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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**Form 10-Q**

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(Mark One)

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

For the quarterly period ended December 31, 2022

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: 001-15957

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**Capstone Green Energy Corporation**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**16640 Stagg Street**

**Van Nuys, California**

(Address of principal executive offices)

**95-4180883**

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

**91406**

(Zip Code)

**818-734-5300**

(Registrant's telephone number, including area code)

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

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of exchange on which registered</b>
Common Stock, par value \$.001 per share	CGRN	NASDAQ Capital Market
Series B Junior Participating Preferred Stock Purchase Rights		

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ 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 ☒

The number of shares outstanding of the registrant's common stock as of February 10, 2023, was 18,347,840.

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**CAPSTONE GREEN ENERGY CORPORATION  
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# PART I — FINANCIAL INFORMATION

## Item 1. Financial Statements

### CAPSTONE GREEN ENERGY CORPORATION AND SUBSIDIARIES CONDENSED CONSOLIDATED BALANCE SHEETS (In thousands, except share amounts) (Unaudited)

	December 31, 2022	March 31, 2022
<b>Assets</b>		
Current Assets:		
Cash and cash equivalents	\$ 16,618	\$ 22,559
Accounts receivable, net of allowances of \$1,013 at December 31, 2022 and \$845 at March 31, 2022	15,119	24,665
Inventories, net	25,602	18,465
Prepaid expenses and other current assets	7,125	5,519
Total current assets	64,464	71,208
Property, plant, equipment and rental assets, net	25,906	18,038
Non-current portion of accounts receivable	107	1,212
Non-current portion of inventories	3,055	1,680
Other assets	11,334	8,635
Total assets	<u>\$ 104,866</u>	<u>\$ 100,773</u>
<b>Liabilities and Stockholders' Equity</b>		
Current Liabilities:		
Accounts payable and accrued expenses	\$ 26,087	\$ 25,130
Accrued salaries and wages	1,421	1,147
Accrued warranty reserve	1,540	1,483
Deferred revenue	9,699	9,185
Current portion of notes payable and lease obligations	2,201	675
Term note payable	50,974	—
Total current liabilities	91,922	37,620
Deferred revenue - non-current	817	981
Term note payable - non-current	—	50,949
Long-term portion of notes payable and lease obligations	11,036	5,809
Total liabilities	<u>103,775</u>	<u>95,359</u>
Commitments and contingencies (Note 14)		
Stockholders' Equity:		
Preferred stock, \$.001 par value; 1,000,000 shares authorized; none issued	—	—
Common stock, \$.001 par value; 51,500,000 shares authorized, 18,464,854 shares issued and 18,347,840 shares outstanding at December 31, 2022; 15,398,368 shares issued and 15,296,735 shares outstanding at March 31, 2022	18	15
Additional paid-in capital	954,982	946,969
Accumulated deficit	(951,770)	(939,482)
Treasury stock, at cost; 117,014 shares at December 31, 2022 and 101,633 shares at March 31, 2022	(2,139)	(2,088)
Total stockholders' equity	1,091	5,414
Total liabilities and stockholders' equity	<u>\$ 104,866</u>	<u>\$ 100,773</u>

See accompanying notes to condensed consolidated financial statements

**CAPSTONE GREEN ENERGY CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands, except per share data)  
(Unaudited)

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2022	2021	2022	2021
Revenue, net:				
Product and accessories	\$ 10,003	\$ 12,329	\$ 29,773	\$ 29,183
Parts, service and rentals	9,603	8,280	29,260	24,704
Total revenue, net	19,606	20,609	59,033	53,887
Cost of goods sold:				
Product and accessories	11,629	12,689	33,017	30,479
Parts, service and rentals	5,308	5,703	16,465	15,833
Total cost of goods sold	16,937	18,392	49,482	46,312
Gross profit	2,669	2,217	9,551	7,575
Operating expenses:				
Research and development	634	767	1,726	2,637
Selling, general and administrative	5,397	5,293	15,423	17,055
Total operating expenses	6,031	6,060	17,149	19,692
Loss from operations	(3,362)	(3,843)	(7,598)	(12,117)
Other income (expense)	5	(21)	(43)	639
Interest income	43	5	74	16
Interest expense	(1,900)	(1,287)	(4,618)	(3,800)
Gain (loss) on debt extinguishment	—	—	—	1,950
Loss before provision for income taxes	(5,214)	(5,146)	(12,185)	(13,312)
Provision for income taxes	—	—	6	10
Net loss	(5,214)	(5,146)	(12,191)	(13,322)
Less: Deemed dividend on purchase warrant for common shares	—	—	97	—
Net loss attributable to common stockholders	<u>\$ (5,214)</u>	<u>\$ (5,146)</u>	<u>\$ (12,288)</u>	<u>\$ (13,322)</u>
Net loss per common share attributable to common stockholders—basic and diluted	<u>\$ (0.28)</u>	<u>\$ (0.34)</u>	<u>\$ (0.73)</u>	<u>\$ (0.92)</u>
Weighted average shares used to calculate basic and diluted net loss per common share attributable to common stockholders	<u>18,351</u>	<u>15,236</u>	<u>16,824</u>	<u>14,548</u>

See accompanying notes to condensed consolidated financial statements

**CAPSTONE GREEN ENERGY CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(In thousands, except share amounts)  
(Unaudited)

	Common Stock		Additional	Accumulated	Treasury Stock		Total
	Shares	Amount	Paid-in Capital	Deficit	Shares	Amount	Stockholders' Equity
Balance, March 31, 2022	15,398,368	\$ 15	\$ 946,969	\$ (939,482)	101,633	\$ (2,088)	\$ 5,414
Purchase of treasury stock	—	—	—	—	9,296	(36)	(36)
Vested restricted stock awards	33,234	—	36	—	—	—	36
Stock-based compensation	—	—	232	—	—	—	232
Net loss	—	—	—	(2,059)	—	—	(2,059)
Balance, June 30, 2022	15,431,602	15	947,237	(941,541)	110,929	(2,124)	3,587
Purchase of treasury stock	—	—	—	—	6,085	(15)	(15)
Vested restricted stock awards	28,882	—	15	—	—	—	15
Stock-based compensation	—	—	154	—	—	—	154
Stock awards to Board of Directors	54,585	—	—	—	—	—	—
Issuance of common stock, net of issuance costs	2,934,498	3	7,247	—	—	—	7,250
Deemed dividend on purchase warrant for common shares	—	—	97	(97)	—	—	—
Net loss	—	—	—	(4,918)	—	—	(4,918)
Balance, September 30, 2022	18,449,567	18	954,750	(946,556)	117,014	(2,139)	6,073
Vested restricted stock awards	35,915	—	—	—	—	—	—
Stock-based compensation	—	—	232	—	—	—	232
Net loss	—	—	—	(5,214)	—	—	(5,214)
Balance, December 31, 2022	<u>18,485,482</u>	<u>\$ 18</u>	<u>\$ 954,982</u>	<u>\$ (951,770)</u>	<u>117,014</u>	<u>\$ (2,139)</u>	<u>\$ 1,091</u>

	Common Stock		Additional	Accumulated	Treasury Stock		Total
	Shares	Amount	Paid-in Capital	Deficit	Shares	Amount	Stockholders' Equity
Balance, March 31, 2021	12,898,144	\$ 13	\$ 934,381	\$ (919,271)	73,954	\$ (1,949)	\$ 13,174
Purchase of treasury stock	—	—	—	—	3,353	(29)	(29)
Vested restricted stock awards	19,096	—	29	—	—	—	29
Stock-based compensation	—	—	305	—	—	—	305
Issuance of common stock, net of issuance costs	2,289,651	2	11,203	—	—	—	11,205
Net loss	—	—	—	(2,182)	—	—	(2,182)
Balance, June 30, 2021	15,206,891	15	945,918	(921,453)	77,307	(1,978)	22,502
Purchase of treasury stock	—	—	—	—	20,006	(92)	(92)
Vested restricted stock awards	48,313	—	53	—	—	—	53
Stock-based compensation	—	—	333	—	—	—	333
Stock awards to Board of Directors	70,260	—	—	—	—	—	—
Issuance of common stock, net of issuance costs	—	—	(26)	—	—	—	(26)
Net loss	—	—	—	(5,994)	—	—	(5,994)
Balance, September 30, 2021	15,325,464	15	946,278	(927,447)	97,313	(2,070)	16,776
Purchase of treasury stock	—	—	—	—	1,650	(8)	(8)
Vested restricted stock awards	17,661	—	8	—	—	—	8
Stock-based compensation	—	—	335	—	—	—	335
Net loss	—	—	—	(5,146)	—	—	(5,146)
Balance, December 31, 2021	<u>15,343,125</u>	<u>\$ 15</u>	<u>\$ 946,621</u>	<u>\$ (932,593)</u>	<u>98,963</u>	<u>\$ (2,078)</u>	<u>\$ 11,965</u>

See accompanying notes to condensed consolidated financial statements

**CAPSTONE GREEN ENERGY CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)  
(Unaudited)

	Nine Months Ended December 31,	
	2022	2021
<b>Cash Flows from Operating Activities:</b>		
Net loss	\$ (12,191)	\$ (13,322)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,345	1,337
Amortization of financing costs and discounts	60	26
Amortization of right-of-use assets	848	552
Gain on debt extinguishment	—	(1,950)
Bad debt expense	237	—
Inventory provision	771	386
Provision for warranty expenses	369	358
Provision for sales returns, net	81	—
Stock-based compensation	617	973
Changes in operating assets and liabilities:		
Accounts receivable	9,077	(6,249)
Inventories	(9,080)	(5,637)
Prepaid expenses, other current assets and other assets	(933)	509
Accounts payable and accrued expenses	(276)	5,953
Accrued salaries and wages and long-term liabilities	274	(168)
Accrued warranty reserve	(312)	(4,780)
Deferred revenue	350	(981)
Net cash used in operating activities	(7,763)	(22,993)
<b>Cash Flows from Investing Activities:</b>		
Expenditures for property, plant, equipment and rental assets	(3,999)	(5,748)
Net cash used in investing activities	(3,999)	(5,748)
<b>Cash Flows from Financing Activities:</b>		
Repayment of notes payable and lease obligations	(1,429)	(590)
Cash used in employee stock-based transactions	(52)	(129)
Net proceeds from issuance of common stock and warrants	7,302	11,194
Net cash provided by financing activities	5,821	10,475
Net increase (decrease) in Cash and Cash Equivalents	(5,941)	(18,266)
Cash and Cash Equivalents, Beginning of Period	22,559	49,533
Cash and Cash Equivalents, End of Period	\$ 16,618	\$ 31,267
<b>Supplemental Disclosures of Cash Flow Information:</b>		
Cash paid during the period for:		
Interest	\$ 4,128	\$ 3,818
Income taxes	\$ 13	\$ 17
<b>Supplemental Disclosures of Non-Cash Information:</b>		
Acquisition of property and equipment through accounts payable and notes payable	\$ 565	\$ 118
Renewal of insurance contracts financed by notes payable	\$ 665	\$ 567
Issuance of common stock for services to be received	\$ —	\$ 75
Deemed dividend	\$ 97	\$ —
Right-of-use assets obtained in exchange for lease obligations	\$ 9,764	\$ —

See accompanying notes to condensed consolidated financial statements

**CAPSTONE GREEN ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(Unaudited)

**1. Business and Organization**

Capstone Green Energy Corporation (“Capstone” or the “Company”) is a provider of customized microgrid solutions, on site resilient green Energy as a Service (“EaaS”) solutions, and on-site energy technology systems focused on helping customers around the globe meet their environmental, energy savings, and resiliency goals. These solutions include stationary distributed power generation applications and distribution networks, including cogeneration (combined heat and power (“CHP”)), integrated combined heat and power (“ICHPP”), and combined cooling, heat and power (“CCHP”), renewable energy, natural resources, and critical power supply. In April 2021, the Company added additional products to its portfolio and shifted its focus to four key business lines. The Energy Conversion Products business line is driven by the Company’s industry-leading, highly efficient, low-emission, resilient microturbine energy systems, which offer scalable solutions in addition to a broad range of customer-tailored solutions, including hybrid energy systems and larger frame industrial turbines. Through the Energy as a Service business line, the Company offers rental solutions utilizing its microturbine energy systems and battery storage systems, comprehensive factory protection plan service contracts that guarantee life-cycle costs, as well as aftermarket spare parts. The Company’s two emerging business lines are Energy Storage Products and Hydrogen Energy Solutions. The Energy Storage Products business line is driven by the design and installation of microgrid storage systems creating customized solutions using a combination of battery technologies and monitoring software. Through the Company’s Hydrogen Energy Solutions business line, it offers customers a variety of hydrogen products, including the Company’s microturbine energy systems. Because these are still emerging offerings, Energy Storage Products and Hydrogen Energy Solutions’ revenue has been immaterial to date. The Company was organized in 1988 and has been commercially producing its microturbine generators since 1998.

**2. Basis of Presentation and Significant Accounting Policies**

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“generally accepted accounting principles” or “GAAP”) for interim financial information and the instructions to Form 10-Q and Regulation S-X promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). They do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. The condensed consolidated balance sheet at March 31, 2022 was derived from audited consolidated financial statements included in the Company’s Annual Report on Form 10-K for the Fiscal year ended March 31, 2022. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. In the opinion of management, the interim condensed consolidated financial statements include all adjustments (including normal recurring adjustments) necessary for a fair presentation of the financial condition, results of operations and cash flows for such periods. Results of operations for any interim period are not necessarily indicative of results for any other interim period or for the full year. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the Fiscal Year 2022 filed with the SEC on July 13, 2022. This Quarterly Report on Form 10-Q (this “Form 10-Q”) refers to the Company’s fiscal years ending March 31 as its “Fiscal” years.

**Significant Accounting Policies** There have been no changes to the Company’s significant accounting policies described in the Annual Report on Form 10-K for Fiscal Year 2022 filed with the SEC on July 13, 2022, that have had a material impact on the Company’s condensed consolidated financial statements and related notes.

**Liquidity and Going Concern** In connection with the preparation of these condensed consolidated financial statements for the three and nine months ended December 31, 2022, management evaluated whether there were conditions and events, considered in the aggregate, that raised substantial doubt about the Company’s ability to meet its obligations as they become due over the next twelve months from the date of the issuance of the financial statements. Management assessed that there were such conditions and events, primarily the October 1, 2023, due date for the Goldman Sachs outstanding debt of \$51.0 million at fair value (see Note 10 – Term Note Payable for further discussion of the outstanding debt). As of December 31, 2022, the Company had cash and cash equivalents of \$16.6 million. While the Company believes internally generated cash will adequately fund operating and investment activities over the next twelve months, there will not be sufficient internally generated cash, nor does the Company expect that it could obtain sufficient financing through underwritten public offerings, at-the-market offerings or other similar methods, to retire the outstanding debt. The Company has engaged Greenhill & Co., LLC (“Greenhill”), a global investment banking firm, to assess financing

alternatives related to the Note Payable as well as to raise incremental capital for general corporate purposes. Greenhill's refinancing efforts are ongoing as of December 31, 2022. As there is no guarantee that the Company will successfully complete these financing activities, these conditions raise substantial doubt about the Company's ability to continue as a going concern for a period of one year from the date of the financial statements are issued.

**Basis for Consolidation** These condensed consolidated financial statements include the accounts of the Company, Capstone Turbine International, Inc., its wholly owned subsidiary that was formed in June 2004 and Capstone Turbine Financial Services, LLC, its wholly owned subsidiary that was formed in October 2015, after elimination of inter-company transactions.

### 3. Recently Issued Accounting Pronouncements

#### *Not yet adopted*

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. The amendments in this ASU provide guidance for estimating credit losses on certain types of financial instruments, including trade receivables, by introducing an approach based on expected losses. The expected loss approach will require entities to incorporate considerations of historical information, current information and reasonable forecasts. With certain exceptions, the transition to the new guidance will be through a cumulative effect adjustment to opening accumulated deficit as of the beginning of the first reporting period in which the guidance is adopted. In November 2019, the FASB issued ASU 2019-10, Financial Instruments - Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842) ("ASU 2019-10"), which defers the adoption of ASU 2016-13 for Smaller Reporting Companies ("SRCs") as defined by the SEC for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The Company is currently evaluating the impact of ASU 2016-13 on its condensed consolidated financial statements and related disclosures.

Management considers the applicability and impact of all Accounting Standards Updates ("ASUs"). The ASUs not listed were assessed and determined by management to be either not applicable or are expected to have minimal impact on the Company's consolidated financial position and/or results of operations.

### 4. Customer Concentrations and Accounts Receivable

RSP Systems and Cal Microturbine, two of the Company's domestic distributors, accounted for 21% and 14% of revenue for the three months ended December 31, 2022, respectively. E-Finity Distributed Generation, LLC ("E-Finity"), one of the Company's domestic distributors, Radian Oil & Gas Services Co, one of the Company's international direct customers, and RSP Systems, accounted for 13%, 10%, and 10% of revenue for the three months ended December 31, 2021, respectively. Cal Microturbine and RSP Systems accounted for 16% and 13% of revenue for the nine months ended December 31, 2022, respectively. E-Finity accounted for 15% of revenue for the nine months ended December 31, 2021.

Additionally, E-Finity accounted for 13% and 28% of net accounts receivable as of December 31, 2022 and March 31, 2022, respectively. The Company recorded a net bad debt expense of \$0.2 million during the three and nine months ended December 31, 2022. The Company had no bad debt expense during the three and nine months ended December 31, 2021.



## 5. Inventories

Inventories are valued at the lower of cost (determined on a first in first out (“FIFO”) basis) or net realizable value and consisted of the following (in thousands):

	December 31, 2022	March 31, 2022
Raw materials	\$ 30,648	\$ 20,071
Finished goods	399	1,935
Total	31,047	22,006
Less: inventory reserve	(2,390)	(1,861)
Less: non-current portion	(3,055)	(1,680)
Total inventory, net-current portion	<u>\$ 25,602</u>	<u>\$ 18,465</u>

The non-current portion of inventories represent the portion of inventories in excess of amounts expected to be sold or used in the next twelve months and is primarily comprised of repair parts for older generation products still in operation but not technologically compatible with current configurations. The non-current portion also includes inventory that has long lead times. The weighted average age of the non-current portion of inventories on hand as of December 31, 2022 is 0.8 years. The Company expects to use the non-current portion of the inventories on hand as of December 31, 2022 over the periods presented in the following table (in thousands):

Expected Period of Use	Non-current Inventory Balance Expected to be Used
13 to 24 months	\$ 1,645
25 to 36 months	1,410
Total	<u>\$ 3,055</u>

## 6. Property, Plant, Equipment and Rental Assets

Property, plant, equipment and rental assets consisted of the following (in thousands):

	December 31, 2022	March 31, 2022
Machinery, equipment, automobiles and furniture	\$ 14,603	\$ 15,945
Leasehold improvements	8,868	8,848
Molds and tooling	3,516	3,469
Rental assets	28,519	17,079
	55,506	45,341
Less: accumulated depreciation	(29,600)	(27,303)
Total property, plant, equipment and rental assets, net	<u>\$ 25,906</u>	<u>\$ 18,038</u>

During the nine months ended December 31, 2022, the Company deployed an additional 12.4 megawatts (“MWs”) of microturbine systems with a book value of approximately \$11.4 million under its long-term rental program, bringing the total rental fleet to 33.5 MWs.

The Company regularly assesses the useful lives of property and equipment and retires assets no longer in service. Depreciation expense for property, plant, equipment and rental assets was \$0.9 million and \$0.5 million for the three months ended December 31, 2022 and 2021, respectively. Depreciation expense for property, plant, equipment and rental assets was \$2.3 million and \$1.2 million for the nine months ended December 31, 2022 and 2021, respectively.

## 7. Stock-Based Compensation

The following table summarizes, by condensed consolidated statements of operations line item, stock-based compensation expense (in thousands):

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2022	2021	2022	2021
Cost of goods sold	\$ 8	\$ 29	\$ 23	\$ 86
Research and development	24	22	73	57
Selling, general and administrative	200	284	521	830
Stock-based compensation expense	<u>\$ 232</u>	<u>\$ 335</u>	<u>\$ 617</u>	<u>\$ 973</u>

### Stock Plans

#### 2000 Equity Incentive Plan and 2017 Equity Incentive Plan

In June 2017, the Company's Board adopted the Capstone Green Energy Corporation 2017 Equity Incentive Plan (the "2017 Plan"), which was approved by the stockholders at the Company's 2017 annual meeting of stockholders on August 31, 2017 (the "2017 Annual Meeting"). The 2017 Plan initially provided for awards of up to 300,000 shares of Common Stock. The 2017 Plan is administered by the Compensation and Human Capital Committee designated by the Board (the "Compensation Committee"). The Compensation Committee's authority includes determining the number of incentive awards and vesting provisions. On June 5, 2018, the Company's Board of Directors adopted an amendment to the 2017 Plan to increase the aggregate number of shares of Common Stock authorized for issuance under the 2017 Plan by 300,000 shares of Common Stock. The amendment of the 2017 Plan was approved by the Company's stockholders at the 2018 annual meeting of stockholders on August 30, 2018. Since this time, the Company's stockholders have approved amendments to increase the aggregate number of shares authorized for issuance under the 2017 Plan by an additional 2,200,000 shares of Common Stock, including, most recently, on June 7, 2022, the Company's Board of Directors adopted Amendment No. 6 (the "Plan Amendment") of the 2017 Plan to increase the aggregate number of shares of Common Stock authorized for issuance under the 2017 Plan by 600,000 shares of Common Stock. The Plan amendment was approved by the Company's stockholders at the 2022 annual meeting of stockholders on September 12, 2022.

As of December 31, 2022, there were 1,117,061 shares available for future grants under the 2017 Plan.

#### *Restricted Stock Units and Performance Restricted Stock Units*

The Company issued restricted stock units under the Company's 2000 Equity Incentive Plan, as well as issued (and may in the future issue) restricted stock units under the 2017 Plan to employees, non-employee directors and consultants. The restricted stock units are valued based on the closing price of the Company's Common Stock on the date of issuance, and compensation cost is recorded on a straight-line basis over the vesting period. The restricted stock units issued to employees vest over a period of two, three or four years. For restricted stock units with two-year vesting, 100% vests on the second year anniversary. For restricted stock units with three-year vesting, one-third vest annually beginning one year after the issuance date. For restricted stock units with four-year vesting, one-fourth vest annually beginning one year after the issuance date. The restricted stock units issued to non-employee directors vest one year after the issuance

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date. The following table summarizes restricted stock unit and performance restricted stock unit (“PRSU”) activity during the nine months ended December 31, 2022:

Restricted Stock Units and Performance Restricted Stock Units	Shares	Weighted Average Grant Date Fair Value
Non-vested restricted stock units outstanding at March 31, 2022	591,805	\$ 5.66
Granted	512,164	2.11
Vested and issued	(152,616)	5.81
Forfeited	(214,517)	4.55
Non-vested restricted stock units outstanding at December 31, 2022	736,836	3.48
Restricted stock units expected to vest beyond December 31, 2022	736,836	3.48

The following table provides additional information on restricted stock units and performance restricted stock units:

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2022	2021	2022	2021
Restricted stock compensation expense (in thousands)	\$ 232	\$ 335	\$ 617	\$ 973
Aggregate fair value of restricted stock units vested and issued (in thousands)	\$ 37	\$ 94	\$ 423	\$ 798
Weighted average grant date fair value of restricted stock units granted during the period	\$ 1.59	\$ 4.70	\$ 2.11	\$ 5.45

As of December 31, 2022, there was approximately \$1.7 million of total compensation cost related to unvested restricted stock units that is expected to be recognized as an expense over a weighted average period of 2.3 years.

