SUNPOWER CORP
Form 10-Q
November 02, 2012

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

FORM 10-Q

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

For the quarterly period ended September 30, 2012

OR

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

For the transition period from ______________ to ______________

Commission file number 001-34166

SunPower Corporation
(Exact Name of Registrant as Specified in Its Charter)

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

77 Rio Robles, San Jose, California 95134
(Address of Principal Executive Offices and 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 T No o

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

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

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

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

The total number of outstanding shares of the registrant's common stock as of October 26, 2012 was 119,047,078.

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SunPower Corporation

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PART I. FINANCIAL INFORMATION

ITEM 1: FINANCIAL STATEMENTS

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

	September 30, 2012	January 1, 2012 (1)
Assets		
Current assets:		
Cash and cash equivalents	$377,126	$725,618
Restricted cash and cash equivalents, current portion	11,275	52,279
Accounts receivable, net	297,696	438,633
Costs and estimated earnings in excess of billings	65,562	54,854
Inventories	407,210	445,501
Advances to suppliers, current portion	54,937	43,143
Project assets - plants and land, current portion	142,771	24,243
Prepaid expenses and other current assets (2)	584,669	502,879
Total current assets	1,941,246	2,287,150
Restricted cash and cash equivalents, net of current portion	13,939	27,276
Restricted long-term marketable securities	10,764	9,145
Property, plant and equipment, net	659,234	628,769
Project assets - plants and land, net of current portion	18,720	34,614
Goodwill	—	47,077
Other intangible assets, net	1,759	23,900
Advances to suppliers, net of current portion	302,577	284,378
Other long-term assets (2)	244,823	176,821
Total assets	$3,193,062	$3,519,130
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable (2)	$417,896	$441,655
Accrued liabilities	160,520	249,404
Billings in excess of costs and estimated earnings	139,625	170,828
Short-term debt	292,075	2,122
Convertible debt, current portion	—	196,710
Customer advances, current portion (2)	29,813	48,073
Total current liabilities	1,039,929	1,108,792
Long-term debt	100,952	364,273
Convertible debt, net of current portion	434,415	423,268
Customer advances, net of current portion (2)	240,254	181,946
Other long-term liabilities	257,236	166,126
Total liabilities	2,072,786	2,244,405

Commitments and contingencies (Note 8)		
Stockholders' equity:		
Preferred stock, $0.001 par value; 10,000,000 shares authorized; none issued and outstanding as of both September 30, 2012 and January 1, 2012	—	—
Common stock, $0.001 par value, 367,500,000 shares authorized; 123,064,117 shares issued, and 119,046,999 outstanding as of September 30, 2012; 101,851,290 shares issued, and 100,475,533 shares outstanding as of January 1, 2012	119	100
Additional paid-in capital	1,914,697	1,845,964
Accumulated deficit	(757,312)	(550,064)
Accumulated other comprehensive income (loss)	(3,382)	7,142
Treasury stock, at cost; 4,017,118 shares of common stock as of September 30, 2012; 1,375,757 shares of common stock as of January 1, 2012	(33,846)	(28,417)
Total stockholders' equity	1,120,276	1,274,725
Total liabilities and stockholders' equity	$3,193,062	$3,519,130

(1) As adjusted to reflect the balances of Tenesol S.A. ("Tenesol") beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).

(2) The Company has related party balances in connection with transactions made with unconsolidated entities in which the Company has a direct equity investment. These related party balances are recorded within the "Prepaid expenses and other current assets," "Other long-term assets," "Accounts payable," "Customer advances, current portion," and "Customer advances, net of current portion" financial statement line items in the Condensed Consolidated Balance Sheets (see Note 5, Note 8, and Note 9).

