Purchase Price” has the meaning given on Annex 3.

“Regions Bank SPEs” means each of entities listed as a “Project Company” under the “Regions Bank Project” as set forth on Schedule 4.5.

“Regions Bank Toyota PPA Provider” has the meaning given in the recitals.

“Representatives” means each Party’s respective officers, directors, employees, representatives, agents, attorneys and advisors.

“Sales Tax Disclosed Obligations” means the obligations of any Project Entity to pay the sales, use, excise, or transaction privilege Taxes set forth in Part B of Schedule 4.17.

“Section 467 Schedule” has the meaning given in Section 3.1.3.9(c).

“Securities Act” means the Securities Act of 1933.

“Seller” has the meaning given in the preamble.

“Seller Approvals” means the approvals, consents, waivers, notices and filings set forth in Schedule 3.1.3.5.

“Seller Confidentiality Agreement” means the Nondisclosure Agreement, dated as of June 30, 2018, entered into between The Private Credit Group of Goldman Sachs Asset Management, L.P. and SunPower Corporation.

“Seller Disclosure Schedules” means the disclosure schedules delivered by Seller pursuant to this Agreement.

“Seller Indemnified Group” has the meaning given in Section 7.2.

“Seller Indemnitors” has the meaning given in Section 7.2.

“Seller Related Party” shall mean any of Seller’s former, current and future Affiliates, and each of their respective former, current and future direct or indirect directors, officers, principals, stockholders, general or limited partners, other equity holders, employees, members, managers, agents, successors, assignees, Affiliates, controlling Persons or Representatives.

“Seller’s Financial Model” the financial model prepared by Seller and its Affiliates, dated as of October 5, 2018, which is attached to this Agreement as Annex 1.

“Seller’s Knowledge” means the actual knowledge, after reasonable due inquiry, of the persons set forth for Seller on Schedule 1.2 and expressly excluding the knowledge of any other shareholder, partner, member, trustee, beneficiary, director, officer, manager, employee, agent or representative of Seller or any of its Affiliates. “Site Lease Agreement” means, with respect to each Project, the agreement (whether a lease, sublease, license, or the PPA) that provides to the applicable

Project SPE the rights to access and use the site upon which such Project is located for the purpose of operating and using such Project, as set forth on Schedule 4.5.

“Side Letter” means that certain Letter Agreement, dated as of the Agreement Date, by and among Buyer Parent, SunPower Corporation, SunPower Manager, SunPower Systems and Swingletree.

“Specified Contractual Credit Support Obligations” means the general contractual and guaranteed obligations of SunPower Systems and SunPower Corporation, as applicable, specified on Schedule 1.3(b).

“Specified Credit Support Instruments” means the letters of credit and cash reserve obligations specified on Schedule 1.3(a).

“Specified Credit Support Obligations” means the Specified Credit Support Instruments and the Specified Contractual Credit Support Obligations.

“Specified Lease Credit Support Instruments” means the letters of credit, guaranties and cash reserve obligations specified on Schedule 4.27.

“Specified SPWR Recourse Obligations” means (i) with respect to each Project, the obligations and liabilities of SunPower Corporation and/or its affiliates (excluding the Portfolio Entities), under the Lease Documents related to such Project, (ii) with respect to each Project, the obligations and liabilities, if any, of SunPower Corporation and/or its affiliates (excluding the Portfolio Entities) under the Material Contracts related to such Project, (iii) the Specified Credit Support Obligations and (iv) the Specified Lease Credit Support Instruments, provided, that, for the avoidance of doubt, Specified SPWR Recourse Obligations shall explicitly exclude any obligations under any Continuing SPWR Project Contract.

“Straddle Taxable Period” means a taxable period beginning on or before any Closing Date and ending after such Closing Date.

“Subsidiary” means, with respect to a specified Person, any other Person Controlled by the specified Person.

“Sulphur Springs Equity Interests” has the meaning given in the recitals.

“Sulphur Springs HoldCo” means has the meaning given in the recitals.

“Sulphur Springs Holdback Amount” means the amount required to be held back from the Sulphur Springs Purchase Price in accordance with Annex 2.

“Sulphur Springs Holdback Amount Release Date” means the date on which each of the conditions precedent set forth on Annex 2 necessary for the Sulphur Springs Holdback Amount to be released shall have been satisfied.

“Sulphur Springs Project” means Sulphur Springs HoldCo and the Sulphur Springs SPE.



“Sulphur Springs Purchase Price” has the meaning given on Annex 3.

“Sulphur Springs SPE” means the entity listed as a “Project Company” under the “Sulphur Springs Project” as set forth on Schedule 4.5.

“SunPower Corporation” has the meaning given in the preamble.

“SunPower Manager” means SunPower Capital Services, LLC, a Delaware limited liability company.

“SunPower Systems” has the meaning given in the recitals.

“SunTrust Equity Interests” means the SunTrust Parent Equity Interests, the SunTrust ESA 1 Equity Interests and the SunTrust ESA 2 Equity Interests.

“SunTrust ESA Company 1” has the meaning given in the recitals.

“SunTrust ESA Company 2” has the meaning given in the recitals.

“SunTrust ESA 1 Equity Interests” has the meaning given in the recitals.

“SunTrust ESA 2 Equity Interests” has the meaning given in the recitals.

“SunTrust HoldCo” means a limited liability company to be established by Seller to which 100% of the limited liability company interests of SunTrust Parent, SunTrust ESA Company 1 and SunTrust ESA Company 2 shall have been transferred prior to the occurrence of the Closing on the Closing Date with respect to the SunTrust Project.

“SunTrust Holdback Amount” means the amount required to be held back from the SunTrust Purchase Price in accordance with Annex 2.

“SunTrust Holdback Amount Release Date” means the date on which each of the conditions precedent set forth on Annex 2 necessary for the SunTrust Holdback Amount to be released shall have been satisfied.

“SunTrust Parent” has the meaning given in the recitals.

“SunTrust Parent Equity Interests” has the meaning given in the recitals.

“SunTrust Project” means SunTrust HoldCo, SunTrust Parent, SunTrust ESA Company 1, SunTrust ESA Company 2 and the SunTrust SPEs.

“SunTrust Purchase Price” has the meaning given on Annex 3.

“SunTrust SPEs” means each of entities listed as a “Project Company” under the “SunTrust Project” as set forth on Schedule 4.5.

“Swingletree” means Swingletree Operations, LLC.

“Target Date Working Capital Amount” has the meaning given on Annex 5.

“Tax” or “Taxes” means all taxes, including all charges, fees, duties, imposts, levies or other assessments in the nature of taxes, now or hereafter imposed by any Governmental Authority, including income, gross receipts, excise, property, sales, gain, use, license, custom duty, unemployment, inheritance, corporation, capital stock, transfer, franchise, payroll, withholding, social security, minimum estimated, profit, gift, severance, value added, disability, premium, recapture, credit, occupation, service, leasing, employment, stamp, goods and services, ad valorem, utility, utility users and other taxes, and shall include interest, penalties or additions attributable thereto or attributable to any failure to comply with any requirement regarding Tax Returns.

“Tax Returns” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any such document prepared on a consolidated, combined or unitary basis and also including any schedule or attachment thereto, and including any amendment thereof.

“Taxing Authority” means the IRS and any other Governmental Authority responsible for administration of Taxes under the Laws of any jurisdiction.

“Threshold” has the meaning set forth in Section 7.2.5.

“TPI Assessment Liability” means the assessment of any Taxes with respect to any taxable possessory interest relating to any of the Projects other than the TPI Assessment Projects.

“TPI Assessment Projects” means any of the Projects leased by the Project SPEs identified in Part A of Schedule 4.17 as being subject to assessment of Taxes with respect to any taxable possessory interest.

“TPI Current Liability” means any Taxes with respect to any taxable possessory interest relating to any of the TPI Assessment Projects, which are each set forth on Part A of Schedule 4.17.

“Transfer Instrument” has the meaning set forth in Section 3.1.2.1.

“Transaction Documents” means this Agreement, each Transfer Instrument, each Assignment Agreement, the Side Letter and the Buyer Parent Guaranty.

“Transfer Taxes” has the meaning given in Section 6.4.

“Treasury Guidance” means the U.S. Treasury Department’s program guidance publication entitled “Payments for Specified Energy Property in Lieu of Tax Credits under the American Recovery and Reinvestment Act of 2009”, dated July 2009 and as revised through April 2011, the Frequently Asked Questions and Answers and the Frequently Asked Questions and Answers – Begun Construction issued by the U.S. Treasury Department and any other guidance, instructions, regulations or terms and conditions published or issued by the U.S. Treasury Department on January 8, 2010 and June 25, 2010 in respect of the Cash Grant or any application thereof.

“Treasury Regulations” means the regulations promulgated under the Code.

“True-Up Date” has the meaning given in Section 2.3.3.

“True-Up Date Balance Sheet” has the meaning given in Section 2.3.3.

“True-Up Date Working Capital Adjustment” means the positive difference, if any, as of any date of determination, of (a) the share of the Target Date Working Capital Amount allocated to the applicable Individual Portfolio, as set forth in Annex 5, minus (b) the True-Up Date Working Capital Amount for the applicable Individual Portfolio.

“True-Up Date Working Capital Amount” means the working capital amount determined with respect to the applicable Individual Portfolio as of February 28, 2019, based on the applicable True-Up Date Balance Sheet delivered under Section 2.3.3 and in accordance with the same accounting principles, policies and methods used to prepare Annex 4 to this Agreement.

“Wells Fargo Equity Interests” means the Wells Fargo Parent Equity Interests, the Wells Fargo ESA 1 Equity Interests and the Wells Fargo ESA 2 Equity Interests.

“Wells Fargo ESA Company 1” has the meaning given in the recitals.

“Wells Fargo ESA Company 2” has the meaning given in the recitals.

“Wells Fargo ESA 1 Equity Interests” has the meaning given in the recitals.

“Wells Fargo ESA 2 Equity Interests” has the meaning given in the recitals.

“Wells Fargo HoldCo” means a limited liability company to be established by Seller to which 100% of the limited liability company interests of Wells Fargo Parent, Wells Fargo ESA Company 1 and Wells Fargo ESA Company 2 shall have been transferred prior to the occurrence of the Closing on the Closing Date with respect to the Wells Fargo Project.

“Wells Fargo Parent” has the meaning given in the recitals.

“Wells Fargo Parent Equity Interests” has the meaning given in the recitals.

“Wells Fargo Holdback Amount” means the amount required to be held back from the Wells Fargo Purchase Price in accordance with Annex 2.

“Wells Fargo Holdback Amount Release Date” means the date on which each of the conditions precedent set forth on Annex 2 necessary for the Wells Fargo Holdback Amount to be released shall have been satisfied.

“Wells Fargo Project” means Wells Fargo HoldCo, Wells Fargo Parent, Wells Fargo ESA Company 1, Wells Fargo ESA Company 2 and the Wells Fargo SPEs.

“Wells Fargo Purchase Price” has the meaning given on Annex 3.

“Wells Fargo SPEs” means each of entities listed as a “Project Company” under the “Wells Fargo Project” as set forth on Schedule 4.5.

1.2 Interpretation. Except where otherwise expressly provided or unless the context otherwise necessarily requires, in this Agreement (including in the recitals hereto):

(a) Reference to a given Article, Section, Subsection, clause, Exhibit, annex or Schedule is a reference to an Article, Section, Subsection, clause, Exhibit, annex or Schedule of this Agreement, unless otherwise specified.

(b) The headings, subheadings and table of contents used in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect the meaning, construction or effect of any provision of this Agreement.

(c) The terms “this Agreement”, “hereof”, “herein”, “hereto”, “hereunder” and “herewith” refer to this Agreement as a whole.

(d) Reference to a given agreement (including this Agreement), instrument, document or Law is a reference to that agreement, instrument, document or Law as modified, amended, supplemented, extended and restated (including by means of any change order, waiver or other modification) through the date as of which such reference is made, and, as to any Law, any successor Law.

(e) Reference to a Person includes its predecessors, successors and permitted assigns; provided, however, that nothing contained in this sentence is intended to authorize any assignment or transfer not otherwise permitted by this Agreement.

(f) The words “shall” and “will” have the same meaning.

(g) References to “days” means calendar days unless the term “Business Days” is used. If the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day. Unless the context otherwise requires, all references to a specific time shall refer to Eastern Standard Time. With respect to the determination of any period of time, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding”.

(h) Where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings; “include,” “includes” or “including” and words of similar import shall be deemed to be followed by the phrase “without limitation” and shall not be limited by any enumeration or otherwise; any pronoun or pronoun used herein shall be deemed to include both the singular and the plural and to cover all genders; the use of the words “or,” “either” and “any” shall not be exclusive; all accounting terms not specifically defined herein shall be construed in accordance with GAAP; “made available to Buyer” and words of similar import shall mean that any such information or document was accessible by Buyer on the Data Room as of the close of business on the date that is two Business Days immediately preceding the applicable Closing Date.

(i) All references to “Dollars” and “\$” refer to United States Dollars.

(j) Disclosure of any item on any Schedule to this Agreement will constitute disclosure of such item on any other Schedule to this Agreement if its relevance to such other Schedule to this Agreement is reasonably apparent on its face.

## ARTICLE 2

### SALE AND PURCHASE OF EQUITY INTERESTS AND PAYMENT OF PURCHASE PRICE

2.1 Sale and Purchase of Equity Interests. Subject to the terms and conditions hereof, at the Closing with respect to any Individual Portfolio, (a) Seller agrees to sell, transfer and assign to Buyer all of the Equity Interests related to such Individual Portfolio, free and clear of all Liens, other than Permitted Encumbrances, and Buyer shall purchase and acquire all of such Equity Interests, and (b) the Parties shall take or cause to be taken the other actions described in Article 3 with respect to such Individual Portfolio.

2.2 Purchase Price and Payment. In consideration of the sale of the applicable Equity Interests to Buyer, Buyer shall pay to Seller (a) with respect to the MetLife Project, the MetLife Purchase Price *less* the MetLife Holdback Amount, (b) with respect to the PNC Project, the PNC Purchase Price *less* the PNC Holdback Amount, (c) with respect to the Regions Bank Project, the Regions Bank Purchase Price *less* the Regions Bank Holdback Amount, (d) with respect to the Sulphur Springs Project, the Sulphur Springs Purchase Price *less* the Sulphur Springs Holdback Amount, (e) with respect to the SunTrust Project, the SunTrust Purchase Price *less* the SunTrust Holdback Amount, and (f) with respect to the Wells Fargo Project, the Wells Fargo Purchase Price *less* the Wells Fargo Holdback Amount, which, in each case, shall be net of the applicable Holdback Amount, subject to adjustment as set forth in Section 2.3 and/or Section 3.1.3.12, if applicable, and shall be payable to, or to the order of, Seller by wire transfer of immediately available funds in the proportions and to the bank accounts designated by Seller prior to the applicable Closing.

#### 2.3 Closing Date Purchase Price Adjustment; Post-Closing Purchase Price Adjustment.

2.3.1 Closing Date Purchase Price Adjustment. Each applicable Purchase Price shall be adjusted on the applicable Closing Date (and prior to the consummation of the applicable Closing) as follows: to the extent that the unaudited balance sheet(s) as of February 28, 2019 relating to the applicable Individual Portfolio (each, an “Estimated Deemed Closing Date Balance Sheet”) is/are available, not later than five (5) Business Days before the applicable Closing Date, Seller shall have delivered to Buyer such Estimated Deemed Closing Date Balance Sheet, together with a calculation, based on the applicable Estimated Deemed Closing Date Balance Sheet, of the amount of the Estimated Deemed Closing Date Working Capital Amount and the Estimated Closing Date Working Capital Adjustment. If, within three (3) Business Days following delivery of the applicable Estimated Deemed Closing Date Balance Sheet and the calculation of the amount of the applicable Estimated Deemed Closing Date Working Capital Amount and Estimated Closing Date Working Capital Adjustment, Buyer does not object in writing thereto

to Seller, then the applicable Purchase Price shall be decreased by the amount of the applicable Estimated Closing Date Working Capital Adjustment if that amount is positive and, for the avoidance of doubt, no adjustment shall be made to the Purchase Price if the Estimated Closing Date Working Capital Adjustment is not positive. The applicable Closing shall not be contingent on, or delayed by, agreement over the applicable Estimated Deemed Closing Date Balance Sheet or calculations of the applicable Estimated Deemed Closing Date Working Capital Amount or Estimated Closing Date Working Capital Adjustment.

2.3.2 Post-Closing Purchase Price Adjustment. With respect of each Individual Portfolio for which Section 2.3.1 was not applicable because the Estimated Deemed Closing Date Balance Sheet relating to the applicable Individual Portfolio was not yet available, not later than thirty (30) days following the date on which the Estimated Deemed Closing Date Balance sheet relating to such applicable Individual Portfolio is available, Seller will prepare and deliver to Buyer the Estimated Deemed Closing Date Balance Sheet for such Individual Portfolio, together with a calculation, based on the applicable Estimated Deemed Closing Date Balance Sheet, of the amount of Seller's calculation of the applicable Estimated Deemed Closing Date Working Capital Amount and Estimated Closing Date Working Capital Adjustment for such Individual Portfolio. If, within five (5) Business Days following delivery of the Estimated Deemed Closing Date Balance Sheet and Seller's calculation of the amount of the applicable Estimated Deemed Closing Date Working Capital Amount and Estimated Closing Date Working Capital Adjustment, Buyer does not object in writing thereto to Seller, then if the applicable Estimated Closing Date Working Capital Adjustment amount is positive, Seller shall pay to Buyer, promptly, but in any event within five (5) Business Days after the date of such determination, to such account or accounts as may be specified in writing delivered to Seller by Buyer, the amount of such Estimated Closing Date Working Capital Adjustment, provided, that, for the avoidance of doubt, no payment shall be made by Seller or Buyer if the Estimated Closing Date Working Capital Adjustment is not positive.

2.3.3 Post-Closing True-Up. Not later than ninety (90) days after the Closing Date for the last Individual Portfolio with respect to which a Closing occurs prior to the Drop Dead Date (the "True-Up Date"), Buyer will prepare and deliver to Seller an unaudited balance sheet(s) as of February 28, 2019 relating to the each applicable Individual Portfolio with respect to which a Closing has already occurred (each, a "True-Up Date Balance Sheet") together with a calculation, based on the applicable True-Up Date Balance Sheet, of the amount of Buyer's calculation of the applicable True-Up Date Working Capital Amount and True-Up Date Working Capital Adjustment for each Individual Portfolio. Buyer shall also promptly furnish or cause to be furnished to Seller and its Representatives such access to the books, records and other information of the Portfolio Entities with respect to which a Closing has already occurred as Seller reasonably requests to verify any True-Up Balance Sheet and/or Buyer's calculation of any True-Up Date Working Capital Amount or True-Up Date Working Capital Adjustment. If, within twenty (20) Business Days following delivery of the True-Up Date Balance Sheets and Buyer's calculation of the amount of the each applicable True-Up Date Working Capital Amount and True-Up Date Working Capital Adjustment, Seller does not object in writing thereto to Buyer, then Buyer's calculation of such True-Up Date Working Capital Amount and True-Up Date Working Capital Adjustment shall be final and binding on Buyer and Seller and shall be referred

to as the “Final Working Capital Adjustment” for such Individual Portfolio (each, a “Final Working Capital Adjustment”)

2.3.4 Dispute Resolution. If, within the time specified in Section 2.3.3, Seller objects in writing to any True-Up Date Balance Sheet, and/or Buyer’s calculations of any True-Up Date Working Capital Amount or True-Up Date Working Capital Adjustment, as applicable (describing in reasonable detail the specific line items and values that are in dispute and the reasons for such dispute, and proposing alternative values with respect to such specific line items), then Buyer and Seller shall negotiate in good faith and attempt to resolve the particular items and values that are identified in the applicable written notice of objection over a fifteen (15) day period commencing on delivery of written notice of objection. Should such negotiations not result in an agreement within such fifteen (15) day period (or such longer period as Buyer and Seller may mutually agree), then either Party may submit such disputed items and values for dispute resolution by a firm of reputable and independent certified public accountants reasonably acceptable to Buyer and Seller, with the cost of such review and re-calculation to be shared one-half by Buyer and one-half by Seller. The result of such review and re-calculation shall be final and binding on Buyer and Seller and shall be reflected in a definitive final statement of the applicable True-Up Date Balance Sheet, True-Up Date Working Capital Amount and/or the applicable True-Up Date Working Capital Adjustment, which shall be deemed to be the applicable Final Working Capital Adjustment.