The Company’s PRSU activity is included in the above restricted stock units tables. The PRSU program has a three-year performance measurement period. The performance measurement occurs in the third year (for a three-year grant) following the grant date. The program is intended to have overlapping performance measurement periods (e.g., a new three-year cycle begins each year on April 1), subject to Compensation Committee approval. The overall performance at the end of the three-year period will be defined as the average of the yearly goals to determine the payout. Overall performance and payout at the end of the three-year period will be defined as the average of the three annual goals performance versus that years actual. At the end of each performance measurement period, the Compensation Committee will determine the achievement against the performance objectives.

During the nine months ended December 31, 2022, the Company granted 72,412 PRSUs with a three-year performance measurement and the criteria measured by the Company’s aftermarket sales absorption. During the nine months ended December 31, 2021, the Company granted 35,986 PRSUs with a three-year performance measurement period. The target PRSU awards for each participant, will be paid upon achievement of the target level of performance for cash flow from operations and aftermarket sale absorption, taking into account the applicable weighing for the individual metric. Achievement of a performance goal at the threshold level will result in a payment that is 50% of the target PRSU award. Achievement of a performance goal at the maximum level will result in a payment that is 150% of the target PRSU award. The Compensation Committee will use an interpolation table that weighs performance between levels for determining the portion of the Target PRSU that is earned.

The weighted average per share grant date fair value of PRSUs granted during the nine months ended December 31, 2022 and 2021, was \$3.80 and \$8.39, respectively. Based on the Company’s assessment as of December 31, 2022, the Company will not meet the threshold of the performance measurements, and as a result, no compensation expense was recorded during the nine months ended December 31, 2022 and 2021. Compensation expense is recognized over the corresponding requisite service period and will be adjusted in subsequent reporting periods if the Company’s assessment of the probable level of achievement of the performance goals change. The Company will continue to assess the likelihood of the PRSU threshold being met until the end of the applicable performance period.

## Stockholder Rights Plan

On May 6, 2019, the Board declared a dividend of one right (a “New Right”) for each of the Company’s issued and outstanding shares of Common Stock. The dividend was paid to the stockholders of record at the close of business on May 16, 2019 (the “Record Date”). Each New Right entitles the registered holder, subject to the terms of the NOL Rights Agreement (as defined below), to purchase from the Company one one-thousandth of a share of the Company’s Series B Junior Participating Preferred Stock (the “Preferred Stock”) at a price of \$5.22 (the “Exercise Price”), subject to certain adjustments. The description and terms of the New Rights are set forth in the Rights Agreement dated as of May 6, 2019 (the “NOL Rights Agreement”) between the Company and Broadridge Financial Solutions, Inc., as Rights Agent (the “Rights Agent”).

The NOL Rights Agreement replaced the Company’s Rights Agreement, dated May 6, 2016, by and between the Company and Broadridge Financial Solutions, Inc., as successor-in-interest to Computershare Inc., as rights agent (the “Original Rights Agreement”). The Original Rights Agreement, and the rights thereunder to purchase fractional shares of Preferred Stock, expired at 5:00 p.m., New York City time, on May 6, 2019 and the NOL Rights Agreement was entered into immediately thereafter.

The purpose of the NOL Rights Agreement is to diminish the risk that the Company’s ability to use its net operating losses and certain other tax assets (collectively, “Tax Benefits”) to reduce potential future federal income tax obligations would become subject to limitations by reason of the Company’s experiencing an “ownership change,” as defined in Section 382 of the Internal Revenue Code of 1986, as amended (the “Tax Code”). A company generally experiences such an ownership change if the percentage of its stock owned by its “5-percent shareholders,” as defined in Section 382 of the Tax Code, increases by more than 50 percentage points over a rolling three-year period. The NOL Rights Agreement is designed to reduce the likelihood that the Company will experience an ownership change under Section 382 of the Tax Code by (i) discouraging any person or group from becoming a 4.9% or greater shareholder and (ii) discouraging any existing 4.9% or greater shareholder from acquiring additional shares of the Company’s stock.

The New Rights will not be exercisable until the earlier to occur of (i) the close of business on the tenth business day after a public announcement or filing that a person has, or group of affiliated or associated persons have, become an “Acquiring Person,” which is defined as a person or group of affiliated or associated persons who, at any time after the date of the NOL Rights Agreement, have acquired, or obtained the right to acquire, beneficial ownership of 4.9% or more of the Company’s outstanding shares of Common Stock, subject to certain exceptions or (ii) the close of business on the tenth business day after the commencement of, or announcement of an intention to commence, a tender offer or exchange offer the consummation of which would result in any person becoming an Acquiring Person (the earlier of such dates being called the “Distribution Date”). Certain synthetic interests in securities created by derivative positions, whether or not such interests are considered to be ownership of the underlying Common Stock or are reportable for purposes of Regulation 13D of the Exchange Act, are treated as beneficial ownership of the number of shares of Common Stock equivalent to the economic exposure created by the derivative position, to the extent actual shares of the Common Stock are directly or indirectly held by counterparties to the derivatives contracts.

With respect to certificates representing shares of Common Stock outstanding as of the Record Date, until the Distribution Date, the New Rights will be evidenced by such certificates for shares of Common Stock registered in the names of the holders thereof, and not by separate Rights Certificates, as described further below. With respect to book entry shares of Common Stock outstanding as of the Record Date, until the Distribution Date, the New Rights will be evidenced by the balances indicated in the book entry account system of the transfer agent for the Common Stock. Until the earlier of the Distribution Date and the Expiration Date, as described below, the transfer of any shares of Common Stock outstanding on the Record Date will also constitute the transfer of the New Rights associated with such shares of Common Stock. As soon as practicable after the Distribution Date, separate certificates evidencing the New Rights (“Right Certificates”) will be mailed to holders of record of the Common Stock as of the close of business on the Distribution Date, and such Right Certificates alone will evidence the New Rights.

The New Rights, which are not exercisable until the Distribution Date, will expire prior to the earliest of (i) May 6, 2022 or such later day as may be established by the Board prior to the expiration of the New Rights, provided that the extension is submitted to the Company’s stockholders for ratification at the next annual meeting of stockholders of the Company succeeding such extension; (ii) the time at which the New Rights are redeemed pursuant to the NOL Rights Agreement; (iii) the time at which the New Rights are exchanged pursuant to the NOL Rights Agreement; (iv) the time at which the New Rights are terminated upon the occurrence of certain transactions; (v) the close of business on the first day after the Company’s 2019 annual meeting of stockholders, if approval by the stockholders of the Company of the NOL

Rights Agreement has not been obtained on or prior to the close of business on the first day after the Company's 2019 annual meeting of stockholders; (vi) the close of business on the effective date of the repeal of Section 382 of the Tax Code, if the Board determines that the NOL Rights Agreement is no longer necessary or desirable for the preservation of Tax Benefits; and (vii) the close of business on the first day of a taxable year of the Company to which the Board determines that no Tax Benefits are available to be carried forward, (the earliest of (i), (ii), (iii), (iv), (v), (vi) and (vii) is referred to as the "Expiration Date").

Each share of Preferred Stock will be entitled, when, as and if declared, to a preferential per share quarterly dividend payment equal to the greater of (i) \$1.00 per share or (ii) an amount equal to 1,000 times the aggregate quarterly dividend declared per share of Common Stock since the immediately preceding quarterly dividend payment date for the Common Stock (or, with respect to the first quarterly dividend payment on the Common Stock, since the first issuance of the Preferred Stock). Each share of Preferred Stock will entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Company. In the event of any merger, consolidation or other transaction in which shares of Common Stock are converted or exchanged, each share of Preferred Stock will be entitled to receive 1,000 times the amount received per one share of Common Stock.

On April 7, 2022, the Board approved an extension of the NOL Rights Agreement from May 6, 2022 to May 6, 2025. This extension was approved by the stockholders at the 2022 annual meeting of stockholders held on September 12, 2022.

## **8. Offerings of Common Stock and Warrants**

### ***Common Stock Offerings***

On June 17, 2021, the Company entered into an amended and restated underwriting agreement (the "Wainwright Underwriting Agreement") with H.C. Wainwright & Co., LLC ("Wainwright") whereby the Company agreed to sell to Wainwright, and Wainwright agreed to purchase, in a firm commitment underwritten public offering 1,904,763 shares (the "Wainwright Shares") of the Company's Common Stock, \$0.001 par value per share (the "Wainwright Offering"). The offering price to the public in the Offering was \$5.25 per share of Common Stock, and the Underwriter agreed to purchase the Wainwright Shares from the Company pursuant to the Wainwright Underwriting Agreement at a price of \$4.91 per share, representing an underwriting discount of 6.5%. Pursuant to the Wainwright Underwriting Agreement, the Company also granted Wainwright an option to purchase, for a period of 30 days from the date of the Underwriting Agreement, up to an additional 285,714 shares of Common Stock (the "Option Shares"). On June 21, 2021, Wainwright exercised the option in full.

The Wainwright Offering of the Wainwright Shares was registered pursuant to a shelf registration statement (No. 333-254290) on Form S-3 filed by the Company with the Securities and Exchange Commission on March 22, 2021, and declared effective on April 14, 2021 (the "Registration Statement"), and made pursuant to a prospectus supplement, dated June 17, 2021, and accompanying prospectus that form a part of the Registration Statement relating to the Offering. The Offering closed on June 22, 2021, and the Company received net proceeds of \$10.5 million after deducting \$1.0 million in underwriting discounts, commissions and offering expenses paid by the Company.

On August 18, 2022, the Company entered into an underwriting agreement (the "Lake Street Underwriting Agreement") with Lake Street Capital Markets, LLC and Joseph Gunnar and Company, LLC (the "Underwriters") whereby the Company agreed to sell to the Underwriters, and the Underwriters agreed to purchase, in a firm commitment underwritten public offering 2,934,498 (the "Lake Street Shares") of the Company's Common Stock, \$0.001 par value per share (the "Lake Street Offering") and accompanying warrants to purchase up to 2,934,498 shares of common stock. The offering price to the public in the Offering was \$2.75 per share of Common Stock and accompanying warrant, and the Underwriter agreed to purchase the shares and accompanying warrants from the Company pursuant to the Underwriting Agreement at a price of \$2.585 per share and accompanying warrant, representing an underwriting discount of 6.0%.

The Lake Street Offering of the Lake Street Shares was registered pursuant to the Registration Statement, and made pursuant to a prospectus supplement, dated August 22, 2022, and accompanying prospectus that form a part of the Registration Statement relating to the Lake Street Offering. The Lake Street Offering closed on August 24, 2022, and the Company received net proceeds of \$7.3 million after deducting \$0.8 million in underwriting discounts, commissions and offering expenses paid by the Company.

## **Warrants**

### **Goldman Warrant**

On February 4, 2019, the Company sold to Goldman Sachs & Co. LLC (the “Holder”), a Purchase Warrant for Common Shares (the “Warrant”) pursuant to which the Holder may purchase shares of the Company’s Common Stock in an aggregate amount of up to 404,634 shares (the “Warrant Shares”). The Warrant was sold to the Holder at a purchase price of \$150,000, in a private placement exempt from registration under the Securities Act. The Warrant may be exercised by the Holder at any time after August 4, 2019 at an exercise price equal to \$8.86 and will expire on February 4, 2024. The Warrant contains standard adjustment provisions in the event of additional stock issuances below the exercise price of the warrant, stock splits, combinations, rights offerings and similar transactions. The value of the Warrant was \$2.3 million, and has been classified as an equity instrument in additional paid in capital in the Company’s condensed consolidated balance sheets. As of December 31, 2022, the Holder may purchase shares of the Company’s Common Stock in an aggregate amount of up to 463,067 shares.

On December 9, 2019, the Company entered into an Amendment No. 1 to the Purchase Warrant for Common Shares (the “Amendment No. 1”) with Special Situations Investing Group II, LLC (as successor in interest to Goldman Sachs & Co. LLC) (the “Warrant Holder”) that amends the Warrant. The Amendment No. 1 amended the Warrant to increase the number of Warrant Shares issuable under the Warrant (on a post-reverse split basis) and to decrease the exercise price from \$8.86 per share (on a post-reverse split basis) to \$3.80 per share (the “Per Share Warrant Exercise Price”). The Amendment No. 1 also amends the Warrant such that the Per Share Anti-Dilution Price is equal to the Per Share Warrant Exercise Price. As a result of the decrease in exercise price, the Company recorded the change in valuation of \$0.3 million as additional debt discount with a corresponding entry to additional paid-in capital in the condensed consolidated balance sheets and statements of stockholders equity.

On June 16, 2020, the Company entered into an Amendment No. 2 to the Purchase Warrant for Common Shares (“Amendment No. 2”) with the Warrant Holder to increase the number of Warrant Shares (as defined therein) issuable under the Warrant and to decrease the exercise price from \$3.80 per share to \$2.61 per share (the “Per Share Warrant Exercise Price”). The Company would receive aggregate gross proceeds of \$1,186,313 if the outstanding Warrant is exercised at the new Per Share Warrant Exercise Price.

### **Goldman “2020 Warrant”**

On October 1, 2020, the Company entered into an Amendment No. 3 to the Purchase Warrant for Common Shares (the “Amendment No. 3”) with Special Situations Investing Group II, LLC (as successor in interest to Goldman Sachs & Co. LLC) (the “Warrant Holder”) that amends that certain Purchase Warrant for Common Shares originally issued by the Company to Goldman Sachs & Co. LLC, dated February 4, 2019, as amended (the “Original Warrant”). Amendment No. 3 amends the Original Warrant to amend Section 2.1, Section 2.2(c) and Section 18.1 of the Original Warrant to, among other things, make certain changes necessitated by the issuance of a second warrant (the “2020 Warrant”) to the Warrant Holder pursuant to the Company’s entry into the Amended & Restated (“A&R”) Note Purchase Agreement (see Note 10 – Term Note Payable).

On October 1, 2020, and pursuant to the Company’s entry into the A&R Note Purchase Agreement, the Company sold to the Warrant Holder the 2020 Warrant to purchase up to 291,295 shares (the “2020 Warrant Shares”) of the Company’s Common Stock. The 2020 Warrant was sold to the Warrant Holder at a purchase price of \$10,000, in a private placement exempt from registration under the Securities Act. The 2020 Warrant may be exercised by the Warrant Holder at any time after October 1, 2020 at an exercise price equal to \$4.76 and will expire on February 4, 2024. The 2020 Warrant contains standard adjustment provisions in the event of additional stock issuances below the exercise price of the warrant, stock splits, combinations, rights offerings and similar transactions. The value of the 2020 Warrant was \$0.8 million, and has been classified as an equity instrument in additional paid in capital in the Company’s consolidated balance sheets. The value of the Warrant was determined using the Black-Scholes Option Pricing model using the following assumptions:

Risk-free interest rate	0.2%
Contractual term	3 years
Expected volatility	81.0%

Amendment No. 2 also amends the Warrant such that the Per Share Anti-Dilution Price (as defined therein) is equal to the Per Share Warrant Exercise Price as provided in the Amendment No. 2 to the Warrant. As a result of the decrease in exercise price, the Company recorded the change in valuation of \$0.1 million as additional debt discount with

a corresponding entry to additional paid in capital in the condensed consolidated balance sheets and statements of stockholders equity. All other terms and provisions in the Warrant remain in effect.

*September 2019 Pre-Funded and Series D Warrants*

On September 4, 2019, the Company entered into a Securities Purchase Agreement (the “Securities Purchase Agreement”) with certain institutional and accredited investors pursuant to which the Company agreed to issue and sell in a registered direct offering (the “Registered Direct Offering”) an aggregate of 580,000 shares of Common Stock, at a negotiated purchase price of \$5.00 per share, and pre-funded warrants to purchase up to an aggregate of 440,000 shares of Common Stock at a negotiated purchase price of \$5.00 per pre-funded warrant, for aggregate gross proceeds of approximately \$5.1 million (580,000 shares of Common Stock plus 440,000 pre-funded warrants at a \$5.00 per share purchase price), before deducting placement agent fees and other offering expenses. Net proceeds from the offering were \$4.6 million. The offering closed on September 9, 2019. On October 24, 2019, a warrant holder exercised its rights to the warrant agreement to exercise on a cash basis 440,000 pre-funded warrants at an exercise price of \$0.001 per share under the warrant agreement.

In a concurrent private placement, the Company issued to the purchasers warrants to purchase 765,000 shares of Common Stock, which represent 75% of the number of shares of Common Stock and shares underlying the pre-funded warrants purchased in the Registered Direct Offering, pursuant to the Securities Purchase Agreement. The Common Warrants will be exercisable for shares of Common Stock at an initial exercise price of \$6.12 per share for a period of five years, starting on April 2, 2020 and expiring on April 2, 2025. In January 2021, three warrant holders exercised their rights to the warrant agreement to exercise on a cashless basis 690,000 Series D warrants at an exercise price of \$6.12 per share under the warrant agreement. In accordance with terms of the warrant agreement, after taking into account the shares withheld to satisfy the cashless exercise option, the Company issued 352,279 shares of Common Stock. As of December 31, 2022, there were 75,000 Series D warrants outstanding.

*August 2022 Warrants*

On August 24, 2022 the Company issued 2,934,498 of common stock warrants with an exercise price of \$2.75 in conjunction with the Lake Street Offering.

***Stock to Vendors***

From time to time, the Company may enter into agreements with vendors for sponsorship, marketing or investor relation services whereby it may agree to compensate the vendor in cash and unregistered shares of Common Stock of the Company. The value of the unregistered shares of Common Stock is recorded as prepaid marketing cost and included in prepaid expenses and other current assets and stockholder's equity in the Condensed Consolidated Balance Sheets and is amortized in proportion to the terms of their respective agreements.

On February 17, 2021 and April 1, 2021, the Company issued 105,933 and 9,541 shares of the Company's Common Stock, under a sponsorship agreement and an investor relations consulting agreement, respectively, to vendors. The prepaid marketing cost amortization associated with the Common Stock issued were \$0.5 million and \$1.0 million during the three and nine months ended December 31, 2021, respectively, and were included in selling, general and administrative expenses in the condensed consolidated statements of operations. As of December 31, 2022, there are no amounts remaining in prepaid marketing cost, prepaid expenses and other current assets in the condensed consolidated balance sheets related to the value of shares issued under the sponsorship agreement and investor relations consulting agreement.

**9. Fair Value Measurements**

The FASB has established a framework for measuring fair value using generally accepted accounting principles. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). The three levels of the fair value hierarchy are described as follows:

*Level 1.* Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets.

*Level 2.* Inputs to the valuation methodology include:

- Quoted prices for similar assets or liabilities in active markets
- Quoted prices for identical or similar assets or liabilities in inactive markets
- Inputs other than quoted prices that are observable for the asset or liability
- Inputs that are derived principally from or corroborated by observable market data by correlation or other means

If the asset or liability has a specified (contractual) term, the level 2 input must be observable for substantially the full term of the asset or liability.

*Level 3.* Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used must maximize the use of observable inputs and minimize the use of unobservable inputs.

#### *Basis for Valuation*

The carrying values reported in the condensed consolidated balance sheets for cash and cash equivalents, accounts receivable and accounts payable approximate their fair values because of the immediate or short-term maturities of these financial instruments. The term note payable has been recorded net of a discount based on the fair value of the associated warrant and capitalized debt issuance costs and as of December 31, 2022 includes the Three-Year Term Note as discussed in Note 10 – Term Note Payable. The carrying values and estimated fair values of these obligations are as follows (in thousands):

	As of December 31, 2022		As of March 31, 2022	
	Carrying Value	Estimated Fair Value	Carrying Value	Estimated Fair Value
Term note payable	\$ 50,974	\$ 51,000	\$ 50,949	\$ 51,000

#### **10. Term Note Payable**

##### *Three-Year Term Note*

On February 4, 2019, the Company entered into a Note Purchase Agreement (as amended, the "Note Purchase Agreement"), by and among the Company, certain subsidiaries of the Company party thereto as guarantors, Goldman Sachs Specialty Lending Holdings, Inc. and any other purchasers party thereto from time to time (collectively, the "Purchaser"). Under the Note Purchase Agreement, the Company sold the Purchaser \$30.0 million aggregate principal amount of senior secured notes (the "Notes"), bearing interest at a rate of 13.0% per annum and payable quarterly on March 31, June 30, September 30 and December 31 of each year until maturity.

On October 1, 2020, the Company entered into an Amended & Restated Note Purchase Agreement (the "A&R Note Purchase Agreement"). The A&R Note Purchase Agreement amends and restates that certain Note Purchase Agreement, as amended, dated February 4, 2019, by and among the Company, certain of its subsidiaries as guarantors, the Collateral Agent and various purchasers party thereto. Under the A&R Note Purchase Agreement, the Company issued an additional \$20 million in Notes, increasing total borrowings to \$50.0 million. Following entry into the A&R Note Purchase Agreement, all outstanding Notes bear interest at the Adjusted (London Interbank Offer) LIBO Rate (as defined in the A&R Note Purchase Agreement) plus 8.75% per annum, payable on the last day of each interest period of one-, two-, three- or six-months (but, in the case of a six-month interest period, every three months). The Notes do not amortize and the entire principal balance is due in a single payment on the maturity date, October 1, 2023. As of December 31, 2022, \$51.0 million in borrowings were outstanding under the Notes, which includes the accrual for an exit fee to be paid at maturity or upon pre-payment. Obligations under the A&R Note Purchase Agreement are secured by all of the Company's assets, including intellectual property and general intangibles.

The A&R Note Purchase Agreement contains customary covenants, including, among others, covenants that restrict the Company's ability to incur debt, grant liens, make certain investments and acquisitions, pay dividends,



repurchase equity interests, repay certain debt, amend certain contracts, enter into affiliate transactions and asset sales or make certain equity issuances (including equity issuances that would cause an ownership change within the meaning of Section 382 of the Internal Revenue Code), and covenants that require the Company to, among other things, provide annual, quarterly and monthly financial statements, together with related compliance certificates, maintain its property in good condition, maintain insurance and comply with applicable laws. The financial covenants of the A&R Note Purchase Agreement require the Company not to exceed specified levels of Adjusted EBITDA losses relative to its financial model, beginning with the fiscal quarter ending September 30, 2021. Additionally, the Company shall not permit the Company's minimum consolidated liquidity, which consists of its cash and cash equivalents, to be less than \$9.0 million. Furthermore, the covenants require the Company to expand its Rental Fleet (as defined in the A&R Note Purchase Agreement) by (i) at least 6.25 MW by the 9-month anniversary of the Closing Date, and (ii) at least 12.50 MW by the 18-month anniversary of the Closing Date.