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		Nine Months Ended	
	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
Revenue	$648,948	$705,427	$1,738,976	$1,749,100
Cost of revenue	568,175	629,303	1,539,455	1,565,160
Gross margin	80,773	76,124	199,521	183,940
Operating expenses:				
Research and development	14,956	12,664	45,786	41,565
Sales, general and administrative	69,714	76,329	208,388	243,364
Goodwill impairment	46,734	309,457	46,734	309,457
Other intangible asset impairment	12,847	40,301	12,847	40,301
Restructuring charges	10,544	637	61,189	13,945
Total operating expenses	154,795	439,388	374,944	648,632
Operating loss	(74,022)	(363,264)	(175,423)	(464,692)
Other income (expense), net:				
Interest income	94	206	762	1,437
Interest expense	(25,834)	(17,096)	(63,935)	(48,414)
Gain on sale of equity interest in unconsolidated investee	—	10,989	—	10,989
Gain on share lending arrangement	50,645	—	50,645	—
Other, net	594	8,487	(4,984)	(10,066)
Other income (expense), net	25,499	2,586	(17,512)	(46,054)
Loss before income taxes and equity in earnings (loss) of unconsolidated investees	(48,523)	(360,678)	(192,935)	(510,746)
Provision for income taxes	(593)	(11,077)	(12,542)	(17,963)
Equity in earnings (loss) of unconsolidated investees	578	971	(1,772)	7,932
Net loss	$(48,538)	$(370,784)	$(207,249)	$(520,777)
Net loss per share of common stock:				
Basic and diluted	$(0.41)	$(3.77)	$(1.78)	$(5.34)
Weighted-average shares:				
Basic and diluted	118,952	98,259	116,408	97,456

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

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

	Three Months Ended		Nine Months Ended	
(In thousands)	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
Net loss	$(48,538)	$(370,784)	$(207,249)	$(520,777)
Components of comprehensive loss:				
Translation adjustment	148	5,211	(1,802)	4,067
Net unrealized gain (loss) on derivatives (Note 11)	(2,611)	38,987	(10,738)	(2,008)
Income taxes	490	(4,483)	2,016	3,251
Net change in accumulated other comprehensive income (loss)	(1,973)	39,715	(10,524)	5,310
Total comprehensive loss	$(50,511)	$(331,069)	$(217,773)	$(515,467)

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

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

	Nine Months Ended	
	September 30, 2012	October 2, 2011
Cash flows from operating activities:		
Net loss	$(207,249)	$(520,777)
Adjustments to reconcile net income to net cash used in operating activities:		
Stock-based compensation	33,179	37,829
Depreciation	82,747	83,979
Loss on retirement of property, plant and equipment	56,399	—
Amortization of other intangible assets	8,099	20,614
Goodwill impairment	46,734	309,457
Other intangible asset impairment	12,847	40,301
Loss on sale of investments	—	191
Loss (gain) on mark-to-market derivatives	(4)	(331)
Non-cash interest expense	29,336	21,112
Amortization of debt issuance costs	2,899	4,196
Amortization of promissory notes	—	3,486
Gain on change in equity interest in unconsolidated investee	—	(322)
Third-party inventories write-down	8,869	16,399
Gain on sale of equity interest in unconsolidated investee	—	(10,989)
Project assets write-down related to change in European government incentives	—	16,053
Equity in (earnings) loss of unconsolidated investees	1,772	(7,932)
Gain on share lending arrangement	(50,645)	—
Deferred income taxes and other tax liabilities	110	(860)
Changes in operating assets and liabilities, net of effect of acquisition:		
Accounts receivable	124,865	(48,587)
Costs and estimated earnings in excess of billings	(10,709)	(3,304)
Inventories	29,992	(120,753)
Project assets	(101,917)	(43,242)
Prepaid expenses and other assets	(221,069)	(123,044)
Advances to suppliers	(29,993)	(9,535)
Accounts payable and other accrued liabilities	(38,063)	64,432
Billings in excess of costs and estimated earnings	(31,203)	14,345
Customer advances	40,048	(1,698)
Net cash used in operating activities	(212,956)	(258,980)
Cash flows from investing activities:		
Decrease in restricted cash and cash equivalents	54,341	29,789
Purchase of property, plant and equipment	(79,033)	(85,528)
Proceeds from sale of equipment to third-party	419	501
Purchase of marketable securities	(1,436)	(8,962)
Proceeds from sales or maturities of available-for-sale securities	—	43,759
Cash received for sale of investment in unconsolidated investees	17,403	24,043
Cash paid for investments in unconsolidated investees	(10,000)	(80,000)
Net cash used in investing activities	(18,306)	(76,398)
Cash flows from financing activities:		