2.3.5 Working Capital Adjustment Payments. Upon determination of any Final Working Capital Adjustment, whether pursuant to Section 2.3.3 or Section 2.3.4, Buyer shall pay to Seller or Seller shall pay to Buyer, as applicable, promptly, but in any event within five (5) Business Days after the date of such determination, to such account or accounts as may be specified in writing delivered to Buyer by Seller or to Seller by Buyer, as applicable, the amount due to Seller or Buyer, as applicable, equal to the difference between the applicable Estimated Closing Date Working Capital Adjustment and the applicable Final Working Capital Adjustment.

2.4 Purchase Price Allocation. Following each Closing Date, Buyer shall prepare an allocation (the “Draft Allocation”) of the applicable Purchase Price and any other items constituting consideration for U.S. federal income tax purposes among the applicable Project Holding Company’s assets in accordance with Section 1060 of the Code. Seller shall provide Buyer with any information reasonably requested to prepare each Draft Allocation, and Buyer shall furnish Seller with a copy of each Draft Allocation. Seller shall provide any objections to any Draft Allocation to Buyer within fifteen (15) days after the receipt thereof, and the Parties will negotiate in good faith to resolve such objection(s). If Seller and Buyer reach an agreement with respect to any Draft Allocation (each such agreed allocation, a “Purchase Price Allocation”), (i) Seller and Buyer shall report consistently with such Purchase Price Allocation in all Tax returns, including IRS Form 8594, which Buyer, Seller, or any Affiliate shall timely file with the IRS, and none of Seller, Buyer, or any Affiliate shall take any position in any Tax Return that is inconsistent with such Purchase Price Allocation, as adjusted, in each case, unless required to do so by a Final Determination and (ii) each of Seller and Buyer agree to promptly advise each other regarding the existence of any Tax audit, controversy or litigation related to such Purchase Price Allocation.

2.5 Holdback Amounts. No later than ten (10) Business Days following any applicable Holdback Amount Release Date for an applicable Individual Portfolio, Buyer shall pay to Seller the positive amount (if any) equal to the sum of (i) the applicable Holdback Amount *minus* (ii) the aggregate amount of claims for indemnification satisfied from the aggregate Holdback Amounts pursuant to Section 7.3.

2.5.1 Regions Bank UCSF PTO Holdback Amount. If Regions Bank UCSF PTO Holdback Amount Release Date has not occurred on or before April 1, 2020, Buyer shall cause the Dental Clinics Project SPE (a) to exercise an early buy-out option for the Dental Clinics Project (as provided in the waiver to be delivered under Section 3.1.3.9(e)) and (b) to use the amount of Regions Bank UCSF PTO Holdback Amount—SLV Portion to pay the Regions Bank Project Lessor the early buy-out option purchase price for the Dental Clinics Project. Upon the exercise of such purchase option, Buyer shall cause the Dental Clinics Project SPE to transfer its title to the Dental Clinics Project to an Affiliate of Seller, identified by Seller in writing, without any representations or warranties of the Dental Clinics Project SPE or Buyer of any kind, and otherwise pursuant to documentation satisfactory to Buyer and Seller. Notwithstanding anything to the contrary provided in this Section 2.5.1, following April 1, 2020, Buyer shall retain the then-applicable Regions Bank UCSF PTO Holdback Amount—PV Portion for its account.

### ARTICLE 3 CLOSINGS; CONDITIONS PRECEDENT

#### 3.1 Closings.

3.1.1 Time and Place of each Closing. Subject to the terms and conditions hereof, including Article 8, the closing of the transactions contemplated by Article 2 with respect to any Individual Portfolio (each, a “Closing”) shall take place at such location as the Parties may agree (and otherwise, at the offices of Seller’s counsel), two Business Days after the satisfaction or waiver of the closing conditions set forth in this Section 3.1 (other than conditions that can only be satisfied at the applicable Closing, but subject to the satisfaction of such conditions) with respect to such Individual Portfolio, or on such other date as the Parties mutually agree (the actual date of any Closing is referred to herein as a “Closing Date”), provided, that, from and following the first Closing Date, each Closing Date thereafter shall only be permitted to occur on the last Business Day of a calendar month.

3.1.2 Actions at each Closing. At the Closing with respect to each Individual Portfolio, the applicable Party agrees, severally and not jointly, to take or cause to be taken the following actions (the “Closing Actions”):

3.1.2.1 Transfer of Equity Interests. Against receipt of the Purchase Price applicable to such Individual Portfolio, as adjusted pursuant to Section 2.3 and/or Section 3.1.3.12, if applicable, (i) for each individual Portfolio set forth on Part A of Schedule 3.1.2.1, Seller shall execute and deliver to Buyer a transfer instrument substantially in the form of the attached Exhibit A-1 (or such documents of transfer and assignment as are necessary to sell, transfer and assign the applicable Equity Interests to Buyer and acceptable to Buyer) (each, a “Transfer”



Instrument”) or (ii) for each individual Portfolio set forth on Part B of Schedule 3.1.2.1, Seller shall execute and deliver to Buyer, and Buyer shall execute and deliver to Seller, an assignment and assumption agreement substantially in the form of the attached Exhibit A-2 (or such documents of transfer and assignment as are necessary to sell, transfer and assign the applicable Equity Interests to Buyer) (each, an “Assignment Agreement”).

3.1.2.2 Payment and Allocation of Purchase Price. Buyer shall pay to Seller, by wire transfer in immediately available funds to the accounts designated by Seller prior to such Closing, the Purchase Price applicable to such Individual Portfolio, as adjusted as set forth in Section 2.3 and/or Section 3.1.3.12, if applicable.

3.1.2.3 Non-foreign Certificate. Seller shall furnish Buyer with a certificate, substantially in the form of Exhibit B hereto, that satisfies the requirements of Section 1445(b)(3) of the Code.

3.1.2.4 Resignations. Seller shall deliver to Buyer resignations of all of the managers and officers of the Portfolio Entities that are part of such Individual Portfolio.

3.1.2.5 Additional Actions. The Parties shall execute and deliver, or cause to be executed and delivered, all other documents, and take such other actions, in each case as shall be reasonably requested by either Party as necessary or appropriate to consummate the transactions contemplated hereby with respect to such Individual Portfolio, all in accordance with the provisions of this Agreement.

3.1.3 Conditions Precedent to Obligations of Buyer at each Closing. The obligation of Buyer to consummate the transactions contemplated hereby with respect to each Individual Portfolio shall be subject to the satisfaction, at or prior to the applicable Closing, of the following conditions precedent, any of which may be waived by Buyer in its sole discretion:

3.1.3.1 Performance of Closing Actions. Seller shall have tendered performance of its respective Closing Actions with respect to such Individual Portfolio.

3.1.3.2 Representations and Warranties. The representations and warranties with respect to such Individual Portfolio set forth in Article 4 shall be true and correct (without giving effect to any materiality or Material Adverse Effect qualifiers contained therein) in all material respects as of the Agreement Date and the applicable Closing Date (except for such representations and warranties that expressly speak as of an earlier date, in which case such representations and warranties shall have been so true and correct in all material respects as of such earlier date).

3.1.3.3 Covenants. Seller shall have performed and complied in all material respects with all covenants and other obligations required to be complied with or performed by it under this Agreement with respect to such Individual Portfolio at or prior to such Closing Date.

3.1.3.4 Governmental Approvals. The waiting period applicable to the consummation of the transactions contemplated by this Agreement under the HSR Act shall have expired or been earlier terminated.

3.1.3.5 Seller Approvals. All Seller Approvals with respect to such Individual Portfolio, each in form and substance reasonably satisfactory to Buyer, shall have been obtained and be in full force and effect.

3.1.3.6 No Adverse Law, Proceeding or Litigation. There shall not be in effect any Order issued by a Governmental Authority of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement, nor shall any Law have been enacted which would prohibit the consummation of any of the transactions contemplated by this Agreement (each, a "Prohibitive Order").

3.1.3.7 Release of Claims Arising Prior to Closing. Each of SunPower Corporation and Seller shall have delivered to Buyer a duly executed release, in substantially the form of Exhibit E-1 or otherwise in form and substance satisfactory to Buyer, by SunPower Corporation and Seller of all claims, whether known or unknown, that SunPower Corporation, Seller or its respective Affiliates (other than any Portfolio Entity that is part of the Individual Portfolio to which such Closing relates) have or may have against any Portfolio Entity that is part of the Individual Portfolio to which such Closing relates, arising on or prior to such Closing or in respect of acts, omissions or matters related to periods on or prior to such Closing (but not including (i) the obligations of any Party under this Agreement, or (ii) the obligations under the Continuing SPWR Project Contracts).

3.1.3.8 Officer's Certificates / Closing Certificate.

(a) Buyer shall have received (i) a certificate or certificates from Seller, dated the applicable Closing Date and signed by a duly authorized representative of Seller in the form of Exhibit C-1, certifying on behalf of Seller, as applicable, as to the matters contained therein, including the matters set forth in Sections 3.1.3.2 and 3.1.3.3 and (ii) solely with respect to the first Closing, an incumbency certificate from SunPower Corporation in the form of Exhibit C-2.

(b) For each Closing following the first Closing, Buyer shall have received from Seller a Closing Notice not later than 20 Business Days prior to the date on which the Seller anticipates that such Closing will occur.

3.1.3.9 Projects.

(a) Buyer has received appraisals and cost segregation reports in respect of each applicable Project for which Seller possesses appraisals and cost segregation reports.

(b) (i) With respect to each applicable Project, Buyer has received a detailed breakdown of the costs and expenses incurred by Seller or its Affiliates with respect to each such Project (the "Project Costs"), (ii) the fair market value as of each such Project's lease

commencement date under the applicable Lease Documents, (iii) the commercial operation date under the applicable PPA for such Project and (iv) if applicable, the delivery commencement date under the applicable ESA for such Project.

(c) With respect to each applicable Project subject to a “Section 467 rental agreement” (within the meaning of Section 467 of the Code) Buyer has received a detailed breakdown of the rent and loan schedule for purposes of Section 467 of the Code (the “Section 467 Schedule”).

(d) With respect to each applicable Project set forth on Schedule 3.1.3.9(d), Seller shall have (i) caused the applicable Portfolio Entity to make the regulatory filings that relate to such Project as set forth on Schedule 3.1.3.9(d), in each case, in form and substance satisfactory to Buyer or (ii) provided an explanation satisfactory to Buyer as to the reasons for which the regulatory filings that relate to such Project as set forth on Schedule 3.1.3.9(d) are not required to be made.

(e) With respect to the Regions Bank Project, Buyer shall have received a waiver from the applicable Lessor, in form and substance satisfactory to Buyer, for any default under any applicable Lease Documents arising from or relating to the revocation by Pacific Gas & Electric Company of the permission to operate for the Dental Clinics Project SPE with respect to its Dental Clinics Project for a period ending on April 1, 2020 (such waiver shall also provide for an early buy-out mechanism with respect to the Dental Clinics Project, in the event that such permission to operate is not obtained by the expiration of such waiver period).

3.1.3.10 Other Closing Deliverables. Seller shall have delivered, or caused to be delivered, to Buyer all of the following documents, and shall have taken, or caused to be taken, all of the following actions with respect to each Portfolio Entity that is part of an Individual Portfolio to which the applicable Closing relates (and each applicable Project, as applicable):

(a) a comprehensive listing of all FERC dockets (if any) in which each Portfolio Entity has made any application, certification or petition filing (or any other FERC dockets otherwise related to such Portfolio Entity);

(b) tax, lien and judgment searches in respect of each applicable (i) Project Holding Company, (ii) Project Parent Company, (iii) Project ESA Company, (iv) Additional Portfolio Entity, and (v) Project SPE, which, in the case of any Project SPE, itself leases Projects under the applicable Leases, with an aggregate capacity of more than one MW, in each case, demonstrating that such Portfolio Entity and the Ownership Interests in such Portfolio Entity are free and clear of all Liens except for Permitted Liens;

(c) a true, correct, complete and executed copy of (and all schedules, exhibits, appendices, annexes and deliverables with respect to) each Material Contract (and any amendments or modifications thereto), as in effect on the Closing Date;

(d) copies of the Charter Documents of each Portfolio Entity, including, in respect of the MetLife Project, fully executed amended and restated copies of the

operating agreements for each of Solar Star California XV Parent, LLC and Solar Star California XV, LLC, which shall each be in form and substance satisfactory to the Buyer and expressly permitted by the Seller Approval relating to the MetLife Project Lease Documents;

(e) for each Portfolio Entity that has a real property interest in the Real Property on which such Project is located, copies of all current title insurance policies and surveys in relation to such Real Property;

(f) a complete and accurate Asset Register with all “Seller Required Fields” (as defined in the Asset Register) completed;

(g) with respect to each Project, all necessary Governmental Approvals required for operation of such Project, including its intended use of generating and selling electricity;

(h) as-built engineering packages with respect to each Project, including electrical, structural and civil packages; and

(i) a completed property Tax matrix summarizing taxable amount, the applicable taxing Governmental Authority and a payment schedule for each Project subject to property Tax.

3.1.3.11 Financial Models. Buyer shall have received:

(a) Seller’s Financial Model; and

(b) a pro forma financial model with respect to each applicable Project.

3.1.3.12 Sales Tax Obligations. Buyer shall have received satisfactory evidence that each Portfolio Entity constituting the applicable Individual Portfolio has paid or has caused to be paid by the applicable Closing Date any and all sales Taxes due to the applicable Governmental Authorities, including all known or estimated sales Tax liabilities set forth in the “Voluntary Disclosure Agreements” between Portfolio Entities and the applicable Governmental Authorities, except for any Sales Tax Disclosed Obligations that have not yet been paid to the applicable Governmental Authorities by the applicable Closing Date, solely to the extent that the Purchase Price for the applicable Individual Portfolio has been reduced by the amount of such applicable Sales Tax Disclosed Obligations; provided, that, solely with respect to (i) Solar Star Plano I, LLC, and only to the extent the “Voluntary Disclosure Agreement” with the State of Texas has not been finalized as of the Closing for the Regions Bank Project, an amount equal to 200% of Buyer’s estimate of the liability thereunder has been included in the Regions Bank Holdback Amount, it being agreed that if the amount of such liability has been finalized as of the Closing for the Regions Bank Project, the Purchase Price for the Regions Bank Project will be reduced by such amount (and there will be no amount relating thereto included in the Regions Bank Holdback Amount) and (ii) Solar Star HI Air, LLC, and only to the extent the “Voluntary Disclosure Agreement” with the State of Hawaii

has not been finalized as of the Closing for the PNC Project, an amount equal to 200% of Buyer's estimate of the liability thereunder has been included in the PNC Holdback Amount, it being agreed that if the amount of such liability has been finalized as of the Closing for the PNC Project, the Purchase Price for the PNC Project will be reduced by such amount (and there will be no amount relating thereto included in the PNC Holdback Amount).

3.1.3.13 Existing Litigation. A filing shall have been made with the court adjudicating the Existing Litigation seeking assignment of the Existing Litigation, which, if approved by such court, would result in no Portfolio Entities being a party to the Existing Litigation.

3.1.4 Conditions Precedent to Obligations of Seller at the Closing. The obligation of Seller to consummate the transactions contemplated hereby with respect to each Individual Portfolio shall be subject to the satisfaction, on or prior to the applicable Closing, of the following conditions precedent, any of which may be waived by Seller in its sole discretion:

3.1.4.1 Performance of Closing Actions. Buyer shall have tendered performance of its respective Closing Actions with respect to such Individual Portfolio.

3.1.4.2 Representations and Warranties. The representations and warranties set forth in Article 5 (without giving effect to any materiality qualifiers contained therein) shall be true and correct in all material respects as of the Agreement Date and the applicable Closing Date (except for such representations and warranties that expressly speak as of an earlier date, in which case such representations and warranties shall have been so true and correct in all material respects as of such earlier date).

3.1.4.3 Covenants. Buyer shall have performed and complied in all material respects with all covenants and other obligations required to be complied with or performed by it under this Agreement with respect to such Individual Portfolio at or prior to the applicable Closing Date.

3.1.4.4 Governmental Approvals. The waiting period applicable to the consummation of the transactions contemplated by this Agreement under the HSR Act shall have expired or been earlier terminated.

3.1.4.5 Seller Approvals. All Seller Approvals with respect to such Individual Portfolio shall have been obtained and be in full force and effect, and any conditions to the effectiveness thereof shall have been satisfied.

3.1.4.6 No Adverse Law, Proceeding or Litigation. There shall not be in effect any Prohibitive Order.

3.1.4.7 Officer's Certificates. Seller shall have received a certificate or certificates from Buyer, dated the applicable Closing Date and signed by a duly authorized representative of Buyer, certifying as to the matters set forth in Sections 3.1.4.2 and 3.1.4.3.

3.1.4.8 Replacement of Credit Support. Buyer shall have delivered or caused to be delivered (or shall concurrently with such Closing deliver or cause to be delivered) to the applicable beneficiaries set forth on Schedule 1.3(a) replacement credit support instruments in order to replace the Specified Credit Support Instruments.

3.1.4.9 Release of Claims Arising Prior to Closing. Seller shall have received from the Portfolio Entities that are part of the Individual Portfolio to which such Closing relates a duly executed release by such Portfolio Entities, in each case, in substantially the form of Exhibit E-2 or otherwise in form and substance satisfactory to Buyer and Seller, of all claims, whether known or unknown, that any such Portfolio Entity has or may have against Seller or its Affiliates (other than any such Portfolio Entity) arising on or prior to such Closing or in respect of acts, omissions or matters related to periods on or prior to such Closing (but not including (i) the obligations of any Party under this Agreement, (ii) the obligations under the Continuing SPWR Project Contracts or (iii) any claims or obligations in respect of the gross negligence, bad faith, fraud or willful misconduct of Seller or any of its Affiliates).

3.2 Release and Assumption of Seller Obligations. Without limiting Section 3.1.4:

3.2.1 Release of SunPower Corporation and Affiliates. It shall be a condition to Seller's obligation to consummate the transactions contemplated hereby with respect to each Individual Portfolio that Seller shall have obtained valid and binding written releases of SunPower Corporation and/or its Affiliates (excluding the Portfolio Entities part of the Individual Portfolio to which such Closing relates), as applicable, from the respective beneficiary or beneficiaries and in form and substance reasonably satisfactory to Seller, from any liability or obligation under or in respect of the Specified Credit Support Instruments related to the Individual Portfolio to which such Closing relates.

3.2.2 Indemnification and Reimbursement.

3.2.2.1 If, notwithstanding Section 3.2.1, any Specified Credit Support Instruments with respect to any Individual Portfolio remain in effect as of the Closing Date with respect to such Individual Portfolio, and Seller nevertheless wishes to proceed with the applicable Closing, then:

(a) Buyer will diligently seek to replace each applicable Specified Credit Support Instrument and, in connection therewith, with respect to any Specified Credit Support Instrument represented by a letter of credit or guarantee, Buyer shall (or shall cause the applicable beneficiary thereof to) use commercially reasonable efforts to return such Specified Credit Support Instrument to SunPower Corporation or the applicable issuer of such Specified Credit Support Instrument, as applicable, together with a cancellation request executed by the applicable beneficiary thereof.

(b) (i) If a beneficiary of any Specified Credit Support Instrument with respect to which SunPower Corporation or its Affiliates (excluding the Acquired Project Entities) has not been released as of the applicable Closing Date draws or collects on any such Specified Credit Support Instrument or SunPower Corporation and/or its Affiliates (excluding the

Acquired Portfolio Entities), as applicable, incur a cost or expense on account of any such Specified Credit Support Instrument and (ii) the event or condition giving rise to such drawing or demand under any such Specified Credit Support Instrument has occurred after the Closing Date with respect to the applicable Individual Portfolio, Buyer shall, within 30 calendar days after Seller notifies Buyer in writing of such drawing or payment, reimburse SunPower Corporation and/or such Affiliate thereof, as applicable, for the amount of a drawing or payment under such Specified Credit Support Instrument paid or incurred by SunPower Corporation and/or such Affiliates, as applicable, in connection with such Specified Credit Support Instrument. Notwithstanding anything to the contrary provided herein, if the event or condition giving rise to such drawing or demand under any such Specified Credit Support Instrument has occurred before the Closing Date for the applicable Individual Portfolio, Buyer shall not be responsible for any such cost, expense or loss arising under such Specified Credit Support Instrument and all such costs, expenses or losses shall be borne solely by Seller, SunPower Corporation and/or its applicable Affiliates. To the extent that any such payment or reimbursement is not made as provided above within 30 calendar days after Seller notifies Buyer in writing of such drawing or payment recoverable pursuant to the first sentence of this Section 3.2.2.1(b), such drawing or payment shall bear interest (y) in respect of any Specified Credit Support Instrument that accrues interest, at the rate per annum at which such Specified Credit Support Instrument accrues interest or (z) in respect of any Specified Credit Support Instrument that does not accrue interest, at a rate of 3.5% per annum, in either case, from the date that Buyer shall have been obligated to reimburse SunPower Corporation and/or its Affiliates under this Section 3.2.2.1(b) through the date of payment. Buyer shall indemnify SunPower Corporation and/or its applicable Affiliates for any reasonable and documented expenses incurred by SunPower Corporation and/or its Affiliates solely in connection with enforcing Buyer's obligation to make any reimbursement that is required but not timely made pursuant to this Section 3.2.2.1(b).