On May 13, 2021, the Company and the collateral agent, entered into a First Amendment, dated as of May 13, 2021 (the "Amendment"), to the A&R Note Purchase Agreement. The Amendment amends certain provisions of the A&R Note Purchase Agreement, including to (a) require the Company to expand its Rental Fleet (as defined in the A&R Note Purchase Agreement) by (i) at least 2.00 MW by the 9-month anniversary of the Closing Date (instead of 6.25 MW as provided in the A&R Note Purchase Agreement prior to the Amendment), and (ii) at least 12.50 MW by the 18-month anniversary of the Closing Date (which is unchanged from the covenant set forth in the A&R Note Purchase Agreement prior to the Amendment), and (b) increase the Company's minimum consolidated liquidity requirement from \$9.0 million to \$12.2 million for the period from the Amendment Date to March 31, 2022, and \$9.0 million thereafter. The financial covenants of the A&R Note Purchase Agreement require the Company not to exceed specified levels of Adjusted EBITDA losses relative to its financial model, beginning with the fiscal quarter ending September 30, 2021. As of March 31, 2022, the Company was not in compliance with the Adjusted EBITDA covenant contained in the A&R Note Purchase Agreement and did not cure such non-compliance by prepaying the Notes. As a result, the Company was in breach of the Adjusted EBITDA covenant as of May 27, 2022. On July 13, 2022 the Company entered into the A&R NPA Second Amendment with the Purchaser and the Collateral Agent, pursuant to which (i) the Purchaser and the Collateral Agent waived our breach of the Adjusted EBITDA covenant and (ii) the A&R Note Purchase Agreement has been amended to, among other things, add certain new covenants, including requirements that the Company uses its commercially reasonable best efforts to raise at least \$10 million through a sale of its common stock by September 14, 2022 and refinance the Notes by October 1, 2022.

The Company was compliant with the Adjusted EBITDA covenant as of December 31, 2022. On August 24, 2022 the Company completed a public stock offering with net proceeds of \$7.3 million. (See Note 8 – Offering of Common Stocks and Warrants), which Goldman Sachs Specialty Lending Group, L.P. agreed satisfied the Company's obligation to use commercially reasonable best efforts to raise at least \$10 million through a sale of its common stock by September 14, 2022. On September 9, 2022, the Company engaged Greenhill as financial advisor and investment banker in conjunction with the commercially reasonable best effort of refinancing the Notes. Greenhill's refinancing efforts are ongoing as of December 31, 2022.

The Notes have been recorded net of a discount based on the debt issuance costs totaling \$0.1 million. Amortization of the debt discount and debt issuance costs was \$9,000 and \$26,000 for the three and nine months ended December 31, 2022, respectively, based on an effective interest rate, and has been recorded as interest expense in the condensed consolidated statements of operations.

Interest expense related to the Notes payable during the three months ended December 31, 2022 and 2021 was \$1.9 million and \$1.3 million, respectively, and includes \$9,000 in amortization of debt issuance costs in both periods. Interest expense related to the Notes payable during the nine months ended December 31, 2022 and 2021 was \$4.6 million and \$3.8 million, respectively, and includes \$26,000 in amortization of debt issuance costs in both periods.

*SBA Paycheck Protection Program Loan*

On April 15, 2020, the Company submitted an application to its banking partner Western Alliance Bank, an Arizona corporation (“Western Alliance”) under the Small Business Administration (the “SBA”) Paycheck Protection Program (“PPP”) enabled by the Coronavirus Aid, Relief and Economic Security Act of 2020 (the “CARES Act”). Western Alliance entered into a note on April 24, 2020 with the Company and agreed to make available to the Company a loan in the amount of \$2,610,200 (the “PPP Loan”). The Company received the full amount of the PPP Loan on April 24, 2020 (the “Initial Disbursement Date”) and has used the proceeds to support fixed costs such as payroll costs, rent and utilities in accordance with the relevant terms and conditions of the CARES Act. The advance under the Loan bears interest at a rate per annum of 1%. The term of the PPP Loan is two years, ending April 24, 2022.

On May 13, 2020, the Company repaid \$660,200 of the PPP Loan in accordance with the Fourth Amendment to the Note Purchase Agreement between the Company and Goldman Sachs Specialty Lending Group, L.P.

In February 2021, the Company applied for forgiveness of the PPP Loan, and the loan was forgiven in full on June 30, 2021 (See “Gain on extinguishment of debt” below).

**Gain on extinguishment of debt** In June 2021, the Company received notification from Western Alliance that the SBA approved forgiveness of the PPP loan in its entirety. The Company accounted for forgiveness on the PPP Loan in accordance with ASC 470 and recognized a gain on debt extinguishment of \$1.9 million on its Condensed Consolidated Statements of Operations and Condensed Consolidated Statements of Cash Flows during the three months ended June 30, 2021. In June 2021, the Company also received a refund of the \$660,200 previously repaid in accordance with the Fourth Amendment to the Note Purchase Agreement between the Company and Goldman Sachs Specialty Lending Group, L.P. and recorded these amounts within other income on the Company’s Condensed Consolidated Statements of Operations.

**11. Accrued Warranty Reserve**

The Company provides for the estimated costs of warranties at the time revenue is recognized. The specific terms and conditions of those warranties vary depending upon the microturbine product sold and the geography of sale. The Company’s product warranties generally start from the delivery date and continue for up to twenty-four months. Factors that affect the Company’s warranty obligation include product failure rates, anticipated hours of product operations and costs of repair or replacement in correcting product failures. These factors are estimates that may change based on new information that becomes available each period. Similarly, the Company also accrues the estimated costs to address reliability repairs on products no longer in warranty when, in the Company’s judgment, and in accordance with a specific plan developed by the Company, it is prudent to provide such repairs. The Company assesses the adequacy of recorded warranty liabilities quarterly and makes adjustments to the liability as necessary. When the Company has sufficient evidence that product changes are altering the historical failure occurrence rates, the impact of such changes is then taken into account in estimating future warranty liabilities. Changes in the accrued warranty reserve during the nine months ended December 31, 2022 are as follows (in thousands):

Balance, beginning of the period	\$ 1,483
Standard warranty provision	369
Deductions for warranty claims	(312)
Balance, end of the period	<u>\$ 1,540</u>

During the fourth quarter of Fiscal 2021, the Company recorded a specific \$4.9 million accrual related to a reliability repair program to account for the replacement of remaining high risk failure parts in some of the Company’s fielded units due to a supplier defect. As of December 31, 2022, the accrual related to this reliability repair program was zero as the Company has determined it replaced a sufficient quantity of high-risk failure parts in its fielded units under this reliability repair program and that it should be terminated.

**12. Revenue Recognition**

The Company derives its revenues primarily from system sales, service contracts and professional services. Revenues are recognized when control of the systems and services is transferred to the Company’s customers in an amount that reflects the consideration it expects to be entitled to in exchange for those services.

The Company determines revenue recognition through the following steps:

- Identification of the contract, or contracts, with a customer
- Identification of the performance obligations in the contract
- Determination of the transaction price
- Allocation of the transaction price to the performance obligations in the contract
- Recognition of revenue when, or as, the Company satisfies a performance obligation

The Company recognizes revenue when performance obligations identified under the terms of contracts with its customers are satisfied, which generally occurs, for systems, upon the transfer of control in accordance with the contractual terms and conditions of the sale. The majority of the Company's revenue associated with systems is recognized at a point in time when the system is shipped to the customer. Revenue from service contracts and post-shipment performance obligations is recognized when or as those obligations are satisfied. The Company primarily offers assurance-type standard warranties that do not represent separate performance obligations and will separately offer and price extended warranties that are separate performance obligations for which the associated revenue is recognized over-time based on the extended warranty period. The Company records amounts billed to customers for reimbursement of shipping and handling costs within revenue. Shipping and handling costs associated with outbound freight after control over a system has transferred to a customer are accounted for as fulfillment costs and are included in cost of goods sold. Sales taxes and other usage-based taxes are excluded from revenue.

Comprehensive Factory Protection Plan ("FPP") service contracts require payment at the beginning of the contract period. Advance payments are not considered a significant financing component as they are typically received less than one year before the related performance obligations are satisfied. These payments are treated as a contract liability and are classified in deferred revenue in the Condensed Consolidated Balance Sheets. Once control transfers to the customer and the Company meets the revenue recognition criteria, the deferred revenue is recognized in the Condensed Consolidated Statement of Operations. The deferred revenue relating to the annual maintenance service contracts is recognized in the Condensed Consolidated Statement of Operations on a straight-line basis over the expected term of the contract.

#### **Significant Judgments - Contracts with Multiple Performance Obligations**

The Company enters into contracts with its customers that often include promises to transfer multiple products, parts, accessories, FPP and services. A performance obligation is a promise in a contract with a customer to transfer products or services that are distinct. Determining whether products and services are distinct performance obligations that should be accounted for separately or combined as one unit of accounting may require significant judgment.

Products, parts and accessories are distinct as such services are often sold separately. In determining whether FPP and service contracts are distinct, the Company considers the following factors for each FPP and services agreement: availability of the services from other vendors, the nature of the services, the timing of when the services contract was signed in comparison to the product delivery date and the contractual dependence of the product on the customer's satisfaction with the professional services work. To date, the Company has concluded that all of the FPP and services contracts included in contracts with multiple performance obligations are distinct.

The Company allocates the transaction price to each performance obligation on a relative standalone selling price ("SSP") basis. The SSP is the price at which the Company would sell a promised product or service separately to a customer. Judgment is required to determine the SSP for each distinct performance obligation.

The Company determines SSP by considering its overall pricing objectives and market conditions. Significant pricing practices taken into consideration include the Company's discounting practices, the size and volume of the Company's transactions, the customer demographic, the geographic area where systems and services are sold, price lists, its go-to-market strategy, historical sales and contract prices. The determination of SSP is made through consultation with and approval by the Company's management, taking into consideration the go-to-market strategy. As the Company's go-to-market strategies evolve, the Company may modify its pricing practices in the future, which could result in changes to SSP.

In certain cases, the Company is able to establish SSP based on observable prices of products or services sold separately in comparable circumstances to similar customers. The Company uses a single amount to estimate SSP when it has observable prices.

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If SSP is not directly observable, for example when pricing is highly variable, the Company uses a range of SSP. The Company determines the SSP range using information that may include market conditions or other observable inputs. The Company typically has more than one SSP for individual products and services due to the stratification of those products and services by customer size and geography.

The following table presents disaggregated revenue by business group (in thousands):

	Nine Months Ended December 31,	
	2022	2021
Microturbine Products	\$ 28,201	\$ 28,234
Accessories	1,572	949
Total Product and Accessories	29,773	29,183
Parts, Service and Rentals	29,260	24,704
Total Revenue	\$ 59,033	\$ 53,887

The following table presents disaggregated revenue by geography based on the primary operating location of the Company's customers (in thousands):

	Nine Months Ended December 31,	
	2022	2021
United States	\$ 38,798	\$ 26,052
Mexico	2,684	2,142
All other North America	1,384	480
Total North America	42,866	28,674
Russia	2,138	3,099
All other Europe	8,377	8,911
Total Europe	10,515	12,010
Asia	1,732	1,755
Australia	2,529	3,861
All other	1,391	7,587
Total Revenue	\$ 59,033	\$ 53,887

#### Contract Balances

The Company's contract liabilities consist of advance payments for systems as well as deferred revenue on service obligations and extended warranties. The current portion of deferred revenue is included in current liabilities under deferred revenue and the non-current portion of deferred revenue is included in deferred revenue non-current liabilities in the Condensed Consolidated Balance Sheets.

As of December 31, 2022, the balance of deferred revenue was approximately \$10.5 million compared to \$10.2 million as of March 31, 2022. The overall increase of \$0.3 million was due to an increase in deferred revenue attributed to FPP contracts. Changes in deferred revenue during the nine months ended December 31, 2022 are as follows (in thousands):

FPP Balance, beginning of the period	\$ 4,544
FPP Billings	14,624
FPP Revenue recognized	(14,296)
Balance attributed to FPP contracts	4,872
DSS Program	447
Deposits	5,197
Deferred revenue balance, end of the period	\$ 10,516

Deferred revenue attributed to FPP contracts represents the unearned portion of the Company's contracts. FPP contracts are generally paid quarterly in advance, with revenue recognized on a straight-line basis over the contract period. As of December 31, 2022, approximately \$4.9 million of revenue is expected to be recognized from remaining performance obligations for FPP contracts. The Company expects to recognize revenue on approximately \$4.1 million of these remaining performance obligations over the next 12 months and the balance of \$0.8 million will be recognized thereafter.

The DSS program provides additional support for distributor business development activities, customer lead generation, brand awareness and tailored marketing services for each of the Company's major geography and market vertical. This program is funded by the Company's distributors and was developed to provide improved worldwide distributor training, sales efficiency, website development, company branding and provide funding for increased strategic marketing activities. DSS program revenue is generally paid quarterly with revenue recognized on a straight-line basis over a calendar year period.

Deposits are primarily non-refundable cash payments from distributors for future orders.

#### Unsatisfied Performance Obligations

The Company has elected the practical expedient to disclose only the value of unsatisfied performance obligations for contracts with an original expected length greater than one year. The majority of the Company's revenues resulted from sales of inventoried systems with short periods of manufacture and delivery and thus are excluded from this disclosure.

As of December 31, 2022, the FPP backlog was approximately \$71.5 million, which represents the value of the contractual agreement for FPP services that had not been earned and extends through Fiscal 2042.

#### Practical Expedients

The Company applies a practical expedient to expense costs as incurred for costs to obtain a contract when the amortization period would have been one year or less. These costs are recorded within sales and marketing expenses in the accompanying Condensed Consolidated Statements of Operations.

### 13. Other Assets

The Company was a party to a Development and License Agreement with Carrier Corporation ("Carrier") regarding the payment of royalties on the sale of each of the Company's 200 kilowatt ("C200") microturbines. In 2013, the Company reached its repayment threshold and the fixed rate royalty was reduced by 50%. On July 25, 2018, the Company and Carrier entered into a Second Amendment to the Development and License Agreement ("Second Amendment") whereby the Company agreed to pay Carrier approximately \$3.0 million to conclude the Company's current royalty obligation under the Development and License Agreement, dated as of September 4, 2007, as amended ("Development Agreement"), and release the Company from any future royalty payment obligations. The Second Amendment also removed non-compete provisions from the Development Agreement, allowing the Company to design market or sell its C200 System in conjunction with any energy system and compete with Carrier products in the CCHP market.

On September 19, 2018, the Company paid in full the negotiated royalty settlement of \$3.0 million to Carrier, and as such, there is no further royalty obligation to Carrier. The prepaid royalty of \$3.0 million has been recorded under the captions "Prepaid expenses and other current assets" and "Other assets" in the accompanying condensed consolidated balance sheets and will be amortized in the accompanying condensed consolidated statements of operations over a 15-year amortization period through September 2033 using an effective royalty rate. A 15-year amortization period is the minimum expected life cycle of the current generation of product. The effective royalty rate is calculated as the prepaid royalty settlement divided by total projected C200 System units over the 15-year amortization period. On an annual basis, the Company performs a re-forecast of C200 System unit shipments, to determine if an adjustment to the effective royalty rate is necessary. Accordingly, if the Company's future projections change, its effective royalty rates may also change, which could affect the amount and timing of royalty expense the Company recognizes. If impairment exists, then the prepaid royalty asset would be written down to fair value. Prepaid royalties are classified as current assets to the extent that such amounts will be recognized in the Company's condensed consolidated statements of operations within the next 12 months. The current and long-term portions of prepaid royalties, included in other current assets and other assets, respectively, consisted of (in thousands):

	December 31, 2022	March 31, 2022
Other current assets	\$ 124	\$ 124
Other assets	2,423	2,506
Royalty-related assets	<u>\$ 2,547</u>	<u>\$ 2,630</u>

## **14. Commitments and Contingencies**

### **Purchase Commitments**

As of December 31, 2022, the Company had firm commitments to purchase inventories of approximately \$58.4 million through Fiscal 2023. Certain inventory delivery dates and related payments are not firmly scheduled; therefore, amounts under these firm purchase commitments will be payable upon the receipt of the related inventories.

### **Lease Commitments**

See Note 15 – Leases.

### **Other Commitments**

The Company has agreements with certain of its distributors requiring that, if the Company renders parts obsolete in inventories the distributors own and hold in support of their obligations to serve fielded microturbines, then the Company is required to replace the affected stock at no cost to the distributors. While the Company has never incurred costs or obligations for these types of replacements, it is possible that future changes in the Company's product technology could result and yield costs to the Company if significant amounts of inventory are held at distributors. As of December 31, 2022, no significant inventories of this nature were held at distributors.

### **Legal Matters**

*Capstone Turbine Corporation v. Turbine International, LLC.*

On February 3, 2020, Capstone Turbine Corporation filed suit against its former distributor, Turbine International, LLC ("Turbine Intl."), in the Superior Court of California for the County of Los Angeles under the following caption: Capstone Turbine Corporation v. Turbine International, LLC; Case No. 20STCV04372 ("Capstone-Turbine Intl. Litigation"). The Company has alleged claims against Turbine Intl. for breach of contract and for injunctive relief relating to the parties' prior distributor relationship, which terminated at the end of March 2018, and Turbine Intl.'s failure to satisfy its payment obligations under certain financial agreements, namely an accounts receivable agreement and promissory note in favor of Capstone. As remedies for these claims, the Company is seeking compensatory, consequential, along with injunctive relief and attorney's fees, interest, and costs.

On March 18, 2020, Turbine Intl. filed its answer and cross-claims in the Capstone-Turbine Intl. Litigation. In its cross-claims, Turbine Intl. asserted claims against Capstone, and individually against Mr. James Crouse, Capstone's Chief Revenue Officer, for breach of contract under the distributor agreement, accounts receivable agreement and promissory note, fraud, breach of the covenant of good faith and fair dealing, unjust enrichment and constructive trust, negligent misrepresentation, violation of the California unfair practices act, violation of racketeer influenced corrupt organizations act, and conspiracy to commit fraud. As remedies for these alleged claims, Turbine Intl. are seeking compensatory, consequential, and punitive damages along with attorney's fees, interest, and costs. Capstone answered the cross-claims on May 7, 2020.

On June 29, 2020, Capstone filed a motion to file a First Amended Complaint that would add, among other things, a claim for enforcement of a guaranty signed by an entity related to Turbine Intl., Hispania Petroleum, S.A., and personal claims against the principals of Turbine Intl. and Hispania. That motion was granted on August 19, 2020, and the First Amended Complaint ("FAC") is now on file. All of the new defendants have been served and have filed answers. Discovery is ongoing. The Company has not recorded any liability as of December 31, 2022 as the matter is too early to estimate.

## **15. Leases**

The Company leases facilities and equipment under various non-cancelable operating and finance leases expiring at various times through Fiscal 2037. All of the leases require the Company to pay maintenance, insurance and property taxes. The lease agreements for primary office and manufacturing facilities provide for rent escalation over the lease term and renewal options for five-year periods. Lease expense is recognized on a straight-line basis over the term of the lease.

During Fiscal 2023, the Company entered into several rental agreements, to rent used microturbine equipment from customers where that equipment was not currently in use. The Company is then renting this equipment to end users

as part of its Energy as a Service business. These agreements totaled approximately 12.8 MW of microturbines and have an average term of 36 months, and a total commitment value of approximately \$9.8 million.

The components of lease expense were as follows (in thousands):

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2022	2021	2022	2021
Operating lease costs	\$ 84	\$ 295	\$ 635	\$ 799
Finance lease costs	293	—	702	—
Total lease costs	\$ 377	\$ 295	\$ 1,337	\$ 799

Supplemental balance sheet information related to the leases was as follows (dollars in thousands):

	December 31, 2022	March 31, 2022
Operating lease right-of-use assets	\$ 8,702	\$ 5,959
Finance lease right-of-use assets (1)	6,497	—
Total right-of-use assets	\$ 15,199	\$ 5,959
Operating lease liability, current	\$ 1,292	\$ 586
Finance lease liability, current	843	—
Operating lease liability, non-current	7,572	5,619
Finance lease liability, non-current	3,322	—
Total lease liabilities	\$ 13,029	\$ 6,205

**Operating leases:**

Weighted average remaining lease life	5.95 years	8.35 years
Weighted average discount rate	12.00%	12.00%

- (1) Included in property, plant, equipment and rental assets in the Company's condensed consolidated balance sheets. Also see Note 6 – Property, Plant, Equipment and Rental Assets.

The Company records its operating lease right-of-use assets within other assets (non-current) and its operating lease liabilities within current and long-term portion of notes payable and lease obligations. As of December 31, 2022, the Company offset \$1.3 million of its customer accounts receivable against its notes payable related to its rental obligations that are contractually satisfied by reducing the customers' accounts receivable and qualify to be offset.

Supplemental cash flow information related to the leases was as follows (in thousands):

	Nine Months Ended December 31,	
	2022	2021
Cash paid for amounts included in the measurement of lease liabilities		
Operating cash flows from operating leases	\$ 701	\$ 805
Operating cash flows from finance leases	\$ 671	\$ —
Right-of-use assets obtained in exchange for lease obligations		
Operating leases	\$ 3,590	\$ 1,877
Finance leases	\$ 6,174	\$ —

Maturities of operating lease liabilities as of December 31, 2022 were as follows (in thousands):

Year Ending March 31,	Operating Leases
2023 (remainder of fiscal year)	\$ 688
2024	2,760
2025	2,685
2026	1,653
2027	1,279
Thereafter	3,358
Total lease payments	\$ 12,423
Less: imputed interest	(3,559)
Present value of operating lease liabilities	<u>\$ 8,864</u>

#### 16. Net Loss Per Common Share

Basic loss per common share is computed using the weighted-average number of Common Shares outstanding for the period. Diluted loss per share is also computed without consideration to potentially dilutive instruments because the Company incurred losses which would make such instruments anti-dilutive. Outstanding stock options and restricted stock units at December 31, 2022 and 2021 totaled 0.7 million. As of December 31, 2022 and 2021, the number of warrants excluded from diluted net loss per common share computations was approximately 3.8 million and 0.8 million, respectively.

#### 17. Subsequent Events

The Company has evaluated subsequent events through the filing date of this Form 10-Q with the SEC, to ensure that this filing includes all appropriate footnote disclosure of events both recognized in the financial statements as of December 31, 2022, and events that occurred subsequently but were not recognized in the financial statements. There were no subsequent events that required recognition, adjustment to or disclosure in the financial statements.



## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

*The following Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with the condensed consolidated financial statements and notes thereto included in this Form 10-Q and in our Annual Report on Form 10-K for Fiscal 2021. All dollar amounts in this Management's Discussion and Analysis of Financial Condition and Results of Operations are approximate.*

### **Special Note Regarding Forward-Looking Statements**

This Form 10-Q includes certain forward-looking statements (as such term is defined in Section 27A of the Securities Act of 1933, as amended (the "Securities Act") and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act")). These statements can be identified by the fact that they do not relate strictly to historical or current facts. Words such as "expect," "anticipate," "should," "believe," "target," "project," "goals," "estimate," "potential," "predict," "may," "will," "might," "could," "intend" and variations of these terms and similar expressions are intended to identify these forward-looking statements, although not all forward-looking statements contain these identifying words. These forward-looking statements include, among others, statements relating to our future financial performance, our business prospects and strategy, anticipated financial position, liquidity and capital needs and other similar matters. These forward-looking statements are based on management's current expectations and assumptions about future events, which are inherently subject to uncertainties, risks and changes in circumstances that are difficult to predict.