Proceeds from issuance of bank loans, net of issuance costs	125,000	489,221
Proceeds from issuance of project loans, net of issuance costs	27,617	—
Proceeds from residential lease financing	26,809	—
Proceeds from recovery of claim in connection with share lending arrangement	50,645	—
Repayment of bank loans and other debt	(126,427)	(377,124)
Cash paid for repurchase of convertible debt	(198,608)	—
Proceeds from private offering of common stock, net of issuance costs	163,616	—
Cash distributions to Parent in connection with the transfer of entities under common control	(178,290)	—
Proceeds from warrant transactions	—	2,261
Proceeds from exercise of stock options	51	4,013
Purchases of stock for tax withholding obligations on vested restricted stock	(5,430)	(10,550)
Net cash provided by (used in) financing activities	(115,017)	107,821
Effect of exchange rate changes on cash and cash equivalents	(2,213)	(3,301)
Net decrease in cash and cash equivalents	(348,492)	(230,858)
Cash and cash equivalents at beginning of period	725,618	605,420
Cash and cash equivalents, end of period	$377,126	$374,562
Non-cash transactions:		
Assignment of residential lease receivables to a third party financial institution	$10,259	$—
Property, plant and equipment acquisitions funded by liabilities	13,243	11,781
Non-cash interest expense capitalized and added to the cost of qualified assets	1,161	2,096
Issuance of warrants in connection with the Liquidity Support Agreement	50,327	—

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

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Note 1. THE COMPANY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Company

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

In December 2011, the Company announced a reorganization to align its business and cost structure with a regional focus in order to support the needs of its customers and improve the speed of decision-making processes. As a result, in the first quarter of fiscal 2012, the Company changed its segment reporting from its Utility and Power Plants ("UPP") Segment and Residential and Commercial ("R&C") Segment to three regional segments: (i) the Americas Segment, (ii) the EMEA Segment, and (iii) the APAC Segment. The Americas Segment includes both North and South America. The EMEA Segment includes European countries, as well as the Middle East and Africa. The APAC segment includes all Asia-Pacific countries. The Company's President and Chief Executive Officer, as the chief operating decision maker ("CODM"), has organized the Company, manages resource allocations and measures performance of the Company's activities among these three regional segments.

Historically, the UPP Segment referred to the Company's large-scale solar products and systems business, which included power plant project development and project sales, turn-key engineering, procurement and construction ("EPC") services for power plant construction, and power plant operations and maintenance ("O&M") services. The UPP Segment also sold components, including large volume sales of solar panels and mounting systems, to third parties, sometimes on a multi-year, firm commitment basis. The Company's former R&C Segment focused on solar equipment sales into the residential and small commercial market through its third-party global dealer network, as well as direct sales and EPC and O&M services in the United States and Europe for rooftop and ground-mounted solar power systems for the new homes, commercial, and public sectors.

On June 21, 2011, the Company became a majority owned subsidiary of Total Gas & Power USA, SAS, a French société par actions simplifiée ("Total"), a subsidiary of Total S.A., a French société anonyme ("Total S.A."), through a tender offer and Total's purchase of 60% of the outstanding former class A common stock and former class B common stock of the Company as of June 13, 2011. On January 31, 2012, Total purchased an additional 18.6 million shares of the Company's common stock in a private placement, thereby increasing Total's ownership to approximately 66% of the Company's outstanding common stock as of that date (see Note 2).

Basis of Presentation and Preparation

Principles of Consolidation

The Condensed Consolidated Financial Statements are prepared in accordance with accounting principles generally accepted in the United States of America ("United States" or "U.S.") and include the accounts of the Company, all of its subsidiaries and special purpose entities, as appropriate under consolidation accounting guidelines. Intercompany transactions and balances have been eliminated in consolidation. The assets of the special purpose entities that the Company sets up related to project financing for customers are not designed to be available to service the general liabilities and obligations of the Company in certain circumstances.

Reclassifications

Certain prior period balances have been reclassified to conform to the current period presentation in the Company's Condensed Consolidated Financial Statements and the accompanying notes. Such reclassifications had no effect on previously reported results of operations or accumulated deficit.

Fiscal Years

The Company reports on a fiscal-year basis and ends its quarters on the Sunday closest to the end of the applicable calendar quarter, except in a 53-week fiscal year, in which case the additional week falls into the fourth quarter of that fiscal year. Both fiscal 2012 and 2011 consist of 52 weeks. The third quarter of fiscal 2012 ended on September 30, 2012, while the third quarter in fiscal 2011 ended on October 2, 2011.

