



Board of Directors

Meeting Date

March 15, 2024



Board of Directors

Lonnie Reed Chair	Hank Webster Vice Chair Connecticut Department of Energy and Environmental Protection (DEEP)
Matthew Ranelli Secretary Partner Shipman & Goodwin	Bettina Bronisz State Treasurers Office State of Connecticut
Thomas Flynn Managing Member Coral Drive Partners	Robert Hotaling Deputy Director DECD
Adrienne Farrar Houel President and CEO Greater Bridgeport Community Enterprises, Inc.	Dominick Grant Director of Investments Dirt Capital Partners
John Harrity Chair CT Roundtable on Climate and Jobs	Brenda Watson Executive Director North Hartford Partnership
Joanne Wozniak-Brown Office of Policy and Management (OPM)	TBD



March 8, 2024

Dear Connecticut Green Bank Board of Directors:

We have a **regular meeting** of the Board of Directors for 2024 scheduled for **Friday, March 15, 2024 from 9:00-11:00 a.m.**

Please take note, for those of you that want to be at the meeting in-person, we will have space at our offices for you to join. Otherwise, this will be an online meeting.

We have a light agenda. For the agenda, we have the following:

- **Consent Agenda** – we have several items on the consent agenda, including:

- Meeting Minutes of January 26, 2024
- C-PACE project time extension

In addition to items requiring resolution, there are also documents that you might be interested in perusing that are report outs or updates, including:

- FY24 Q2 Financial Report
- IPC FY24 Q2 Report

- **Financing Programs Updates and Recommendations** – we have several recommendations for the following:

- **Farmington** – C-PACE project; and
- **C-PACE Resiliency** – follow-up from public comments and recommendation to revise program guidelines incorporating resilience.

- **Investment Updates and Recommendations** – we have several investment recommendations for the following transactions:

- **PosiGen** – contract amendment and equity participation; and
- **Capital for Change** – contract modification and extension.

- **Legislative Review** – update on our process for legislative review.

- **Other Business** – if there is other business, we will have time for it.

Please note, those items **underlined, italicized, and highlighted** above, are materials coming by the close of business on Tuesday, March 12, 2024.

Have a great weekend ahead.

Appreciatively,

A handwritten signature in black ink, featuring a stylized 'B' and 'G' followed by a horizontal line.

Bryan Garcia
President and CEO



AGENDA

Board of Directors of the
Connecticut Green Bank
75 Charter Oak Avenue
Hartford, CT 06106

Friday, March 15, 2024
9:00 – 11:00 a.m.

Dial in: +1 860-924-7736
Phone Conference ID: 992 037 860#
[+1 860-924-7736,,992037860#](tel:+18609247736)

Staff Invited: Sergio Carrillo, Mackey Dykes, Brian Farnen, Bryan Garcia, Bert Hunter, Jane Murphy, Eric Shrago, Leigh Whelpton, James Desantos and Priyank Bhakta

1. Call to Order
2. Public Comments – 5 minutes
3. Consent Agenda – 5 minutes
4. Financing Programs Updates and Recommendations – 20 minutes
 - a. C-PACE Project – Farmington
 - b. C-PACE Program Guidelines for Resiliency
5. Investment Programs Updates and Recommendations – 20 minutes
 - a. PosiGen – Amendment and Equity Participation
 - b. Capital for Change – Modification and Extension Request
6. Legislative Process – 20 minutes
7. Other Business – 5 minutes
8. Adjourn

[Click here to join the meeting](#)

Teams Meeting ID: 295 750 568 756
Passcode: KWuUet
Dial in: +1 860-924-7736
Phone Conference ID: 992 037 860#
[+1 860-924-7736,,992037860#](tel:+18609247736992037860)

***Next Regular Meeting: Friday, April 26, 2024 from 9:00-11:00 a.m.
Colonel Albert Pope Room at the
Connecticut Green Bank, 75 Charter Oak Avenue, Hartford***



RESOLUTIONS

Board of Directors of the
Connecticut Green Bank
75 Charter Oak Avenue
Hartford, CT 06106

Friday, March 15, 2024
9:00 – 11:00 a.m.