3.2.2.2 If any Specified Contractual Credit Support Obligations with respect to any Individual Portfolio remain in effect as of the Closing Date with respect to such Individual Portfolio, and Seller and Buyer proceed with the applicable Closing, then, solely to the extent permitted by the applicable Lease Documents in respect of the Individual Portfolio to which such Specified Contractual Support Obligations relate:

(a) If SunPower Systems or SunPower Corporation, as applicable, is obligated to perform any obligations under such Specified Contractual Credit Support Obligation, incurs a cost or expense on account of such Specified Contractual Credit Support Obligation or the counterparty to any Contract evidencing such Specified Contractual Credit Support Obligation collects a payment under such Specified Contractual Credit Support Obligation directly from SunPower Systems or SunPower Corporation, as applicable (excluding any applicable Acquired Portfolio Entity), in each case with respect to any event or condition giving rise to such obligation of SunPower Systems or SunPower Corporation, as applicable arising after the applicable Closing Date and as a result of a default by the applicable Project SPE, which has not been cured within in the applicable cure period under the applicable Material Contract, then SunPower Systems or SunPower Corporation, as applicable, shall be entitled to seek (i) subject to the immediately following sentence, compensation for such performance (on a time and materials basis in accordance with the then-prevailing rates of SunPower Systems or SunPower Corporation, as applicable) or (ii) reimbursement for such payment solely against the Acquired Portfolio Entity that is SunPower

Systems' or SunPower Corporation's co-obligor under the Contract evidencing such Specified Contractual Credit Support Obligation, as applicable. In the case of the performance of any obligations by SunPower Systems or SunPower Corporation (other than any payment obligation and any obligation to perform any actions that are reasonably required to prevent, mitigate or respond to an emergency or to a condition that implicates the safety or security of the applicable Project) (x) SunPower Systems or SunPower Corporation, as applicable, shall first provide to the Acquired Portfolio Entity that is SunPower Systems' or SunPower Corporation's co-obligor under the Contract evidencing such Specified Contractual Credit Support Obligation a written proposal (1) describing in reasonable detail the obligations that SunPower Systems or SunPower Corporation, as applicable, intends to perform and (2) including a proposed budget for such performance, (y) if such Acquired Project Entity accepts such proposal or does not respond to such proposal within ten (10) days after such Acquired Project Entity has received such proposal, SunPower Systems or SunPower Corporation, as applicable, shall be entitled to perform the applicable obligations and to be compensated for such performance in accordance with the budget included in such proposal, and (z) if such Acquired Project Entity rejects such proposal (1) neither SunPower Systems nor SunPower Corporation shall be entitled to perform the applicable obligations and (2) such Acquired Project Entity shall defend, indemnify and hold harmless SunPower Systems and SunPower Corporation from and against all Damages incurred by SunPower Systems or SunPower Corporation and asserted by the applicable Power Purchaser directly resulting from the failure to perform such obligations under the applicable PPA. Notwithstanding anything to the contrary provided herein, if the event or condition giving rise to a demand for payment against SunPower Systems or SunPower Corporation, as applicable, under any such Specified Contractual Credit Support Obligation has occurred before the Closing Date for the applicable Individual Portfolio, then SunPower Systems' or SunPower Corporation's co-obligor under the Contract evidencing such Specified Contractual Credit Support Obligation shall not be responsible for such payment, cost or expense under such Specified Contractual Credit Support Obligation and all such costs, expenses or losses shall be borne solely by SunPower Systems or SunPower Corporation, as applicable, and/or its applicable Affiliates. To the extent that any such payment or reimbursement is not made as provided above within 30 calendar days after SunPower Systems or SunPower Corporation, as applicable, notifies the applicable Acquired Portfolio Entity in writing of such payment or reimbursement recoverable pursuant to the first sentence of this Section 3.2.2.2(a), such payment or reimbursement shall bear interest at a rate of 3.5% per annum from the end of such 30 calendar day period through the date of payment. Solely to the extent permitted by the applicable Lease Documents, the Acquired Portfolio Entity that is SunPower Systems' or SunPower Corporation's co-obligor under the Contract evidencing the applicable Specified Contractual Credit Support Obligation shall indemnify SunPower Systems or SunPower Corporation, as applicable, for any reasonable and documented expenses incurred by SunPower Systems or SunPower Corporation, as applicable solely in connection with enforcing such Acquired Portfolio Entity's obligation to make any payment or reimbursement that is required but not timely made pursuant to this Section 3.2.2.2(a).

(b) With respect to the MetLife Project and the Regions Bank Project, following the Closing Date for such Individual Portfolio, not later than the date on which a Replacement Service Provider (as defined in the Side Letter) enters into replacement agreements in respect of the O&M Agreements relating to such Individual Portfolio, Buyer shall cause MetLife Holdco and Regions Bank Holdco to provide a guarantee, on a joint and several basis, in the form



of the Buyer Parent Guaranty (with the necessary changes, including with respect to the nature of obligations, guarantor, beneficiary and limitations of liability), to SunPower Systems and/or SunPower Corporation, as applicable, backstopping the obligations of the applicable Portfolio Entities under Section 3.2.2.2(a). The aggregate limitation of liability under all guarantees that are provided in connection with this Section 3.2.2.2(b) shall be \$20,000,000.

3.2.2.3 Solar Star California XLIV, LLC (i) has fully funded the Pearblossom CfD Reserve for the benefit of the applicable Lessor and (ii) is currently negotiating (A) with the applicable Power Purchaser, an amendment to the PPA to which Solar Star California XLIV, LLC is a party, as described in more detail on Part B of Schedule 4.6 and (B) with the applicable Lessor, to the extent such PPA amendment is executed, an amendment to eliminate the requirement of Solar Star California XLIV, LLC to maintain the Pearblossom CfD Reserve. To the extent such proposed amendments have not been executed prior to the Closing Date with respect to the Wells Fargo project, then:

(a) Buyer shall (and shall cause any applicable Acquired Portfolio Entity to) use commercially reasonable efforts to, at the sole cost and expense of Seller, take such action as Seller shall reasonably request from time to time to implement the proposed amendments described in this Section 3.2.2.3. For the avoidance of doubt, no such amendment shall be executed without Buyer's prior written consent.

(b) Not later than 60 calendar days after the execution of the proposed amendments and elimination of the requirement to maintain the Pearblossom CfD Reserve, Buyer shall pay to SunPower Corporation an amount equal to the amount on deposit in the Pearblossom CfD Reserve account as of the date when Solar Star California XLIV, LLC obtains the unrestricted right to release and distribute funds therefrom to its Affiliates under the terms of the applicable Lease Documents. To the extent that such payment is not made as provided above within 60 calendar days after the execution of the proposed amendments and elimination of the requirement to maintain the Pearblossom CfD Reserve, such payment shall bear interest at a rate of 3.5% per annum from the date that Buyer shall have been obligated to make such payment to SunPower Corporation through the date of payment. Buyer shall indemnify SunPower Corporation and/or its applicable Affiliates for any reasonable and documented expenses incurred by SunPower Corporation and/or its Affiliates solely in connection with enforcing Buyer's obligation to make any payment that is required but not timely made pursuant to this Section 3.2.2.3(b).

3.2.3 Acknowledgment and Agreement. Buyer hereby agrees that the obligations of Buyer to indemnify and reimburse SunPower Corporation and its Affiliates set forth in Section 3.2.2.1(b) and Section 3.2.2.3(b) and, solely to the extent permitted by the applicable Lease Documents, the obligations of any Acquired Portfolio Entity to indemnify and reimburse SunPower Systems set forth in Section 3.2.2.2(a) are absolute and unconditional, and are not subject to any defenses, set-offs, deductions, claims or counterclaims (including without limitation under Article 7 hereof). Buyer specifically acknowledges and agrees that SunPower Corporation and its Affiliates are and may be acting in various roles and capacities in relation to the Project, including as seller of the Equity Interests, photovoltaic panel supplier, engineering, procurement and construction contractor, operations and maintenance contractor or asset

manager, and therefore Buyer's or any of its affiliates' recourse for any asserted claims for breach or default by SunPower Corporation or any of its Affiliates in connection with any such role or capacity shall be under the specific agreement or agreements that gave rise to the applicable duty, role or capacity, and shall not be a defense or permit a setoff or deduction from the obligations or liabilities of Buyer under this Agreement, including under this Section 3.2, or solely to the extent permitted by the applicable Lease Documents, the obligations or liabilities of any Acquired Portfolio Entity under Section 3.2.2.2(a), provided, that, both SunPower Corporation and Seller acknowledge and agree that this acknowledgement of Buyer shall in no way limit Buyer's rights or Seller or SunPower Corporation's obligations or liability under this Agreement, including in respect of any breach or default by SunPower Corporation or any of its Affiliates in any capacity, which also constitutes a breach or default by Seller or SunPower Corporation of a representation and warranty, covenant or any other term of this Agreement.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller and SunPower Corporation (solely in the case of Sections 4.1.3, 4.2.3, 4.2.4, 4.3 and 4.4.6 to the extent such sections relate to SunPower Corporation) each hereby represent and warrant to Buyer as follows (except as set forth in the Seller Disclosure Schedules) as of the Agreement Date and each Closing Date; provided that as of each Closing Date, to the extent that the applicable Closing relates only to one or more Individual Portfolios and any of the following representations and warranties relate to one or more Individual Portfolios (including any Project, Portfolio Entity, Governmental Approval or Material Contract part of such Individual Portfolio(s)), such representation and warranty is being made only as of the Closing Date with respect to such Individual Portfolio(s) and only with respect to such Individual Portfolio(s) (including any Project, Portfolio Entity, Governmental Approval or Material Contract, as applicable, part of such Individual Portfolio(s)):

##### 4.1 Organization and Good Standing; Organizational Documents.

4.1.1 Seller is a limited liability company, duly organized, validly existing and in good standing (to the extent such concept exists under applicable Law) under the Laws of Delaware. Seller is duly qualified or licensed to do business in and is in good standing in each jurisdiction in which its ownership of property or the character of its business requires such qualification, license or standing.

4.1.2 Each Portfolio Entity is duly organized, validly existing and in good standing under the Laws of Delaware and is qualified to do business in the jurisdictions in which the nature of the business conducted by it makes such qualification necessary and has all requisite entity power and authority to carry on its business as it is currently conducted and to own, lease and operate its assets, where such assets are now owned, leased or operated. Each Portfolio Entity is duly qualified or licensed to do business in and is in good standing in each jurisdiction in which the assets owned, leased or operated by it or the nature of the business conducted by it requires such qualification, license or standing.

4.1.3 SunPower Corporation is a corporation, duly organized, validly existing and in good standing (to the extent such concept exists under applicable Law) under the Laws of Delaware, and is duly qualified and in good standing in each jurisdiction where the failure to so qualify and be in good standing would materially and adversely affect its ability to perform its obligations under this Agreement.

#### 4.2 Authorization, Execution and Enforceability.

4.2.1 Seller has the requisite limited liability company power and authority to enter into this Agreement and each other Transaction Document to which it is party, consummate each of the transactions contemplated hereby and thereby, and perform all of the terms and conditions hereof to be performed by Seller. The execution, delivery and performance by Seller of this Agreement, each other Transaction Document to which it is party, and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of Seller under its Charter Documents.

4.2.2 This Agreement has been duly and validly executed and delivered by Seller, and is enforceable against Seller in accordance with the terms hereof, except as such enforceability may be limited or denied by (a) applicable bankruptcy, insolvency, reorganization, moratorium or similar applicable Laws affecting creditors' rights and the enforcement of debtors' obligations generally, and (b) general principles of equity, regardless of whether enforcement is pursuant to a proceeding in equity or at law (the "Enforceability Exceptions"). Upon execution and delivery of the Transaction Documents to which Seller is a party, each of the Transaction Documents will constitute the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited or denied by Enforceability Exceptions.

4.2.3 SunPower Corporation has the requisite corporate power and authority to enter into this Agreement, consummate each of the transactions contemplated hereby, and perform all of the terms and conditions hereof to be performed by SunPower Corporation. The execution, delivery and performance by SunPower Corporation of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of SunPower Corporation under its Charter Documents.

4.2.4 This Agreement has been duly and validly executed and delivered by SunPower Corporation, and is enforceable against SunPower Corporation in accordance with the terms hereof, except as such enforceability may be limited or denied by Enforceability Exceptions.

4.3 No Violation. None of the execution and delivery by Seller or SunPower Corporation of this Agreement or, in the case of Seller, any other Transaction Document to which it is a party, the performance of the obligations of Seller or SunPower Corporation hereunder or thereunder, as applicable, nor the consummation of the transactions contemplated hereby and thereby by Seller or SunPower Corporation, as applicable, will (i) conflict with or result in any violation or breach of or default under (or constitute an event that, with notice or lapse of time or both, would constitute a default under) or give rise to a right of termination, cancellation, modification or

acceleration of any obligation, to any put or call or similar rights, or to loss of a benefit under, any provision of the Charter Documents of Seller, SunPower Corporation or any Portfolio Entity, (ii) as of the Agreement Date (subject to obtaining the Seller Approvals), and as of the applicable Closing Date, result in any material violation or material breach of or default under (or constitute an event that, with notice or lapse of time or both, would constitute a default under) or give rise to a right of termination, cancellation, modification or acceleration of any obligation, to any put or call or similar rights, or to loss of a benefit under, any Contract or Governmental Approval (including any Material Contract) to which Seller, SunPower Corporation or any Portfolio Entity is a party or by which any of their respective assets (including any Project) are bound, (iii) result in the imposition or creation of any material Lien upon or with respect to the Equity Interests or the Ownership Interests of any Portfolio Entity or any assets of any Portfolio Entity, other than Permitted Liens, or (iv) as of the Agreement Date (subject to the satisfaction of the condition set forth in Section 3.1.4.4), and as of the applicable Closing Date, conflict with or result in the violation of any applicable Law, in any material respect, to which Seller, SunPower Corporation, any Portfolio Entity or any of their respective assets (including any Project) are subject.

#### 4.4 Equity Interests; Subsidiaries.

##### 4.4.1 Ownership of Equity Interests.

###### 4.4.1.1 As of the Agreement Date:

(a) Seller owns beneficially and of record 100% of the limited liability company interests of each of (i) Regions Bank HoldCo, which itself owns beneficially and of record 100% of the limited liability company interests of Regions Bank Pledgor, which itself owns beneficially and of record 100% of the limited liability company interests of (A) each Regions Bank SPE, (B) Regions Bank ESA Company and (C) Regions Bank Toyota PPA Provider; (ii) Sulphur Springs HoldCo, which itself owns beneficially and of record 100% of the limited liability company interests of Sulphur Springs SPE; (iii) SunTrust Parent, which itself owns beneficially and of record 100% of the limited liability company interests of each SunTrust SPE; (iv) SunTrust ESA Company 1; (v) SunTrust ESA Company 2; (vi) Wells Fargo ESA Company 1 and (vii) Wells Fargo ESA Company 2, in each case free and clear of all Liens, other than Permitted Encumbrances;

(b) SunPower Systems owns beneficially and of record 100% of the limited liability company interests of (i) MetLife HoldCo, which itself owns beneficially and of record 100% of the limited liability company interests of MetLife SPE; and (ii) each PNC SPE, in each case free and clear of all Liens, other than Permitted Encumbrances; and

(c) SunPower Corporation owns beneficially and of record 100% of the limited liability interests of Wells Fargo Parent; which itself owns beneficially and of record 100% of the limited liability company interests of each Wells Fargo SPE, in each case free and clear of all Liens, other than Permitted Encumbrances.

###### 4.4.1.2 Closing Dates.

(a) As of the Closing Date with respect to the MetLife Project, (i) Seller owns beneficially and of record the MetLife Equity Interests, and (ii) MetLife Holdco owns beneficially and of record 100% of the limited liability company interests of MetLife SPE, in each case free and clear of all Liens, other than Permitted Encumbrances.

(b) As of the Closing Date with respect to the PNC Project, (i) Seller owns beneficially and of record the PNC Equity Interests, and (ii) PNC HoldCo owns beneficially and of record 100% of the limited liability company interests of each PNC SPE, in each case free and clear of all Liens, other than Permitted Encumbrances.

(c) As of the Closing Date with respect to the Regions Bank Project, (i) Seller owns beneficially and of record the Regions Bank Equity Interests, (ii) Regions Bank HoldCo owns beneficially and of record 100% of the limited liability company interests of Regions Bank Pledgor, and (iii) Regions Bank Pledgor owns beneficially and of record 100% of the limited liability company interests of (A) each Regions Bank SPE, (B) Regions Bank ESA Company and (C) Regions Bank Toyota PPA Provider, in each case free and clear of all Liens, other than Permitted Encumbrances.

(d) As of the Closing Date with respect to the Sulphur Springs Project, (i) Seller owns beneficially and of record the Sulphur Springs Equity Interests, and (ii) Sulphur Springs HoldCo owns beneficially and of record 100% of the limited liability company interests of Sulphur Springs SPE, in each case free and clear of all Liens, other than Permitted Encumbrances.

(e) As of the Closing Date with respect to the SunTrust Project, (i) Seller owns beneficially and of record the SunTrust Equity Interests, (ii) SunTrust HoldCo owns beneficially and of record 100% of the limited liability company interests of (A) SunTrust Parent, (B) SunTrust ESA Company 1 and (C) SunTrust ESA Company 2, and (iii) SunTrust Parent owns beneficially and of record 100% of the limited liability company interests of each SunTrust SPE, in each case free and clear of all Liens, other than Permitted Encumbrances.

(f) As of the Closing Date with respect to the Wells Fargo Project, (i) Seller owns beneficially and of record the Wells Fargo Equity Interests, (ii) Wells Fargo HoldCo owns beneficially and of record 100% of the limited liability company interests of (A) Wells Fargo Parent, (B) Wells Fargo ESA Company 1 and (C) Wells Fargo ESA Company 2, and (iii) Wells Fargo Parent owns beneficially and of record 100% of the limited liability company interests of each Wells Fargo SPE, in each case free and clear of all Liens, other than Permitted Encumbrances (the ownership interests described in clauses (a) through (f), collectively, the “Acquired Ownership Interests”).

4.4.2 As of any Closing Date, with respect to each Portfolio Entity part of the Individual Portfolio to which such Closing Date relates, (a) all of the Acquired Ownership Interests (i) have been duly authorized, validly issued and were not issued in violation of any Person’s preemptive or other purchase rights, (ii) are fully paid and have no requirements for the owner thereof to make additional contributions to the applicable Portfolio Entity, and (iii) are non-assessable and were issued in compliance with applicable Laws, (b) no Portfolio Entity has

issued any certificates or other instruments to evidence any Acquired Ownership Interest, except as set forth on Schedule 4.4.2 and each such original certificate or other instrument of evidence of any Acquired Ownership Interest listed on Schedule 4.4.2 was delivered to the applicable Lessor (or a collateral agent of such Lessor) as required by applicable Lease Documents, and (c) the Acquired Ownership Interests constitute one hundred percent (100%) of the Ownership Interests of each Portfolio Entity. Upon each Closing, Buyer will acquire beneficially good and valid title to the Ownership Interests of the Portfolio Entities constituting a portion of such Acquired Ownership Interests, free and clear of any and all Liens, other than Permitted Encumbrances.

4.4.3 Other than Permitted Encumbrances, no Portfolio Entity is subject to any Contracts or other arrangements with respect to voting rights or transferability, and there are no outstanding options, warrants, rights (including conversion or preemptive rights) or Contracts for the purchase or acquisition of any portion of such Portfolio Entity's Ownership Interests other than the terms of this Agreement.

4.4.4 No Project SPE (i) owns or has ever owned, of record or beneficially, or controls or has ever controlled, directly or indirectly, any Ownership Interest in any Person (or any option, warrant, security or other right convertible, exchangeable or exercisable therefor), and (ii) except as disclosed in Schedule 4.4.4, is, directly or indirectly, a participant in any joint venture, partnership, trust, association or other Person.

4.4.5 Except as described in this Section 4.4, there is no: (i) outstanding subscription, option, call, convertible note, warrant or right (whether or not currently exercisable) to acquire any shares of or interest in any securities of any Portfolio Entity; (ii) outstanding security, instrument or obligation (including any share or award of restricted stock unit, deferred stock or deferred stock unit or similar award) that is or may become convertible into or exchangeable for any securities of any Portfolio Entity; or (iii) Contract under which any Portfolio Entity is or may become obligated to sell or otherwise issue any shares of or interests in securities of any Portfolio Entity, including any promise or commitment to grant options to acquire any securities of any Portfolio Entity to an employee of or other service provider to any Portfolio Entity.