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Management Estimates

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

Summary of Significant Accounting Policies

In May 2011, the Financial Accounting Standards Board ("FASB") amended its fair value principles and disclosure requirements. The amended fair value guidance states that the concepts of highest and best use and valuation premise are only relevant when measuring the fair value of nonfinancial assets and prohibits the grouping of financial instruments for purposes of determining their fair values when the unit of account is specified in other guidance. The amendment became effective for the Company on January 2, 2012 and did not have a material impact on its financial statements.

In June 2011, the FASB amended its disclosure guidance related to the presentation of comprehensive income. This amendment eliminates the option to report other comprehensive income and its components in the statement of changes in equity and requires presentation and reclassification adjustments on the face of the income statement. In December, 2011, the FASB further amended its guidance to defer changes related to the presentation of reclassification adjustments indefinitely as a result of concerns raised by stakeholders that the new presentation requirements would be difficult for preparers and add unnecessary complexity to financial statements. The amendment (other than the portion regarding the presentation of reclassification adjustments which, as noted above, has been deferred indefinitely) became effective for the Company on January 2, 2012 and did not have any impact on its financial position. However, the Company now reports other comprehensive income and its components in a separate statement of comprehensive income for all presented periods.

In September 2011, the FASB amended its goodwill guidance by providing entities an option to use a qualitative approach to test goodwill for impairment. An entity will be able to first perform a qualitative assessment to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying value. If it is concluded that the fair value is less than the carrying value, it is necessary to perform the currently prescribed two step goodwill impairment test. Otherwise, the two-step goodwill impairment test is not required. The amendment became effective for the Company on January 2, 2012 and did not have a material impact on its financial statements.

There have been no significant changes in the Company's significant accounting policies for the three and nine months ended September 30, 2012, as compared to the significant accounting policies described in the Company's Annual Report on Form 10-K for the fiscal year ended January 1, 2012 ("2011 Form 10-K"). Further, there has been no issued accounting guidance not yet adopted by the Company that it believes is material or potentially material to its condensed consolidated financial statements.

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

On April 28, 2011, the Company and Total entered into a Tender Offer Agreement (the "Tender Offer Agreement"), pursuant to which, on May 3, 2011, Total commenced a cash tender offer to acquire up to 60% of the Company's outstanding shares of former class A common stock and up to 60% of the Company's outstanding shares of former class B common stock (the "Tender Offer") at a price of $23.25 per share for each class. The offer expired on June 14, 2011 and Total accepted for payment on June 21, 2011 a total of 34,756,682 shares of the Company's former class A common stock and 25,220,000 shares of the Company's former class B common stock, representing 60% of each class of its outstanding common stock as of June 13, 2011, for a total cost of approximately $1.4 billion.

On December 23, 2011, the Company entered into a Stock Purchase Agreement with Total, under which it agreed to acquire 100% of the equity interest of Tenesol from Total for $165.4 million in cash. The Tenesol acquisition was consummated on January 31, 2012 (see Note 3). Contemporaneously with the execution of the Tenesol Stock Purchase Agreement, the Company entered into a Private Placement Agreement with Total, under which Total agreed to purchase, and the Company

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agreed to issue and sell 18.6 million shares of the Company's common stock for a purchase price of $8.80 per share, thereby increasing Total's ownership to approximately 66% of the Company's outstanding common stock as of that date. The sale was completed contemporaneously with the closing of the Tenesol acquisition.

Credit Support Agreement

In connection with the Tender Offer, the Company and Total S.A. entered into a Credit Support Agreement (the "Credit Support Agreement") under which Total S.A. agreed to enter into one or more guarantee agreements (each a "Guaranty") with banks providing letter of credit facilities to the Company in support of certain Company businesses and other permitted purposes. Total S.A. will guarantee the payment to the applicable issuing bank of the Company's obligation to reimburse a draw on a letter of credit and pay interest thereon in accordance with the letter of credit facility between such bank and the Company. The Credit Support Agreement became effective on June 28, 2011 (the "CSA Effective Date"). Under the Credit Support Agreement, at any time from the CSA Effective Date until the fifth anniversary of the CSA Effective Date, the Company may request that Total S.A. provide a Guaranty in support of the Company's payment obligations with respect to a letter of credit facility. Total S.A. is required to issue and enter into the Guaranty requested by the Company, subject to certain terms and conditions that may be waived by Total S.A., and subject to certain other conditions.