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Staff Invited: Sergio Carrillo, Mackey Dykes, Brian Farnen, Bryan Garcia, Bert Hunter, Jane Murphy, Eric Shrago, Leigh Whelpton, James Desantos and Priyank Bhakta

1. Call to Order
2. Public Comments – 5 minutes
3. Consent Agenda – 5 minutes

Resolution #1

Motion to approve the meeting minutes of the Board of Directors for January 26, 2024.

- a. C-PACE Project Approval Extension – Branford

Resolution #2

WHEREAS, pursuant to Connecticut General Statute Section 16a-40g (the "Statute"), the Connecticut Green Bank (Green Bank) is directed to, amongst other things, establish a commercial sustainable energy program for Connecticut, known as Commercial Property Assessed Clean Energy ("C-PACE");

WHEREAS, the Green Bank Board of Directors (the "Board") has approved a \$40,000,000 C-PACE construction and term loan program;

WHEREAS, the Green Bank seeks to provide a **\$1,003,474** construction and (potentially) term loan under the C-PACE program to Elm Harbor Realty LLC, the building owner of 20 Elm Street, Branford, CT (the "Loan"), to finance the construction of specified clean energy measures in line with the State's Comprehensive Energy Strategy and the Green Bank's Strategic Plan; and

NOW, therefore be it:

RESOLVED, that the President of the Green Bank and any other duly authorized officer of the Green Bank is authorized to execute and deliver the Loan in an amount not to be greater than one hundred ten percent of the Loan amount with terms and conditions consistent with the memorandum submitted to the Board dated April 8, 2024, and as he or she shall deem to be in the interests of the Green Bank and the ratepayers no later than 120 days from the date of authorization by the Board of Directors;

RESOLVED, that before executing the Loan, the President of the Green Bank and any other duly authorized officer of the Green Bank shall receive confirmation that the C-PACE transaction meets the statutory obligations of the Statute, including but not limited to the savings to investment ratio and lender consent requirements; and

RESOLVED, that the proper the Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents and instruments as they shall deem necessary and desirable to effect the above-mentioned legal instruments.

4. Financing Programs Updates and Recommendations – 20 minutes

a. C-PACE Project – Farmington

Resolution #3

WHEREAS, pursuant to Connecticut General Statute Section 16a-40g (the “Statute”), the Connecticut Green Bank (Green Bank) has established a commercial sustainable energy program for Connecticut, known as Commercial Property Assessed Clean Energy (“C-PACE”);

WHEREAS, the Green Bank Board of Directors (the “Board”) has approved a \$40,000,000 C-PACE construction and term loan program;

WHEREAS, the Green Bank seeks to provide a \$678,946 construction and term loan under the C-PACE program to Emmett & Associates, LLC and Turbine Technologies, Inc (DBA: Burke Aerospace), the building owner of 126 Hyde Road, Farmington, CT 06032, Hartford County, Connecticut (the "Loan"), to finance the construction of specified clean energy measures in line with the State’s Comprehensive Energy Strategy and the Green Bank’s Strategic Plan as more particularly described in the memorandum submitted to the Green Bank Board of Directors dated March 8, 2024 (the “Memo”);

NOW, therefore be it:

RESOLVED, that the President of the Green Bank and any other duly authorized officer of the Green Bank is authorized to execute and deliver the Loan in an amount not to be greater than one hundred ten percent of the Loan amount with terms and conditions consistent with the Memo , and as he or she shall deem to be in the interests of the Green Bank and the ratepayers no later than 120 days from the date of authorization by this resolution;

RESOLVED, that before executing the Loan, the President of the Green Bank and any other duly authorized officer of the Green Bank shall receive confirmation that the C-PACE transaction meets the statutory obligations of the Statute, including but not limited to the savings to investment ratio and lender consent requirements;

RESOLVED, that the duly authorized Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents and instruments as they shall deem necessary and desirable to effect the above-mentioned legal instruments.