4.4.6 SunPower Corporation owns, indirectly, beneficially and of record 100% of the limited liability company interests of the Seller.

#### 4.5 Contracts; Equipment Warranties.

4.5.1 Schedule 4.5 contains a true and complete list as of the Agreement Date of all Material Contracts (including all amendments and supplements thereto and all waivers of any material rights thereunder) to which any of the Portfolio Entities is a party or to which its assets are subject. Schedule 4.5 also contains a true and complete list as of the Agreement Date of all material equipment warranties with respect to the equipment constituting the Projects, including any manufacturers warranties, equipment supplier warranties and other warranties provided by any contractor, subcontractor, module manufacturer, inverter manufacturer or manufacturer of

any energy storage systems or batteries (the “Material Equipment Warranties”); and each such Material Equipment Warranty is in full force and effect.

4.5.2 Each Material Contract is in full force and effect and is valid, binding and enforceable against each Portfolio Entity signatory thereto and, to Seller’s Knowledge, each other party thereto in accordance with its terms, subject to the Enforceability Exceptions.

4.5.3 (i) As of the Agreement Date, true, correct and complete copies of all Material Contracts (including all amendments and supplements thereto and all waivers of any material right thereunder) have been made available to Buyer and (ii) as of any Closing Date, true, correct and complete copies of all Material Contracts (including all amendments and supplements thereto and all waivers of any material right thereunder) to which any Portfolio Entity part of the Individual Portfolio to which such Closing Date relate is a party have been made available to Buyer.

4.6 Default. No Portfolio Entity nor, to Seller’s Knowledge, any other party to any Material Contract is in breach of, or in default under, any Material Contract in any material respect. (i) Except as set forth on Part A of Schedule 4.6, no event has occurred which with the passage of time or giving of notice or both would constitute such a breach or default (by any Portfolio Entity, or to Seller’s Knowledge any other party), result in a loss of material rights (by any Portfolio Entity, or to Seller’s Knowledge any other party) or permit termination, material modification or acceleration under, or result in the creation of any Lien (other than Permitted Liens) under, any Material Contract (to Seller’s Knowledge as it relates to any such right or occurrence triggered by an action of any party other than any Portfolio Entity) and (ii) on or prior to the Closing Date for the Regions Bank Project, the applicable Lessor shall have provided and the Buyer shall have received the waiver referenced in Section 3.1.3.9(e) in respect of the default disclosed on Part A of Schedule 4.6. No Portfolio Entity nor, to Seller’s Knowledge, any other party thereto is seeking to, other than as set forth on Part B of Schedule 4.6, renegotiate the terms of any Material Contract and, subject to obtaining the Seller Approvals, none of the transactions contemplated hereby give any other party to a Material Contract the right to terminate, amend or renegotiate such Material Contract or make an indemnity claim thereunder.

#### 4.7 Governmental Approvals.

4.7.1 Assuming the accuracy of the representations and warranties of Buyer set forth herein, Seller is not, and Seller will not be, required to obtain any Governmental Approval to execute, deliver or perform this Agreement or to consummate the transactions contemplated hereby other than (i) any filing, consent or approval required under the HSR Act and (ii) any Governmental Approvals that have already been obtained or made (or will be obtained or made prior to the applicable Closing Date) or are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course of business on commercially reasonable terms and conditions when needed.

4.7.2 All Governmental Approvals necessary for the ownership of the Portfolio and all material Governmental Approvals necessary for the leasing and operation of the Projects have been obtained and are held by the applicable Portfolio Entity. Each such Governmental

Approval is in full force and effect and all applicable appeal periods have expired with respect thereto. There are no proceedings pending or, to Seller's Knowledge, threatened in writing, which would reasonably be expected to result in the revocation or termination of any such Governmental Approval or the imposition of any material penalty or condition thereunder. To Seller's Knowledge, no event has occurred and is continuing that constitutes, or after notice or lapse of time or both would constitute, a material violation of or material noncompliance with any such Governmental Approval, or could reasonably be expected to result in a material modification, revocation or termination of, or any other change in, any such Governmental Approval.

4.7.3 SunPower Corporation is not, and SunPower Corporation will not be, required to obtain any consent or approval of any Person or entity which has not already been obtained in order to execute, deliver or perform this Agreement.

#### 4.8 Legal Proceedings.

4.8.1 Neither Seller nor any of its Affiliates is a party to, subject to or bound by any Contract, or any Order, which would prevent or materially and adversely affect the execution, delivery or performance of this Agreement by Seller or any other Transaction Documents by Seller.

4.8.2 There is no Action pending or threatened in which Seller has appeared or has been named or served as a party (either as a plaintiff or defendant) that would materially and adversely affect the execution, delivery or performance of this Agreement by Seller or any other Transaction Document by Seller.

4.8.3 None of Seller, nor any Portfolio Entity (a) is a party to, subject to or bound by any Contract or any Order, which would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on any Portfolio Entity or (b) is subject to or bound by any Order with respect to which any Project is subject or bound. Neither any Portfolio Entity nor any Project is subject to or bound by any Order. None of Seller, any Portfolio Entity or any of their respective Affiliates has received notice of any such Order described in this Section 4.8 entered or threatened against Seller, any Portfolio Entity, any of their respective Affiliates or any Project, as applicable.

4.8.4 (i) There is no Action (not including Tax matters, which are addressed in Section 4.17) pending or, to Seller's Knowledge, threatened in writing, in which Seller any of its Affiliates or any Portfolio Entity (x) except for the Existing Litigation, has appeared or has been named or served as a party (either as a plaintiff or defendant) or (y) as of the Closing Date, appears, is named or serves as a party, or otherwise in each case: (a) as of the Agreement Date (except for the Existing Litigation) and as of the Closing Date, involving or affecting any Portfolio Entity, the Real Property or any Project; or (b) seeking to prevent the consummation of the transactions contemplated hereby or (c) that is reasonably likely to have a Material Adverse Effect on any Portfolio Entity and (ii) none of SunPower Corporation (except for the Existing Litigation) (or any of its Affiliates), Seller or any Portfolio Entity has any material disputes with



any counterparty to a Material Contract or any subcontractor thereof in connection with any Project.

#### 4.9 Personal Property; Projects.

4.9.1 Each Portfolio Entity has good and valid title or leasehold interest or valid rights of use or access (as applicable) to all of its respective personal property assets free and clear of all Liens other than Permitted Liens.

4.9.2 (x) Each Project (i) (A) was owned by the applicable Project SPE prior to being sold, assigned or otherwise transferred to the applicable Lessor, in each case, as reflected on Schedule 4.9.2 and prior to any such sale, assignment or other transfer, and except as set forth on Schedule 4.9.2, each such Project SPE had good and marketable title to, and was the sole and exclusive owner of, all right, title and interest in, the applicable Project(s), free and clear of all Liens (other than Liens permitted pursuant to the applicable Lease Documents), (B) was sold, assigned or otherwise transferred to the applicable Lessor from the applicable Project SPE, in each case as reflected on Schedule 4.9.2 and (ii) to Seller's Knowledge, is owned by the applicable Lessor and leased by the applicable Project SPE, in each case, as reflected on Schedule 4.9.2. and (y) each Project SPE (together with any applicable Project ESA Company and/or Additional Portfolio Entity relating to the same applicable Project) has good and marketable title to, and is the sole and exclusive owner of, all right, title and interest in, the applicable Project Related Assets relating to the Project or Projects that it leases under the applicable Lease Documents, free and clear of all Liens (other than Permitted Liens).

4.9.3 As of any Closing Date, all of the respective assets (other than Intellectual Property, which is addressed in Section 4.21) of each Portfolio Entity part of the Individual Portfolio to which such Closing Date relates are in the sole possession and control of such Portfolio Entity, and, except for Permitted Encumbrances and as disclosed in Schedule 4.9.3, no Person (other than such Portfolio Entity) owns or has any interest in, or option or other right (contingent or otherwise), including a right of first refusal or a right of first offer, in or on or has any Lien on, any Project.

4.9.4 The assets owned or leased by each Portfolio Entity are all of the material assets used by the Portfolio Entities with respect to the Projects and such assets comprise all of the assets, Governmental Approvals, Contracts and rights necessary for the ownership, development, construction, interconnection, operation and maintenance of such Project(s).

4.9.5 The assets owned or leased by each Portfolio Entity are all related to the ownership, development, construction, operation and maintenance of the applicable Projects.

#### 4.10 Financial Statements; No Undisclosed Liabilities; Absence of Changes.

4.10.1 Financial Statements. The Financial Statements (a) have been prepared from the Books and Records of the applicable Portfolio Entities in accordance with GAAP (except as may be stated therein or in the notes thereto and subject to audit and year-end adjustments and the absence of footnotes) and (b) present fairly in all material respects the financial condition

and results of operations of the applicable entities as of the dates or for the periods set forth therein. Each Portfolio Entity maintains a system of internal accounting controls which are effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements, in accordance with GAAP. No Portfolio Entity (including any employee thereof) has identified or has been made aware of (i) any significant deficiency or material weakness in the system of internal accounting controls utilized by any Portfolio Entity, (ii) any fraud, whether or not material, that involves any Portfolio Entity's management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by any Portfolio Entity or (iii) any claim or allegation regarding any of the foregoing.

4.10.2 No Undisclosed Liabilities. The Portfolio Entities have no material Liabilities, except material Liabilities (a) reflected, disclosed or reserved for in the Most Recent Financial Statements, (b) which have arisen after February 28, 2019 in the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency, and in any event do not relate to breach of contract, tort or noncompliance with Law), or (c) specifically disclosed on Schedule 4.10.2. None of the Portfolio Entities has any off balance sheet liability of any nature to, or any financial interest in, any third party or entities the purpose or effect of which is to defer, postpone, reduce or otherwise avoid or adjust the recording of debt expenses incurred by such Portfolio Entity.

4.10.3 Absence of Certain Changes. Since December 31, 2017, no condition, circumstance, event or change has occurred which, individually or in the aggregate, has had, or would reasonably be expected to have, a Material Adverse Effect on any Individual Portfolio.

4.11 Insurance. Attached as Schedule 4.11 to this Agreement is a list of all insurance maintained by or otherwise providing coverage for the Portfolio Entities or the Projects (the "Company Policies"), and (a) all premiums due and payable under the Company Policies have been paid; (b) the Company Policies are in full force and effect in accordance with their terms; (c) where applicable, each of the Portfolio Entities has complied in all material respects with the provisions of the Company Policies; (d) none of the Portfolio Entities has received any written notice of any pending or threatened cancellation with respect to any of the Company Policies or of any material changes that are required in the conduct of the business as a condition to the continuation of coverage under, or renewal of, any such Company Policy; and (e) (x) no material claims have been made under the Company Policies relating to any Portfolio Entity or Project and (y) no claims have been made under the Company Policies relating to any Portfolio Entity or Project that have not been fully remediated and resolved.

#### 4.12 Environmental Matters.

(a) Each Portfolio Entity is in material compliance with applicable Environmental Laws.

(b) To Seller's Knowledge, no contamination or release of any Hazardous Material has occurred at any Real Property with respect to which any Portfolio Entity must report, monitor, or perform any remedial action under any applicable Environmental Law.

(c) There are no pending or, to Seller's Knowledge, threatened Actions under any Environmental Law that have been asserted against any of the Portfolio Entities.

(d) Copies of all material environmental investigations, studies, audits, tests, reviews, assessments, sampling analyses, and other reports prepared in relation to the Real Property and any Project located thereon, to the extent commissioned by or for the benefit of, and in the possession of Seller, any Portfolio Entity, or any of their respective Affiliates, have been made available to Buyer. Seller has made available to Buyer copies of all other material documents and records in the possession and control of Seller, any such Portfolio Entity or any of their respective Affiliates concerning any condition of the environment with respect to the Real Property.

4.13 Regulatory Status. Each Project is a QF. A QF self-certification filing has been made with respect to each Project that is larger than 1 MW in size by maximum net power production capacity, applying the method of calculation in 18 C.F.R. §292.204, all representations and information in such self-certification filings were and remain true, correct and complete in all material respects, and each such self-certification is in full force and effect. Except as set forth on Schedule 4.13, no other energy regulatory filing has been made with any Governmental Authority with respect to any Project (other than any filings made with any Power Purchaser that is a Governmental Authority pursuant to the terms of the applicable PPAs). Each Project is eligible for the exemptions from regulation as set forth in 18 C.F.R. §§ 292.601(c) (including exemption from FPA Sections 203, 205, and 206), 292.602(b) and 292.602(c). No Project Holding Company is a "public utility" as defined under Section 201 of the FPA. Each Project Holding Company is a "holding company" as defined in PUHCA solely with respect to its ownership of one or more QFs or "exempt wholesale generators", as defined in PUHCA. No Project SPE is subject to regulation under applicable Laws as a "public utility" or "public service company" (or similar designation) with respect to their rates, securities issuances or capital structure by any applicable state Governmental Authority. The purchase of the Equity Interests and the consummation of the other transactions contemplated by this Agreement and the other Transaction Documents will not cause Buyer to become subject to, or not exempt from, (i) rate regulation as a "public utility" under the Federal Power Act, (ii) regulation under the Public Utility Regulatory Policies Act of 1978 (other than as with respect to an owner or operator of a qualifying small power production facility) or (iii) regulation as an "electric utility company" or a "holding company" under the Public Utility Holding Company Act of 2005.

4.14 No Subsidiaries. No Portfolio Entity owns, directly or indirectly, any capital stock, security, partnership interest or other equity interest of any kind in any corporation, partnership, limited liability company, joint venture, association or other entity other than another Portfolio Entity.

4.15 Employee Matters. No Portfolio Entity has any employees or has ever employed any employees. No Portfolio Entity has any Liabilities with respect to any employees of Seller or any of its Affiliates or any other individuals (including independent contractors, contract workers, leased employees or temporary employees) that have performed work at or in connection with any Project or in connection with the business of any Portfolio Entity.

4.16 Brokers. None of Seller, any Affiliate of Seller, any Portfolio Entity or any of their respective officers, directors or employees has employed any broker or finder or incurred any Liability for any brokerage fees, commissions, finder's fees or other similar obligations in connection with the transactions provided for in this Agreement.

4.17 Taxes.

4.17.1 Each Project Holding Company, each Project SPE and, to Seller's Knowledge, each other Portfolio Entity (a) have filed, or caused to be filed on its behalf, all federal income Tax Returns and all other material Tax Returns required to be filed as of the date hereof (after giving effect to any extensions that have been requested by, and granted to such party by, the applicable Governmental Authority), and (b) have paid or caused to be paid on its behalf all Taxes shown as due on such Tax Returns and all other federal income Taxes and other material Taxes payable by it (other than Taxes that it is contesting in good faith and by appropriate proceedings and in respect of which appropriate reserves have been established and are maintained by the applicable taxpayer in accordance with GAAP).

4.17.2 Each Project Holding Company, each Project SPE and, to Seller's Knowledge, each other Portfolio Entity is in material compliance with all applicable Laws relating to withholding of Taxes and the payment thereof, for taxable periods or portions thereof ending on or before the applicable Closing Date, in connection with amounts owing to any employee, independent contractor, creditor, partner or similar third party related to any Project and the activities of any Portfolio Entity, and has duly and timely withheld and paid over to the appropriate Governmental Authority all amounts required to be so withheld and has materially complied with all reporting obligations with respect to such amounts.

4.17.3 Except as set forth in Part A of Schedule 4.17, there is no, and has never been any, audit, action, suit, claim, appeal, proceeding, adjustment, or special assessment, pending, proposed (formally or informally) or threatened (and Seller has not received notice in writing of any formal investigation) by or before the IRS or any other Governmental Authority with respect to liabilities for Taxes or the ITC or Cash Grant in respect of each Project Holding Company, each Project SPE and, to Seller's Knowledge, each other Portfolio Entity and each Lessor. Except as set forth in Part A of Schedule 4.17, prior to the applicable Closing Date, the Project Holding Company to which such Closing Date relates, each Project SPE that is part of the applicable Individual Portfolio and, to Seller's Knowledge, each other Portfolio Entity that is part of the applicable Individual Portfolio (i) has not executed or granted any waiver or agreed to any extension with respect to any statute of limitations on the assessment or collection of any material Tax or with respect to any material Tax Return and (ii) does not have in effect any power of attorney with respect to Taxes.

4.17.4 Except as set forth in Part A of Schedule 4.17, no Taxing Authority has asserted or, to Seller's Knowledge, threatened to assert any deficiency or assessment, or proposed (formally or informally) any adjustment, for any Taxes against any Project Holding Company that has not been fully resolved.

4.17.5 No Project Holding Company, any Project SPE or, to Seller's Knowledge, any other Portfolio Entity, is a party to any material Tax indemnification or similar agreement currently in force other than tax indemnification provisions in the Material Contracts and Lease Documents.

4.17.6 Each Portfolio Entity is and has at all times since its formation been a limited liability company and no election has been filed (on IRS Form 8832 or otherwise) with respect to any Portfolio Entity to cause such entity to be treated as an association taxable as a corporation for U.S. federal Tax purposes.

4.17.7 Seller (or if Seller is a disregarded entity, Seller's owner) is a United States person within the meaning of Section 7701(a)(30) of the Code.

4.17.8 No Project Holding Company, any Project SPE or, to Seller's Knowledge, any other Portfolio Entity is a party to, is not bound by, or has no obligation under, any allocation or sharing agreement (not including indemnity arrangements) related to Tax. No Project Holding Company, any Project SPE or, to Seller's Knowledge, any other Portfolio Entity has any liability for the Taxes of any other Person under Treasury Regulations § 1.1502-6 (or any provision of state or local law), as a transferee or successor, by contract (other than (i) a contract entered into in the ordinary course of business the primary purpose of which is not the allocation of liability for Taxes and (ii) as set forth in a "Tax Indemnity Agreement" listed on Schedule 4.5) or otherwise.

4.17.9 No Project Holding Company, any Project SPE, or to Seller's Knowledge, any other Portfolio Entity have been a party to a transaction that is a "reportable transaction", within the meaning of Treasury Regulations Section 1.6011-4(b), or any other transaction requiring disclosure under analogous provisions of United States, state or local Tax law.

4.17.10 Except as set forth in Part A of Schedule 4.17, no Project Holding Company, any Project SPE or, to Seller's Knowledge, any other Portfolio Entity has claimed the benefits of any property tax exclusion with respect to any property owned or leased by any Portfolio Entity.

4.17.11 Each Project is designed and intended to use solar resources to generate electricity within the meaning of Section 48 of the Code. Any such Project is not comprised of any property that (A) is "used predominately outside the United States" within the meaning of Code Section 168(g), (B) is "imported property" within the meaning of Code Section 168(g)(6), or (C) is "tax-exempt use property" within the meaning of Section 168(h) of the Code or "tax-exempt bond financed property" within the meaning of Section 168(g)(5) of the Code except, in the case of each of the preceding clauses (A) through (C), as a result of (i) any action of Buyer or any Affiliate of Buyer, (ii) any tax status or classification of Buyer or any Affiliate of Buyer or (iii) any event or circumstance occurring or arising after the Closing Date with respect to such Project.

4.17.12 No Project Holding Company or any Project SPE has claimed or will claim with respect to the Projects on any Tax Return any renewable energy production tax credits pursuant to Section 45 of the Code, ITC, the Cash Grant, or other Tax benefit. To Seller's

Knowledge, (a) there has been no recapture of or event that could cause the recapture of any ITC or Cash Grant with respect to any Project and (b) no facts exist that could result in any ITC Recapture Liability. No Project Holding Company, no Lessee, nor, to Seller's Knowledge, any other Portfolio Entity has taken a position on any Tax Return that the transactions between such Lessor and Lessee are anything other than "true leases" for federal income tax purposes or that such Lessor is anything other than the owner of the applicable Projects for federal income tax purposes.

4.17.13 Each Project Holding Company, each Project SPE, and to Seller's Knowledge, each other Portfolio Entity and Lessor has filed its Tax Returns consistently with the Section 467 Schedule.

4.17.14 With respect to each Project, (a) neither the Power Purchaser (or a related entity) nor the ESA Purchaser (or a related entity) operates the Project, (b) neither the Power Purchaser (or a related entity) nor the ESA Purchaser (or a related entity) bears any significant financial burden if there is nonperformance under the applicable PPA, and (c) neither the Power Purchaser (or a related entity) nor the ESA Purchaser (or a related entity) receives any financial benefit if the operating costs of the applicable Project are less than the standards of performance or operation under such PPA or ESA, as applicable.