In consideration for the commitments of Total S.A., under the Credit Support Agreement, the Company is required to pay Total S.A. a guarantee fee for each letter of credit that is the subject of a Guaranty and was outstanding for all or part of the preceding calendar quarter. The Company is also required to reimburse Total S.A. for payments made under any Guaranty and certain expenses of Total S.A., plus interest on both. In the three and nine months ended September 30, 2012, the Company incurred guaranty fees of $1.7 million and $5.2 million, respectively, to Total S.A.

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

The Credit Support Agreement will terminate following the fifth anniversary of the CSA Effective Date, after the later of the payment in full of all obligations thereunder and the termination or expiration of each Guaranty provided thereunder.

Affiliation Agreement

In connection with the Tender Offer, the Company and Total entered into an Affiliation Agreement that governs the relationship between Total and the Company following the close of the Tender Offer (the "Affiliation Agreement"). Until the expiration of a standstill period (the "Standstill Period"), Total, Total S.A., any of their respective affiliates and certain other related parties (the "Total Group") may not effect, seek, or enter into discussions with any third-party regarding any transaction that would result in the Total Group beneficially owning shares of the Company in excess of certain thresholds, or request the Company or the Company's independent directors, officers or employees, to amend or waive any of the standstill restrictions applicable to the Total Group. The standstill provisions of the Affiliation Agreement do not apply to securities issued in connection with the Liquidity Support Agreement described below.

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

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

In accordance with the terms of the Affiliation Agreement, on July 1, 2011, the Company's Board of Directors expanded the size of the Board of Directors to eleven members and elected six nominees from Total as directors, following which the Board of Directors was composed of the Chief Executive Officer of the Company (who also serves as the chairman of the Company's Board of Directors), four existing non-Total designated members of the Company's Board of Directors, and six directors designated by Total. Directors designated by Total also serve on certain committees of the Company's Board of

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Directors. On the first anniversary of the consummation of the Tender Offer on June 21, 2012, the size of the Company's Board of Directors was reduced to nine members and one non-Total designated director and one director designated by Total resigned from the Company's Board of Directors. If the Total Group's ownership percentage of Company common stock declines, the number of members of the Company's Board of Directors that Total is entitled to nominate to the Company's Board of Directors will be reduced as set forth in the Affiliation Agreement.

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

Affiliation Agreement Guaranty

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

Research & Collaboration Agreement

In connection with the Tender Offer, Total and the Company 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 ("R&D Projects"), with a focus on advancing technology in the area of photovoltaics. The primary purpose of the R&D Collaboration is to: (i) maintain and expand the Company's technology position in the crystalline silicon domain; (ii) ensure the Company's industrial competitiveness; and (iii) guarantee a sustainable position for both the Company and Total to be best-in-class industry players.

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

Registration Rights Agreement

In connection with the Tender Offer, Total and the Company entered into a customary registration rights agreement (the "Registration Rights Agreement") related to Total's ownership of Company shares. The Registration Rights Agreement provides Total with shelf registration rights, subject to certain customary exceptions, and up to two demand registration rights in any 12-month period, also subject to certain customary exceptions. Total also has certain rights to participate in any registrations of securities initiated by the Company. The Company will generally pay all costs and expenses incurred by the Company and Total in connection with any shelf or demand registration (other than selling expenses incurred by Total). The Company and Total have also agreed to certain indemnification rights. The Registration Rights Agreement terminates on the first date on which: (i) the shares held by Total constitute less than 5% of the then-outstanding common stock; (ii) all securities held by Total may be immediately resold pursuant to Rule 144 promulgated under the Securities and Exchange Act of 1934 (the "Exchange Act") during any 90-day period without any volume limitation or other restriction; or (iii) the Company ceases to be subject to the reporting requirements of the Exchange Act.

Stockholder Rights Plan

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

On June 14, 2011, the Company entered into a second amendment to the Rights Agreement (the "Second Rights Agreement Amendment"), in order to, among other things, exempt Total, Total S.A. and certain of their affiliates and certain members of a group of which they may become members from the definition of "Acquiring Person" such that the rights

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issuable pursuant to the Rights Agreement will not become issuable in connection with the completion of the Tender Offer.