Our actual results may differ materially from those expressed in, or implied by, the forward-looking statements included in this Form 10-Q as a result of various factors, including, among others:

- the additional covenants imposed by our most recent amendment to the A&R Note Purchase Agreement with Goldman Sachs and our ability to refinance the outstanding indebtedness thereunder;
- the availability of credit and compliance with the agreements governing our indebtedness;
- risks related to our history of net losses and ability to raise additional capital and fund future operating requirements;
- the worldwide supply chain issues that affect our ability get direct material products on a timely and cost-effective basis;
- the development of the market for and customer uses of our microturbines, including our EaaS;
- our ability to develop new products and enhance existing products;
- our ability to produce products on a timely basis in a high quality manner;
- availability of sources for and costs of component parts;
- competition in the markets in which we operate;
- operational interruption by fire, earthquake and other events beyond our control;
- federal, state and local regulations of our markets and products;
- usage of our federal and state net operating loss carryforwards;
- the financial performance of the oil and natural gas industry and other general business, industry and economic conditions applicable to us;
- changes to international trade regulation, quotas, duties or tariffs, and sanctions caused by the changing U.S. and geopolitical environment, including the ongoing conflict between Russia and the Ukraine;
- security and cybersecurity risks related to our electronic processing of sensitive and confidential business and product data;
- the impact of the recent departure of several key management and other employees;
- our ability to adequately protect our intellectual property rights;
- the COVID -19 pandemic, which may cyclically continue to adversely affect our business, financial condition and results of operations;

- the potential that our use of cash for operations and expansion of our rental fleet could result in our cash falling below the minimum balance required by the A&R Note Purchase Agreement with Goldman Sachs, therefore violating a covenant in that agreement;
- the risk that our inventory balances continue to rise due to purchases of long lead time inventory, and the consequences of a backlog of obsolete or excess inventory;
- the impact of pending or threatened litigation; and
- other risks and uncertainties discussed in “Item 1A. Risk Factors” included in our Annual Report on Form 10-K for Fiscal 2022 and in “Item 1A. Risk Factors” included in this Quarterly Report on Form 10-Q.

Furthermore, new risks may emerge from time to time and it is not possible for us to predict all risks, nor can we assess the impact of all factors on the business or the extent to which any factor, or combination of factors, may cause actual results, performance or achievement to differ materially from those contained in any forward-looking statements. Forward-looking statements speak only as of the date of this Form 10-Q. Except as expressly required under federal securities laws and the rules and regulations of the Securities and Exchange Commission (the “SEC”), we do not have any obligation, and do not undertake, to update any forward-looking statements to reflect events or circumstances arising after the date of this Form 10-Q, whether as a result of new information or future events or otherwise. Readers should not place undue reliance on the forward-looking statements included in this Form 10-Q or that may be made elsewhere from time to time by us, or on our behalf. All forward-looking statements attributable to us are expressly qualified by these cautionary statements.

## Overview

We are the market leader in microturbines based on the number of microturbines sold. Generally, power purchased from the electric utility grid is less costly than power produced by distributed generation technologies. Utilities may also charge fees to interconnect to their power grids. However, we can provide economic benefits to end users in instances where the waste heat from our microturbine has value (CHP and CCHP), where fuel costs are low (renewable energy/renewable fuels), where the costs of connecting to the grid may be high or impractical (such as remote power applications), where reliability and power quality are of critical importance, or in situations where peak shaving could be economically advantageous because of highly variable electricity prices. Our microturbines can be interconnected to other distributed energy resources to form “microgrids” (also called “distribution networks”) located within a specific geographic area and provide power to a group of buildings. Because our microturbines can provide a reliable source of power and can operate on multiple fuel sources, management believes they offer a level of flexibility not currently offered by other technologies such as reciprocating engines. In addition to our existing microturbine products, since September 2020, we have offered additional energy conversion products in the form of Baker Hughes 5 MW, 12 MW, and 16 MW industrial gas turbines, where we will purchase and resell their product (although there was no revenue from sales of additional energy conversion products in the form of Baker Hughes industrial gas turbines for the three and nine months ended December 31, 2022 or 2021). We are currently exploring energy conversion options for the smaller end of the power spectrum. We intend to begin to manufacture modular hybrid energy stations and lithium-ion battery energy storage systems (“BESS”) to be sold either individually or combined as part of a custom microturbine-battery storage solution. We consider our microturbines, Baker Hughes turbines, and hybrid energy stations to be a part of our Energy Conversion Products business line. We also added a new Energy Storage Products business line in Fiscal 2022 and there has not yet been any revenue from this business line.

Our goals for Fiscal 2023 are to:

- expand our EaaS business by growing the long-term rental fleet,
- focus on growing top line revenue through our new Direct Solutions Sales team and growing the DSS subscription program,
- broaden our diverse energy products and service offerings,
- increase aftermarket margins and escalate parts availability, and
- focus on managing working capital and inventory turns.

During the nine months ended December 31, 2022 our net loss decreased by 8% to \$12.3 million and our basic and diluted loss per share improved by 21% to \$0.73 compared to \$13.3 million and \$0.92, respectively, in the same period of the previous fiscal year. The improvement in the net loss during the nine months ended December 31, 2022 was

primarily the result of a greater contribution from the higher margin rental business, a reduction of operating expenses, partially offset by higher direct material costs and higher interest expense. The improvement in the net loss per share was primarily the result of the \$1.1 million improvement noted above and an increase in weighted average shares outstanding to 16.8 million for the nine months ended December 31, 2022 from 14.5 million for the same period of the previous fiscal year.

Our products continue to gain interest in all our major vertical markets (energy efficiency, renewable energy, natural resources, critical power supply, and microgrids). In the energy efficiency market, we continue to expand our market presence in hotels, office buildings, hospitals, retail, and industrial applications globally. The renewable energy market is fueled by landfill gas, biodiesel, and biogas from sources such as food processing, agricultural waste and livestock manure. Our product sales in the oil and gas and other natural resources market is driven by our microturbines' reliability, emissions profile and ease of installation. Given the volatility of the oil and gas market, our business strategy is to ensure diversification by also targeting projects within the energy efficiency and renewable energy markets.

We continue to focus on improving our products based on customer input, building brand awareness and new channels to market by developing a diversified network of strategic distribution partners. Our focus is on products and solutions that provide near term opportunities to drive repeatable business rather than discrete projects for niche markets. In addition, management closely monitors operating expenses and strives to improve manufacturing efficiencies while simultaneously lowering direct material costs and increasing average selling prices. The key drivers to our success are revenue growth, higher average selling prices, lower direct material costs, positive new order flow, reduced cash usage and expansion of the EaaS business.

An overview of our direction, targets and key initiatives are as follows:

1. Our Energy Conversion Products business line is driven by our industry-leading, highly efficient, low-emission, resilient microturbine energy systems offering scalable solutions in addition to a broad range of customer-tailored solutions. We target specific market verticals for these products.

**Focus on Vertical Markets** Within the distributed generation markets that we serve, we focus on vertical markets that we identify as having the greatest near-term potential. In our primary products and applications (energy efficiency, renewable energy, natural resources, critical power supply, and microgrid products), we identify specific targeted vertical market segments. Within each of these segments, we identify what we believe to be the critical factors to success and base our plans on those factors. Given the volatility of the oil and gas market, we have refocused our business strategy to target projects within the energy efficiency and renewable energy markets.

The following table summarizes our percentage of product revenues by vertical markets for which we had product revenues for the periods presented:

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2022	2021	2022	2021
Energy efficiency	79 %	83 %	58 %	66 %
Natural resources	19 %	4 %	28 %	16 %
Renewable energy	2 %	7 %	14 %	16 %
Microgrid	— %	6 %	— %	2 %

#### *Energy Efficiency—CHP/CCHP*

Energy efficiency refers to the proper utilization of both electrical and thermal energies in the power production process. In such applications, our microturbines are able to maximize the availability of usable energy to provide a significant economic advantage to customers while reducing their onsite emissions. CHP and CCHP can improve site economics by capturing the waste heat created from a single combustion process to increase the efficiency of the total system, from approximately 30 percent to 80 percent or more. Compared with more traditional, independent generation sources, the increase in operational efficiency also reduces greenhouse gas emissions through the displacement of other separate systems, which can also reduce operating costs.

### *Natural Resources—Crude Oil, Natural Gas, Shale Gas & Mining*

Our microturbines are installed in the natural resource market for use in both onshore and offshore applications, including oil and gas exploration, production, and at compression and transmission sites as a highly efficient and reliable source of power. In some cases, these oil and gas or mining operations have no electric utility grid and rely solely on power generated onsite. There are numerous locations, on a global scale, where the drilling, production, compression and transportation of natural resources and other extraction and production processes create fuel byproducts, which are traditionally burned or released into the atmosphere. Our microturbines can turn these fuel byproducts - flare gas, or associated gas, into a useable fuel to provide prime power to these sites.

### *Renewable Energy*

There is a growing transition to renewable energy sources and technologies on a global scale. Our microturbines run efficiently on renewable fuels such as methane and other biogases from landfills, wastewater treatment facilities and renewable natural gas. They also run efficiently on other small biogas applications like food processing plants, livestock farms and agricultural green waste operations. Microturbines can burn these renewable fuels with minimal emissions, thereby, in some cases, avoiding the imposition of penalties incurred for pollution while simultaneously producing electricity from this “free” renewable fuel source for use at the site or in the surrounding areas. Our microturbines have demonstrated effectiveness in these smaller applications and may outperform conventional combustion engines in some situations, including when the gas contains a high amount of sulfur, as the sulfur can contaminate combustion engines lube oil leading to equipment breakdowns and higher lifecycle costs.

### *Microgrid*

Microgrid is a group of interconnected loads and distributed energy resources that acts as a single controllable energy entity with respect to the grid. Distributed energy resources typically include other dual-mode microturbines, reciprocating engines, solar photovoltaic (PV), wind turbine, fuel cells and battery storage. Microgrids can be connected to larger electricity grids; however, in the event of a widespread outage, the microgrid will disconnect from the main grid and continue to operate independently to maintain the electricity supply to the homes and businesses that are connected to the microgrid's electricity network. Our microturbines have the ability to meet the needs of microgrid end-users by lowering their overall cost to operate and by providing a versatile dispatchable technology that is fuel flexible and scalable enough to fit a wide variety of applications. We have seen continued development in the microgrid market segment. There was no revenue in the Microgrid market vertical for the three and nine months ended December 31, 2022.

### *Backlog*

Net product orders were approximately \$1.7 million and \$4.5 million for the three months ended December 31, 2022 and 2021, respectively. Ending backlog was approximately \$21.8 million at December 31, 2022 compared to \$25.3 million at March 31, 2022. The gross book-to-bill ratio was 0.8:1 and 0.5:1 for the three months ended December 31, 2022 and 2021, respectively. Book-to-bill ratio is the ratio of new orders we received to units shipped and billed during a period.

A portion of our backlog is concentrated in the oil and gas market, which may impact the overall timing of shipments or the conversion of backlog to revenue. The timing of the backlog is based on the requirement date indicated by our customers. However, based on historical experience, management expects that a significant portion of our backlog may not be shipped within the next 18 months. Additionally, the timing of shipments is subject to change based on several variables (including customer deposits, payments, availability of credit and customer delivery schedule changes), most of which are not in our control and can affect the timing of our revenue. As a result, management believes the book-to-bill ratio demonstrates the current demand for our products in the given period.

2. ***Sales and Distribution Channels*** We seek out distributors that have business experience and capabilities to support our growth plans in our targeted markets. A significant portion of our revenue is derived from sales to distributors that resell our products to end users. We have a total of 66 distributors, OEMs and national accounts. In the United States and Canada, we currently have 10 distributors, OEMs and national accounts. Outside of the United States and Canada, we currently have 56 distributors, OEMs and national accounts. We continue to refine our distribution channels to address our specific targeted markets.

Our Distributor Support System (“DSS program”) provides additional support for distributor business development activities, customer lead generation, brand awareness and tailored marketing services for each of our major geography and market verticals. This program is funded by our distributors and was developed to provide improved worldwide distributor training, sales efficiency, website development and company branding and to provide funding for increased strategic marketing activities. See Note 12 – *Revenue Recognition* for additional discussion of revenue recognition for this program.

3. **Service** As part of our Energy as a Service business line, we provide service primarily through our global distribution network. Together with our global distribution network, we offer a comprehensive factory protection plan for a fixed fee to perform regularly scheduled and unscheduled maintenance as needed. We provide factory and on-site training to certify all personnel that are allowed to perform service on our microturbines. Factory protection plans are generally paid quarterly in advance.

Our FPP backlog as of December 31, 2022 was approximately \$71.5 million, which represents the value of the contractual agreement for FPP services that had not been earned and extends through Fiscal 2042. Our FPP backlog as of March 31, 2022 was approximately \$79.1 million, which represents the value of the contractual agreement for FPP services that then had not been earned and extends through Fiscal 2042. Additionally, we offer new and remanufactured parts through our global distribution network. Service revenue in the third quarter of Fiscal 2023 was approximately 39% of total revenue.

4. **Product Robustness and Life Cycle Maintenance Costs** We continue to invest in enhancements that relate to high performance and high reliability. An important element of our continued innovation and product strategy is to focus on the engineering of our product hardware and electronics to make them work together more effectively and deliver improved microturbine performance, reliability and low maintenance cost to our customers.
5. **New Product Development** Our new product development is targeted specifically to meet the needs of our selected vertical markets. We expect that our existing product platforms, the C65, C200 and C1000 Series microturbines, will be our foundational product lines for the foreseeable future. Our research and development project portfolio is centered on enhancing the features of these base products.

During Fiscal 2022, we continued to expand and develop our new hydrogen products. In March 2022, we released a commercially available hydrogen-based combined heat and power (CHP) product, which can safely run on a 30% hydrogen-70% natural gas mix. In continuing these efforts, we are testing a 100% hydrogen gas combustion system through our research and development partnership with Argonne National Laboratory.

6. **Cost and Core Competencies** We believe that the core competencies of our products are air-bearing technology, advanced combustion technology and sophisticated power electronics to form efficient and ultra-low emission electricity and cooling and heat production systems. Our core intellectual property is contained within our air-bearing technology. We continue to review avenues for cost reduction by sourcing from the best value supply chain option. In order to utilize manufacturing facilities and technology more effectively, we are focused on continuous improvements in manufacturing processes. Additionally, considerable effort is being directed to manufacturing cost reduction through process improvement, product design, advanced manufacturing technology, supply management and logistics. Management expects to be able to leverage our costs as product volumes increase.

Our manufacturing designs include the use of conventional technology, which has been proven in high- volume automotive and turbocharger production for many years. Many components used in the manufacture of our products are readily fabricated from commonly available raw materials or off-the-shelf items available from multiple supply sources; however, certain items are custom made to meet our specifications and require longer lead time. We believe that in most cases, adequate capacity exists at our suppliers and that alternative sources of supply are available or could be developed within a reasonable period of time; however, single source suppliers with long lead times may be more challenging to transition to another supplier. We regularly reassess the adequacy and abilities of our suppliers to meet our future needs.

We believe that effective execution in each of these key areas will be necessary to leverage Capstone’s promising technology and early market leadership into achieving positive cash flow with growing market presence and improving financial performance.

We currently occupy warehouse and office space in Van Nuys, California with a production capacity of approximately 2,000 units per year, depending on product mix.

### Critical Accounting Policies and Estimates

The preparation of our condensed consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses. Management believes the most complex and sensitive judgments, because of their significance to the condensed consolidated financial statements, result primarily from the need to make estimates about the effects of matters that are inherently uncertain. Actual results could differ from management's estimates. Management believes the critical accounting policies listed below affect our more significant accounting judgments and estimates used in the preparation of the condensed consolidated financial statements. These policies are described in greater detail in our Annual Report on Form 10-K for Fiscal 2022 and continue to include the following areas:

- Revenue recognition;
- Inventory write-downs and classification of inventories;
- Estimates of warranty obligations;
- Accounts receivable allowances;
- Sales return allowances;
- Deferred tax assets and valuation allowance;
- Impairment of long-lived assets, including intangible assets with finite lives; and
- Stock-based compensation expense.

### Results of Operations

#### Three Months Ended December 31, 2022 and 2021

The following table summarizes our revenue by geographic markets (amounts in millions):

	Three Months Ended December 31,	
	2022	2021
United States and Canada	\$ 13.2	\$ 10.9
Europe and Russia	3.4	4.2
Latin America	2.0	1.8
Asia and Australia	1.0	1.5
Middle East and Africa	—	2.2
Total	<u>\$ 19.6</u>	<u>\$ 20.6</u>

**Revenue** for the three months ended December 31, 2022 decreased \$1.0 million to \$19.6 million from \$20.6 million for the three months ended December 31, 2021. The \$1.0 million decrease was primarily driven by a \$2.2 million decrease in the Middle East and Africa, \$0.8 million in Europe and Russia and \$0.5 million in Asia and Australia, partially offset by increases of \$2.3 million in United States and Canada and \$0.2 million in Latin America. The decreases in Middle East and Africa, Europe and Russia, and Asia and Australia were primarily due to decreases in product shipments into the energy efficiency and renewable energy vertical markets in those regions compared to the same period last year. The increase in the United States and Canada was primarily attributable to an increase in our EaaS long-term rental services and product shipments into the natural resources vertical markets compared to the same period last year.

The following table summarizes our revenue (revenue amounts in millions):

	Three Months Ended December 31,					
	2022			2021		
	Revenue	Megawatts	Units	Revenue	Megawatts	Units
Microturbine Product	\$ 8.9	7.6	50	\$ 11.6	10.3	54
Accessories	1.1			0.7		
Total Product and Accessories	10.0			12.3		
Parts, Service and Rentals	9.6			8.3		
Total	\$ 19.6			\$ 20.6		

For the three months ended December 31, 2022, revenue from microturbine products and accessories decreased \$2.3 million, or 19%, to \$10.0 million from \$12.3 million for the three months ended December 31, 2021. The \$2.3 million decrease was primarily driven by a decrease in megawatts and units shipped during the three months ended December 31, 2022 compared to the same period last year. Megawatts shipped were 7.6 megawatts and 10.3 megawatts during the three months ended December 31, 2022 and 2021, respectively. Average revenue per megawatt shipped was approximately \$1.2 million and \$1.1 million during the three months ended December 31, 2022 and 2021, respectively. The timing of shipments is variable and based on several factors (including customer deposits, payments, availability of credit and delivery schedule changes), most of which are not within our control and can affect the timing of revenue recognition.

Parts, service and rentals revenue (which are part of our EaaS business line and includes revenue from our parts shipments, FPP contracts, rentals, Distributor Support Subscription fees, and other service revenue) increased \$1.3 million, or 16%, to \$9.6 million for three months ended December 31, 2022 from \$8.3 million for the three months ended December 31, 2021. The \$1.3 million increase was primarily driven by an increase in rental revenue as a result of our EaaS business plan during the three months ended December 31, 2022 compared to the same period last year.

Sales to RSP Systems and Cal Microturbine accounted for 21% and 14% of our revenue for the three months ended December 31, 2022, respectively. Sales to E-Finity, RSP Systems, and Radian Oil & Gas Services Co, accounted for 13%, 10%, and 10% of our revenue for the three months ended December 31, 2021, respectively.

**Gross Profit** Cost of goods sold includes direct material costs, production and service center labor and overhead, inventory charges and provision for estimated product warranty expenses. Gross profit was \$2.7 million, or 14% of revenue, for the three months ended December 31, 2022 compared to a gross profit of \$2.2 million, or 11% of revenue, for the three months ended December 31, 2021. The increase of \$0.5 million was primarily the result of current year product price increases and an increase in higher margin rental revenue. The increase was also due to higher direct material profit of \$0.8 million and lower warranty expense of \$0.2 million, partially offset by higher production and service center labor and overhead expense of \$0.3 million, and inventory charges of \$0.2 million.

Direct material profit, calculated as total revenue less our direct material costs, increased \$0.8 million during the third quarter of Fiscal 2023 compared to the third quarter of Fiscal 2022. The increase was due to higher margin rental business, partially offset by higher direct material costs due to vendor price increases and supply chain shortages. We increased our sales prices effective January 2023 and are negotiating with vendors to reduce these costs.

Warranty expense is a combination of a standard warranty provision recorded at the time revenue is recognized and changes, if any, in estimates for reliability repair programs. Reliability repair programs are based upon estimates that are recorded in the period that new information becomes available, including design changes, cost of repair and product enhancements, which can include both in-warranty and out-of-warranty systems. The decrease in warranty expense of \$0.2 million is primarily due to declining failure and repair rates. During the three months ended December 31, 2021, we shipped approximately \$0.4 million of parts to replace high risk failure parts in some of our fielded units due to a previously identified supplier defect and recorded it against the \$4.9 million reserve established during the three months ended March 31, 2021.

Production and service center labor and overhead expense increased by \$0.3 million primarily because of an increase of \$0.8 million in depreciation and rent expense related to our rental business, partially offset by decreases of \$0.3 million in labor costs and \$0.2 million in supplies expense, primarily as a result of higher margin rental revenue in the three months ended December 31, 2022.

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The following table summarizes our gross profit (in millions except percentages):

	Three Months Ended December 31,	
	2022	2021
<b>Gross Profit</b>		
Product and accessories	\$ (1.6)	\$ (0.4)
As a percentage of product and accessories revenue	(16)%	(3)%
Parts, service and rentals	\$ 4.3	\$ 2.6
As a percentage of parts, service and rentals revenue	45 %	31 %
Total Gross Profit	\$ 2.7	\$ 2.2
As a percentage of total revenue	14 %	11 %

The \$1.2 million decrease in product and accessories gross profit was primarily the result of higher material costs and lower product sales in the three months ended December 31, 2022.

Product and accessories gross margin as a percentage of product and accessories revenue decreased to (16)% during the three months ended December 31, 2022, from (3)% during the three months ended December 31, 2021, primarily driven by higher direct material costs related to supply chain shortages from key vendors in the three months ended December 31, 2022. Parts, service and rentals gross margin as a percentage of parts and service revenue increased to 45% during the three months ended December 31, 2022, compared to 31% during the three months ended December 31, 2021 primarily as a result of higher margin rental revenue in the three months ended December 31, 2022.

**Research and Development (“R&D”) Expenses** decreased \$0.2 million, or 25%, to \$0.6 million from \$0.8 million as a result of lower costs from actions taken in our cost reduction plan during the three months ended December 31, 2022.

**Selling, General, and Administrative (“SG&A”) Expenses** increased \$0.1 million, or 2%, to \$5.4 million from \$5.3 million primarily as a result of increases of approximately \$0.3 million in marketing related costs and \$0.3 million in consulting expense, partially offset by a decrease of \$0.5 million in labor costs during the three months ended December 31, 2022 compared to the same period last year.

**Interest Expense** for the three months ended December 31, 2022 and 2021 was \$1.9 million and \$1.3 million, respectively, due to an increase in interest rates. See Liquidity and Capital Resources below for additional discussion on our interest expense.