4.17.15 Except for the Sales Tax Disclosed Obligations, each Project Holding Company and each Project SPE has paid or has caused to be paid by the applicable Closing Date any and all sales Taxes due to the applicable Governmental Authorities, including all known or estimated sales Tax liabilities set forth in the "Voluntary Disclosure Agreements" between the applicable Project SPEs and the applicable Governmental Authorities. No Sales Tax Disclosed Obligations is past due.

4.17.16 The Project Costs are true, accurate and complete.

#### 4.18 Real Property.

4.18.1 Each Portfolio Entity has a good and valid leasehold interest in or other right to locate, access, operate and use the applicable Project on the real property that is subject to applicable Site Lease Agreement (the "Real Property").

4.18.2 (i) The Site Lease Agreements have not been assigned by any Portfolio Entity nor have the premises subject thereto been subleased, in whole or in part, and (ii) to Seller's Knowledge, there are no condemnation, rezoning or taking actions pending respecting any Real Property.

4.18.3 There are no rents, royalties, fees or other material amounts incurred, payable or receivable by Seller or any Portfolio Entity in connection with any Project's site, except as set forth in the Seller's Financial Model.

4.18.4 All premiums required to be paid for the issuance or maintenance of any title policy in effect or required to be effect under any Material Contract in respect of any Project has been paid.

4.19 Affiliate Transactions. Neither Seller nor any Affiliate thereof (except for any Portfolio Entity) is a party to any Contract with any Portfolio Entity except for (i) the Contracts disclosed in Schedule 4.19, the Continuing SPWR Project Contracts and, prior to giving effect to the transactions contemplated under this Agreement on the applicable Closing Date, the other Material Contracts to which Seller or any of its Affiliates (except for any Portfolio Entities) is a party, (ii) the applicable Charter Documents and any conveyancing documents necessary to effect the intercompany transfers of Ownership Interests in the Portfolio Entities contemplated by Section 4.4.1. As of any Closing Date, no Portfolio Entity part of the applicable Individual Portfolio has outstanding Indebtedness to Seller or any Affiliate thereof .

4.20 Compliance with Laws. Except as could not reasonably be expected to have a Material Adverse Effect on any individual Project or Portfolio Entity, each of (a) Seller and any Affiliate thereof (except for any Portfolio Entity) that is party to any Material Contract and (b) each Portfolio Entity is in, and has been in compliance with all applicable Laws (including with respect to the Projects, the Real Property and its assets). None of Seller or any Portfolio Entity has received any notification from any Governmental Authority indicating (i) violation of, or non-compliance with, any applicable Law with respect to any Portfolio Entity, any Project or the Real Property or (ii) investigation with respect to any of the foregoing described in clause (i).

4.21 Intellectual Property. All Intellectual Property owned purported to be owned by the Portfolio Entities is (a) solely owned by the applicable Portfolio Entity free and clear of any Liens, other than Permitted Liens and (b) in good standing and is alienable, valid and enforceable. Each Portfolio Entity owns or licenses and possesses all right, title and interest in and to, or possesses the valid right to use, all material Intellectual Property necessary for and sufficient to accomplish the ownership, operation and maintenance of the applicable Projects for the life thereof ("Portfolio Entity IP"). Neither Seller (as it relates to any Portfolio Entity or any Project) or any Portfolio Entity has infringed or has received any notice of a claim for the infringement of the patent, trademark, copyright or other intellectual property rights of any Person, and Seller has no knowledge of any reasonable basis for any such claim. To Seller's Knowledge, no third party is infringing or misappropriating any of the Portfolio Entity IP owned by the Portfolio Entities.

4.22 Organizational Documents, Books and Records. Prior to the applicable Closing Date with respect to any Individual Portfolio, Seller has made available to Buyer true, correct and complete copies of (a) the Charter Documents of each Portfolio Entity, and (b) the Books and Records of each Individual Portfolio. The Books and Records of each Portfolio Entity have been kept and maintained in all material respects as required by applicable Law, and such records and minutes accurately reflect all transactions referred to in such records and minutes.

4.23 Solvency. No petition or notice has been presented, no Order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of SunPower Corporation, Seller or any Portfolio Entity. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of assets or the income of SunPower Corporation, Seller or any Portfolio

Entity. None of SunPower Corporation, Seller nor any Portfolio Entity has any plan or intention of filing, making or obtaining any such petition, notice, order or resolution or of seeking the appointment of a receiver, trustee, custodian or similar fiduciary.

4.24 Investment Company. No Portfolio Entity is an “investment company” or a company controlled by an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

4.25 Sole Purpose. Except as reflected on Schedule 4.25, each Project SPE was organized for the purpose of the development, construction, maintenance, ownership and leasing of the applicable Project(s). Since its formation, each Project SPE has been engaged solely in the development, construction, maintenance and ownership or leasing of the applicable Projects and has conducted no other material business, except as reflected on Schedule 4.25 and for which no liabilities arising therefrom or in connection therewith, remain in existence.

4.26 Bank Accounts, Powers of Attorney. None of Seller or any of its Affiliates shall have, from and following the Closing Date with respect to any Individual Portfolio, any outstanding powers of attorney for banking or other purposes related to any Portfolio Entity part of such Individual Portfolio or any Project part of such Individual Portfolio.

4.27 Specified Credit Support Obligations; Reserve Accounts. The Specified Credit Support Obligations are all of the Specified SPWR Recourse Obligations constituting credit support or assurance of any kind (other than pursuant to the Lease Documents) that have been provided by, on behalf of, or for the benefit of, any Portfolio Entity. The Specified Credit Support Obligations constitute all of the credit support or assurance that each Portfolio Entity is currently required by any Law (including any Governmental Approval) or Contract to provide (other than pursuant to the Lease Documents). The Specified Lease Credit Support Instruments are all of the Specified SPWR Recourse Obligations constituting credit support or assurance of any kind that have been provided by, on behalf of, or for the benefit of, any Portfolio Entity pursuant to the Lease Agreements and, Schedule 4.27 identifies each reserve account of each applicable Portfolio Entity, including the applicable account number for each such account, the required balance (if any) for such account under the applicable Lease Documents and the amount actually credited to such reserve account as of (i) one Business Day prior to the Agreement Date and (ii) February 28, 2019, and the name of the financial institution maintaining such account. Except for the (i) the following amounts credited to the following reserve accounts: (A) \$690,159.73 of Regions Completion Reserve in Wells Fargo account 77084104 and (B) \$331,933.54 of SunTrust Target Woodland Reserve in Wells Fargo account 77386900, or (ii) as permitted under Section 4.33, from and after February 28, 2019, no amounts credited to any reserve account as reflected on Schedule 4.27 as of February 28, 2019, have been or shall be released or distributed, directly or indirectly, to SunPower Corporation or any of its Affiliates.

4.28 Disclosure. Seller has made available for Buyer’s review all material information in its possession in connection with Buyer’s due diligence examination of the Portfolio Entities and the Projects. The factual information (including factual assumptions in the Seller’s Financial Model) provided by Seller to Buyer that has been prepared by Seller or its Affiliates, when taken as a whole, does not contain any materially untrue or incorrect statement of fact, or omit to state any fact



necessary to make the information, in light of the circumstances in which it was provided, not misleading as of the date provided. Any projections or forward-looking statements made by Seller or its Affiliates in the Seller's Financial Model (i) are based on assumptions that are reasonable at the time when made as to all relevant legal and factual matters, and (ii) have been prepared in good faith. Except as identified in Annex 1, the Seller's Financial Model does not contain any mathematical errors. For clarity but without otherwise limiting the representations and warranties set forth herein or in any Transaction Document (including the representations and warranties set forth in this Section 4.28), Seller is providing the Asset Register at Buyer's request to assist with Buyer's diligence investigation of the Portfolio, but neither Seller nor SunPower Corporation makes any representation or warranty as to the accuracy of the information set forth in the Asset Register, provided, that, for the avoidance of doubt, this disclaimer regarding the Asset Register does not apply to any information that is set forth in the Asset Register but that Seller or SunPower Corporation or any of their Affiliates has otherwise made available for Buyer in connection with Buyer's due diligence examination of the Portfolio Entities and the Projects.

**4.29 Illegal Payments.** None of Seller, any Portfolio Entity, any of their respective subsidiaries or any officer, manager, employee or agent of either Seller or any Portfolio Entity or (to Seller's Knowledge) any of their respective Affiliates, has ever (a) violated the U.S. Foreign Corrupt Practices Act (15 U.S.C. §§ 78 dd-1, et seq.), the UK Bribery Act of 2010, or any similar applicable anti-corruption laws and regulations (collectively, the "Anti-Corruption Laws"); (b) offered, made or received on behalf of Seller or any Portfolio Entity or any of their respective subsidiaries any payment or contribution of any kind, directly or indirectly, including payments, gifts or gratuities (or promises thereof) of any money or anything of value, to (i) any public official in violation of any Anti-Corruption Law or otherwise illegally to any person, (ii) any public official for the purpose of influencing any official act or decision of such official or inducing him or her to use his or her influence to affect any act or decision of a governmental authority, or (iii) any political party or official thereof or candidate for political office for the purpose of influencing any official act or decision of such party, official or candidate or inducing such party, official or candidate to use his, her or its influence to affect any act or decision of a governmental authority, in the case of both (ii) and (iii) above in order to assist Seller, any Portfolio Entity or any of their respective Affiliates to obtain or retain business for, or direct business to, Seller, the any Portfolio Entity or any of their respective Affiliates, as applicable (in each case as it relates to the Projects); (c) established or maintained any unrecorded fund or asset for any purpose or made any false entries on the Books and Records of Seller or any Portfolio Entity or any of their respective subsidiaries for any reason; (d) paid or delivered any fee, commission or any other sum of money or item of property, however characterized, to any finder, agent, government official or other party, in the United States or any other country, which in any manner relates to the assets of Seller or any Portfolio Entity or any of their respective subsidiaries, the business or operations of Seller or any Portfolio Entity or any of their respective subsidiaries which was illegal under any Laws of the United States or any other country having jurisdiction; or (d) made, requested, accepted, or retained any bribe, rebate, payoff, influence payment, kickback or other unlawful payment of funds in violation of any law, rule or regulation, including Anti-Corruption Laws. There have never been any known or alleged violations, enforcement actions, penalties or threats of penalty, whistleblower reports, governmental investigations or audits, voluntary disclosures to a government agency, or threatened or pending litigation relating to Anti-Corruption Laws, involving Seller, any Portfolio Entity or (to Seller's

Knowledge) any of their respective Affiliates, or (to Seller's Knowledge) any employee or agent acting on behalf of Seller, any Portfolio Entity or any of their respective Affiliates. Seller, each Portfolio Entity and each of their respective subsidiaries have been subject to and currently maintain an anti-corruption compliance program designed to detect and prevent violations of Anti-Corruption Laws.

#### 4.30 Export Control Compliance.

4.30.1 Except as specifically authorized by a governmental license, license exception, or other permit or applicable authorization of a Governmental Authority, neither Seller nor any Portfolio Entity nor any of their respective subsidiaries has:

4.30.1.1 exported, re-exported, transferred, or brokered the sale of any goods, services, technology, or technical data to or from, or entered into any transaction or had any dealing with, any person or entity for whom a license or other authorization is required under the U.S. Export Administration Regulations (the "EAR," 15 C.F.R. § 730 *et seq.*), the International Traffic in Arms Regulations (the "ITAR," 22 C.F.R. § 120 *et seq.*), or the U.S. economic sanctions administered by the Office of Foreign Assets Control ("OFAC," 31 C.F.R. Part 500 *et seq.*), or entered into any transaction prohibited by such laws;

4.30.1.2 exported, re-exported, or transferred any goods, services, technology, or technical data to, on behalf of, or for the benefit of, or had any transaction or dealing with, any person or entity who, at the time such transaction or dealing occurred, was (A) on the Specially Designated Nationals List of OFAC, (B) on the Denied Persons, Entity, or Unverified Lists of the Bureau of Industry and Security, or (C) on the Debarred List of the Directorate of Defense Trade Controls (if applicable);

4.30.1.3 entered into any transaction prohibited by or sanctionable under the Iran Threat Reduction and Syria Human Rights Act of 2012; Executive Order 13628; the National Defense Authorization Act for Fiscal Year 2013, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010; the Iran Sanctions Act of 1996 (as amended); the Iranian Transactions And Sanctions Regulations, 31 C.F.R. Part 560, or any other United States law, order, or regulation pertaining to Iran;

4.30.1.4 exported any goods, services, technology, or technical data that have been or will be used for any purposes associated with nuclear activities, missiles, chemical or biological weapons, or terrorist activities; or

4.30.1.5 exported, re-exported, transferred, or imported any goods, services, technology, or technical data to or from, or entered into any transaction or had any dealing with a person or entity in, Cuba, Iran, Libya, North Korea, Sudan, or Syria during a time at which such country and/or its government was subject to a U.S. trade embargoes under OFAC regulations, the EAR, or any other applicable statute or Executive Order.

4.30.2 Seller and each Portfolio Entity have in place controls to ensure compliance with any Laws pertaining the export and import of goods, services, and technology, including the EAR, the ITAR, the U.S. economic sanctions administered by OFAC.

4.30.3 Neither Seller nor any Portfolio Entity nor any of their respective subsidiaries has undergone or is undergoing any audit, review, inspection, investigation, survey or examination by a governmental authority relating to export, import, or other trade-related activity.

4.31 Power Purchasers' Purchase Options. As of the Agreement Date, to Seller's Knowledge, no power purchaser with respect to any photovoltaic solar project subject to a sale-leaseback transaction involving SunPower Corporation or any of its Affiliates has (a) exercised an early purchase option with respect to any such project under any power purchase agreement to which it is a party or (b) terminated any such power purchase agreement for convenience.

4.32 No Expected Curtailment. Except as provided in Schedule 4.32, none of Seller or any Portfolio Entity has received any communication from any counterparty to a Material Contract (whether verbal or written) of such counterparty's intent to curtail generation at any Project.

4.33 No Distributions. As of any Closing Date, since February 28, 2019, no Portfolio Entity part of the Individual Portfolio to which such Closing Date relates has declared, set aside or paid any dividends or made any other distributions (whether in cash or in kind) to SunPower Corporation, Seller or any Affiliates thereof with respect to the Ownership Interests of any such Portfolio Entity other than (a) with respect to the Closing Date with respect to the PNC Project, any distributions (if any) required to be made by BNB Bloomfield Solar LLC (or that SunPower Systems is required to cause BNB Bloomfield Solar LLC to make) pursuant to the Development Agreement, dated as of July 30, 2014, by and among BNB Campbell Renewables LLC, SunPower Systems and BNB Bloomfield Solar LLC, (b) with respect to the Closing Date with respect to the PNC Project, any transfers to SunPower Corporation or any Affiliates thereof pursuant to Section 12(d) of any Master Lease Agreement (as defined in the Lease Documents with respect to the PNC Project) to which any of the PNC SPEs is a party in an amount not to exceed, in the aggregate for the PNC Project, \$8,870 per month since February 28, 2019, and (c) with respect to the Closing Date with respect to the MetLife Project, any transfers to SunPower Corporation or any Affiliates thereof pursuant to clause *sixth* of Section 6.1(a) of the Depositary Agreement (as defined in the Lease Documents with respect to the MetLife Project) in an amount not to exceed, in the aggregate for the MetLife Project, \$7,500 per month since February 28, 2019, in each case of clauses (b) and (c) to compensate SunPower Corporation or such Affiliate, as applicable, for the performance by SunPower Corporation or such Affiliate, as applicable, of asset management services in order to satisfy the applicable Project SPE's asset management related obligations under the Lease Documents to which such Project SPE is a party.

4.34 Officers and Managers. As of the Closing Date, all of the managers and officers of the Portfolio Entities that are part of such Individual Portfolio shall have resigned and all such managers and officers are listed on Schedule 4.34.

4.35 Bank Accounts. Schedule 4.35 identifies each bank account of each applicable Portfolio Entity, including the applicable account number for each such account, the required balance (if any)

for such account under the applicable Lease Documents and the amount actually credited to such account as of (i) one Business Day prior to the Agreement Date and (ii) February 28, 2019, and the name of the financial institution maintaining such account. Except for the (i) the following amounts credited to the following bank accounts: (A) \$690,159.73 of Regions Completion Reserve in Wells Fargo account 77084104 and (B) \$331,933.54 of SunTrust Target Woodland Reserve in Wells Fargo account 77386900, or (ii) as permitted under Section 4.33, from and after February 28, 2019, no amounts credited to any bank account as reflected on Schedule 4.35 as of February 28, 2019, have been or shall be released or distributed, directly or indirectly, to SunPower Corporation or any of its Affiliates.

## **ARTICLE 5 REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS OF BUYER**

Buyer hereby represents and warrants to Seller as follows as of the Agreement Date and each Closing Date:

5.1 Organization and Status. Buyer is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization and is qualified to do business in the jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify would materially adversely affect the ability of Buyer to perform any of its obligations under this Agreement or to consummate the transactions contemplated hereby.

5.2 Authority and Power. Buyer has the requisite corporate or other organizational power and authority to enter into this Agreement, consummate each of the transactions contemplated hereby, and perform all the terms and conditions thereof to be performed by it. The execution, delivery and performance of this Agreement and the consummation of each of the transactions contemplated hereby have been duly authorized by all requisite corporate or other organizational action on the part of Buyer under its Charter Documents.

5.3 Valid and Binding Obligations. This Agreement has been duly and validly executed and delivered by Buyer and is enforceable against Buyer in accordance with the terms hereof, except as may be limited or denied by the Enforceability Exceptions.

5.4 Approvals and Consents. Assuming the accuracy of the representations and warranties of Seller set forth herein, Buyer is not, and Buyer will not be, required to obtain any Governmental Approval to execute, deliver or perform this Agreement or to consummate the transactions contemplated hereby other than (i) any filing, consent or approval required under the HSR Act and (ii) any Governmental Approvals that have already been obtained or made (or will be obtained or made prior to the applicable Closing Date) or are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course of business on commercially reasonable terms and conditions when needed.

5.5 Financing. Buyer has, as of the Agreement Date, and will have at each Closing, funds sufficient to (a) pay the applicable Purchase Price, (b) pay any and all fees and expenses required to be paid by Buyer and its Affiliates in connection with the transactions contemplated by this Agreement and (c) consummate the transactions contemplated by this Agreement and perform Buyer's obligations

hereunder. In no event shall the receipt or availability of any other funds or financing by Buyer or any Affiliate or any other transactions be a condition to any of Buyer's obligations hereunder.

5.6 No Violations. The execution, delivery and performance by Buyer of this Agreement does not and will not, and the consummation of the transactions contemplated hereby will not (a) violate the Charter Documents of Buyer, (b) violate or constitute a default (or any event that, with or without due notice or lapse of time, or both, would constitute a default) under, any Contract to which Buyer is a party or by which any of Buyer's properties or assets are bound that, in any case, would materially affect the ability of Buyer to perform its obligations under this Agreement or (c) violate any applicable Law that, in any case, would materially adversely affect the ability of Buyer to perform its obligations under this Agreement.

5.7 No Litigation. There are no Actions pending or, to Buyer's Knowledge, threatened against Buyer that would reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

5.8 Solvency. Immediately after giving effect to the transactions contemplated by this Agreement, Buyer will be solvent and will (a) be able to pay its debts as they become due, (b) own property that has a fair salable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities and obligations) and (c) have adequate capital to carry on its business. Buyer acknowledges that, in connection with the transactions contemplated by this Agreement, (i) no transfer of property is being made and no obligation is being incurred with the intent to hinder, delay or defraud either present or future creditors of Buyer or Seller and (ii) Buyer has not incurred, and does not plan to incur, debts beyond its ability to pay as they become absolute and matured.

5.9 Securities Law Matters. Buyer hereby acknowledges that the Equity Interests have not been registered under the Securities Act, or registered or qualified for sale under any state securities laws, and cannot be resold without registration thereunder or exemption therefrom, to the extent such Laws are applicable. Buyer is an "accredited investor," as such term is defined in Regulation D of the Securities Act, and will acquire the Equity Interests for its own account and not with a view to a sale or distribution thereof in violation of the Securities Act, and the rules and regulations thereunder, any applicable state "blue sky" laws or any other applicable securities laws. Buyer has (alone or together with its advisors) sufficient knowledge and experience in financial and business matters to enable it to evaluate the risks of investment in the Equity Interests and at each Closing will have the ability to bear the economic risk of this investment. Buyer acknowledges that it has been afforded an opportunity to request and to review all information considered by Buyer to be necessary to make the investment decision to enter into this Agreement and to consummate the transactions contemplated hereby. Buyer has made its own independent inquiry and investigation into, and based thereon has formed an independent judgment concerning, the decision to enter into this Agreement and to consummate the transactions contemplated hereby.