b. C-PACE Program Guidelines for Resiliency

Resolution #4

WHEREAS, Conn. Gen. Stat. Section 16a-40g (the “Authorizing Statute”) authorizes what has come to be known as the Commercial Property Assessed Clean Energy Program (“C-PACE”), the Authorizing Statute designates the Connecticut Green Bank (“Green Bank”) as the state-wide administrator of the program;

WHEREAS, the Authorizing Statute charges Green Bank to develop program guidelines (the “Program Guidelines”) governing the terms and conditions under which state and third-party financing may be made available to C-PACE;

WHEREAS, Green Bank staff drafted proposed changes to the Program Guidelines and Appendix N, and included Appendix O;

WHEREAS, The proposed changes to the Program Guidelines and Appendix N, and the inclusion of Appendix O, went through a thirty-day public comment period in accordance with Conn. Gen. Stat. Section 1-120 et seq, and staff has made further minor changes to the Guidelines to address certain public comments which were received, as more particularly described in that memorandum to the Board dated March 12, 2024 (the “Memorandum”).

NOW, therefore be it:

RESOLVED, the Green Bank Board of Directors (the “Board”) approves the proposed changes to Program Guidelines and Appendix N, and the inclusion of Appendix O, substantially in the form of attached to the Memorandum;

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents and instruments as they shall deem necessary and desirable to affect the above-mentioned Program Guidelines.

5. Investment Programs Updates and Recommendations – 20 minutes

a. PosiGen – Amendment and Equity Participation

Resolution #5

WHEREAS, the Connecticut Green Bank (“Green Bank”) has an existing partnership with PosiGen, Inc. (together with its affiliates and subsidiaries, “PosiGen”) to support PosiGen in delivering a solar lease (including battery storage) and energy efficiency financing offering to low to moderate income households in Connecticut;

WHEREAS, the Green Bank Board of Directors (the “Board”) previously authorized approval for Green Bank’s participation in equity financing through the exercise of warrants [REDACTED] of Series D-3B of PosiGen, Inc. which was exercised in February 2021 (the “Prior Preferred Shares”);

WHEREAS, in June 2023 PosiGen has exchanged the Prior Preferred Shares [REDACTED] shares of common stock of PosiGen Inc. and the opportunity to purchase Series 1 Preferred Stock;

WHEREAS, in August 2023 the “Board previously authorized approval for Green Bank’s participation in [REDACTED] \$121,321.93;

WHEREAS, staff has analyzed the current state of PosiGen relation to the proposed incremental investment in Class 1 Secured Convertible Note and related financing and has concluded that the investment risk is worth the potential upside return, and recommends the Board approve the incremental investment not to exceed [REDACTED] as more fully explained in a memorandum to the Board dated March 8, 2024 (the “Board Memo”);

NOW, therefore be it:

RESOLVED, that the Board authorizes the Green Bank to enter into the Amended and Restated Note Purchase Agreement with PosiGen and other investors to fully participate in the purchase of a secured convertible promissory note of PosiGen. not to [REDACTED] and executing amendment number four to the June 2023 Note Purchase Agreement, as set forth in the Board Memo;

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and negotiate and deliver all other documents and instruments as they shall deem necessary and desirable to effect the above-mentioned legal instruments.

Resolution #6

WHEREAS, the Connecticut Green Bank (“Green Bank”) has an existing partnership with PosiGen, PBC (together with its affiliates and subsidiaries, “PosiGen”) to support PosiGen in delivering a solar lease (including battery storage) and energy efficiency financing offering to LMI households in Connecticut;

WHEREAS, the Green Bank Board of Directors (the “Board”) previously authorized approval for Green Bank’s participation in a back leverage credit facility (the “BL Facility”) collateralized by all of PosiGen’s solar PV system and energy efficiency leases in the United States as part of PosiGen’s strategic growth plan, as well as a facility to finance performance based incentives earned by PosiGen on its solar PV portfolio in Connecticut;

WHEREAS, PosiGen is now in the process of upsizing its BL Facility with Brookfield Asset Management (“Brookfield”), as explained in the memorandum to the Board dated January 23, 2024 (the “Board Memo”);

WHEREAS, PosiGen’s repayment performance on its existing obligations remains consistent and satisfactory;

NOW, therefore be it:

RESOLVED, that the Board authorizes the Green Bank to amend its existing 2nd lien facility as part of the BL Facility to allow for an upsized Green Bank position together with the first lien lender,

Brookfield (itself upsizing its position and expanding its collateral base), as set forth in the Board Memo;

RESOLVED, that the Board authorizes the Green Bank to advance up to [REDACTED] in in Term Loans under the 2nd lien financing associated with the New BL Facility, excluding the Connecticut PBI Term Loans and excluding the Capital Solutions Tax Equity Bridge facility, and inclusive of third-party participation, as set forth in the Board Memo; and

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and negotiate and deliver all other documents and instruments as they shall deem necessary and desirable to effect the above-mentioned legal instruments.

b. Capital for Change – Modification and Extension Request

Resolution #7

WHEREAS, the Connecticut Green Bank (“Green Bank”) has an existing Master Facility to fund the Low Income Multifamily Efficiency (“LIME”) loan Program with Capital for Change (“C4C”), approved at the October 25, 2019 meeting of the Green Bank Board of Directors (the “Board”),

WHEREAS, C4C has been successful in deploying LIME Program loans using the Master Facility;

WHEREAS, in order to continue the successful deployment of capital into the LIME Program C4C has requested an extension of the availability period until March 31, 2025, approximately one year from the expiration of the availability period under the existing terms and conditions;

WHEREAS, Green Bank staff recommends the Board approve such extension of the availability period;

NOW, therefore be it:

RESOLVED, that the Board approves the extension of the availability period under the Master Facility until a date not to exceed March 31, 2025;

RESOLVED, that the President of the Green Bank; and any other duly authorized officer of the Green Bank, is authorized to execute and deliver, any contract or other legal instrument necessary to effect the extension of the availability period under the Master Facility for the LIME program on such terms and conditions as are materially consistent with the memorandum submitted to the Board on March 8, 2024; and

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents as they shall deem necessary and desirable to effect the above-mentioned legal instrument.

6. Legislative Process – 20 minutes

7. Other Business – 5 minutes

8. Adjourn

[Click here to join the meeting](#)

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***Next Regular Meeting: Friday, April 26, 2024 from 9:00-11:00 a.m.
Colonel Albert Pope Room at the
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ANNOUNCEMENTS

- **In-Person Option** – if anyone wants to join future BOD or Committee meetings in person, we are inviting you to our offices in Hartford
- **Mute Microphone** – in order to prevent background noise that disturbs the meeting, if you aren't talking, please mute your microphone or phone.
- **Chat Box** – if you aren't being heard, please use the chat box to raise your hand and ask a question.
- **Recording Meeting** – we continue to record and post the board meetings.
- **State Your Name** – for those talking, please state your name for the record.



Board of Directors Meeting

March 15, 2024

Colonel Albert Pope Conference Room

Board of Directors

Agenda Item #1

Call to Order

Board of Directors

Agenda Item #2

Public Comments

Board of Directors

Agenda Item #3

Consent Agenda

Consent Agenda

Resolutions #1 through #2



1. **Meeting Minutes** – approve meeting minutes of January 26, 2023
2. **C-PACE Project Extensions** – Branford
 - **Financial Report** – abridged and comprehensive through Q2 FY24
 - **IPC Report** – update through Q2 of FY24

Board of Directors

Agenda Item #4a

Financing Programs Updates and Recommendations

C-PACE Project

Farmington

126 Hyde Road, Farmington

Introduction & Overview



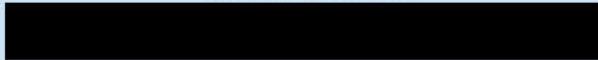
Overview

Property Owner:

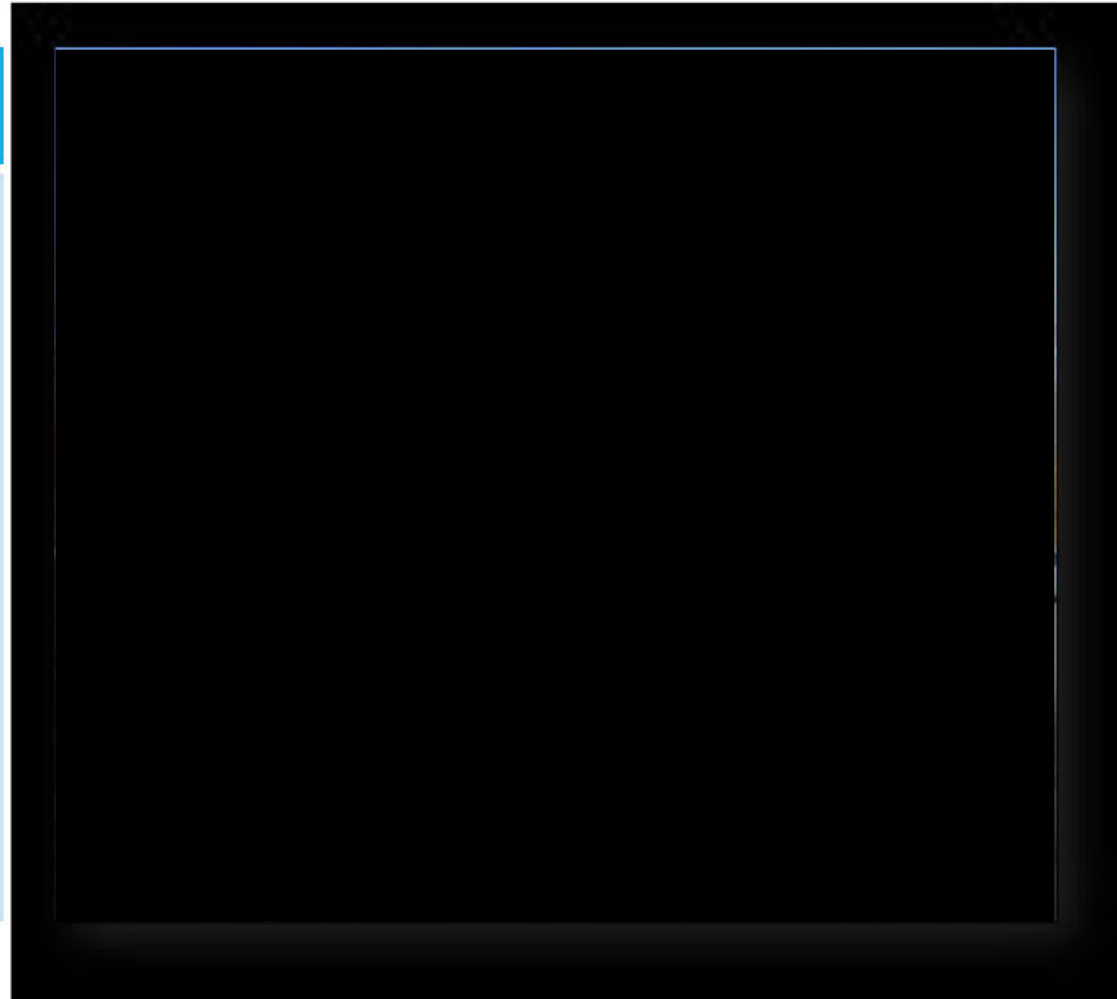
Emmett & Associates, LLC
(*Turbine Technologies, Inc –
DBA: Burke Aerospace*)

Property Type:

Industrial

Contractor:**Project Description:**

276.4 kW Ground Mount Solar PV
System



126 Hyde Road, Farmington

Transaction Summary



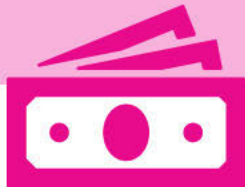
Loan Terms

Benefit Assessment:
\$678,946

Loan Term:
20 Year

Term Loan Interest:
5.75%

Construction Interest:
5%



Financial Metrics

Property Value:
[REDACTED]

Loan to Value: [REDACTED]

Lien to Value: [REDACTED]

DSCR: [REDACTED]

Mortgage Lender:
[REDACTED]
[REDACTED]