#### **Nine Months Ended December 31, 2022 and 2021**

The following table summarizes our revenue by geographic markets (amounts in millions):

	Nine Months Ended December 31,	
	2022	2021
United States and Canada	\$ 40.2	\$ 26.5
Europe and Russia	10.5	12.0
Latin America	3.8	6.9
Asia and Australia	4.2	5.7
Middle East and Africa	0.3	2.8
Total	\$ 59.0	\$ 53.9

**Revenue** for the nine months ended December 31, 2022 increased \$5.1 million, or 9%, to \$59.0 million from \$53.9 million for the nine months ended December 31, 2021. The \$5.1 million increase was primarily driven by the \$13.7 million increase in United States and Canada, offset by decreases of \$3.1 million in Latin America, \$2.5 million in Middle East and Africa, \$1.5 million in Asia and Australia and \$1.5 million in Europe and Russia. The increase in the United States and Canada was primarily attributable to an increase in our EaaS long-term rental services and product shipments into the natural resources vertical markets compared to the same period last year. The decreases in Europe and Russia, Latin America, Asia and Australia, and Middle East and Africa are primarily attributable to decreases in product shipments into the energy efficiency and natural resources vertical markets in those regions compared to the same period last year.



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The following table summarizes our revenue (revenue amounts in millions):

	Nine Months Ended December 31,					
	2022			2021		
	Revenue	Megawatts	Units	Revenue	Megawatts	Units
Microturbine Product	\$ 28.2	25.0	145	\$ 28.3	25.2	143
Accessories	1.6			0.9		
Total Product and Accessories	29.8			29.2		
Parts, Service and Rentals	29.2			24.7		
Total	\$ 59.0			\$ 53.9		

For the nine months ended December 31, 2022, revenue from microturbine products and accessories increased \$0.6 million, or 2%, to \$29.8 million from \$29.2 million for the nine months ended December 31, 2021. The \$0.6 million increase was primarily due to higher accessory sales during the nine months ended December 31, 2022 compared to the same period last year. Megawatts shipped were 25.0 megawatts and 25.2 megawatts during the nine months ended December 31, 2022 and 2021, respectively. Average revenue per megawatt shipped was approximately \$1.1 million during the nine months ended December 31, 2022 and 2021.

Parts, service and rentals revenue (which are part of our EaaS business line and includes revenue from our parts shipments, FPP contracts, rentals, Distributor Support Subscription fees, and other service revenue) increased \$4.5 million, or 19%, to \$29.2 million for nine months ended December 31, 2022 from \$24.7 million for the nine months ended December 31, 2021. The \$4.5 million increase was primarily driven by an increase in rental revenue as a result of our EaaS business plan, and an increase in revenue from our FPP contracts during the nine months ended December 31, 2022 compared to the same period last year.

Sales to Cal Microturbine and RSP Systems accounted for 16% and 13% of our revenue for the nine months ended December 31, 2022, respectively. E-Finity accounted for 15% of our revenue for the nine months ended December 31, 2021.

**Gross Profit** was approximately \$9.6 million, or 16% of revenue, for the nine months ended December 31, 2022 compared to a gross profit of \$7.6 million, or 14% of revenue, for the nine months ended December 31, 2021. The increase of \$2.0 million was primarily a result of higher direct material profit of \$4.1 million, partially offset by increases in our production and service labor and overhead expenses of \$1.7 million, and higher inventory charges of \$0.4 million.

Direct material profit, calculated as total revenue less our direct material costs, increased \$4.1 million during the nine months ended December 31, 2022 compared to the nine months ended December 31, 2021 primarily due to an increase in sales, partially offset by higher direct material costs due to vendor price increases and supply chain shortages. We increased our sales prices effective January 2023 and are negotiating with vendors to reduce these costs.

Production and service center labor and overhead expense increased \$1.7 million in the nine months ended December 31, 2022 compared to the nine months ended December 31, 2021 primarily due to an increase of approximately \$2.5 million in facilities costs, offset by a decrease in labor costs of \$0.8 million, primarily as a result of lower overhead costs and higher margin rental revenue in the nine months ended December 31, 2022.

Inventory charges increased by \$0.4 million during the nine months ended December 31, 2022 compared to the nine months ended December 31, 2021 primarily as the result of an increase in the provision for excess and obsolete inventory as we reserved for some older inventory parts.

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The following table summarizes our gross profit (in millions except percentages):

	Nine Months Ended December 31,	
	2022	2021
<b>Gross Profit</b>		
Product and accessories	\$ (3.2)	\$ (1.3)
As a percentage of product and accessories revenue	(11)%	(4)%
Parts, service and rentals	\$ 12.8	\$ 8.9
As a percentage of parts, service and rentals revenue	44 %	36 %
Total Gross Profit	\$ 9.6	\$ 7.6
As a percentage of total revenue	16 %	14 %

The \$1.9 million decrease in product and accessories gross profit in the nine months ended December 31, 2022 was primarily due to high costs driven by material cost increases from key vendors.

Product and accessories gross margin as a percentage of product and accessories revenue decreased to (11)% during the nine months ended December 31, 2022, from (4)% during the nine months ended December 31, 2021, primarily due to higher product material costs in the nine months ended December 31, 2022 driven by price increases from key vendors. Parts and service gross margin as a percentage of parts and service revenue increased to 44% during the nine months ended December 31, 2022, compared to 36% during the nine months ended December 31, 2021, primarily due to lower overhead costs and higher margin rental revenue in the nine months ended December 31, 2022.

**Research and Development (“R&D”) Expenses** decreased \$0.9 million, or 35%, to \$1.7 million from \$2.6 million as a result of lower costs from actions taken in our cost reduction plan during the nine months ended December 31, 2022.

**Selling, General, and Administrative (“SG&A”) Expenses** decreased \$1.7 million, or 10%, to \$15.4 million from \$17.1 million primarily as a result of decreases of approximately \$1.5 million labor costs and \$0.7 million in marketing related costs, partially offset by an increase of \$0.7 million in consulting expense. These decreases were primarily due to lower costs from actions taken in our cost reduction plan during the nine months ended December 31, 2022.

**Interest Expense** for the nine months ended December 31, 2022 and 2021 was \$4.6 million and \$3.8 million, respectively, due to higher interest rates. See Liquidity and Capital Resources below for additional discussion on our interest expense.

**Gain on Extinguishment of Debt** of approximately \$1.9 million during the nine months ended December 31, 2021 was the result of the forgiveness of the PPP Loan. See Note 10 – Term Note Payable.

**Other Income** for the nine months ended December 31, 2021 includes the payment to the Company of \$0.6 million of PPP Loan proceeds previously repaid in accordance with the Fourth Amendment to the Note Purchase Agreement between the Company and Goldman Sachs Specialty Lending Group, L.P. See Note 10 – Term Note Payable.

## Liquidity and Capital Resources

### Cash Flows

Our cash requirements depend on many factors, including the execution of our business strategy and plan. We have invested our cash in institutional funds that invest in high quality short-term money market instruments to provide liquidity for operations and for capital preservation. Our cash and cash equivalents balances decreased \$5.9 million during the nine months ended December 31, 2022, primarily due to the net loss and an increase in inventory purchases, partially offset by improved collections of accounts receivable and net proceeds from the August 2022 public offering. Cash used in investing activities was primarily to continue the expansion of the rental fleet, which was partially offset by cash provided by financing activities from the issuance of common stock through the August 2022 public offering.

**Operating Activities** During the nine months ended December 31, 2022, we used \$7.8 million in cash in our operating activities, which consisted of a net loss for the period of \$12.2 million and cash used for working capital of \$0.9

million, partially offset by non-cash adjustments (primarily depreciation and amortization, inventory provision, warranty provision and stock based compensation) of \$5.3 million. During the nine months ended December 31, 2021, we used \$23.0 million in cash in our operating activities, which consisted of a net loss for the period of \$13.3 million, cash used for working capital of \$11.4 million and non-cash adjustments (primarily gain on extinguishment of debt, warranty provision, depreciation and amortization, stock based compensation and inventory provision) of \$1.7 million.

The following is a summary of the significant sources (uses) of cash from operating activities (amounts in thousands):

	Nine Months Ended December 31,	
	2022	2021
Net loss	\$ (12,191)	\$ (13,322)
Non-cash operating activities(1)	5,328	1,682
Changes in operating assets and liabilities:		
Accounts receivable	9,077	(6,249)
Inventories	(9,080)	(5,637)
Accounts payable and accrued expenses	(276)	5,953
Prepaid expenses, other current assets and other assets	(933)	509
Other changes in operating assets and liabilities	312	(5,929)
Net cash provided by (used) in operating activities	\$ (7,763)	\$ (22,993)

- (2) Represents a change in gain on extinguishment of debt, warranty provision, depreciation and amortization, stock-based compensation expense, inventory provision, accounts receivable and sales return allowances.

The change in non-cash operating activities during the nine months ended December 31, 2022, compared to the same period the previous year was primarily driven by the gain on extinguishment of debt resulting from the forgiveness of the PPP Loan during the first quarter of Fiscal 2022 and an increase in depreciation expense related to the additions to our rental fleet during the nine months ended December 31, 2022, compared to the same period the previous fiscal year. The change in accounts receivable was primarily the result of improved collections during the nine months ended December 31, 2022 compared to the same period in the previous fiscal year. The change in inventory was primarily the result of an increase in raw materials during the nine months ended December 31, 2022 to secure inventory with long lead times, compared to the nine months ended December 31, 2021. The change in accounts payable and accrued expenses was primarily due to higher accounts payable payments to vendors during the nine months ended December 31, 2022 compared to the same period of the previous fiscal year. The change in other operating assets and liabilities during the nine months ended December 31, 2022 compared to the same period in the previous fiscal year, was primarily driven by the decrease in our accrued warranty reserve during the nine months ended December 31, 2021, as we had additional spend for the reliability repair program.

**Investing Activities** Net cash used in investing activities of \$4.0 million and \$5.7 million during the nine months ended December 31, 2022 and 2021, respectively, primarily related to the additions to our rental fleet of approximately \$4.1 million and \$5.1 million, respectively.

**Financing Activities** During the nine months ended December 31, 2022, we generated cash of approximately \$5.8 million from financing activities, compared to cash generated during the nine months ended December 31, 2021 of approximately \$10.5 million. The funds generated from financing activities during the nine months ended December 31, 2022 were primarily the result of net proceeds from the August 2022 public offering, which were partially offset by financing related to additions to our rental fleet. The funds generated from financing activities during the nine months ended December 31, 2021 were primarily the result of net proceeds from the June 2021 Common Stock offering and proceeds from the at-the-market offering program described below.

#### *At-the-market offerings*

On June 7, 2018, we entered into a sales agreement with H.C. Wainwright & Co., LLC (the “Sales Agreement”) with respect to an at-the-market offering program (the “ATM Program”) pursuant to which we may offer and sell, from time to time at our sole discretion, shares of our Common Stock, having an aggregate offering price of up to \$25.0 million. We will set the parameters for sales of the shares, including the number to be sold, the time period during which sales are requested to be made, any limitation on the number that may be sold in one trading day and any minimum price below which sales may not be made. On July 15, 2020, we entered into an amendment to the Sales Agreement, which modified

the Sales Agreement to, among other things, amend the termination provisions of the Agreement and amend the maximum amount of shares of our Common Stock that we may offer and sell through or to H.C. Wainwright & Co., LLC from time to time under the ATM Program. On March 19, 2021, we entered into a second amendment to the Sales Agreement, which modified the Sales Agreement to, among other things, reflect our filing of a new Registration Statement on Form S-3 with the SEC on March 22, 2021 and set the maximum amount of shares of our Common Stock that we may offer and sell through or to H.C. Wainwright at \$50 million from the date of the amendment to the Sales Agreement, subject to certain limitations set forth in the amendment. No shares of our Common Stock under the at-the-market offering program were issued during the nine months ended December 31, 2022. Following the filing of our Annual Report on Form 10-K on July 13, 2022, we are now subject to General Instruction I.B.6 of Form S-3, which limits the amounts that we may sell under our registration statement on Form S-3. At the conclusion of our public offering in August of 2022, we had no remaining shares available for issuance with respect to this ATM Program.

#### *Common Stock Offerings*

On June 17, 2021, we entered into an amended and restated underwriting agreement (the “Wainwright Underwriting Agreement”) with H.C. Wainwright & Co., LLC (“Wainwright”) whereby we agreed to sell to Wainwright, and Wainwright agreed to purchase, in a firm commitment underwritten public offering 1,904,763 shares (the “Wainwright Shares”) of our common stock, \$0.001 par value per share (the “Wainwright Offering”). The offering price to the public in the Wainwright Offering was \$5.25 per share of Common Stock, and Wainwright agreed to purchase the Wainwright Shares from the Company pursuant to the Wainwright Underwriting Agreement at a price of \$4.91 per share, representing an underwriting discount of 6.5%. Pursuant to the Wainwright Underwriting Agreement, we also granted Wainwright an option to purchase, for a period of 30 days from the date of the Wainwright Underwriting Agreement, up to an additional 285,714 shares of Common Stock (the “Option Shares”). On June 21, 2021, Wainwright exercised the option in full. The Wainwright Offering closed on June 22, 2021, and we received net proceeds of \$10.5 million after deducting \$1.0 million in underwriting discounts, commissions and offering expenses paid by the Company.

On August 18, 2022, we entered into an underwriting agreement (the “Lake Street Underwriting Agreement”) with Lake Street Capital Markets, LLC and Joseph Gunnar and Company, LLC (the “Underwriters”) whereby we agreed to sell to the Underwriters, and the Underwriters agreed to purchase, in a firm commitment underwritten public offering 2,934,498 (the “Lake Street Shares”) of the Company’s Common Stock, \$0.001 par value per share (the “Lake Street Offering”) and accompanying warrants to purchase up to 2,934,498 shares of common stock. The offering price to the public in the Offering was \$2.75 per share of Common Stock and accompanying warrant, and the Underwriters agreed to purchase the shares and accompanying warrant from the Company pursuant to the Lake Street Underwriting Agreement at a price of \$2.585 per share and accompanying warrant, representing an underwriting discount of 6.0%. The Lake Street Offering closed on August 24, 2022, and the Company received net proceeds of \$7.3 million after deducting \$0.8 million in underwriting discounts, commissions and offering expenses paid by the Company.

#### *Warrants*

##### *Goldman Warrant*

On February 4, 2019, we sold to Goldman Sachs & Co. LLC (the “Holder”), a Purchase Warrant for shares of our Common Stock (the “Warrant”) pursuant to which the Holder may purchase shares of our Common Stock in an aggregate amount of up to 404,634 shares (the “Warrant Shares”). Our Common Stock and warrant transactions during Fiscal 2021 triggered certain anti-dilution provisions in the warrants outstanding. As of December 31, 2022, the Holder may purchase shares of our Common Stock in an aggregate amount of up to 463,067 shares at an exercise price of \$2.61 per share.

##### *Goldman “2020 Warrant”*

On October 1, 2020, we entered into an Amendment No. 3 to the Purchase Warrant for shares of our Common Stock (the “Amendment No. 3”) with Special Situations Investing Group II, LLC (as successor in interest to Goldman Sachs & Co. LLC) (the “Warrant Holder”) that amended that certain Purchase Warrant for shares of our Common Stock originally issued by the Company to Goldman Sachs & Co. LLC, dated February 4, 2019, as amended (the “Original

Warrant”). As of December 31, 2022, the holder may purchase shares of our Common Stock in an aggregate amount of up to 291,295 shares at an exercise price of \$2.75 per share.

*September 2019 Pre-Funded and Series D Warrants*

On September 4, 2019, we entered into a Securities Purchase Agreement (the “Securities Purchase Agreement”) with certain institutional and accredited investors pursuant to which we agreed to issue and sell in a registered direct offering (the “Registered Direct Offering”) an aggregate of 580,000 shares of our Common Stock at a negotiated purchase price of \$5.00 per share, and pre-funded warrants to purchase up to an aggregate of 440,000 shares of our Common Stock at a negotiated purchase price of \$5.00 per Pre-Funded Warrant, for aggregate gross proceeds of approximately \$5.1 million (580,000 shares of common stock plus 440,000 pre-funded warrants at a \$5.00 per share purchase price), before deducting placement agent fees and other offering expenses.

In a concurrent private placement, we agreed to issue to the purchasers warrants to purchase 765,000 shares of Common Stock, which represent 75% of the number of shares of Common Stock and shares underlying the Pre-Funded Warrants purchased in the Registered Direct Offering, pursuant to the Securities Purchase Agreement. The Common Warrants are exercisable for shares of Common Stock at an initial exercise price of \$6.12 per share for a period of five years, starting on April 2, 2020 and expiring on April 2, 2025. In January 2021, three warrant holders exercised their rights to the warrant agreement to exercise on a cashless basis 690,000 Series D warrants at an exercise price of \$6.12 per share under the warrant agreement. In accordance with terms of the warrant agreement, after taking into account the shares withheld to satisfy the cashless exercise option, we issued 352,279 shares of Common Stock. As of December 31, 2022, there were 75,000 Series D warrants outstanding at an exercise price of \$6.12 per share.

*August 2022 Warrants*

On August 24, 2022 we issued 2,934,498 of common stock warrants with an exercise price of \$2.75 in conjunction with the Lake Street Offering.

There were no stock options exercised during the three months ended December 31, 2022 and 2021. Repurchases of shares of our Common Stock for employee taxes due on vesting of restricted stock units, net of employee stock purchases, resulted in approximately \$0.1 million of net cash used during the nine months ended December 31, 2022 and 2021, respectively.

**Three-year Term Note** On February 4, 2019, we entered into a Note Purchase Agreement, by and among us, certain subsidiaries of us as guarantors, Goldman Sachs Specialty Lending Holdings, Inc., as collateral agent and any other Purchasers party thereto from time to time, in connection with the sale of senior secured notes of us in a private placement exempt from registration under the Securities Act of 1933, as amended. Under the Note Purchase Agreement, we sold to the Purchaser \$30.0 million aggregate principal amount of senior secured notes (the “Goldman Notes”). The first interest payment on the Notes was on March 31, 2019. On October 1, 2020, pursuant to A&R Note Purchase Agreement, we increased the amount of borrowing under the Notes by \$20.0 million to \$50.0 million, and all outstanding Notes bear interest at the Adjusted (London Interbank Offer) LIBO Rate (as defined in the A&R Note Purchase Agreement) plus 8.75% per annum. The Notes do not amortize and the entire principal balance is due in a single payment on the maturity date. As of March 31, 2022, \$51.0 million in borrowings were outstanding under the Notes, which includes the accrual for an exit fee to be paid at maturity or upon pre-payment. Pursuant to the First Amendment to the A&R Note Purchase dated as of May 13, 2021, the minimum consolidated liquidity requirement increased from \$9.0 million to \$12.0 million for the period from the Amendment Date to March 31, 2022, and \$9.0 million thereafter. The financial covenants of the A&R Note Purchase Agreement require the Company not to exceed specified levels of Adjusted EBITDA losses relative to its financial model, beginning with the fiscal quarter ending September 30, 2021. As of March 31, 2022, we were not in compliance with the Adjusted EBITDA covenant contained in the A&R Note Purchase Agreement and did not cure such non-compliance by prepaying the Notes. As a result, we were in breach of the Adjusted EBITDA covenant as of May 27, 2022. On July 13, 2022 we entered into the A&R NPA Second Amendment with the Purchaser and the Collateral Agent, pursuant to which (i) the Purchaser and the Collateral Agent waived our breach of the Adjusted EBITDA covenant and (ii) the A&R Note Purchase Agreement has been amended to, among other things, add certain new covenants, including requirements that we use our commercially reasonable best efforts to raise at least \$10 million through a sale of our common stock by September 14, 2022 and refinance the Notes by October 1, 2022. As of December 31, 2022, we are in compliance with the other covenants contained in the A&R Note Purchase Agreement, as amended by A&R NPA Second Amendment.

We were compliant with the Adjusted EBITDA covenant as of December 31, 2022. On August 24, 2022 we completed a public stock offering with net proceeds of \$7.5 million. (See Note 8 - Offering of Common Stocks and Warrants), which Goldman Sachs Specialty Lending Group, L.P. agreed satisfied the Company's obligation to use commercially reasonable best efforts to raise at least \$10 million through a sale of its common stock by September 14, 2022. On September 9, 2022, we engaged Greenhill as financial advisor and investment banker in conjunction with the commercially reasonable best effort of refinancing the Goldman Notes. Greenhill's activities were ongoing as of December 31, 2022.

**Paycheck Protection Program Loan** On April 15, 2020, we applied for an unsecured PPP Loan in the principal amount of \$2,610,200 under the Small Business Administration Paycheck Protection Program enabled by the Coronavirus Aid, Relief and Economic Security Act of 2020. On April 24, 2020, we entered into a promissory note with Western Alliance Bank. The Company received the full amount of the PPP Loan on April 24, 2020. In accordance with the requirements of the CARES Act, we used the proceeds from the PPP Loan to support fixed costs such as payroll costs, rent and utilities. On May 13, 2020, we repaid \$660,200 of the PPP Loan in accordance with the Fourth Amendment to the Note Purchase Agreement between the Company and Goldman Sachs Specialty Lending Group, L.P.

The advance under the PPP Loan bore interest at a rate per annum of 1%.

In February 2021, the Company applied for forgiveness in full of the original balance of the PPP loan and the loan was forgiven in full on June 30, 2021. The Company received a refund of \$660,200 and recorded these amounts within other income on the Company's Condensed Consolidated Statements of Operations. Management accounted for forgiveness on the PPP Loan in accordance with ASC 470 and recorded a gain on extinguishment of debt on its condensed consolidated financial statements and related footnote disclosures, provided forgiveness be approved by the SBA.

**Working Capital and Other Operating Assets and Liabilities** Cash used for working capital was \$0.9 million during the nine months ended December 31, 2022, a decrease of \$10.5 million from the cash used for working capital of \$11.4 million during the nine months ended December 31, 2021. These decreases in cash used for working capital and other operating assets and liabilities were primarily due to improved collections of accounts receivable and lower warranty claims. Additionally, the change in accounts payable and accrued expenses was primarily due to increased accounts payable payments to vendors.

**Liquidity and Going Concern** In connection with the preparation of these condensed consolidated financial statements for the three and nine months ended December 31, 2022, management evaluated whether there were conditions and events, considered in the aggregate, that raised substantial doubt about our ability to meet obligations as they became due over the next twelve months from the date of issuance of our third quarter of Fiscal 2023 interim condensed consolidated financial statements. Management assessed that there were such conditions and events, primarily the October 1, 2023 due date for the Goldman Sachs Specialty Lending Group, L.P. outstanding debt of \$51.0 million at fair value (see Note 10 – Term Note Payable in the Notes to the Condensed Consolidated Financial Statements for further discussion of the outstanding debt). As of December 31, 2022, the Company had cash and cash equivalents of \$16.6 million. While the Company believes internally generated cash will adequately fund operating and investment activities over the next twelve months, there will not be sufficient internally generated cash, nor does the Company expect that it could obtain sufficient financing through underwritten public offerings, at-the-market offerings or other similar methods, to retire the outstanding debt. The Company has engaged Greenhill, a global investment banking firm, to assess financing alternatives related to the Note Payable as well as to raise incremental capital for general corporate purposes. Greenhill's refinancing efforts are ongoing as of December 31, 2022. As there is no guarantee that the Company will successfully complete these financing activities, these conditions raise substantial doubt about the Company's ability to continue as a going concern for a period of one year from the date the financial statements are issued.