5.10 Experienced and Knowledgeable Investor. Buyer has sufficient knowledge and experience to evaluate the Portfolio Entities, the business of the Portfolio Entities, and the technical, commercial, financial and other risks associated with acquiring the Equity Interests .

5.11 Brokers. None of Buyer, any Affiliate of Buyer or any of their respective officers, directors or employees has employed any broker or finder or incurred any Liability for any brokerage fees, commissions, finder's fees or other similar obligations in connection with the transactions provided for in this Agreement.

5.12 Tax and Regulatory Matters.

5.12.1 Buyer (or if Buyer is a disregarded entity, Buyer's owner) is a United States person within the meaning of Section 7701(a)(30) of the Code.

5.12.2 Buyer is not a Disqualified Person.

5.12.3 Buyer is a C corporation or a Pass-Through Entity or, as of each Closing Date, will be a C corporation or a Pass-Through Entity. If Buyer is a Pass-Through Entity, as of each Closing Date, each direct beneficial owner shall be a Permitted Investor.

5.12.4 Buyer's ownership of the Equity Interests following each Closing will not cause (a) any Project Holding Company to be a Disqualified Person or (b) cause any assets of the Acquired Portfolio to be treated wholly or partly as subject to alternative depreciation under Section 168(g) of the Code or to be "tax-exempt use property" within the meaning of Section 168(h) of the Code, as a result of Buyer's or its owners' status for federal income tax purposes.

5.13 ERISA. Buyer is not acquiring the Equity Interests with the "plan assets" of a "benefit plan investor" as such terms are defined by Section 3(42) of ERISA.

5.14 OFAC. Neither Buyer nor any of its Affiliates nor, to Buyer's knowledge, any other Person holding any direct or indirect interest in Buyer is a person or entity with whom United States persons or entities are restricted from doing business under regulations of OFAC (including those named on the Specially Designated Nationals List of OFAC) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action. Buyer will not assign or otherwise transfer this Agreement to such persons or entities. Buyer is subject to policies and procedures designed to comply with the sanctions regulations administered by OFAC.

5.15 No Further Representations. Except for the representations and warranties expressly made in Article 4, as a material inducement to the execution and delivery of this Agreement and the performance by Seller of its duties and obligations hereunder, Buyer hereby acknowledges, represents, warrants and agrees to and with Seller that Seller is not making and has not made any other warranty or representation relating to Seller, the Equity Interests, the other Acquired Ownership Interests, the Portfolio Entities, the Projects or the transactions contemplated by this Agreement (including with respect to the validity or accuracy of the materials, documents or other data made available by or on behalf of Seller to Buyer, the physical condition, potential use or any other aspect of all or any part of any Project and the MERCHANTABILITY, usage, suitability or FITNESS FOR ANY PARTICULAR PURPOSE with respect to the Portfolio Entities, the Projects, or any part thereof) as an inducement to Buyer to enter into this Agreement and to purchase the Equity Interests,

or for any other purpose. In connection with Buyer's investigation of the Portfolio Entities and their respective businesses, assets, condition (financial or otherwise), and results of operations, Buyer has received from Seller, the Portfolio Entities and their respective Affiliates, Representatives, advisors and agents certain projections, forecasts and other forward looking information, including projected financial statements, cash flow items, business plans and other data related to the Portfolio Entities, their business, assets and condition (financial or otherwise) and their prospects. Buyer acknowledges that there are uncertainties inherent in attempting to make such projections, forecasts and plans. Accordingly, Buyer acknowledges that no assurances or representations can be given that the actual results of the operations of the Portfolio Entities will conform to the projected results for any period; provided, that the foregoing shall not limit Buyer's right to rely on the express representations and warranties contained herein and in any other Transaction Document, including the representations set forth in Section 4.28.

## **ARTICLE 6 COVENANTS**

### **6.1 Covenants of the Parties.**

6.1.1 Consummation of Transactions and Obtaining Approvals. Each Party shall (a) diligently and in good faith use reasonable best efforts to cause the Closing conditions set forth in Section 3.1 with respect to each Individual Portfolio to be satisfied by such Party as promptly as is reasonably practicable, and (b) coordinate and cooperate with the other Party in providing such information and supplying any assistance reasonably requested by such other Party in connection with the foregoing. Each Party will provide prompt notification to each other Party when any such consents, orders, approvals or filings referred to in Section 6.1.1 is obtained, taken, made, given or denied, as applicable, and will advise each other Party of any material communications with any Governmental Authority or other Person regarding any of the transactions contemplated herein. In furtherance of the foregoing, the Parties will request expedited treatment of any such filings, will promptly furnish each other with copies of any notices, correspondence or other written communication from the relevant Governmental Authority, will promptly make any appropriate or necessary subsequent or supplemental filings and will promptly cooperate in the preparation of such filings as is reasonably necessary and appropriate. Each Party has the right to review in advance a copy of, and all information related to Seller, any Portfolio Entity or Buyer, as applicable, and the transactions contemplated herein with respect to, any filing with any Governmental Authority made by any other Party in connection with the transactions contemplated herein. Each Party will promptly furnish to the other Party copies of any notices or written communications received by such Party or any of its Affiliates from any Governmental Authority concerning the transactions contemplated herein, and each Party will permit counsel to the other Party an opportunity to review in advance, and such Party will consider in good faith the views of, or changes proposed by, such counsel in connection with, any proposed filing or other communications by such Party and/or its Affiliates to any Governmental Authority concerning the transactions contemplated herein; provided, that the Parties shall have the joint right to approve in advance any filing or other communication that must be submitted jointly by Seller and Buyer. Each Party will provide the other Party and their counsel the opportunity, on reasonable advance notice, to participate in any substantive

meetings or discussions, either in person or by telephone, between such Party and/or any of its Affiliates or Representatives, on the one hand, and any Governmental Authority, on the other hand, concerning the transactions contemplated herein. Buyer shall be responsible for and shall pay all filing fees and other charges incurred in connection with any HSR Act filing with the Federal Trade Commission and the Antitrust Division of the Department of Justice made pursuant to this Section 6.1. Seller shall not be required to pay any amount or to cause any Portfolio Entity to pay any amount in connection with any HSR Act filing with the Federal Trade Commission and the Antitrust Division of the Department of Justice made pursuant to this Section 6.1.

## 6.2 Covenants of Seller.

6.2.1 Pre-Closing Period Actions. Prior to the Closing Date with respect to any Individual Portfolio:

6.2.1.1 Seller shall and shall cause each Portfolio Entity part of such Individual Portfolio to conduct its business in the ordinary course of business, consistent with past practice in all material respects.

6.2.1.2 Seller shall promptly notify Buyer of any default under any Material Contract or violation of any Governmental Approval of any Portfolio Entity part of such Individual Portfolio of which it becomes aware, except for any defaults or violations that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on any individual Project or Portfolio Entity.

6.2.1.3 Seller shall use commercially reasonable efforts to (and Buyer shall, to the extent applicable, reasonably cooperate with Seller to) obtain, or assist in obtaining, all consents, approvals, transfers, permissions, waivers, orders, reissuance and authorizations of (and make all necessary filings or registrations with) all Governmental Authorities and other third parties that are required to be obtained or made by them in connection with the consummation of the transactions contemplated by this Agreement.

6.2.1.4 Seller shall maintain insurance consistent with the policies listed on Schedule 4.11.

6.2.1.5 Seller shall not cause or permit any Portfolio Entity part of such Individual Portfolio to take any of the following actions without the prior written consent of Buyer:

- (a) enter into, amend or modify in any material respect, assign, or terminate any Material Contract;
- (b) amend or modify in any material respect, or terminate any Lease Document;
- (c) sell, lease, license, assign or transfer (including transfers to Seller or any of its Affiliates) any assets or a Project part of such Individual Portfolio or assets of any such Portfolio Entity;



- (d) make any material change in the accounting methods used by Seller for the Portfolio Entities, except as required by GAAP;
- (e) merge or consolidate with any other entity, undertake any recapitalization, adopt any plan of dissolution or liquidation, make any voluntary bankruptcy or insolvency filing (or consent to any such involuntary filing) or reorganization, or not maintain its existence as a limited liability company;
- (f) incur or assume any Indebtedness other than that which is satisfied and released in full prior to the applicable Closing;
- (g) redeem or repurchase, directly or indirectly, any Ownership Interests of a Portfolio Entity or declare, set aside or pay any dividends or make any other distributions (whether in cash or in kind) with respect to the Ownership Interests of any such Portfolio Entity;
- (h) issue, sell, pledge or transfer any Ownership Interests of any such Portfolio Entity or enter into any agreement for the sale, voting, registration or repurchase of any Ownership Interests of any such Portfolio Entity (including any securities convertible into or exchangeable for, or options with respect to, or warrants to purchase or rights to subscribe for, any such Ownership Interests);
- (i) voluntarily incur, create or assume any Lien other than Permitted Liens;
- (j) make or change any material Tax election, file any material amended Tax Return, enter into any closing agreement, settle any material Tax claim or assessment relating to a Portfolio Entity, surrender any right to claim a refund of material Taxes, or consent to any extension or waiver of the limitation period applicable to any material Tax claim or assessment relating to any such Portfolio Entity;
- (k) release, waive, settle or compromise any dispute for amounts over \$100,000 or that would restrict the business in any material respect, except for the TPI Current Liability and Sales Tax Disclosed Obligations to the extent settled or compromised, as applicable, in amounts not in excess of the applicable amounts corresponding to such liabilities and obligations as set forth on Schedule 4.17;
- (l) hire any employees;
- (m) enter into any transaction or Contract with Seller or any of its Affiliates other than as contemplated by Section 4.4.1;
- (n) amend the Charter Documents of any such Portfolio Entity, except for ministerial amendments; or
- (o) commit or agree to do any of the foregoing.

6.2.1.6 Seller shall not, and shall not cause or permit any Portfolio Entity to, consider, solicit, negotiate or discuss with any other Person any transaction in connection with, or alternative to, the transactions contemplated by this Agreement, or provide any Person who might be a prospective purchaser with any confidential information about the Projects or the transactions contemplated by this Agreement. Seller shall, and shall cause each Portfolio Entity to, (A) deal exclusively with Buyer with respect to the transactions contemplated by this Agreement, and (b) promptly notify Buyer of any proposals by third-parties with respect to such transaction and furnish Buyer with the material terms thereof.

6.2.1.7 Seller shall, and shall cause each Portfolio Entity part of the applicable Individual Portfolio to, deliver to Buyer copies of bank statements with respect to each reserve account set forth in Schedule 4.27.

6.2.2 Notification of Litigation. Prior to each Closing Date, Seller shall promptly notify Buyer (in writing promptly after Seller has notice thereof), and Buyer shall promptly notify Seller (in writing promptly after Buyer has notice thereof), and keep such other Party advised, as to any Action pending and known to such Party or, to Buyer's knowledge or Seller's Knowledge, as applicable, threatened against such Party that challenges the transactions contemplated hereby.

6.2.3 Pre-Closing Access to Information; Confidentiality. Seller shall, prior to the Closing Date with respect to each Individual Portfolio, furnish or cause to be furnished to Buyer and its Representatives, at reasonable times and upon reasonable notice, (a) such access, during normal business hours, to the Projects part of such Individual Portfolio as Buyer reasonably requests; provided, however, that Buyer shall not be entitled to perform any invasive or destructive environmental or other testing or sampling at such Projects and (b) such access to the books, records and other information of the Portfolio Entities part of such Individual Portfolio as Buyer reasonably requests, but, in each case, only to the extent that such access does not unreasonably interfere with the business and operations of such Portfolio Entities; provided, however, that (i) Seller shall have the right to have a Representative present and impose reasonable restrictions and requirements for safety purposes and (ii) Seller shall not be required to provide access to any information that is subject to attorney-client privilege to the extent doing so would cause such privilege to be waived, prohibited by applicable Law or subject to contractual prohibitions against disclosure to the extent doing so would violate such prohibition; provided, further, that notwithstanding anything to the contrary contained herein, neither Seller nor its Affiliates shall be required to disclose to Buyer or any of its Representatives (x) any consolidated, combined, affiliated or unitary Tax return which includes Seller or any of its Affiliates or any Tax-related work papers, except, in each case, for materials or portions thereof that relate solely to any Portfolio Entities or (y) any information related to Seller's or its Affiliates' profit margins, earnings or yield related to development or sale of such Projects.

6.2.4 Post-Closing Period Actions. Upon the reasonable request of Buyer or any of its Affiliates, Seller shall use commercially reasonable efforts to deliver to Buyer or any of its Affiliates (to the extent not previously provided to Buyer):

6.2.4.1 with respect to each Individual Portfolio, all items listed in Part I of Schedule 6.2.4, to the extent available, as soon as can reasonably be provided, but no later than twenty (20) days after the later of (i) the Closing Date for such Individual Portfolio and (ii) such request by Buyer;

6.2.4.2 with respect to each Individual Portfolio, all items listed in Part II of Schedule 6.2.4, to the extent available, as soon as can reasonably be provided, but no later than sixty (60) days after the later of (x) the Closing Date for such Individual Portfolio and (y) such request by Buyer; and

6.2.4.3 as soon as can reasonably be provided, any historical claim information relating to the Company Policies (solely to the extent such information relates to any Portfolio Entity or Project) and any Portfolio Entity or Project, including, if necessary by working collaboratively with Buyer and its Representatives (including Buyer's insurance broker), to provide such information to Buyer or any of its Affiliates, as applicable.

6.3 Publicity. No press release or public announcement related to this Agreement or the transactions contemplated hereby, or other announcements to the customers or suppliers of any Portfolio Entity, shall be issued or made without the joint approval of Seller and Buyer, unless required by applicable Law (in the reasonable opinion of counsel), in which case Seller and Buyer shall have the right to review such press release or announcement prior to publication. Upon prior written notice to Seller, Buyer may respond to any public release or announcement made by a third party concerning this Agreement or the transactions contemplated hereby to the extent necessary to correct or clarify any information provided in such release or announcement and following the last Closing under this Agreement, Buyer shall be permitted to make public releases and announcements regarding this Agreement and the transactions contemplated hereby.

6.4 Transfer Taxes. Seller and Buyer each shall be responsible for the timely payment of, and shall indemnify and hold harmless the other party from and against, fifty percent (50%) of all sales, use, transfer, goods and services, real property transfer, value added, recording, gains, documentary, stock transfer, stamp duty, excise, gross receipts and other similar taxes, duties, fees and charges including for the avoidance of doubt, all associated preparation and filing costs, penalties and interest ("Transfer Taxes"), if any, arising out of or in connection with the purchase of the Equity Interests. Buyer shall prepare and timely file all Tax Returns or other documentation relating to such Transfer Taxes; provided, however, that to the extent required by applicable Law, Seller will join in the execution of any such Tax Returns or other documents relating to such Transfer Taxes. Buyer shall provide Seller with copies of each such Tax Return or other document at least 30 days prior to the date on which such Tax Return or other document is required to be filed.

6.5 Retention of Books and Records. Buyer shall cause the Portfolio Entities part of any Individual Portfolio to retain, until all applicable Tax statutes of limitations (including periods of waiver and extension) have expired, all Books and Records in existence on the Closing Date with respect to such Individual Portfolio that are required to be retained under current retention policies and to make the same available after such Closing Date for inspection and copying by Seller or its Representatives at Seller's expense, during regular business hours and upon reasonable request and upon reasonable advance notice. After the expiration of such period, no such Books and Records

shall be destroyed by Buyer without first advising Seller in writing detailing the contents thereof and giving Seller at least 120 days to obtain possession thereof. Seller agrees that such records will be kept confidential and used only as contemplated herein or as otherwise agreed by the Parties.

6.6 Signage Rights. Buyer agrees, to the maximum extent permitted under the applicable Site Lease Agreements, any other applicable Material Contracts and under applicable Law, after the Closing with respect to any Individual Portfolio, to consider, in Buyer's reasonably discretion, any request by Seller (or its Affiliates) (a) to access the Projects part of such Individual Portfolio with guests for promotional purposes, including the taking photographs, during normal business hours and at other times as are acceptable to the applicable Project Holding Company in its reasonable business judgment; and (b) to place a SunPower logo at the site of any such Project. Before undertaking any action requested by Seller pursuant to the immediately preceding sentence, Seller must receive Buyer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Buyer may also, in its sole discretion (acting reasonably), at any time rescind any access or signage rights granted to Buyer pursuant to this Section 6.6.

6.7 Taxes and Tax Returns. Except as provided in Section 6.4 relating to Transfer Taxes:

6.7.1 With respect to any Tax Return covering a Pre-Closing Taxable Period that is required to be filed with respect to any Portfolio Entity part of any Individual Portfolio after the Closing Date with respect to such Individual Portfolio, (a) Seller shall cause such Tax Return to be prepared in a manner consistent with practices followed in prior taxable periods except where otherwise required by applicable Law and shall deliver such Tax Return as so prepared to Buyer not later than thirty (30) days prior to the due date (including extensions) for filing such Tax Return for Buyer's review and comment, (b) Seller shall cooperate and consult with Buyer to finalize such Tax Return, and (c) thereafter, Seller shall cause such Tax Return to be executed and duly and timely filed with the appropriate Taxing Authority and Seller shall pay all Taxes shown as due and payable on such Tax Return.

6.7.2 With respect to any Tax Return covering a Straddle Taxable Period that is required to be filed with respect to any Portfolio Entity part of any Individual Portfolio after the Closing Date with respect to such Individual Portfolio, (a) Buyer shall cause such Tax Return to be prepared in a manner consistent with practices followed in prior taxable periods except where otherwise required by applicable Law or any Material Contract and shall deliver a draft of such Tax Return to Seller for its review and approval at least thirty (30) days prior to the due date (including extensions) for filing such Tax Return, (b) Seller and Buyer shall cooperate and consult with each other in order to finalize such Tax Return, and (c) thereafter, Buyer shall cause such Tax Return to be executed and duly and timely filed with the appropriate Taxing Authority and each Party shall pay its respective portion of the Taxes shown as due and payable on such Tax Return.

6.7.3 The Parties shall determine the Tax attributable to the portion of the Straddle Taxable Period that ends on and includes the Closing Date with respect to any Individual Portfolio by an interim closing of the books of any Portfolio Entity part of such Individual Portfolio as of the end of the day on such Closing Date, except for real property, personal property and similar ad valorem Taxes of any such Portfolio Entity which shall be prorated on a daily basis to such

Closing Date. In determining whether a property Tax or similar ad valorem Tax is attributable to the portion of the Straddle Taxable Period that ends on and includes such Closing Date, any such Tax that is based on the assessed value of any assets, property or other rights as of any lien date or other specified valuation date shall be deemed a Tax attributable to the taxable period (whether a fiscal year or other tax year) specified on the relevant Tax bill that is issued with respect to that lien date or other valuation date.

6.7.4 To the extent Buyer receives cash therefor (or Buyer's cash liability for Taxes is reduced) or such items are transferrable to Seller, Seller shall be entitled to all refunds or credits of any Tax with respect to any Portfolio Entity that is attributable to a Pre-Closing Taxable Period or to that portion of a Straddle Taxable Period that ends on the applicable Closing Date that has been filed for or received within twelve (12) months after such Closing Date. Within ten (10) Business Days after Buyer or any Acquired Portfolio Entity receives or is capable of transferring such refund or credit, Buyer shall pay or transfer such amounts (together with any interest received or credited thereon, net of any costs incurred by Buyer that would not have been incurred by Buyer but for Buyer's actions to seek such refund or credit in accordance with its obligations in this Section 6.7.4) to Seller.

## 6.8 Tax Indemnification.

6.8.1 Notwithstanding any other provisions of this Agreement, Seller shall indemnify, defend and hold Buyer harmless and be solely responsible for, and shall promptly pay when due all Taxes levied on any Acquired Portfolio Entity or Taxes levied on Buyer (or its direct or indirect members) as a result of purchasing an interest in any Acquired Portfolio Entity, in each case, attributable to a Pre-Closing Taxable Period or the portion of the Straddle Taxable Period that ends on and includes the applicable Closing Date. Except to the extent related to the breach of a representation, warranty, or covenant of Seller or any of its Affiliates, notwithstanding any other provision of this Agreement, Buyer shall indemnify, defend and hold Seller harmless and be solely responsible for, and shall promptly pay when due all Taxes of any Acquired Portfolio Entity that are levied on Seller (or its direct or indirect members) and that are attributable to a taxable period beginning after the applicable Closing Date and that portion of any Straddle Taxable Period beginning after the applicable Closing Date.