By-laws Amendment

On June 14, 2011, the Board of Directors approved the amendment of the Company's By-laws (the "By-laws"). The changes are required under the Affiliation Agreement. The amendments: (i) allow any member of the Total Group to call a meeting of stockholders for the sole purpose of considering and voting on a proposal to effect a Terra Merger (as defined in the Affiliation Agreement) or a Transferee Merger (as defined in the Affiliation Agreement);
(ii) provide that the number of directors of the Board shall be determined from time to time by resolution adopted by the affirmative vote of a majority of the entire Board at any regular or special meeting; (iii) require, prior to the termination of the Affiliation Agreement, a majority of independent directors' approval to amend the By-laws so long as Total, together with Total S.A.'s subsidiaries collectively own at least 30% of the voting securities of the Company as well as require, prior to the termination of the Affiliation Agreement, Total's written consent during the Terra Stockholder Approval Period (as defined in the Affiliation Agreement) to amend the By-laws; and (iv) make certain other conforming changes to the By-laws. In addition, in November 2011, the By-laws were amended to remove restrictions prohibiting stockholder consents in writing.

Liquidity Support Agreement with Total S.A.

The Company is party to an agreement with a customer to construct the California Valley Solar Ranch, a solar park. Part of the debt financing necessary for the customer to pay for the construction of this solar park is being provided by Federal Financing Bank in reliance on a guarantee of repayment provided by the Department of Energy (the "DOE") under a loan guarantee program. On February 28, 2012, the Company entered into a Liquidity Support Agreement with Total S.A. and the DOE, and a series of related agreements with Total S.A. and Total, under which Total S.A. has agreed to provide the Company, or cause to be provided, additional liquidity under certain circumstances to a maximum amount of $600.0 million ("Liquidity Support Facility"). Total S.A. is required to provide liquidity support to the Company under the facility, and the Company is required to accept such liquidity support from Total S.A., if either the Company's actual or projected unrestricted cash, cash equivalents, and unused borrowing capacity are reduced below $100.0 million, or the Company fails to satisfy any financial covenant under its indebtedness. In either such event, subject to a $600.0 million aggregate limit, Total S.A. is required to provide the Company with sufficient liquidity support to increase the amount of its unrestricted cash, cash equivalents and unused borrowing capacity to above $100.0 million, and to restore compliance with its financial covenants. The Liquidity Support Facility is available until the completion of the solar park, expected to be operational in 2013 and completed before the end of fiscal 2014, and, under certain conditions, up to December 31, 2016, at which time all outstanding guarantees will expire and all outstanding debt under the facility will become due. The use of the Liquidity Support Facility is not limited to direct obligations related to the solar park, and is available for general corporate purposes, but the Company has agreed to conduct its operations, and use any proceeds from such facility in ways, that minimize the likelihood of Total S.A. being required to provide further support. In connection with the Liquidity Support Agreement, the Company also entered into a Compensation and Funding Agreement with Total S.A., and a Private Placement Agreement and a Revolving Credit and Convertible Loan Agreement with Total, which implement the terms of the Liquidity Support Agreement and Compensation Funding Agreement.

Compensation and Funding Agreement

In connection with the Liquidity Support Agreement, on February 28, 2012, the Company entered into a Compensation and Funding Agreement (the "Compensation and Funding Agreement") with Total S.A., pursuant to which, among other things, the Company and Total S.A. established the parameters for the terms of the Liquidity Support Facility and any liquidity injections that may be required to be provided by Total S.A. to the Company pursuant to the Liquidity Support Agreement. The Company has agreed in the Compensation and Funding Agreement to use commercially reasonable efforts to assist Total S.A. in the performance of its obligations under the Liquidity Support Agreement and to conduct, and to act in good faith in conducting, its affairs in a manner such that Total S.A.'s obligation under the Liquidity Support Agreement to provide Liquidity Injections will not be triggered or, if triggered, will be minimized. The Company has also agreed to use any cash provided under the facility in such a way as to minimize the need for further liquidity support. The Compensation and Funding Agreement required the Company to issue, in consideration for Total S.A.'s agreement to provide the Liquidity Support Facility, a warrant ("the Upfront Warrant") to Total that is exercisable to purchase a number of shares of the Company's common stock equal to $75.0 million, divided by the volume-weighted average price for the Company's common stock for the 30 trading-day period ending on the trading day immediately preceding the date of the calculation. The Upfront Warrant will be exercisable at any time for seven years after its issuance, provided that, so long as at least $25 million of the Company's convertible debt remains outstanding, such exercise will 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 and Exchange Act of 1934, as amended), of more than 74.99% of the voting power of the Company's common stock at such time, because “any person” becoming such “beneficial owner” would trigger the

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repurchase or conversion of the Company's existing convertible debt. On February 28, 2012, the Company issued to Total the Upfront Warrant to purchase 9,531,677 shares of the Company's common stock with an exercise price of $7.8685, subject to adjustment for customary anti-dilution and other events.