The Company has taken several steps to reduce operating costs and to conserve cash, including staff reductions, price increases, emphasis on the higher margin EaaS business, and the engagement of Greenhill to assist in debt refinancing.

Depending on the timing of our future sales and collection of related receivables, managing inventory costs and the timing of inventory purchases and deliveries required to fulfill the backlog, our future working capital requirements may vary materially from those now planned. The amount of capital that we will need in the future to fund our operations will require us to achieve significantly increased sales volume, which is dependent on many factors, including:

- worldwide supply chain issues, including raw materials shortages and freight surcharges;

- the market acceptance of our products and services;
- our business, product and capital expenditure plans;
- capital improvements to new and existing facilities;
- our competitors' response to our products and services;
- our relationships with customers, distributors, dealers and project resellers; and
- our customers' ability to afford and/or finance our products.

Our accounts receivable balance, net of allowances, was \$15.1 million and \$24.7 million as of December 31, 2022 and March 31, 2022, respectively. Days sales outstanding in accounts receivable ("DSO") decreased by 84 days to 66 days as of December 31, 2022 compared to 150 days as of March 31, 2022, primarily due to an increase in accounts receivable collections, and benefitting from a \$1.3 million offset of certain customer receivable accounts against notes payable to the same customer related to our rental units.. In the Energy Efficiency market vertical we sell to end users that have been significantly, economically impacted by the pandemic, such as in the Hospitality and Health Care industries. Additionally, the COVID-19 Pandemic heavily impacted our natural resources market vertical, where we primarily sell to Oil & Gas end users. While oil prices have rebounded above \$100 per barrel, we have not seen a corresponding rebound in capital expenditures or spending activity.

No assurance can be given that future bad debt expense will not increase above current operating levels. Increased bad debt expense or delays in collecting accounts receivable could have a material adverse effect on cash flows and results of operations. In addition, our ability to access the capital markets may be severely restricted or made very expensive at a time when we need, or would like, to do so, which could have a material adverse impact on our liquidity and financial resources. Certain industries in which our customers do business and certain geographic areas have been and could continue to be adversely affected by the previously referenced economic and geopolitical considerations.

#### **New Accounting Pronouncements**

Refer to Note 3 – Recently Issued Accounting Pronouncements in the Notes to Condensed Consolidated Financial Statements (Part I, Item 1 of this Form 10-Q) for information regarding new accounting standards.

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

We do not have any material off-balance sheet arrangements.

#### **Item 4. Controls and Procedures**

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

Under the supervision and with the participation of our management, including the Chief Executive Officer and Interim Chief Financial Officer, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of the end of the period covered by this report. Based upon that evaluation, our Chief Executive Officer and our Interim Chief Financial Officer concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective as of December 31, 2022. The term "disclosure controls and procedures" means controls and other procedures of ours that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within required time periods. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and Interim Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

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

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during our most recently completed fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.



***Inherent limitations of the Effectiveness of Internal Control***

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the internal control system are met. Because of the inherent limitations of any internal control system, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected.

**PART II — OTHER INFORMATION**

**Item 1. *Legal Proceedings***

Refer to Note 14 – Commitments and Contingencies — Legal Matters, in the Notes to Condensed Consolidated Financial Statements (Part I, Item 1 of this Form 10-Q) for information regarding legal proceedings in which we are involved. From time-to-time, we are involved in other pending and threatened litigation in the normal course of business in which claims for monetary damages are asserted. In the opinion of management, the ultimate liability, if any, arising from such pending or threatened litigation is not expected to have a material effect on our results of operations, liquidity, or financial position.

**Item 1A. *Risk Factors***

In addition to the other information set forth in this report, you should carefully consider the factors discussed in the “Risk Factors” section contained in the Company’s Annual Report on Form 10-K for the year ended March 31, 2022, together with the cautionary statement under the caption “Special Note Regarding Forward-Looking Statements” included elsewhere in this Quarterly Report on Form 10-Q. These described risks are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or operating results.

***Our success depends in significant part upon the continuing service of management and key employees, and several key management and other employees have recently left Capstone.***

In March 2022, we implemented an expense reduction plan, which included furloughs, employment terminations, pay cuts and the elimination of various management positions. We also recently suffered departures of other key personnel, including in accounting/finance and information technology. This has placed additional strain on the remaining personnel, and we do not expect to replace all of the departed employees, so the increased burdens on the remaining personnel are expected to continue for the foreseeable future. Accordingly, our recent losses of key employees could adversely impact our business, financial condition and results of operations.

***SEC regulations limit the amount of funds we can raise during any 12-month period pursuant to our shelf registration statement on Form S-3.***

SEC regulations limit the amount that companies with a public float of less than \$75 million may raise during any 12-month period pursuant to a shelf registration statement on Form S-3. We are currently subject to General Instruction I.B.6 to Form S-3, or the Baby Shelf Rule. Since the filing of our Annual Report on Form 10-K on July 13, 2022, we have been subject to the Baby Shelf Rule. Under the Baby Shelf Rule the amount of funds we can raise through primary public offerings of securities in any 12-month period using a registration statement on Form S-3 pursuant to the Baby Shelf Rule is limited to one-third of the aggregate market value of the shares of our common stock held by non-affiliates of the Company. Therefore, we will be limited in the amount of proceeds we are able to raise by selling shares of our common stock using our Form S-3 until such time as our public float exceeds \$75 million. Prior to such time as our public float exceeds \$75 million, if our public float decreases, the amount of securities we may sell under our Form S-3 shelf registration statement will also decrease. At the conclusion of our public offering in August of 2022, we had no remaining shares available for issuance with respect to this ATM Program. Even if sufficient funding is available, there can be no assurance that it will be available on terms acceptable to us or our stockholders. Furthermore, if we are required or choose to file a new registration statement on a form other than Form S-3, we may incur additional costs and be subject to delays due to review by the SEC staff.



***There is substantial doubt about the Company's ability to continue as a going concern, and this may adversely affect the Company's stock price and the Company's ability to raise capital.***

In connection with the preparation of these condensed consolidated financial statements for the three and nine months ended December 31, 2022, management evaluated whether there were conditions and events, considered in the aggregate, that raised substantial doubt about our ability to meet obligations as they became due over the next twelve months from the date of issuance of our third quarter of Fiscal 2023 interim condensed consolidated financial statements. Management assessed that there were such conditions and events, primarily the October 1, 2023 due date for Goldman Sachs Specialty Lending Group L.P. outstanding debt of \$51.0 million at fair value (see Note 10 – Term Note Payable in the Notes to the Condensed Consolidated Financial Statements for further discussion of the outstanding debt). There will not be sufficient internally generated cash, nor does the Company expect that it could obtain sufficient financing through underwritten public offerings, at-the market offerings or other similar methods, to retire the outstanding debt of \$51.0 million.

The Company has engaged Greenhill and Company, a Global Investment Banking firm, to assist in refinancing the outstanding Notes; however there can be assurance that the Company will be successful in refinancing the Notes. Whether the Company will be able to successfully refinance the Notes will depend on market conditions, the Company's financial performance and other factors. Any refinancing of the Notes, may also lead to increased costs, increased interest rates, additional financial covenants and other lender protections. The substantial doubt about the Company's ability to continue as a going concern may affect the price of the Company's common stock and the grade of its credit rating, may negatively impact relationships with third parties with whom the Company does business, including customers, vendors and lenders, may impact the Company's ability to raise additional capital or implement its business plan.

***Our products involve a lengthy sales cycle, and we may not anticipate sales levels appropriately, which could impair our results of operations.***

The sale of our products typically involves a significant commitment of capital by customers, which can result in the typical delays associated with large capital expenditures. For these and other reasons, the sales cycle associated with our products is typically lengthy and subject to several significant risks over which we have little or no control. We plan our production and inventory levels based on internal forecasts of customer demand, which is highly unpredictable and can fluctuate if sales in any period fall significantly below anticipated levels, our financial condition, results of operations and cash flow would suffer. If demand in any period increases well above anticipated levels, we may have difficulties in responding, incur greater costs to respond, or be unable to fulfill the demand in sufficient time to retain the order, which would negatively impact our operations. In addition, our operating expenses are based on anticipated sales levels, and a high percentage of our expenses are generally fixed in the short term. As a result of these factors, a small fluctuation in timing of sales can cause operating results to vary materially from period to period. Further, our inventory balance as of December 31, 2022 was \$25.6 million, compared to \$18.5 million as of December 31, 2021. This increase was due to purchases of long lead time inventory, and there is a risk that our inventory balances continue to rise, and consequently see a backlog of obsolete or excess inventory.

Net product orders for Fiscal 2022 were \$31.8 million and contributed to an ending backlog of \$25.3 million at March 31, 2022. The book-to-bill ratio was 1.1:1 for Fiscal 2022. Net product orders were approximately \$1.7 million and \$4.5 million for the three months ended December 31, 2022 and 2021, respectively. The gross book-to-bill ratio was 0.8:1 and 0.5:1 for the three months ended December 31, 2022 and 2021, respectively. Book-to-bill ratio is the ratio of new orders we received to units shipped and billed during a period. However, because our backlog represents only the estimated amount of future product revenue to be recognized under negotiated contracts as shipments convert backlog to recognized revenue for accounting purposes, we may not be able to fully realize the revenue value reported in our backlog, and our backlog may not be indicative of future revenues. A portion of our backlog is concentrated in the international oil and gas market which may impact the overall timing of shipments or the conversion of backlog to revenue. The timing of the backlog is based on the requirement date indicated by our customers. Based on historical experience, management expects that a significant portion of our backlog may not be shipped within the next 18 months. The timing of shipments is subject to change based on several variables (including customer deposits, payments, availability of credit and customer delivery schedule changes), most of which are not in our control and can affect the timing of our revenue. As a result, management believes the book-to-bill ratio better demonstrates the current demand for our products in the given period.

***We may be unable to fund our future operating requirements, which could force us to further curtail our operations; we were in breach of our secured note purchase agreement as of May 27, 2022.***

To the extent that the funds we now have on hand are insufficient to fund our future operating requirements, we would need to raise additional funds, through further public or private equity or debt financings depending upon prevailing market conditions. These financings may not be available or, if available, may be on terms that are not favorable to us and could result in dilution to our stockholders and reduction of the trading price of our stock. The state of capital markets when we seek to raise additional capital could also impede our ability to raise additional capital on favorable terms or at all. If adequate capital were not available to us, we likely would be required to significantly curtail our operations or possibly even cease our operations. In March 2022, we implemented an expense reduction plan, which included furloughs, employment terminations and pay cuts. See “— Our recently implemented expenses reduction plan and organizational changes undertaken to align to our focus on our EaaS business and achieving profitability may not be successful.”

We are party to an Amended and Restated Note Purchase Agreement (the “A&R Note Purchase Agreement”) dated October 1, 2020 (the “Closing Date”) among the Company, certain subsidiaries of the Company, Goldman Sachs Specialty Lending Group, L.P. (as successor in interest to Goldman Sachs Specialty Lending Holdings, Inc.), as collateral agent (“Goldman” or the “Collateral Agent”) and the purchasers party thereto (the “Purchasers”). The A&R Note Purchase Agreement amended and restated our Note Purchase Agreement dated February 4, 2019, by and among the Company, certain subsidiaries of the Company, Goldman Sachs Specialty Lending Holdings, Inc. and the purchasers party thereto under which we sold \$30.0 million aggregate principal amount of senior secured notes (the “Notes”) bearing an interest of 13.0% per annum. Pursuant to the A&R Note Purchase Agreement, the Company issued \$20.0 million in additional Notes and all outstanding Notes under the A&R Note Purchase Agreement bear interest at the Adjusted (London Interbank Offer) LIBO Rate (as defined in the A&R Note Purchase Agreement) plus 8.75% per annum, payable on the last day of each interest period of one-, two-, three- or six-months (but, in the case of a six-month interest period, every three-months). The Notes do not amortize and the entire principal balance is due and payable on October 1, 2023. As of March 31, 2022, \$51.0 million in borrowings were outstanding under the Notes, which includes the accrual for an exit fee to be paid at maturity or upon pre-payment. Obligations under the A&R Note Purchase Agreement are secured by all of the Company’s assets, including intellectual property and general intangibles. The A&R Note Purchase Agreement contains customary covenants, including, among others, covenants that restrict our ability to incur debt, grant liens, make certain investments and acquisitions, pay dividends, repurchase equity interests, repay certain debt, amend certain contracts, enter into affiliate transactions and asset sales or make certain equity issuances (including equity issuances that would cause an ownership change within the meaning of Section 382 of the Internal Revenue Code), and covenants that require us to, among other things, provide annual, quarterly and monthly financial statements, together with related compliance certificates, maintain our property in good repair, maintain insurance and comply with applicable laws.

On May 13, 2021, the Company, and the collateral agent, entered into a First Amendment, dated as of May 13, 2021 (the “Amendment”), to the A&R Note Purchase Agreement. The Amendment amended certain provisions of the A&R Note Purchase Agreement, including to (a) require the Company to expand its Rental Fleet (as defined in the A&R Note Purchase Agreement) by (i) at least 2.00 MW by the 9-month anniversary of the Closing Date (instead of 6.25 MW as provided in the A&R Note Purchase Agreement prior to the Amendment), and (ii) at least 12.50 MW by the 18-month anniversary of the Closing Date (which is unchanged from the covenant set forth in the A&R Note Purchase Agreement prior to the Amendment), and (b) increase the Company’s minimum consolidated liquidity requirement from \$9 million to \$12.2 million, for the period from May 13, 2021 to March 31, 2022, and \$9 million thereafter. The financial covenants of the A&R Note Purchase Agreement require the Company not to exceed specified levels of Adjusted EBITDA losses relative to its financial model, beginning with the fiscal quarter ending September 30, 2021. As of March 31, 2022, we were not in compliance with the Adjusted EBITDA covenant contained in the A&R Note Purchase Agreement and did not cure such non-compliance by prepaying the Notes. As a result, we were in breach of the Adjusted EBITDA covenant as of May 27, 2022. On July 13, 2022 we entered into the Second Amendment to the A&R Note Purchase Agreement (the “A&R NPA Second Amendment”) with the purchaser thereunder (the “Purchaser”) and Goldman Sachs Specialty Lending Group, L.P. as collateral agent (the “Collateral Agent”), pursuant to which (i) the Purchaser and the Collateral Agent waived our breach of the Adjusted EBITDA covenant and (ii) the A&R Note Purchase Agreement has been amended to, among other things, add certain new covenants, including requirements that we use our commercially reasonable best efforts to both (a) raise at least \$10 million through a sale of our common stock by September 14, 2022 and (b) refinance the Notes by October 1, 2022. See Item 9B “Other Information” for a summary of the A&R NPA Second Amendment. Although we are currently in compliance with the covenants under the A&R Note Purchase Agreement, as we continue to use cash for operations and expansion of our rental fleet, there is the possibility that our consolidated liquidity could fall

below the minimum balance required under the A&R Note Purchase Agreement if we do not raise additional capital and/or obtain an adjustment to that covenant.

The A&R Note Purchase Agreement, as amended, also defines an event of default as, among other things, payment default, bankruptcy events, cross defaults, breaches of covenants (including the liquidity covenant) and representations and warranties, changes of control, judgment defaults and an ownership change within the meaning of Section 382 of the Internal Revenue Code. An event of default, if not waived, could have a material adverse effect on us.

Our obligations under the A&R Note Purchase Agreement, as amended, have important consequences, including the following:

- We may have difficulty obtaining additional financing at favorable interest rates to meet our requirements for operations, capital expenditures, general corporate or other purposes.
- We will be required to dedicate a substantial portion of our cash flow to the payment of principal and interest on the Notes, which will reduce the amount of funds available for operations, capital expenditures and future acquisitions.
- Goldman Sachs Specialty Lending Holdings, Inc., as collateral agent under the Note Purchase Agreement, may enforce any and all liens and security interests on the collateral we have used to secure the Notes and we may forfeit our right to such collateral.
- In order to avoid breaches of the Note Purchase Agreement covenant relating to Section 382 changes of ownership, we may be limited in the amount of additional equity securities we are able to sell to raise capital. Accordingly, our desire to preserve our federal and state net operating loss ("NOL") carryforwards may cause us to forgo otherwise attractive funding opportunities.

We may be required to repay the Notes immediately if we again default on any of the numerous financial and other covenants contained in the A&R Note Purchase Agreement, including any of those added pursuant to the A&R NPA Second Amendment, and Goldman does not waive such default. It is not certain whether we will have, or will be able to obtain, sufficient funds to make any such accelerated payments. If any outstanding indebtedness under the Notes is accelerated, our assets may not be sufficient to repay such indebtedness.

#### **Item 5. Other Information**

On January 25, 2023, we and Prologis, L.P. ("Lessor") entered into a lease (the "Lease"), pursuant to which we will lease the premises located at 16640 Stagg Street, Van Nuys, California 91406, for use as our office space, warehouse and assembly space, test space and manufacturing space. We entered into the Lease prior to the expiration of the term our lease dated September 25, 2000, as amended, with the Lessor for the same premises. The Lease has a term of thirty-seven (37) calendar months, commencing March 1, 2023, and provides for the following monthly base rent: \$0 until April 1, 2023; \$129,873 until March 1, 2024, \$135,068 until March 1, 2025, \$140,470 until March 1, 2026 and \$146,089 until April 1, 2026. The description of the Lease does not purport to be complete and is qualified in its entirety by the reference to the full text of the Lease, a copy of which is filed herewith as Exhibit 10.1.

**Item 6. Exhibits**

<b>Exhibit Number</b>	<b>Description</b>
3.1	<a href="#">Conformed Copy of Second Amended and Restated Certificate of Incorporation of Capstone Green Energy Corporation, as amended through April 22, 2021 (b)</a>
3.2	<a href="#">Conformed Copy of Fifth Amended and Restated Bylaws of Capstone Green Energy Corporation effective as of April 22, 2021, as amended through August 26, 2021 (a)</a>
4.1	<a href="#">Amended and Restated Note Purchase Agreement, dated as of October 1, 2020, by and among Capstone Turbine Corporation, certain subsidiaries of the Company and Goldman Sachs Specialty Lending Group, L.P. (as successor in interest to Goldman Sachs Specialty Lending Holdings, Inc.) (c)</a>
4.2	<a href="#">First Amendment to the Amended and Restated Note Purchase Agreement, dated as of May 13, 2021 by and among Capstone Green Energy Corporation, certain subsidiaries of the Company and Goldman Sachs Specialty Lending Group, L.P. (d)</a>
4.3	<a href="#">Capstone Green Energy Corporation 2017 Equity Incentive Plan, as amended through September 12, 2022 (g)</a>
4.4	<a href="#">Second Amendment to the Amended and Restated Note Purchase Agreement dated as of July 13, 2022, by and among Capstone Green Energy Corporation, certain subsidiaries of the Company, the purchaser party thereto and Goldman Sachs Specialty Lending Group, L.P. (e)</a>
4.5	<a href="#">Form of Common Stock Purchase Warrant (f)</a>
10.1	<a href="#">Lease Agreement dated as of January 25, 2023, by Capstone Green Energy Corporation and Prologis, L.P.</a>
31.1	<a href="#">Certification of Chief Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
31.2	<a href="#">Certification of Chief Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
32	<a href="#">Certification of Chief Executive Officer and Chief Financial Officer 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
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 Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.LAB	XBRL Label Linkbase Document
101.PRE	XBRL Presentation Linkbase Document
101.DEF	XBRL Definition Linkbase Document
104	The cover page from Capstone Green Energy Corporation’s Quarterly Report on Form 10-Q for the quarter ended December 31, 2022, formatted in Inline XBRL and contained in Exhibit 101
(a)	Incorporated by reference to Capstone Green Energy Corporation’s Quarterly report on Form 10-Q, filed on November 10, 2021 (File No. 001-15957)
(b)	Incorporated by reference to Capstone Green Energy Corporation’s Quarterly report on Form 10-Q, filed on August 11, 2021 (File No. 001-15957)
(c)	Incorporated by reference to Capstone Turbine Corporation’s Current Report on Form 8-K, filed on October 5, 2020 (File No. 001-15957)
(d)	Incorporated by reference to Capstone Turbine Corporation’s Current Report on Form 8-K, filed on May 14, 2021 (File No. 001-15957)
(e)	Incorporated by reference to Capstone Green Energy Corporation’s Annual report on Form 10-K, filed on July 13, 2022 (File No. 001-15957)
(f)	Incorporated by reference to Capstone Green Energy Corporation’s Current Report on Form 8-K, filed on August 23, 2022 (File No. 001-15957)
(g)	Incorporated by reference to Capstone Green Energy Corporation’s Current Report on Form 8-K, filed on September 15, 2022 (File No. 001-15957)

**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.

CAPSTONE GREEN ENERGY CORPORATION

By:                     /s/ SCOTT W. ROBINSON                      
                    Scott W. Robinson  
                    *Interim Chief Financial Officer*  
                    *(Principal Financial Officer)*

Date: February 13, 2023

# PROLOGIS CLEAR LEASE

Simplify your lease. Simplify your business.

THIS LEASE is made between Landlord and Tenant as of the Effective Date below.

1. Defined Terms.

a) **Effective Date:**

25 January 2023

b) **Landlord:**

c) **Landlord Notice Address:**

Prologis, L.P., a Delaware limited partnership  
 Prologis With Prologis  
 17777 Center Court Dr. N., copy to: 1800 Wazee Street  
 Suite 100 Suite 500  
 Cerritos, CA 90703 Attn: Denver, CO 80202 Attn: General  
 Market Officer Counsel

d) **Tenant:**

e) **Tenant Notice Address:**

Capstone Green Energy Corporation, a Delaware corporation  
 16640 Stagg Street Van Nuys,  
 CA 91406 Attn: Celia Fanning  
 Phone: 818.734-5128  
 Email:

f) **Premises:**

cfanning@cgrnenergy.com  
 That portion of the Building containing approximately 78,711 rentable square feet as shown on Exhibit A.

g) **Building:**

Prologis Van Nuys Distribution Center 1  
 16640 Stagg Street  
 Van Nuys, CA 91406-1635

h) **Project:**

i) **Tenant's Proportionate Share of Taxes ("Tenant's Share"):**

Prologis Van Nuys Distribution Center  
 100%

j) **Term:**

Beginning on the Commencement Date and ending on the day which is thirty-seven (37) full calendar months following the Commencement Date (the "Expiration Date").  
 03/01/2023

k) **Commencement Date:**

l) **Monthly Base Rent**

**Period**

**Monthly Base Rent**

03/01/2023 - 03/31/2023	1* USD\$0.00
04/01/2023 - 02/29/2024	USD\$129,873.15
03/01/2024 - 02/28/2025	USD\$135,068.08
03/01/2025 - 02/28/2026	USD\$140,470.80
03/01/2026 - 03/31/2026	USD\$146,089.63

*1\* Monthly Base Rent of USD\$129,873.15 is abated for this period.*

*FOE and Taxes will be due as provided in the Lease during all periods.*

m) **Monthly Fixed Operating Expenses ("FOE"):**

Operating Expenses:	USD\$13,004.88
Capital	USD\$2,022.87
Repairs/Replacements:	
<b>Total FOE:</b>	<b>USD\$15,027.75</b>

- n) **Annual FOE Increase:** FOE shall automatically increase during the Term by 4.30% effective on the first ment Date. day of each full calendar year anniversary of the Commence
- o) **Monthly Taxes (estimated):** USD\$9,012.62
- p) **Security Deposit:** USD\$70,000.00, subject to Paragraph 6
- q) **Landlord Broker:** None
- r) **Tenant Broker:** None
- s) **Exhibits:** **Exhibit A-** Site Plan  
**Exhibit B-** Rules, Regulations, and Legal Requirements  
**Exhibit C-** State Specific Provisions

**2. Granting Clause; Quiet Enjoyment.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the Term subject to the provisions of this Lease. Tenant shall have peaceful and quiet enjoyment of the Premises during the Term against any person claiming by, through or under Landlord provided no uncured Event of Default (defined below) exists. Tenant shall have access to the Premises 24 hours per day, seven days per week, 365 days per year and the non-exclusive use of the Common Areas (defined below) of the Project for their intended purposes and in accordance with the Rules, Regulations, and Legal Requirements (defined below). The term "**Common Areas**" means all areas of the Project designated for the common use by tenants.