6.8.2 Buyer shall (and shall cause any Acquired Portfolio Entity) to give written notice to Seller of its receipt of any notice of any audit, examination, claim or assessment for any Tax for which Seller is responsible within forty-five (45) days after its receipt of such notice; failure to give any such written notice within such forty-five (45) day period shall limit Buyer's right to indemnification pursuant to this Agreement with respect to such Tax to the extent such Seller is actually prejudiced by such failure. With respect to any Tax (or portion thereof) for which Seller has acknowledged in writing that Buyer is entitled to indemnification pursuant to this Agreement, to the extent such Tax is, in Buyer's reasonable discretion, fully severable from Buyer's unrelated Taxes, Seller shall have the right, at its sole cost and expense, to control (in the case of a Pre-Closing Taxable Period) or participate in (in the case of a Straddle Taxable Period) the prosecution, settlement or compromise of any proceeding involving such Tax, including the determination of the value of property for purposes of real and personal property

ad valorem Taxes. Buyer shall (and shall cause any Acquired Portfolio Entity to) take such action in connection with any such proceeding as Seller shall reasonably request from time to time to implement the preceding sentence, including the selection of counsel and experts and the execution of powers of attorney. Buyer shall keep Seller reasonably informed regarding the progress and substantive aspects of any such Straddle Taxable Period claim and Seller's participation rights with respect to such claim shall include participating on calls, attending meetings and the right to comment on any correspondence with respect to such Straddle Taxable Period claim. Notwithstanding the foregoing, if Seller is entitled to control (in the case of a Pre-Closing Taxable Period) or participate in (in the case of a Straddle Taxable Period) the prosecution, settlement or compromise of any proceeding, Seller shall keep Buyer reasonably informed regarding the progress and substantive aspects of any proceeding with respect to a Pre-Closing Taxable Period and Seller shall not settle any proceeding with respect to a Pre-Closing Taxable Period that could materially and adversely affect Buyer or any Acquired Portfolio Entity without Buyer's prior written consent. In addition, Buyer shall not settle any proceeding with respect to any taxable period ending after the applicable Closing Date, and that portion of any Straddle Taxable Period ending after the applicable Closing Date that could materially and adversely affect Seller without Seller's prior written consent; provided, that in all other respects but subject to Section 6.9, Buyer shall control the prosecution, settlement or compromise of any proceeding involving any Tax relating to the period following each Closing Date, including any Straddle Taxable Period.

6.8.3 Seller shall grant to Buyer (or its designees) access at all reasonable times to all of the information, Books and Records relating to any Acquired Portfolio Entity within the possession of Seller (including work papers and correspondence with Taxing Authorities), and shall afford Buyer (or its designees) the right (at Buyer's expense) to take extracts therefrom and to make copies thereof, to the extent reasonably necessary to permit Buyer (or its designees) to prepare Tax Returns, respond to Tax audits and investigations, prosecute Tax protests, appeals and refund claims and to conduct negotiations with Taxing Authorities. Buyer shall grant or cause any Acquired Portfolio Entity to grant to Seller (or its designees) access at all reasonable times to all of the information, Books and Records relating to any Acquired Portfolio Entity for Pre-Closing Taxable Periods or Straddle Taxable Periods within the possession of Buyer (including work papers and correspondence with Taxing Authorities) and to any employees of Buyer, and shall afford Seller (or its designees) the right (at Seller's expense) to take extracts therefrom and to make copies thereof, in each case to the extent reasonably necessary to permit Seller (or its designees) to prepare Tax Returns, respond to Tax audits and investigations, prosecute Tax protests, appeals and refund claims and to conduct negotiations with Taxing Authorities. After the applicable Closing Date, the parties agree to preserve all information, records or documents in its possession relating to liabilities for Taxes of any Acquired Portfolio Entity for Pre-Closing Taxable Periods or Straddle Taxable Periods until the later of (a) seven (7) years and (b) six (6) months after the expiration of all applicable statute of limitations (including extensions thereof) with respect to the assessment of such Taxes.

6.9 TPI Current Liability; VDAs. Notwithstanding anything to the contrary in this Agreement, Seller shall have the right, at its sole cost and expense, to (a) control the prosecution, settlement or compromise of any proceeding involving any TPI Current Liability and (b) solely with respect to

(i) Solar Star Plano I, LLC, and only to the extent the “Voluntary Disclosure Agreement” with the State of Texas has not been finalized and executed as of the Closing for the Regions Bank Project and an estimate of the applicable liability thereunder has been included in the Regions Bank Holdback Amount and (ii) Solar Star HI Air, LLC, and only to the extent the “Voluntary Disclosure Agreement” with the State of Hawaii has not been finalized and executed as of the Closing for the PNC Project and an estimate of the applicable liability thereunder has been included in the PNC Holdback Amount, control the negotiation and finalization of each such “Voluntary Disclosure Agreement”, as applicable. Buyer shall (and shall cause any Acquired Portfolio Entity to), at the sole cost and expense of SunPower Corporation, take such action in connection with any such proceeding or negotiation, as applicable, as Seller shall reasonably request from time to time to implement the preceding sentence, including the selection of counsel and experts and the execution of powers of attorney. Seller shall keep Buyer reasonably informed regarding the progress and substantive aspects of any proceeding with respect to any TPI Current Liability or any such “Voluntary Disclosure Agreement” and Seller shall not settle any proceeding with respect to any TPI Current Liability or any such “Voluntary Disclosure Agreement” that could adversely affect Buyer or any Acquired Portfolio Entity without Buyer’s prior written consent. Seller shall be entitled to (a) all refunds or credits of any TPI Current Liability and (b) any reduction in the cash liability of Buyer or any Acquired Portfolio Entity for any TPI Current Liability below the applicable amount set forth in Seller’s Financial Model resulting from any such proceeding. To the extent Buyer or any Acquired Portfolio Entity receives any such refund, credit or recovered amount, Buyer shall pay or transfer such amounts (together with any interest received or credited thereon) to Seller within ten (10) Business Days after Buyer or any Acquired Portfolio Entity receives or is capable of transferring such refund or credit. To the extent any such proceeding results in any reduction in the cash liability of Buyer or any Acquired Portfolio Entity for any TPI Current Liability below the applicable amount set forth in Seller’s Financial Model, Buyer shall pay to Seller an amount equal to the present value (using a discount rate of 8%) of such reduction within ten (10) Business Days after the final resolution of such proceeding. SunPower Corporation shall hold Buyer harmless from any costs, expenses or liabilities to Buyer resulting from the actions of Seller taken pursuant to this Section 6.9.

6.10 Notification. From the date hereof until the applicable Closing, each of the Parties shall promptly notify the other Party in writing of: (a) any event, condition, fact or circumstance that occurred or existed on or prior to the date of this Agreement and that caused or constitutes a breach of, or an inaccuracy in, any material respect in any representation or warranty made by such Party in this Agreement; (b) any event, condition, fact or circumstance that occurs, arises or exists after the date of this Agreement and that would cause or constitute a breach of or an inaccuracy in any material respect in any representation or warranty made by such Party in this Agreement; (c) any material breach of any covenant or obligation of such Party; and (d) any event, condition, fact or circumstance that would be reasonably expected to prevent the timely satisfaction of any of conditions to any Closing set forth in Section 3.1.3 or Section 3.1.4, as applicable.

6.11 Further Assurances. From and after the Closing with respect to any Individual Portfolio, if either Party reasonably determines or is reasonably advised that any further instruments, documents or actions are reasonably necessary to carry out the terms of this Agreement with respect to such Individual Portfolio, Portfolio Entity or Project, the other party shall execute and deliver all such

instruments, documents, reports, other records of any kind and perform all such actions reasonably necessary and proper to carry out the terms of this Agreement. Without limiting the generality of the foregoing, Seller acknowledges that, from and after the Closing for an Individual Portfolio of which any Project is part, neither Seller nor any Affiliates of Seller shall be entitled to any revenues and proceeds under the applicable PPA, ESA or REC Sale Agreements, any uncontracted Environmental Attributes (including RECs), any Rebates, any Power Purchaser prepayments received during the term of the applicable PPAs, any ESA Purchaser prepayments received during the term of the applicable ESAs, any ITC or other rights related to the Projects.

6.12 Government Incentives. Seller acknowledges that, from and after Closing for an Individual Portfolio, neither Seller nor any Affiliates of Seller shall be entitled to any government incentives and Rebates related to any Project that is part of such Individual Portfolio. Buyer and Seller will cooperate with each other in obtaining and transferring all such government incentives and Rebates.

6.13 Dental Clinics Project. If Pacific Gas & Electric Company, or its successor in interest, has not issued a replacement permission to operate letter, in form and substance satisfactory to Buyer, to Solar Star Bay City I, LLC with respect to its Dental Clinics Project by the Closing Date for the Regions Bank Project, then following such Closing Date, SunPower Corporation, at its sole cost and expense, shall, by no later than April 1, 2020, complete or cause to be completed, all and any work, including any interconnection upgrades, requested, necessary or required for Pacific Gas & Electric Company, or its successor in interest, to issue such replacement permission to operate letter, in form and substance satisfactory to Buyer (the “PTO Work”). SunPower Corporation shall indemnify Buyer and/or its applicable Affiliates for any reasonable and documented expenses incurred by Buyer and/or its Affiliates in connection with enforcing SunPower Corporation’s obligation to perform any work or make any payment that is required but not timely made pursuant to this Section 6.13.

6.14 Existing Litigation. Within 90 days after the Closing with respect to the Wells Fargo Portfolio, no Portfolio Entity shall be a party to the Existing Litigation, whether the Existing Litigation is then continuing or not. If a Portfolio Entity is a party to the Existing Litigation at the end of such 90-day period, SunPower Corporation shall cause the Existing Litigation to be dismissed. None of SunPower Corporation, any Portfolio Entity or any of its Affiliates shall in any event, during such 90-day period, by action or inaction, prejudice its position with respect to the Existing Litigation, the filing referred to in Section 3.1.3.13 or otherwise frustrate the intent of this Section 6.14.

## **ARTICLE 7 NO SURVIVAL; REMEDIES**

7.1 Survival. All representations and warranties made by the Parties in this Agreement shall survive the applicable Closing for twenty-four (24) months following the last Closing Date (which shall be deemed to be the Drop-Dead Date if a Closing for each Individual Portfolio shall not have occurred by such date) under this Agreement, provided, however, that notwithstanding the foregoing, the representations and warranties set forth in (i) Sections 4.1 (Organization and Good Standing; Organizational Documents), 4.2 (Authorization, Execution and Enforceability), 4.4 (Equity Interests; Subsidiaries), 4.14 (No Subsidiaries), 4.16 (Brokers), 4.19 (Affiliate Transactions), 4.29 (Illegal Payments) and 4.30 (Export Control Compliance) shall survive indefinitely and



(ii) Sections 4.12 (Environmental Matters) and 4.17 (Taxes) shall survive until six months after the expiration of the applicable statute of limitations period (the representations and warranties described in clauses (i) and (ii), the “Fundamental Representations”). Any right of indemnification hereunder with respect to a claimed breach of a representation or warranty shall expire at the date of termination of the representation or warranty claimed to be breached (the “Expiration Date”), unless on or prior to the Expiration Date a claim for indemnification has been made to the Party from whom indemnification is sought. Provided that an Indemnification Claim is timely made, it may continue to be asserted beyond the Expiration Date of the representation and warranty to which such claim relates until the final disposition of such claim. All covenants and agreements of the Parties shall survive the applicable Closing until performed in accordance with their terms.

## 7.2 Indemnification.

7.2.1 Each of Seller and SunPower Corporation (together, “Seller Indemnitors”) hereby agrees, jointly and severally, to defend, indemnify and hold harmless Buyer and each of its respective members, parents, Affiliates, directors, officers and employees (collectively, the “Buyer Indemnified Group”), from and against all demands, claims, actions or causes of action, assessments, losses, damages, judgments, settlements, liabilities, Taxes, penalties, costs and expenses, including, without limitation, reasonable attorneys’ fees, disbursements and expenses (“Damages”), of any nature whatsoever asserted against, resulting to, imposed upon or incurred by any member of the Buyer Indemnified Group, arising out of or resulting from (i) a breach of any representation or warranty of Seller or SunPower Corporation contained in this Agreement or any certificate delivered pursuant hereto; (ii) a breach of any covenant, agreement or other obligation of Seller, SunPower Corporation or any Portfolio Entity (other than any Acquired Portfolio Entity) contained in this Agreement; (iii) any claim for fraud or willful misconduct of (A) Seller or SunPower Corporation relating to the transactions contemplated thereby or (B) any Portfolio Entity relating to or arising from the period prior to the Closing with respect to the Individual Portfolio to which such Portfolio Entity is a part; (iv) any ITC Recapture Liability (including any demand or drawing under any Specified Lease Credit Support Instrument relating thereto); (v) any TPI Assessment Liability; (vi) any demand or drawing under any Specified Credit Support Instrument or Specified Lease Credit Support Instrument (other than in respect of any ITC Recapture Liability) provided or assumed by or on behalf of Buyer, if an event or condition giving rise to such drawing or demand has occurred before the applicable Closing Date for the relevant Individual Portfolio; (vii) the Existing Litigation; or (viii) any costs, expenses, payments or other amounts incurred by Buyer and the Dental Clinics Project SPE (in excess of Regions Bank UCSF PTO Holdback Amount—SLV Portion) in exercising its early buy-out option with respect to the Dental Clinics Project pursuant to Section 2.5.1.

7.2.2 Buyer hereby agrees to defend, indemnify and hold harmless Seller and each of their respective parents, Affiliates, directors, officers and employees (collectively, the “Seller Indemnified Group”) from and against all Damages of any nature whatsoever asserted against, resulting to, imposed upon or incurred by any member of the Seller Indemnified Group arising out of or resulting from a (i) breach of any representation or warranty of Buyer contained in this Agreement or any certificate delivered pursuant hereto, (ii) a breach of any covenant, agreement

or other obligation of Buyer contained in this Agreement and (iii) any claim for fraud or willful misconduct of Buyer relating to the transactions contemplated thereby.

7.2.3 Notwithstanding anything in this Agreement to the contrary, all of the representations and warranties set forth in this Agreement or any certificate or schedule that are qualified as to “material,” “material respects,” “material adverse effects,” or words of similar import or effect shall be deemed to have been made without any such qualifications solely for purposes of determining the amount of Damages resulting from any such breach of representation or warranty.

7.2.4 (i) In no event shall the obligation of Seller Indemnitors to indemnify the Buyer Indemnified Group (x) (1) pursuant to Section 7.2.1(i) (other than for Fundamental Representations) or (2) pursuant to Section 7.2.1(iv) (with respect to the ITC Recapture Liability) exceed, an amount equal to twenty percent (20%) of the Purchase Price that has actually been paid to date under this Agreement, or (y) pursuant to Section 7.2.1(i) (for Fundamental Representations), 7.2.1(ii), 7.2.1(v), 7.2.1(vi), 7.2.1(vii) and/or 7.2.1(viii), exceed the Purchase Price that has actually been paid to date under this Agreement; and (ii) in no event shall Buyer’s obligation to indemnify the Seller Indemnified Group (x) pursuant to Section 7.2.2(i) exceed an amount equal to twenty percent (20%) of the Purchase Price that has actually been paid to date under this Agreement or (y) pursuant to Section 7.2.2(ii) exceed the aggregate Purchase Price that has actually been paid to date under this Agreement; provided, that the preceding limitations of liability in this sentence shall not apply to (A) Damages resulting from fraud or willful misconduct, including any Damages arising under Section 7.2.1(iii) or Section 7.2.2(iii) or (B) any failure of Buyer to pay the Purchase Price with respect to any Individual Portfolio or any failure of any Portfolio Entity, Seller or Buyer to pay any other amount required to be paid by such Person under this Agreement or any Project Contract to which it is a party; provided, further, that, for purposes of calculating the limitations of liability in this Section 7.2.4, if recovery by the Buyer Indemnified Group at any time is limited by reason of such limitations on the percentage of Purchase Price or amount of aggregate Purchase Price, as applicable, and additional Purchase Price is later payable due to a subsequent Closing, then the Buyer Indemnified Group can set-off and withhold a portion of any such additional Purchase Price by an amount that would allow the Buyer to recover up to the amount (in the aggregate) that would reach the new limit taking into account the additional Purchase Price being paid.

7.2.5 Seller Indemnitors shall not have any obligations to indemnify (a) pursuant to Section 7.2.1(i) (other than for Fundamental Representations) or (b) pursuant to Section 7.2.1(iv) (with respect to the ITC Recapture Liability), in each case until Damages in the aggregate exceed 0.50 % of the Purchase Price that has actually been paid to date under this Agreement (the “Threshold”), after which Seller Indemnitors shall be liable for the full amount of such Damages, including the portion below the Threshold. Buyer Indemnitors shall not have any obligations to indemnify pursuant to Section 7.2.2(i) until Damages in the aggregate exceed the Threshold, after which Buyer Indemnitors shall be liable for the full amount of such Damages, including the portion below the Threshold. Once the Threshold has been met at any given point in time, no additional payments of the Purchase Price shall require any additional recalculations of the Threshold.

7.2.6 Notwithstanding anything to the contrary herein, any liability for indemnification under this Section 7.2 shall be determined without duplication of recovery. Without limiting the generality of the immediately preceding sentence, if a condition, event or circumstance constitutes a breach of more than one representation, warranty, covenant or agreement which is subject to indemnification under this Section 7.2 or constitutes a breach of or failure to perform any representation, warranty, covenant or agreement by any member of Seller Indemnified Party under any Contract for which such Seller Indemnified Party has liability, only one recovery of damages shall be allowed and such recovery shall count against any limitation of or cap on liability set forth in any such Contract.

7.2.7 Notwithstanding anything to the contrary provided in this Agreement, any indemnity obligations (a) of Seller Indemnitors under Sections 7.2.1(ii)-(viii) and (b) of Buyer under Sections 7.2.2(ii)-(iii), respectively, shall survive until six months after the expiration of the applicable statute of limitations period.

7.3 Holdback Claims. If Seller does not dispute a claim made by Buyer against Seller for any amounts due by Seller to Buyer pursuant to this Article 7, Buyer shall be entitled, at Buyer's option, to retain an aggregate amount equal to the amount of the undisputed claim from any Holdback Amount relating to the Closings that have occurred to date, in which case such Holdback Amount shall be reduced by the retained amount. If Seller disputes a claim made by Buyer against Seller for any amounts due by Seller to Buyer pursuant to this Article 7 in accordance with this Article 7, then upon final determination of liability (or a settlement between the Parties) with respect to such claim in accordance with this Article 7, Buyer shall be entitled, at Buyer's option, to retain an aggregate amount equal to the amount of the undisputed claim from any Holdback Amount relating to the Closings that have occurred to date, automatically in which case such Holdback Amount shall be reduced by the retained amount. Notwithstanding anything contained in this Agreement to the contrary and for the avoidance of doubt, any reduction of any Holdback Amount applied in accordance with this Section 7.3 shall not be included for the purposes of calculating any limitation of liability of the Seller under Section 7.2.4.

7.4 Indemnification Procedures. Except with respect to the Tax indemnification set forth in Section 6.8:

7.4.1 If a claim arises against a person entitled to indemnification hereunder that such person intends to assert as an indemnifiable claim under Section 7.2, in order to assert an indemnification right, such person (the "Claiming Party") shall give written notice to the Party against whom indemnification is sought hereunder (the "Indemnifying Party") of such claim with respect to which it seeks indemnification promptly after the discovery by such Claiming Party of such claim. However, the failure of any Claiming Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Article 7 except to the extent that the Indemnifying Party is actually prejudiced by such failure to give notice.

7.4.2 The Indemnifying Party shall have the right to contest and defend the claim by all appropriate legal proceedings and, subject to the provisions hereof, to control all settlements (unless the Claiming Party agrees to assume the cost of settlement and to forgo its rights hereunder) and to select lead counsel, which must be reasonably satisfactory to the Claiming

Party, to defend any and all such claims at the sole cost and expense of the Indemnifying Party, subject to Section 7.4.5. In advance of its exercise of such right, the Indemnifying Party shall deliver to the Claiming Party an acknowledgement in writing of the unqualified obligation of the Indemnifying Party to indemnify the Claiming Party for such claim, subject to the limitations of Section 7.2.4. The Claiming Party may select counsel to participate with the Indemnifying Party's counsel in any such defense, in which event the Claiming Party's counsel shall be at the Claiming Party's cost and expense. If the Indemnifying Party assumes the defense of any claim, pursuant to this Section 7.4, the Indemnifying Party shall not be liable to the Claiming Party with respect to such claim for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof except for the reasonable costs of investigation or if (i) the employment of counsel by the Claiming Party has been authorized in writing by the Indemnifying Party; (ii) the Claiming Party has reasonably concluded (based on advice of outside counsel) that there may be legal defenses available to it or other Claiming Parties that are different from or in addition to those available to the Indemnifying Party and after written notice from the Claiming Party to such effect, the Indemnifying Party does not assert and pursue such defenses; (iii) a conflict or potential conflict exists between the Claiming Party and the Indemnifying Party with respect to the claim being asserted (in which case the Indemnifying Party will not have the right to direct the defense of such action, proceeding or defense on behalf of the Claiming Party); and (iv) the Indemnifying Party loses its right to conduct, or discontinues, its defense of such Claim pursuant to Section 7.4.5, in each of which cases the reasonable fees, disbursements and other charges of counsel to the Claiming Party will be at the expense of the Indemnifying Party. Unless and until the Indemnifying Party elects in writing to assume and does so assume the defense of any such claim, action or proceeding, the Indemnifying Party shall be liable for the Claiming Party's reasonable costs and expenses arising out of the defense, settlement or compromise of any such claim, action or proceeding (other than the amount of the settlement itself which is governed by Section 7.4.5 below).