Liquidity support may be provided by Total S.A. or through its affiliates in the form of revolving non-convertible debt, convertible debt, equity, guarantees of Company indebtedness or other forms of liquidity support agreed to by the Company, depending on the amount outstanding under the facility immediately prior to provision of the applicable support among other factors. The Company is required to compensate Total S.A. for any liquidity support actually provided, and the form and amount of such compensation depends on the form and amount of support provided, with the amount of compensation generally increasing with the amount of support provided over time. Such compensation is to be provided in a variety of forms including guarantee fees, warrants to purchase common stock, interest on amounts borrowed, and discounts on equity issued.

During the term of the Compensation and Funding Agreement, the Company will make certain cash payments to Total S.A. within 30 days after the end of each calendar quarter during for the term of the agreement as follow: (i) quarterly payment of a commitment fee in an amount equal to 0.25% of the unused portion of the $600 million Liquidity Support Facility as of the end of such quarter; and (ii) quarterly payment of a guarantee fee in an amount equal to 2.75% per annum of the average amount of the Company's indebtedness that is guaranteed by Total S.A. pursuant to any guaranty issued in accordance with the terms of the Compensation and Funding Agreement during such quarter. Any payment obligations of the Company to Total S.A. under the Compensation and Funding Agreement that are not paid when due shall accrue interest until paid in full at a rate equal to 6-month U.S. LIBOR as in effect from time to time plus 5.00% per annum. In the three and nine months ended September 30, 2012, the Company incurred commitment fees of $1.4 million and $3.5 million, respectively, to Total S.A.

The Liquidity Support Agreement, the Compensation and Funding Agreement, the Private Placement Agreement, and the Revolving Credit and Convertible Loan Agreement are further described in the fiscal 2011 Form 10-K.

Note 3. TRANSFER OF ENTITIES UNDER COMMON CONTROL

Tenesol

On January 31, 2012, the Company completed its acquisition of Tenesol, a global solar provider headquartered in La Tour de Salvagny, France, and formerly wholly-owned subsidiary of Total, for $165.4 million in cash in exchange for 100% of the equity of Tenesol from Total pursuant to a stock purchase agreement entered into on December 23, 2011. Tenesol is engaged in the business of devising, designing, manufacturing, installing, and managing solar power production and consumption systems for farms, industrial and service sector buildings, solar power plants and private homes.

As Tenesol and the Company were under the common control of Total as of the January 31, 2012 acquisition date, the acquisition is treated as a transfer of an entity under common control and represents a change in the reporting entity. As a result, the Company has retrospectively adjusted its historical financial statements to reflect the transfer beginning on October 10, 2011, the first date in which Total had common control of both the Company and Tenesol, and to include the results of operations in the Company's Condensed Consolidated Statement of Operations since October 10, 2011. The Company recorded the transfer of Tenesol's assets and liabilities at their historical carrying value in Total's financial statements in accordance with U.S. GAAP, and the net assets transferred were recorded as an equity contribution from Total to the Company as of October 10, 2011. The subsequent cash payment on January 31, 2012 as described above was treated as a cash distribution to Total. In addition, a transaction between Total and Tenesol on January 23, 2012 resulted in an additional equity contribution from Total to the Company in the fiscal quarter ending January 1, 2012, and an additional cash distribution to Total totaling $12.9 million in the fiscal quarter ending April 1, 2012.

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The Condensed Consolidated Balance Sheets and Condensed Consolidated Statements of Operations of the Company as of and for the twelve months ended January 1, 2012 as reported previously and as adjusted in this report are as follows:

	As of January 1, 2012	
	As Adjusted for the Change in Reporting Entity	As Previously Reported in the 2011 Annual Report on Form 10-K
Assets		
Current assets:		