**3. Acceptance of Premises.** As of the Commencement Date, Tenant accepts the Premises in its "as-is" condition and waives any implied warranties relating to the Premises. Landlord and Tenant shall conduct a walkthrough of the Premises to identify any existing damage that neither party shall be responsible for repairing. Within 10 days after request, Tenant shall execute and deliver to Landlord a certificate confirming the Commencement Date. Tenant's use and occupation of the Premises prior to the Commencement Date shall be subject to all Tenant's obligations hereunder except for the payment of Monthly Base Rent, FOE, and Monthly Taxes.

**4. Use.** The Premises shall be used only for the purpose of receiving, storing, and shipping products, and for other incidental lawful uses. Tenant's use of the Project shall comply at all times with all rules, regulations, and Legal Requirements (defined in Exhibit B) established by Landlord (the "Rules, Regulations, and Legal Requirements"). The current Rules, Regulations, and Legal Requirements are attached as Exhibit B. The Rules, Regulations, and Legal Requirements may be amended by Notice to Tenant, provided the amendments do not materially enlarge Tenant's obligations or limit Tenant's rights hereunder. Landlord shall have no liability for the breach of any rules or regulations by other tenants.

**5. Monthly Rent.** Upon Lease execution, Tenant shall pay to Landlord the first installment of Monthly Base Rent, FOE, and Monthly Taxes. Thereafter, Tenant shall make all such payments in advance, without demand, no later than the first day of each calendar month during the Term (prorated for any fractional calendar month). Tenant shall make all payments to Landlord (or to such other party or at such location as Landlord may from time to time specify in writing) by Electronic Fund Transfer or Automated Clearing House. Tenant shall not abate, reduce, or off-set any amounts payable except as otherwise expressly provided herein. Tenant shall pay to Landlord on demand as a late charge, and not a penalty, five percent (5%) of any amount due for more than 4 days after the due date.

FOE represents payment for Landlord's costs incurred for insurance premiums (see Section 9), Landlord's costs for repair and maintenance (see Section 10), and association and property management fees.

The amount of Monthly Taxes represents one-twelfth (1/12th) of Tenant's Share of Taxes (see Section 8) as estimated by Landlord from time to time. Tenant shall be responsible only for Tenant's Share of actual Taxes in any calendar year. Any difference between Tenant's estimated payments and Tenant's Share of actual Taxes will be reconciled annually no later than 90 days following the first day of a calendar year by either Landlord or Tenant making payment to the other, as applicable, within 60 days after such determination. Tenant's Share may be proportionately adjusted for changes in the size of the Premises, Building, or Project.

**6. Security Deposit.** The Security Deposit is due on the Effective Date and shall be held by Landlord as security for Tenant's performance of its obligations hereunder. The Security Deposit is neither an advance rental deposit, nor a measure of Landlord's damages arising from an Event of Default (defined below). Landlord's obligation with respect to the Security Deposit is that of a debtor, not a trustee. Landlord shall not be required to separate the Security Deposit from its general accounts, and no interest

shall accrue thereon. Upon an Event of Default, Landlord may use the Security Deposit to satisfy Tenant's delinquent obligations, provided that application of the Security Deposit shall not limit any other remedies available to Landlord. Tenant shall restore the Security Deposit after application within 10 days from Notice. Any portion of the Security Deposit remaining at the end of the Term shall be paid to Tenant within 60 days after fulfillment of Tenant's obligations under this Lease.

Landlord and Tenant hereby acknowledge that Landlord currently holds a certain security deposit in the amount of USD\$70,000.00 ("Other Security Deposit") with respect to the Premises under the Prior Lease (as hereinafter defined), and upon the Commencement Date of this Lease, the Other Security Deposit, or portion thereof as described herein, shall be transferred by Landlord and shall become the Security Deposit under this Lease, except as otherwise provided for herein. The difference between the balance of the Other Security Deposit and the amount of the Security Deposit as set forth in Section 1. of this Lease shall be paid by Tenant to Landlord upon demand so that the Security Deposit under this Lease equals the amount as set forth in Section 1. of this Lease.

**7. Utilities.** Normal water and sewer services for office, break room and restroom are included in FOE. If Tenant's use of water and sewer services materially exceeds normal usage, Landlord may, at Tenant's expense, separately meter and require Tenant to pay the utility provider directly for such services. Tenant shall pay the utility providers directly for all other utilities serving the Premises, along with related taxes, penalties, or surcharges. Landlord may elect to hold utility accounts for the Premises and/or deliver utility services to Tenant directly, or through an intermediary, and charge Tenant for such utility services so long as Landlord's rates are priced at, or below, local utility provider rates. In such event, Tenant shall pay Landlord for Tenant's utility consumption within 30 days of Notice.

Upon request, Tenant shall deliver to Landlord data regarding Tenant's utility usage at the Premises as required by law, or as reasonably required for Landlord to manage the Project. Tenant can satisfy this requirement by either: (a) providing written consent for Landlord to obtain the information directly from the utility or (b) providing the data to Landlord in an acceptable electronic format.

**8. Taxes.** Landlord shall pay all taxes, assessments, governmental charges, fees or payments to a governmental authority in lieu of taxes that accrue during the Term against the tax parcel on which the Premises is located, as well as reasonable fees payable to tax consultants and attorneys for consultation and contesting taxes, along with any capital levies, franchise, excise, use, margin, transaction, sales or privilege tax, assessment, levy or charge measured by or based upon the value of the Premises and/or the Project, or assessed upon the Base Rent or FOE (collectively, "**Taxes**"). Tenant shall pay Tenant's Share of Taxes pursuant to Section 5. Tenant shall not be liable for any gift taxes, estate taxes, or income taxes imposed on Landlord unless such income taxes are in substitution for any Taxes. Tenant shall pay directly to the taxing authority any tax levied or assessed directly against Tenant, its property or fixtures placed in the Premises, or resulting from any Tenant-Made Alterations (defined below), even if levied or assessed against Landlord.

**9. Insurance.** Landlord shall maintain all risk property insurance covering the Building and improvements placed in the Common Areas by Landlord and commercial general liability insurance in forms and amounts customary for properties substantially similar to the Project. Landlord's insurance may be included in a blanket policy or captive insurance program.

Without limiting Tenant's liability under this Lease, Tenant shall maintain the following insurance at Tenant's expense:

- (a) commercial general liability, on an occurrence basis, having a minimum limit of \$2,000,000 per occurrence naming Landlord, Prologis, Inc., its affiliates, and property manager (if any) as additional insureds;
- (b) all-risk property covering the full replacement cost of all property and improvements placed at the Project by or on behalf of Tenant;
- (c) workers' compensation as required by applicable state statute;
- (d) employers liability coverage of \$500,000, and
- (e) business automobile liability for owned, hired or non-owned vehicles having a combined single limit of \$1,000,000 per occurrence.

Tenant's insurance shall provide primary and non-contributory coverage to Landlord Parties with respect to Tenant's indemnity obligations. Tenant's insurance requirements may be satisfied by a combination of primary and excess policy limits, or an umbrella policy. Tenant shall provide Landlord with certificates of such insurance prior to Tenant taking possession of the Premises, and thereafter prior to the expiration of any insurance coverage or 5 days following Tenant's receipt of Landlord's request.



The all-risk property and workers' compensation insurance shall include a waiver of subrogation in connection with any insured loss by the insurers and all rights based upon an assignment from its insured, against Landlord, its agents, employees, contractors, or property manager (collectively the "**Landlord Parties**"), or Tenant, its agents, employees, contractors, subtenants, assigns, or invitees (collectively the "**Tenant Parties**"), as applicable. No Landlord Parties or Tenant Parties shall be liable to any other Landlord Parties or Tenant Parties for any loss coverable by all risk property insurance, and each party waives claims against the Landlord Parties and Tenant Parties (as applicable) for such loss. The failure of either party to insure its property shall not void this waiver. Notwithstanding anything contained herein to the contrary, Tenant shall be solely responsible for all property of any kind, owned or unowned, placed at the Project by or on behalf of Tenant. The Landlord Parties and Tenant Parties waive any claims against the other for business interruption loss from any cause whatsoever, including losses caused in whole or in part, directly or indirectly, by the negligent acts of the other party.

**10. Landlord's Repairs and Maintenance.** Landlord shall, at Landlord's sole cost subject to the express terms hereof, maintain, repair, and replace in good working order the (a) structural elements of the Building (including the exterior walls), (b) roof (including roof membrane), (c) Common Areas (including lighting and snow removal to the extent consistent with market practice), (d) Building fire sprinkler system, (e) existing exterior wall windows, (f) exterior personnel doors, (g) office area ceiling tiles, (h) hot water heaters (i) ventilation, and air conditioning units serving the office area of the Premises, and (j) exterior louvers and ventilation fans for standard warehouse air changes, heating and evaporative cooler systems serving the warehouse area of the Premises ((i) and (j) collectively the "Landlord HVAC"). Landlord shall also complete a bi-annual preventative maintenance service of all dock doors, dock levelers, and dock restraints and bumpers serving the Premises. Tenant shall promptly give Landlord Notice of any required repairs hereunder.

Landlord's obligations hereunder shall expressly exclude any work necessary due to misuse or damage by Tenant Parties or resulting from Tenant-Made Alterations or Tenant's other improvements to the Premises. Subject to Sections 9 and 15, Tenant shall reimburse Landlord within 30 days of Notice for the cost of any such work described in the preceding sentence.

**11. Tenant's Repairs.** Subject to Sections 9, 10, and 15, Tenant, at its expense, shall maintain, repair, and replace in good working order all areas, improvements and systems exclusively serving the Premises including dock equipment, non-structural elements of the floor slab, interior doors, above ground water and sewer lines, and Tenant HVAC and related components. "**Tenant HVAC**" means HVAC systems installed by Tenant, specialty HVAC equipment (including IT room HVAC and for temperature-controlled product), and warehouse air conditioning systems other than Landlord HVAC. If Tenant fails to perform any work required hereunder within 30 days from Notice, Landlord may perform such work and Tenant shall reimburse Landlord for such cost, along with a 5% administrative fee, within 30 days of Notice.

On or about the Commencement Date, the parties shall cause the Landlord HVAC, water heater, office areas ceiling tiles, and restroom and break fixtures, to be inspected by a qualified contractor. In the event that such inspection determines that any maintenance, repairs or replacements are required to be performed, then at Landlord's option: (a) Tenant shall perform such work, at Tenant's sole cost and expense, within thirty (30) days after the date of such inspection, (b) Landlord shall perform such work and Tenant shall reimburse Landlord for all costs incurred by Landlord within thirty (30) days after written demand; or (c) defer such work and cause Tenant to pay the costs thereof from any future maintenance, repair or replacement performed by Landlord, such payment to be made within thirty (30) days after written demand from Landlord.

**12. Tenant-Made Alterations and Trade Fixtures.** All alterations, additions, or improvements made to the Premises by, or on behalf of, Tenant are herein referred to as "**Tenant-Made Alterations**". Landlord's prior written consent is required for Tenant-Made Alterations, provided that Tenant may make interior Tenant-Made Alterations to the Premises up to \$25,000 per instance that do not impact the structure or mechanical systems of the Building without Landlord's consent. Where Landlord's consent is not required, Tenant shall provide Landlord prompt Notice of such Tenant-Made Alterations accompanied by plans and specifications. Upon completion of any Tenant-Made Alterations, Tenant shall deliver to Landlord final lien waivers from all contractors and subcontractors who provided services or materials for the Tenant-Made Alterations and as-built plans (if applicable).

Without Landlord's approval, Tenant may erect or install shelves, racking, machinery and trade fixtures in the Premises (collectively "**Trade Fixtures**"), provided such items: (i) do not overload the slab, (ii) may be removed without materially damaging the Premises, and (iii) comply with all Legal Requirements (defined in Exhibit B). Upon Lease termination, Tenant, at its expense, shall remove all Trade Fixtures and Tenant-Made Alterations (except those which Landlord has identified by Notice to Tenant shall

remain as Landlord's property), and repair any damage to the Premises caused by such removal. Upon Tenant's written request, Landlord shall provide Tenant a list of Tenant-Made Alterations which the Landlord will allow to remain upon the Expiration Date.

**13. Signs.** All exterior signage shall require Landlord's prior written consent. Tenant, at its expense, shall: (a) comply with Legal Requirements and Landlord's signage program, and (b) remove all Tenant signage and repair any damaged surfaces upon Lease termination.

**14. Parking.** Tenant may park vehicles in Common Areas designated for non-reserved parking and may park vehicles and trailers overnight at the docks and in designated trailer parking areas for the Premises. Landlord may allocate parking spaces among Tenant and other tenants of the Project in an equitable manner; provided Landlord shall not allocate any parking spaces to other tenants which may reduce Tenant's pro rata share of the Common Area parking. Landlord is not responsible for enforcing Tenant's parking rights.

**15. Restoration.** If the Premises is damaged by a casualty (the "**Casualty Damage**"), Landlord shall notify Tenant of its reasonable estimate for restoration time (the "**Restoration Notice**") within 60 days of the Casualty Damage. If the restoration time is estimated to exceed 6 months, or if the estimated restoration time exceeds 30 days during the last year of the Term (each a "**Casualty Termination Event**"), either Landlord or Tenant may elect to terminate this Lease by Notice to the other party delivered within 30 days after the Restoration Notice and Monthly Base Rent, FOE, and Monthly Taxes shall be apportioned as of the termination date. If the Lease is not so terminated, or if there is no Casualty Termination Event, then Landlord shall restore the Premises, excluding any Tenant-Made Alterations and Trade Fixtures. Commencing on the date of the Casualty Damage until the completion of Landlord's restoration work, Monthly Base Rent, FOE, and Monthly Taxes shall be abated in proportion to the Premises, if any, which is not usable by Tenant. Such abatement is the sole remedy of Tenant, and Tenant waives any right to terminate this Lease by reason of Casualty Damage except as provided above. Notwithstanding anything in this Lease to the contrary, with respect to any damage to the Project caused by Tenant Parties, Tenant shall pay Landlord's all-risk property insurance deductible, not to exceed \$25,000 per occurrence, within 30 days following Notice.

**16. Condemnation.** If the Premises is taken by eminent domain, or by a purchase in lieu thereof (each a "**Taking**" or "**Taken**"), or a portion of the Project is Taken such that Landlord cannot reasonably operate the Project, this Lease shall terminate upon Notice by Landlord and Monthly Base Rent, FOE, and Monthly Taxes shall be apportioned as of the date of such termination. If a portion of the Premises is Taken and: (a) the Lease is not terminated by Landlord; (b) the remaining Premises cannot reasonably be used by Tenant for the uses authorized herein, as determined by Landlord and Tenant, and (c) such area is not replaced by Landlord with reasonably equivalent space in the proximity of the Premises, Tenant shall have the right to terminate this Lease, effective on the date of the Taking, by Notice to Landlord no later than 30 days from Notice of such Taking. If part of the Premises is Taken but the Lease is not terminated, this Lease shall terminate with respect to the portion Taken and Monthly Base Rent and FOE shall be proportionately reduced. Landlord is entitled to the entire purchase price or award from a Taking. Tenant may make a separate claim against the Taking authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant.

**17. Assignment and Subletting.** Tenant shall not assign, mortgage or pledge its interest in this Lease or sublease the Premises without Landlord's prior written consent, and any attempt to do so shall be an immediate Event of Default. Any assignment or sublease shall be subject to the terms of this Lease, and Tenant, any guarantor of Tenant's obligations, and Tenant's successor and assigns shall remain liable for Tenant's obligations under this Lease. In the event of a proposed assignment or sublease, Tenant shall provide Landlord the proposed assignee or sublessee's name, a description of its business, its financial information, and such other information as Landlord may reasonably request. A transfer of the ownership interests controlling Tenant shall be deemed an assignment of this Lease unless the interests are publicly traded.

Provided no Event of Default has occurred and is continuing, Tenant may, without Landlord's prior written consent:

- (a) assign this Lease, or sublet the Premises, to any entity controlling Tenant, controlled by Tenant or under common control with Tenant (a "**Tenant Affiliate**"); or
- (b) assign this Lease to any entity into which Tenant is merged or consolidated, or to any entity to which substantially all of Tenant's stock or assets are transferred, provided the following conditions are met (each a "**Permitted Transfer**" or a transferee thereof a "**Permitted Transferee**"):
  - (i) the Permitted Transfer does not adversely affect the legal existence of the Tenant, or such surviving entity agrees to assume all obligations and liabilities of Tenant under the Lease; and

(ii) the Permitted Transfer does not reduce the tangible net worth of the Tenant hereunder after giving effect to the transfer.

Tenant shall provide prior Notice (together with supporting documentation) to Landlord at least 30 days prior to any assignment or sublease to a Tenant Affiliate or to any Permitted Transfer.

If Tenant delivers Notice to Landlord of a desire to assign this Lease, or sublet a majority the Premises (other than to a Tenant Affiliate or a Permitted Transferee), Landlord may terminate this Lease with respect to the area of the Premises described in Tenant's Notice by Notice sent within 30 days of Landlord's receipt of the request. Tenant may withdraw its Notice to sublease or assign by notifying Landlord within 10 days after Landlord has given Tenant Notice of such termination, in which case the Lease shall not terminate.

If monthly base rent due from a sublessee exceeds Monthly Base Rent payable hereunder, Tenant shall pay to Landlord 50% of such excess (less Tenant's reasonable and customary costs with respect to such sublease) within 30 days of receipt. Landlord may collect rent from a subtenant or any occupant and apply the amount collected to the next installment of rent hereunder.

If Tenant receives consideration for an assignment or transfer of this Lease to a third party (excluding Tenant Affiliates and Permitted Transferees), Tenant shall pay Landlord 50% of the value of all such consideration within 30 days of receipt.

**18. Indemnification.** Tenant shall indemnify, defend, and hold harmless Landlord Parties from and against all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) resulting from third party claims for personal injuries, damage, theft, or loss of property occurring at the Project, or liens which arise from: (a) the use and occupancy of the Premises by Tenant Parties, or (b) any other act or omission of Tenant Parties, except to the extent of the negligence or willful misconduct of Landlord Parties. Tenant's obligations under this Section shall survive the Expiration Date or earlier Lease termination.

**19. Inspection, Data, and Access.** Landlord and its designated appointees may enter the Premises at reasonable times to perform its obligations hereunder and for reasonable business purposes (including showing the Premises to potential tenants during the last year of the Term). Landlord shall provide Tenant with at least 24 hours' telephonic and/or email notice prior to entering the Premises, except in the event of an emergency. Landlord may grant easements, make public dedications, modify the Common Areas, and create restrictions affecting the Project (collectively, "**Encumbrances**"), provided that the Encumbrances do not materially interfere with Tenant's authorized use of the Premises, or result in additional financial obligations to Tenant. Tenant shall execute reasonable documents necessary for the Encumbrances. Landlord may install sensors, meters, and other devices (collectively "**Devices**") in the Premises that collect operational efficiency data for the Project (the "**Data**"). The Devices shall not:

(a) materially interfere with Tenant's use of the Premises, (b) include cameras, video, or voice recording devices, (c) collect employee data, or (d) track people, equipment, or inventories. Landlord shall own all rights, title and interest in the Data. Upon request, Landlord shall provide Tenant access to the Data.

**20. Surrender.** On the Expiration Date, or earlier termination of the Lease or Tenant's right of possession, Tenant shall: (a) surrender the Premises to Landlord in the same condition as received, ordinary wear and tear, casualty loss and condemnation excepted, and (b) remove all Trade Fixtures, Tenant-Made Alterations (except those designated by Landlord to remain), and property placed in the Premises by Tenant. Property not so removed shall be deemed abandoned and may be kept in place, removed and stored, or disposed of at Tenant's expense. If Tenant fails to comply with this Section, Landlord may complete such obligations, and Tenant shall reimburse Landlord for the costs thereof within 30 days of Notice. Tenant's obligations under this Lease shall survive the expiration or earlier termination of the Lease.

Landlord and Tenant agree that Tenant has occupied the Premises since 11/17/2000 under the Lease dated 09/25/2000 between Prologis, L.P. and Capstone Turbine Corporation ("Prior Lease"). Notwithstanding the preceding in this Section 20, Tenant shall be required to surrender the Premises to Landlord in compliance with the preceding paragraph in the same condition as received under the Prior Lease, ordinary wear and tear, casualty loss and condemnation excepted, and Tenant's removal requirements in the preceding paragraph shall also include removal of all Trade Fixtures, Tenant-Made Alterations and property constructed or placed in the Premises during the term of the Prior Lease.

**21. Holding Over.** Possession of the Premises by Tenant after Lease termination shall not extend the Term and such possession shall be immediately terminable. All terms of this Lease shall be applicable during such holdover period except: (a) any expansion, renewal, or similar option shall be null and void, and (b) Monthly Base Rent shall be 200% of Monthly Base Rent in effect immediately prior to the holdover period. In addition, if Landlord provides Tenant with Notice that Landlord is then in negotiations

with another prospective tenant, Tenant shall be liable for all damages resulting from such holding over. Tenant shall be deemed to be holding over until Landlord has legal possession of the Premises, and Tenant has surrendered the Premises in the condition and repair required by this Lease.

**22. Events of Default.** Each of the following shall be an event of default ("**Event of Default**") by Tenant:

- a) Failure to pay any installment of Monthly Base Rent, FOE, Monthly Taxes, or any other payment, within 5 days after Notice from Landlord.
- b) Tenant or any guarantor: (i) makes an assignment for the benefit of creditors; (ii) seeks an order for relief entered on its behalf as a debtor, or to adjudicate it as bankrupt; (iii) seeks reorganization, liquidation, or dissolution of it, or its debts; or (iv) seeks an appointment of a receiver, trustee, or custodian for it, or its property (collectively a "**Proceeding for Relief**").
- c) Failure to maintain insurance or to timely deliver certificate of insurance, in each case as required by Section 9, shall be an immediate Event of Default.
- d) Failure to comply with any other provision of this Lease for more than 30 days after Notice from Landlord, except as otherwise provided herein (said Notice being in lieu of, and not in addition to, any notice required as a prerequisite to a forcible entry, detainer or similar action for possession of the Premises); provided, Tenant shall not be in default under this Section 22(d) as long as Tenant has promptly undertaken cure of such default within the 30 day period, and thereafter continuously pursues to cure such default.
- e) The occurrence of any Event of Default otherwise specifically set forth in this Lease.