7.4.3 In connection with any claim, the Parties shall cooperate with each other and provide each other with access to relevant Books and Records relating to Seller, its business or the Projects in their possession (except documents as to which disclosure is restricted in order to preserve a privilege). The Claiming Party shall cooperate fully with the Indemnifying Party in connection with any negotiation or defense of any claim by the Indemnifying Party. The Indemnifying Party shall keep the Claiming Party fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto.

7.4.4 Without the Claiming Party's prior written consent, the Indemnifying Party may not enter into any settlement or compromise any claim or consent to the entry of any judgment in respect thereof that could result directly or indirectly in any cost, expense or liability to the Claiming Party or any of its Affiliates or imposes an obligation on the Claiming Party or any of its Affiliates, and which does not include, as an unconditional term thereof, the giving by the claimant to the Claiming Party and its Affiliates of an unconditional release from all liability in respect of such claim.

7.4.5 If (i) the Indemnifying Party fails, within thirty (30) days of its receipt of any indemnification notice, to notify the Claiming Party in writing of the Indemnifying Party's

election to defend the claim, (ii) the claim relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation, (iii) the claim seeks an injunction or equitable relief against the Indemnified Party or any of its Affiliates, (iv) the claim alleges or seeks an amount of damages in excess of the limitations contained in Section 7.2.4, or (v) the Indemnifying Party discontinues its defense at any time or fails to actively and diligently conduct the defense of the claim after it commences such defense in accordance with this Agreement, then the Claiming Party may, at its option, assume the defense of, defend, settle or otherwise compromise or pay such claim and the Indemnifying Party shall not have the right to control the defense pursuant to Section 7.4.2. If the Indemnifying Party does not (or cannot) assume or discontinues such defense, the Claiming Party shall keep the Indemnifying Party apprised at all times as to the status of the defense. However, the failure to keep the Indemnifying Party so informed shall not affect the obligations of the Indemnifying Party hereunder. Except as specifically stated herein, the Indemnifying Party shall not be liable for any settlement of any claim, action or proceeding effected without its written consent; provided, that the Indemnifying Party shall not unreasonably withhold, delay or condition a requested consent.

7.5 Insurance. The amount of Damages required to be paid by an Indemnifying Party to another party pursuant to this Article 7 shall be reduced to the extent of any amounts actually received in cash by such other party pursuant to the terms of any insurance policy (excluding self-insurance and flow-through insurance policies), less any documented costs or expenses incurred in connection therewith (including any documented increased insurance premiums); provided, however, a party entitled to indemnification hereunder shall not be obligated to seek recovery under any insurance policy. If the indemnified party actually receives cash proceeds under an insurance policy (excluding self-insurance and flow-through insurance policies) after the Indemnifying Party has fully paid the Damages, then the amount of such reduction, less any costs or expenses incurred in connection therewith (including any increased insurance premiums) shall be repaid by the indemnified party to the Indemnifying Party.

7.6 After-Tax Basis. For tax reporting purposes, to the maximum extent permitted by the Code, each Party will agree to treat all amounts paid under any of the provisions of this Article 7 as an adjustment to the applicable Purchase Price (or otherwise as a non-taxable reimbursement, contribution or return of capital, as the case may be). To the extent that any such indemnification payment is includable as income of the indemnified party, as determined by agreement of the Parties or, if there is no agreement, by an opinion of a nationally-recognized tax counsel selected by the indemnified party and reasonably acceptable to the other Party that such amount is “more likely than not” includable as income of the indemnified party, the amount of the payment shall be increased by the amount of any U.S. federal income tax required to be paid by the indemnified party or its Affiliates on the receipt or accrual of the indemnification payment, including, for this purpose, the amount of any such Tax required to be paid by the indemnified party on the receipt or accrual of the additional amount required to be added to such payment pursuant to this Section 7.6, assuming full taxability, using an assumed tax rate equal to the highest composite U.S. federal and state marginal income tax rate applicable to corporations generally.

7.7 No Duplication; Mitigation. Any liability for indemnification under this Article 7 shall be determined without duplication of recovery. Without limiting the generality of the prior sentence,

if a statement of facts, condition or event constitutes a breach of more than one representation, warranty, covenant or agreement which is subject to the indemnification obligation in this Article 7 or constitutes a breach of or failure to perform any representation, warranty, covenant or agreement by a member of the Seller Indemnified Group set forth in any Contract, only one recovery of Damages shall be allowed and such recovery shall count against any limitation of or cap on liability set forth in any such Contract. The Parties hereby acknowledge the obligation of the Claiming Party to mitigate Damages to the extent required by applicable Law.

#### 7.8 Specific Performance.

7.8.1 Waivers and Acknowledgments. The Parties agree that, prior to the Closing Date with respect to any Individual Portfolio, irreparable damage would occur if any of the provisions of this Agreement were not performed by the Parties in accordance with their specific terms or were otherwise breached, including any wrongful failure to consummate the applicable Closing. It is accordingly agreed that each Party shall be entitled to an injunction or injunctions or other specific performance or equitable relief to prevent breaches of this Agreement and to cause each Closing to occur on the terms and subject to the conditions thereto set forth herein. In that regard, each Party hereby waives any requirement under any applicable Law to post a bond or other security as a prerequisite to obtaining such equitable relief. If either Party brings any action in good faith to enforce specifically the performance of the terms and provisions hereof by the other Party, the Drop-Dead Date shall automatically be extended by (i) the amount of time during which such action is pending, plus 20 Business Days or (ii) such other time period established by the court presiding over such action. Each Party agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief sought in accordance with this Section 7.8.1 on the basis that the other Party has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity.

7.8.2 Alternative Remedies. Notwithstanding Section 7.8.1, prior to the Closing with respect to any Individual Portfolio, a Party may pursue against the other Party any remedy available at law or in equity arising out of any willful and material breach of this Agreement related to such Individual Portfolio by such other Party, including a claim for monetary damages.

7.9 Exclusivity of Remedies and Limitation on Liability. Subject to Section 7.8.2, the remedies under this Article 7 are the sole and exclusive remedies that a Party or other Claiming Party may have arising under or relating to this Agreement or the transactions contemplated hereby for the recovery of monetary damages against any other Party, SunPower Corporation or any of their respective Affiliates with respect to (i) any breach or failure by such other Party, SunPower Corporation or any of their respective Affiliates to perform any covenant or agreement in this Agreement, or (ii) any breach of any representation or warranty of such other Party, SunPower Corporation or any of their respective Affiliates set forth in this Agreement, provided that nothing in this Article 7 shall limit or otherwise affect the obligations of any Party to make any payments required to be made by such Party pursuant to any other Article of this Agreement or for any liability in respect of fraud or willful misconduct.

7.10 Non-Recourse. It is expressly agreed and understood that any obligations of a Party arising from (or in connection with any performance under) this Agreement and/or any certificates or

documents delivered in connection with this Agreement are solely the obligations of such Party, and no personal liability whatsoever (of any type or nature) will attach to, or be incurred by, any of the Buyer Indemnified Group, or the Seller Indemnified Group, as applicable, other than the applicable Party (and in the case of indemnification obligations under this Article 7, SunPower Corporation) because of the incurrence by such Party of any obligations set forth in this Agreement or in any certificate or document delivered in connection with this Agreement or by reason thereof, and any personal liability in respect of any such obligations of any type or nature, and any and all claims for any such liability against any of the Buyer Indemnified Group or the Seller Indemnified Group, as applicable, other than the applicable Party (and in the case of indemnification obligations under this Article 7, SunPower Corporation), whether arising in common law or equity or created by rule of law, statute, constitution, or otherwise, are expressly released and waived by the other Party for and on behalf of itself and each member of its respective indemnified group, in each case, as a condition of, and as part of the consideration for, the execution and delivery of this Agreement by such Party.

## ARTICLE 8 TERMINATION

8.1 Termination of Agreement. At any time prior to the last Closing Date (which shall be deemed to be the Drop-Dead Date if a Closing for each Individual Portfolio shall not have occurred by such date), this Agreement may be terminated as follows:

(a) by mutual written agreement of Buyer and Seller;

(b) by Seller upon written notice to Buyer if Buyer shall have breached any of its representations, warranties, covenants or other agreements contained in this Agreement that (i) would result in a failure of a condition set forth in Sections 3.1.4.2 or 3.1.4.3 to be satisfied or (ii) cannot be, or is not, cured by the earlier to occur of Drop-Dead Date and 30 days following written notice from Seller to Buyer of such breach or failure to perform; provided, however, that Seller shall not have a right to terminate this agreement if Seller is then in breach of any representations, warranties, covenants or other agreements contained in this Agreement that would result in a failure of the conditions set forth in Sections 3.1.3.2 or 3.1.3.3 to be satisfied;

(c) by Buyer upon written notice to Seller if Seller shall have breached any of its representations, warranties, covenants or other agreements contained in this Agreement that (i) would result in a failure of a condition set forth in Section 3.1.3.2 or 3.1.3.3 to be satisfied or (ii) cannot be, or is not, cured by the earlier to occur of the Drop-Dead Date and 30 days following written notice from Buyer to Seller of such breach or failure to perform; provided, however, that Buyer shall not have a right to terminate this agreement if Buyer is then in breach of any representations, warranties, covenants or other agreements contained in this Agreement that would result in a failure of the conditions set forth in Section 3.1.4.2 or 3.1.4.3 to be satisfied;

(d) by Buyer or Seller upon written notice to the other Parties if the Closing Date with respect to each Individual Portfolio has not occurred by the Drop-Dead Date; provided, that the right to terminate this Agreement with respect to any Individual Portfolio pursuant to this Section 8.1(d) shall not be available to a Party whose failure to fulfill any obligation under

this Agreement shall have been a material cause of, or resulted in, the failure of the Closing with respect to such Individual Portfolio to occur on or before such date; or

(e) by Buyer or Seller, by written notice to the other Parties, if any Prohibitive Order permanently prohibiting the consummation of the transactions contemplated by this Agreement shall have become final and non-appealable; provided, that the right to terminate this Agreement pursuant to this Section 8.1(e) shall not be available to a Party whose failure to fulfill any obligation under this Agreement shall have been a material cause of, or resulted in, the Prohibitive Order.

## 8.2 Effect of Termination.

8.2.1 In the event of a termination of this Agreement as provided in Section 8.1, this Agreement shall cease to have force and effect in its entirety, and there shall be no further Liability on the part of either Party in respect of this Agreement, except that (a) if the termination of this Agreement occurs after the occurrence of any Closing Date, this Agreement shall continue to be in full force and effect solely with respect to the Acquired Portfolio, (b) the provisions of Article 7, this Section 8.2 and Article 9 shall continue to apply following any such termination, and (c) each Party shall continue to be liable for any breach by such Party of this Agreement occurring prior to such termination.

8.2.2 In the event that this Agreement is terminated pursuant to Section 8.1(b), Buyer agrees that it will not, and will cause its Affiliates not to, solicit for employment or hire or employ any of the current employees of Seller, the Portfolio Entities (other than the Acquired Portfolio Entities) or their Affiliates to whom Buyer or its Affiliates had been directly or indirectly introduced or otherwise had contact with as a result of its or their consideration, negotiation or consummation of the transaction contemplated herein, so long as they are employed by Seller, the Portfolio Entities (other than the Acquired Portfolio Entities) or their Affiliates for a period of two years following the date of such termination, without the prior written consent of Seller.

## **ARTICLE 9 MISCELLANEOUS**

9.1 Notices. Any notice, statement, demand, claim, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be sent by facsimile, e-mail or other electronic transmission, hand messenger delivery, overnight courier service, or certified mail (receipt requested) to another Party at the address set forth below:

(a) If to a Seller, at:

SunPower AssetCo, LLC  
77 Rio Robles  
San Jose, CA 95134  
Attention: General Counsel  
Facsimile: 408-240-5400  
Email: LegalNoticeSunPower@sunpower.com



(b) If to Buyer, at:

Elizabeth Cady Lessee Holdco LLC  
c/o Goldman Sachs Renewable Power, LLC  
200 West Street, 3<sup>rd</sup> Floor  
New York, NY 10282  
Attention: Patrick McAlpine  
Email: Patrick.McAlpine@ny.email.gs.com

With a copy of any legal notices to:

Goldman Sachs Asset Management, L.P.  
200 West St. 15<sup>th</sup> Fl.  
New York, NY 10282  
Attn: General Counsel

Each Party shall have the right to change the place to which notices shall be sent or delivered or to specify one additional address to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party. Without limiting any other means by which a Party may be able to prove that a notice has been received by another Party, all notices and communications shall be deemed to have been duly given: (i) at the time delivered by hand, if personally delivered, (ii) 5 Business Days after being deposited in the mail, postage prepaid, if mailed by first class certified mail, receipt requested, and (iii) when received, if sent by courier, facsimile or other electronic transmission, if received prior to 5 p.m., recipient's time, on a Business Day, or on the next Business Day, if received later than 5 p.m., recipient's time. In any case hereunder in which a Party is required or permitted to respond to a notice from another Party within a specified period, such period shall run from the date on which the notice was deemed duly given as above provided, and the response shall be considered to be timely given if given as above provided by the last day of the period provided for such response.

9.2 Entire Agreement; Amendments. This Agreement, the other Transaction Documents, the Buyer Confidentiality Agreement and the Seller Confidentiality Agreement constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, of the Parties with respect to the subject matter hereof. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed in accordance with the remainder of this Section 9.2. This Agreement may be amended, modified or supplemented only by a written instrument executed by Buyer and Seller.

9.3 Successors and Assigns. This Agreement and the Buyer Confidentiality Agreement or Seller Confidentiality Agreement, as applicable, shall be binding upon, and shall inure to the benefit of, and shall be enforceable by, the Parties and their respective successors and permitted assigns. Neither this Agreement nor any right or obligation hereunder, may be assigned (a) by Buyer without the prior written consent of Seller or (b) by Seller or SunPower Corporation without the prior written consent of Buyer.

9.4 Governing Law. This Agreement, and any instrument or agreement required hereunder (to the extent not otherwise expressly provided for therein) and its enforcement, and any controversy arising out of or relating to the making or performance thereof, shall be governed by and construed in accordance with the law of the State of New York without reference to conflicts of laws.

9.5 Consent to Jurisdiction; Waiver of Jury Trial. The Parties hereto irrevocably consent and agree that United States federal courts sitting in the Borough of Manhattan, New York, New York are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that, accordingly, any proceedings may only be brought in such courts, except that actions to enforce any final judgment or award may be filed in any court having jurisdiction. By execution and delivery of this Agreement, each Party (for itself, its Affiliates and its designees) irrevocably and unconditionally consents and submits to the exclusive jurisdiction of such courts and the appellate courts therefrom, and waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding. The Parties irrevocably consent to the service of process in any such Action by the mailing of copies thereof by registered or certified mail, first class postage prepaid, return receipt requested, to the addresses set forth or incorporated in Section 9.1. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY AND ALL ACTIONS, CLAIMS AND DISPUTES IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9.6 Expenses. Except as otherwise expressly provided in this Agreement, Buyer, on one hand, and Seller, on the other hand, will bear its own costs and expenses (including the costs and expenses of its counsel) incurred in connection with the transactions contemplated by this Agreement.

#### 9.7 Confidential Information.

9.7.1 Unless and until the Closing with respect to each Individual Project occurs, (i) the Buyer will abide by the provisions of the Seller Confidentiality Agreement, and (ii) the Seller will abide by the provisions of the Buyer Confidentiality Agreement, in each case with respect to the Portfolio Entities, the transactions contemplated herein and otherwise. If this Agreement is terminated under Section 8.1, Buyer shall continue to abide by the provisions of the Seller Confidentiality Agreement and Seller shall continue to abide by the provisions of the Buyer Confidentiality Agreement. Following each Closing, each of the Buyer Confidentiality Agreement and the Seller Confidentiality Agreement shall be terminated with respect to such Closing, the Individual Portfolio relating thereto and each Portfolio Entity and Project constituting such Individual Portfolio, and such agreements shall be superseded by Section 9.7.2 of this Agreement.

9.7.2 After each Closing, Seller agrees to treat and hold as confidential any information concerning the business and affairs of each Portfolio Entity constituting the Individual Portfolio to which such Closing relates, which is not already generally available to the public (the "Confidential Information"), refrain from using any of the Confidential Information other than in accordance with this Agreement, for purposes internal to Seller and its Affiliates or as otherwise agreed in writing between Seller or any of its Affiliates and Buyer or any of its Affiliates. In the event that Seller is requested or required (by oral question or

request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, Seller shall (to the extent practical given the circumstances) notify Buyer promptly of the request or requirement so that Buyer may seek an appropriate protective order or waive compliance with the provisions of this Section 9.7.2. If, in the absence of a protective order or the receipt of a waiver hereunder, Seller is, on the advice of counsel, compelled to disclose any Confidential Information to any tribunal, Seller may disclose the Confidential Information to the tribunal; provided that Seller shall use commercially reasonable efforts to obtain, at the request and expense of Buyer, an order or other assurance that confidential treatment shall be accorded to such portion of the Confidential Information required to be disclosed as Buyer shall designate.

9.8 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one Party than against any other Party.

9.9 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

9.10 Severability. The invalidity of one or more phrases, sentences, clauses, Sections or Articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

9.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which, taken together, shall constitute but one agreement.

9.12 Third Parties. Except as otherwise expressly provided in this Agreement, nothing contained in this Agreement shall be construed to create any right in, duty to, standard of care with respect to, or any Liability to any Person who is not a party to this Agreement; provided, that the Persons expressly entitled to indemnification hereunder shall be third party beneficiaries of the applicable provisions of this Agreement, and SunPower Corporation and its Affiliates are third party beneficiaries of Sections 3.2 and 6.9.

9.13 No Waiver. Any failure of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

9.14 Delivery by Facsimile or PDF. This Agreement, and any amendments hereto or, to the extent signed and delivered by means of a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original Contract and shall be considered to have the same binding legal effects as if it were the original signed version hereof delivered in person. No Party shall raise the use of a facsimile machine or electronic transmission in pdf to deliver a signature or the fact that any signature was transmitted or communicated through such means as a defense to the formation of a Contract and each Party forever waives any such defense.

*[Signature page follows on next page]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the Agreement Date.

“Seller”: **SunPower Asset Co, LLC**

By: /s/ Nam Nguyen

Name: Nam Nguyen

Title: Executive Vice President, Commercial Americas

[Signature Page to Membership Interest Purchase and Sale Agreement]

“Buyer”: **Elizabeth Cady Lessee Holdco LLC**

By: Goldman Sachs Renewable Power Operating Company LLC, its sole member

By: Goldman Sachs Asset Management, L.P., its investment manager

By: /s/ Jon Yoder

Name: Jon Yoder

Title: Authorized Signatory

[Signature Page to Membership Interest Purchase and Sale Agreement]

And, solely for purposes of Section 3.2.3, Article 4, Section 6.9, Section 6.13, Section 6.14 and Article 7 of this Agreement:

“SunPower Corporation”: **SunPower Corporation**

By: /s/ Nam Nguyen

Name: Nam Nguyen

Title: Executive Vice President, Commercial Americas

[Signature Page to Membership Interest Purchase and Sale Agreement]

CERTIFICATIONS

I, Thomas H. Werner, certify that:

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

- 2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4 The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

Date: May 10, 2019

/S/ THOMAS H. WERNER

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

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## CERTIFICATIONS

I, Manavendra S. Sial, certify that:

- 1 I have reviewed this Annual Report on Form 10-Q of SunPower Corporation;
- 2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4 The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

Date: May 10, 2019

/S/ MANAVENDRA S. SIAL

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Manavendra S. Sial  
Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)

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

In connection with the Annual Report of SunPower Corporation (the "Company") on Form 10-K for the period ended March 31, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of Thomas H. Werner and Manavendra S. Sial certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

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

Dated: May 10, 2019

/S/ THOMAS H. WERNER

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

/S/ MANAVENDRA S. SIAL

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Manavendra S. Sial  
Executive Vice President and Chief Financial Officer  
(Principal Financial 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.

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