**23. Landlord Remedies.** Upon an Event of Default, Landlord may elect to: (i) terminate this Lease, (ii) terminate Tenant's right of possession of the Premises (but Tenant shall remain liable as hereinafter provided), and/or (iii) pursue any remedies at law or in equity. Upon Lease termination, or termination of Tenant's right of possession, Landlord may re-enter the Premises by any process authorized by law, and remove Tenant, and all persons and property therefrom.

If Landlord terminates this Lease, Landlord may recover from Tenant the sum of: (a) all Monthly Base Rent, FOE, Monthly Taxes, and all other amounts payable by Tenant which have accrued up to termination; (b) the cost of reletting the Premises, including the unamortized leasing commissions, costs of removing and storing property, and costs of repairing or altering the Premises in order to re-lease the Premises; (c) reasonable attorneys' fees and court costs; and (d) the excess of the then present value of the Monthly Base Rent, Monthly Taxes, FOE, and other amounts payable by Tenant under this Lease applicable to the period following the termination of this Lease through the Expiration Date, over the present value of any amounts which Tenant establishes Landlord can reasonably expect to recover by reletting the Premises during such period, taking into consideration the availability of acceptable tenants consistent with Landlord's leasing criteria and other market conditions. Such present values shall be calculated at a discount rate equal to the 90-day U.S. Treasury bill rate at the date of the termination.

If Landlord terminates Tenant's right of possession (but not this Lease), Landlord shall use commercially reasonable efforts to relet the Premises without releasing Tenant from any liability hereunder; provided: (a) Landlord shall not be obligated to accept a Tenant-proposed tenant, and (b) Landlord shall have the right to first lease any available space controlled by Landlord, or an affiliate of Landlord. Any reletting of the Premises shall be on terms and conditions acceptable to Landlord in its sole, but reasonable discretion. Subject to the foregoing, Landlord shall not be liable, nor shall Tenant's obligations be reduced, as a result of Landlord not reletting the Premises. Landlord shall have the right to make repairs and alterations to the Premises as Landlord deems necessary in order to relet the Premises. If the Premises is not relet, all amounts accruing under this Lease shall continue to be due and Tenant shall pay to Landlord, as damages, a sum equal to: (1) any Monthly Base Rent, FOE, and Monthly Taxes or other amounts unpaid by Tenant at the time of repossession; (2) the cost of recovering possession of the Premises (including reasonable attorneys' fees and court costs); and (3) costs incurred by Landlord to relet the Premises. If the Premises is relet, and the total rent and expenses payable by such replacement tenant (after first deducting (1) through (3) of the prior sentence) does not equal Monthly Base Rent, FOE, and Monthly Taxes payable by Tenant, Tenant shall immediately pay any such deficiency to Landlord upon Notice. Notwithstanding any reletting without termination, Landlord may elect to terminate this Lease for a previous Event of Default at any time with Notice.

Landlord's exercise of any remedies shall not be deemed an acceptance of surrender of the Premises or a Lease termination. Neither party's failure to enforce its rights under this Lease strictly in accordance the terms hereof shall modify this Lease, create a custom contrary to the specific provisions of this Lease or, absent a signed notice, result in a waiver of its rights or remedies in connection with any subsequent Event of Default, even if a party accepts payments with knowledge of the breach. Tenant waives all right of redemption following Lease termination, or Tenant's right of possession, by a judgment of any court. If Landlord re- enters the Premises, Landlord, at Tenant's expense, shall have the right to keep in place, remove and store, or dispose of, all property at the Premises.

**24. Tenant Remedies.** Landlord shall be in default of this Lease if Landlord fails to perform any of its Lease obligations within 30 days after Notice from Tenant specifying such failure; provided, Landlord shall not be in default as long as Landlord has promptly undertaken cure of such default within the 30-day period and thereafter continuously pursues such cure. All Landlord obligations shall be covenants, not conditions. Tenant may not terminate this Lease as a result of a default by Landlord, but Tenant shall be entitled to all remedies available at law or in equity. The term "Landlord" means only the then-current owner of the Premises. In the event of an assignment of the Lease by Landlord, the assignor shall be released from all Landlord's obligations accruing thereafter under this Lease, and such obligations shall be binding on each new assignee for the duration of such assignee's ownership. Any liability of Landlord shall be limited solely to its interest in the Building, and in no event shall Tenant have recourse against any other assets of Landlord.

**25. Subordination.** Tenant's interest under this Lease is subject and subordinate to any lien of an existing or future mortgage to which the Premises is subject, and all amendments thereto, and Tenant shall promptly execute and deliver reasonable instruments to the holders thereof to confirm Tenant's subordination and attornment. The term "mortgage" as used herein shall include ground leases, deeds of trust, security assignments, and any other encumbrances. Any reference to the "holder" of a mortgage shall include a ground lessor and the beneficiary under a deed of trust. Notwithstanding the foregoing, Tenant shall not be obligated to execute an instrument subordinating this Lease or Tenant's interest in the Premises with respect to a future mortgage unless the holder of such mortgage agrees not to disturb Tenant's possession of the Premises absent an Event of Default.

**26. Mechanic's Liens.** Tenant shall not allow any lien or encumbrance to be placed upon the Project due to services or materials provided at any Tenant Parties' request. Tenant shall give Landlord prompt Notice of any such lien or encumbrance and cause the lien or encumbrance to be discharged, or bonded over, within 30 days of the filing or recording thereof. Tenant's failure to discharge the lien within the 30-day period shall be deemed an immediate Event of Default.

**27. Estoppel Certificates.** Within 10 days of Landlord's request Tenant shall execute and deliver to Landlord an estoppel certificate containing customary provisions. Tenant's failure to deliver an estoppel certificate within the 10-day period shall constitute an immediate Event of Default.

**28. Environmental Requirements.** Tenant shall not and shall not allow any party to introduce, store, use, manufacture, or release any Hazardous Material at the Project without Landlord's prior written consent except for Hazardous Materials contained in: (a) small quantities of (i) cleaning products and (ii) office products; (b) forklift fuel; and (c) products stored in their original, sealed, and unopened containers.

Tenant, at its expense, shall: (i) strictly comply with all Environmental Requirements, including all reporting obligations imposed by applicable Environmental Requirements in the capacity as "operator" of Tenant's "facility" and the "owner" (as such terms are used in applicable Environmental Requirements) relating to all Hazardous Materials brought onto the Project by Tenant Parties, and the wastes, by-products, or residues resulting therefrom, or extracted from the Project; (ii) promptly provide copies of any documentation relating to Hazardous Materials at the Project which Tenant receives or sends; (iii) promptly and diligently remediate to Landlord's reasonable satisfaction any Hazardous Materials released on, or from, the Project by Tenant Parties; (iv) promptly notify Landlord in writing of any spill, release, discharge, or disposal of Hazardous Material in, on, or under the Project; and (v) promptly complete and deliver any disclosure or certification requested by Landlord concerning Tenant Parties' storage, use, manufacture or release of Hazardous Materials in, on, or about the Project. Tenant shall be strictly liable to Landlord for Tenant Parties' storage, use, manufacturing, or release of Hazardous Materials at the Project without regard to the fault or negligence of any other party. Notwithstanding any Notice and cure periods provided herein, Tenant shall promptly commence and diligently pursue its remediation obligations as provided herein. The term "**Environmental Requirements**" means all applicable statutes, regulations, ordinances, rules, codes, judgments, orders, or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions, including the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "**Hazardous Materials**" means any substance, material, waste, pollutant, asbestos, radioactive materials, petroleum, or contaminant regulated by any Environmental Requirements.

Tenant shall have no liability to Landlord as to Hazardous Materials on the Project that were caused or permitted by any party other than Tenant Parties except to the extent of any loss, cost, or damage to Landlord arising from Tenant's exacerbation of same.

If Tenant discovers Hazardous Materials at the Project that are in violation of Environmental Requirements, Tenant shall promptly notify Landlord, and provide all related information with respect to such Hazardous Materials. If the presence of such Hazardous Materials is not the result of Tenant Parties, and such Hazardous Materials violate Environmental Requirements, Landlord shall take commercially reasonable actions, at its expense, to remediate, or cause the responsible party to remediate, such Hazardous Materials in compliance with Environmental Requirements. Once Landlord obtains a letter from a qualified environmental professional, or an appropriate governmental authority, that no further remediation is required for the intended use of the Project, Landlord shall be deemed to have satisfied its obligations under this paragraph.

Tenant shall indemnify, defend, and hold harmless Landlord Parties from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorney, fees) resulting from any claims, demands, actions, or suits of any kind brought against Landlord which arise from: (a) any release of Hazardous Materials on, or from, the Project by Tenant Parties, or (b) Tenant Parties' breach of, or noncompliance with, this Section, regardless of whether Tenant had knowledge of such noncompliance. Tenant's obligations under this Section shall survive the Expiration Date or earlier Lease termination.

**29. Force Majeure.** Neither party shall be responsible for delays in the performance of its obligations hereunder, whether foreseen or unforeseen, caused by labor disputes, acts of God, inability to obtain labor or materials, governmental restrictions, delay in issuance of permits, civil commotion, casualty, pandemic or epidemic, or other causes beyond the reasonable control of Landlord or Tenant ("**Force Majeure**"). Force Majeure shall not apply to monetary obligations.

**30. Entire Agreement.** This Lease, together with the exhibits, constitutes the entire agreement between the parties with respect to this subject. Any prior agreements, promises, negotiations, or representations are superseded. In the event of any conflict between the exhibits and this Lease, the exhibits shall control. This Lease may only be amended in writing signed by both parties.

**31. Severability.** If any clause of this Lease is deemed to be illegal, invalid or unenforceable, then such clause shall be replaced with a valid clause of similar meaning and the remainder of this Lease shall not be affected.

**32. Brokers.** Other than the Brokers (if any), no other broker or agent was involved in this transaction. Each party agrees to indemnify and hold the other harmless from and against any claims by any other broker claiming compensation as a result of dealing with the indemnifying party relating to this Lease. Landlord shall pay the Tenant Broker (if any) a leasing commission for this Lease, which shall be paid in accordance with a separate written agreement.

**33. Miscellaneous.**

**a) TIME IS OF THE ESSENCE AS TO THE PERFORMANCE OF TENANT'S AND LANDLORD'S OBLIGATIONS UNDER THIS LEASE.**

- b)** Any amounts payable by Tenant to Landlord shall be deemed additional rent.
- c)** Any "Notice" required under this Lease shall be in writing and sent to the addresses in Section 1 by registered or certified mail, return receipt requested, or by a reputable national overnight courier service (postage prepaid), or hand delivery. Notice shall be deemed given upon delivery or refusal of delivery. Either party may change its Notice address(es) upon delivery of Notice.
- d)** Except as otherwise stated herein, where approval or consent is required hereunder, such approval or consent shall not be unreasonably withheld, conditioned or delayed.
- e)** In the event of: (i) an Event of Default or (ii) Landlord's need to complete financing on, or the sale of, the Project, or (iii) an assignment of the Lease or subletting of the Premises by Tenant, Tenant shall deliver to Landlord complete copies of its most recent annual financial statements prepared by Tenant upon request.
- f)** Neither this Lease, nor a memorandum of lease, shall be recorded by Tenant.
- g)** The laws of the state in which the Project is located shall govern this Lease, without regard to any principles of conflicts of laws. The rule of construction that any ambiguities are to be resolved against the drafting party shall not apply to this Lease.
- h)** This Lease shall not be binding until full execution and delivery of this Lease by both parties.
- i)** Any amount not paid by Tenant when due shall bear interest until paid in full at the lesser of the highest rate permitted by applicable law, or 15 percent per year.
- j)** In the event either party initiates litigation to enforce the terms and provisions of this Lease, the non-prevailing party shall reimburse the prevailing party for its reasonable attorney's fees, filing fees, and court costs. The phrase "**prevailing party**" includes a party who substantially receives the relief desired whether by dismissal, summary judgment, or otherwise
- k)** Landlord shall have the right to place energy installations, such as a solar system, on the Building or the Project, and to enter into a lease allowing a third party the right to do so provided the energy installation does not adversely impact Tenant's use of the Premises, or result in additional costs to Tenant. Tenant waives all rights to any environmental attributes or incentives resulting from an energy installation.

- l) This Lease may be executed in counterparts, each of which shall be considered an original but all of which shall constitute one and the same agreement. The signature of a party transmitted electronically (e.g., e-signature) or by facsimile, PDF and/or other electronic image file format, shall have the same force and effect as an original signature. Following execution, a PDF (or similar image file format) of this Lease (whether signed electronically or in ink) shall be considered to be the original agreement for all purposes.
- m) Landlord and Tenant each represent to the other that:
- (i) Neither it, nor any person or entity that directly owns a 10% or greater equity interest in it nor any of its officers, directors or managing members is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury, including those parties names on the OFAC's Specially Designated and Blocked Persons List and those covered pursuant to Executive Order 13224 signed on September 23, 2001, entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", or other governmental action; and
  - (ii) Its activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or USA Patriot Act, or the regulations or orders promulgated thereunder (as amended from time to time).

**34. WAIVER OF JURY TRIAL. TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY, OR TO HAVE A JURY PARTICIPATE, IN RESOLVING ANY DISPUTE ARISING OUT OF THIS LEASE, OR ANY OTHER DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION WITH THIS LEASE**

**[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Effective Date.

**TENANT:**

CAPSTONE GREEN ENERGY CORPORATION  
a Delaware corporation

By /s/ Darren Jamison  
Name Darren Jamison  
Title CEO

**LANDLORD:**

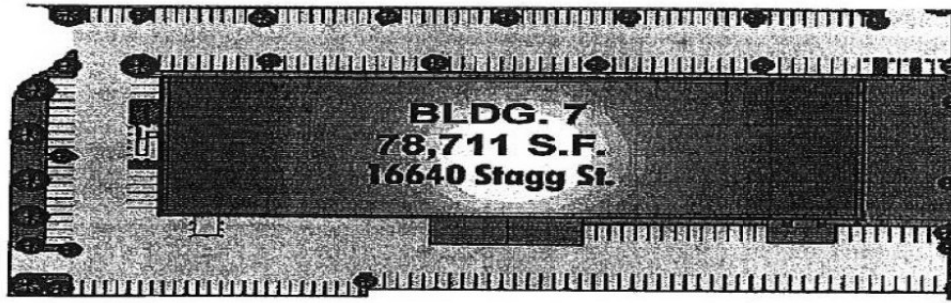
PROLOGIS, L.P.  
a Delaware limited partnership

By Prologis, Inc., a Maryland corporation, its  
general partner

By /s/ Robert B. Antrobus  
Name Robert B. Antrobus  
Title *Senior Vice President-Market Officer LA*



EXHIBIT A: SITE PLAN



**EXHIBIT B: RULES, REGULATIONS, AND LEGAL REQUIREMENTS**

1. Tenant shall not conduct any public sale at the Premises, use the Premises as a place of public accommodation under Legal Requirements, permit any nuisance at the Premises, or use the Premises in conflict with any laws, orders, judgments, permits, licenses, and Encumbrances now or hereafter applicable to the Project (collectively, "**Legal Requirements**").
2. To the extent required or necessitated by Legal Requirements, Tenant shall, at its expense, make all modifications to the Project that are due to Tenant's specific use of the Premises or Tenant-Made Alterations, and Landlord, at Landlord's expense, shall make all other modifications to the Project.
3. Tenant Parties shall not obstruct the sidewalk, entries, and driveways of the Project or use them for any purpose other than ingress and egress to and from the Premises.
4. Except as expressly provided in the Lease, Tenant shall not place property in areas outside of its Premises or on the roof of the Building.
5. No animals shall be allowed in the Premises except for service dogs.
6. Tenant shall not install or operate any steam or gas boiler at the Project. The use of oil, gasoline, or flammable liquids for heating or lighting is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Project.
7. Parking of recreational vehicles or boats is specifically prohibited at the Project. Parking cars or trucks inside the Building is prohibited. In no event shall inoperable vehicles be parked at the Project, or any vehicles or trailers be parked in a manner that causes interference with access to the Common Areas at the Project, nor shall any "For Sale" sign be displayed on any vehicle. No repair, maintenance or washing of vehicles shall take place on the Project. All vehicles shall be parked in designated parking areas in conformity with all signs and other markings. Failure to comply with any of the parking requirements in this Lease (a "**Parking Default**") which continues for more than 3 days from Landlord's Notice to cease such Parking Default shall result in Landlord having the right to tow non-compliant vehicles at Tenant's cost without liability to Landlord. Landlord may hire a parking management company to enforce these parking terms. Tenant shall reimburse Landlord for all costs incurred with respect to such Parking Default no later than thirty (30) days from receipt of an invoice for such amount.
8. Tenant shall maintain the Premises free from rodents, insects and other pests.
9. Landlord reserves the right (but not the obligation) to exclude or expel any person who is intoxicated, under the influence of alcohol or drugs, or that should harass or threaten Landlord's employees, contractors or other occupants, or who otherwise violates this Exhibit.
10. All moveable trash receptacles provided by the trash disposal firm must be kept closed at all times and in designated areas.
11. The Premises shall not be used for lodging, sleeping or cooking (other than kitchenette or break room use) or for any immoral or illegal purposes. No gaming devices shall be operated in the Premises.
12. Tenant shall not permit marijuana to be grown, sold, dispensed, or consumed at the Project.
13. Tenant shall not permit smoking in the Premises.
14. Prior to accessing the roof of the Building, Tenant shall notify Landlord of the date of such requested access. During such periods of access, Tenant shall follow all Legal Requirements and use all reasonable and appropriate safety precautions.
15. Tenant shall not use any part of the Premises to store or handle firearms, firearms accessories or ammunition.
16. Tenant shall not permit any effluent discharge from the Project and shall not engage in any use of the Project that would impact any effluent mitigation system in place at the Project.

## **EXHIBIT C: STATE SPECIFIC PROVISIONS**

### **Section 6, captioned "Security Deposit," is revised to include the following:**

Tenant waives any limitations set forth in California Civil Code Section 1950.7 limiting the use to which a security deposit may be applied. Landlord shall not be required to keep the Security Deposit separate from its general accounts, and no interest shall accrue thereon.

### **Section 22, captioned "Events of Default" is revised to include the following:**

Tenant agrees that any notice given by Landlord pursuant to this Section of the Lease shall satisfy the requirements for notice under California Code of Civil Procedure Section 1161, and Landlord shall not be required to give any additional notice in order to be entitled to commence an unlawful detainer proceeding.

### **Section 23, captioned "Landlord Remedies" is revised so that the second and third paragraphs thereof are deleted and replaced with the following:**

Except as otherwise provided in the next paragraph, if Tenant breaches this Lease and abandoned the Premises prior to the end of the term hereof, or if Tenant's right to possession is terminated by Landlord because of an Event of Default by Tenant under this Lease, this Lease shall terminate. Upon such termination, Landlord may recover from Tenant the following, as provided in Section 1951.2 of the Civil Code of California: (i) the worth at the time of award of the unpaid Base Rent, Taxes, Monthly FOE, and other charges under this Lease that had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the reasonable value of the unpaid Base Rent, Taxes, Monthly FOE, and other charges under this Lease which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (iii) the worth at the time of award by which the reasonable value of the unpaid Base Rent, Taxes, Monthly FOE, and other charges under this Lease for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom. As used herein, the following terms are defined: (a) The "worth at the time of award" of the amounts referred to in Sections (i) and (ii) is computed by allowing interest at the lesser of 18 percent per annum or the maximum lawful rate. The "worth at the time of award" of the amount referred to in Section (iii) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent; (b) The "time of award" as used in clauses (i), (ii), and (iii) above is the date on which judgment is entered by a court of competent jurisdiction; (c) The "reasonable value" of the amount referred to in clause (ii) above is computed by determining the mathematical product of (1) the "reasonable annual rental value" (as defined herein) and (2) the number of years, including fractional parts thereof, between the date of termination and the time of award. The "reasonable value" of the amount referred to in clause (iii) is computed by determining the mathematical product of (1) the annual Base Rent, Taxes, Monthly FOE, and other charges under this Lease and (2) the number of years including fractional parts thereof remaining in the balance of the term of this Lease after the time of award. Tenant acknowledges and agrees that the term "detriment proximately caused by Tenant's failure to perform its obligations under this Lease" includes, without limitation, the value of any abated or free rent given to Tenant.

Even though Tenant has breached this Lease and abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover rent as it becomes due. This remedy is intended to be the remedy described in California Civil Code Section 1951.4, and the following provision from such Civil Code Section is hereby repeated: "The Lessor has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign subject only to reasonable limitations)." Tenant shall immediately pay any such deficiency upon demand. Notwithstanding any reletting without termination, Landlord may elect to terminate this Lease for a previous Event of Default at any time upon written notice.

### **Section 33, captioned "Miscellaneous" is revised to include the following:**

Landlord makes the following statement based on Landlord's actual knowledge in order to comply with California Civil Code Section 1938: The Building and Premises have not undergone an inspection by a Certified Access Specialist ("CASp"). A CASp

can inspect the subject Premises and determine whether the subject Premises comply with all of the applicable construction- related accessibility standards under state law. Although state law does not require a CASp inspection of the subject Premises, the Landlord may not prohibit the Tenant from obtaining a CASp inspection of the subject Premises for the occupancy or potential occupancy of the Tenant, if requested by the Tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises. Landlord and Tenant hereby agree that a Tenant-requested CASp inspection shall be at Tenant's sole cost and expense and that the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises shall be governed by the Rules, Regulations, and Legal Requirements of the Lease.

# **CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER**

I, Darren R. Jamison, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Capstone Green Energy 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 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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 13, 2023

By: /s/ DARREN R. JAMISON  
 Darren R. Jamison  
*President and Chief Executive Officer (Principal Executive Officer)*

1. I have reviewed this quarterly report on Form 10-Q of Capstone Green Energy 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 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 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.

By: /s/ SCOTT W. ROBINSON  
 Scott W. Robinson  
*Interim Chief Financial Officer*  
*(Principal Financial Officer)*

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER AND INTERIM 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 quarterly report of Capstone Green Energy Corporation (the “Company”) on Form 10-Q for the quarter ended December 31, 2022, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), Darren R. Jamison, as Chief Executive Officer of the Company, and Scott W. Robinson, as Interim Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Sec. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that[, to his knowledge]:

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.

By:                     /s/ DARREN R. JAMISON                      
Darren R. Jamison  
*President and Chief Executive Officer*  
*(Principal Executive Officer)*

By:                     /s/ SCOTT W. ROBINSON                      
Scott W. Robinson  
*Interim Chief Financial Officer*  
*(Principal Financial Officer)*

Date: February 13, 2023

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