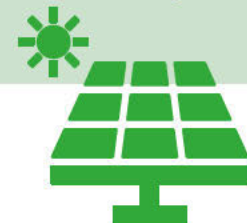
Energy Metrics

SIR: 1.90
(Preliminary)

Savings / EUL:
\$2,263,862

Annual Savings:
\$113,193

Incentives:
NRES
(Pending)



Previous version of C-PACE Transaction slides



30 Grandview Court, Cheshire



Ratepayer Payback

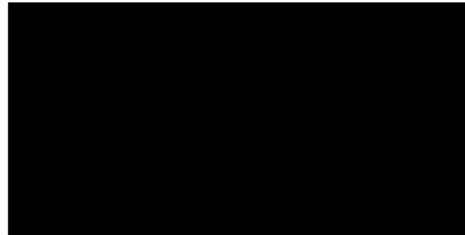


- Ratepayer funds will be paid back in one of the following ways
 - (a) through a take-out by a private capital provider at the end of construction (project completion);
 - (b) subsequently, when the loan is sold down to a private capital provider; or
 - (c) repayment of the C-PACE benefit assessment by the property owner.

30 Grandview Court, Cheshire



Terms and Conditions



30 Grandview Court, Cheshire



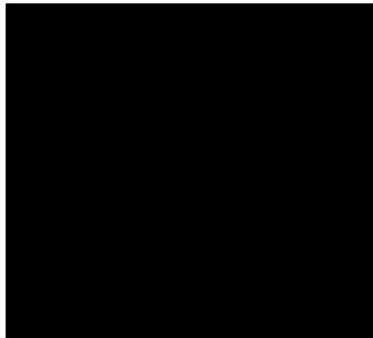
The Five W's

- **What?** Receive approval for a \$750,834 construction and term loans under the C-PACE program to **30 Grandview Court LLC** and **Best Postcards Inc.** to finance the construction of specified energy upgrades.
- **When?** Project to commence 2024.
- **Why?** Allow Green Bank to finance this C-PACE transaction continue to build momentum in the market, and potentially provide term financing for this project until Green Bank sells it along with its other loan positions in C-PACE transactions.
- **Who?** **30 Grandview Court LLC**, the owner of 30 Grandview Court , Cheshire, CT
- **Where?** 30 Grandview Court , Cheshire, CT

30 Grandview Court, Cheshire



Project Tear Sheet



30 Grandview Court, Cheshire



Key Financial Metrics



Resolution #3



NOW, therefore be it:

RESOLVED, that the President of the Green Bank and any other duly authorized officer of the Green Bank is authorized to execute and deliver the Loan in an amount not to be greater than one hundred ten percent of the Loan amount with terms and conditions consistent with the Memo , and as he or she shall deem to be in the interests of the Green Bank and the ratepayers no later than 120 days from the date of authorization by this resolution;

RESOLVED, that before executing the Loan, the President of the Green Bank and any other duly authorized officer of the Green Bank shall receive confirmation that the C-PACE transaction meets the statutory obligations of the Statute, including but not limited to the savings to investment ratio and lender consent requirements; and

RESOLVED, that the duly authorized Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents and instruments as they shall deem necessary and desirable to effect the above-mentioned legal instruments.

Board of Directors

Agenda Item #4b

Financing Programs Updates and Recommendations
C-PACE Program Guidelines for Resilience

“Resilience” means the ability to prepare for and adapt to changing conditions and withstand and recover rapidly from deliberate attacks, accidents or naturally occurring threats or incidents, **including, but not limited to, threats or incidents associated with the impacts of climate change.**

The bank shall consult with the Department of Energy and Environmental Protection and the Connecticut Institute for Resilience and Climate Adaptation to develop program eligibility criteria for financing of resilience improvements, consistent with state environmental resource protection and community resilience goals.

Require performance of an energy audit, renewable energy system feasibility analysis, or **resilience study** on the qualifying commercial real property that **assesses the expected energy or resilience cost savings** of the energy or **resilience improvements over the useful life of such improvements** before approving such financing

Our Approach



The guidelines & appendices are designed to help us understand the need for resilience financing for commercial properties in CT by:

- Collecting intel & data from project leads to understand the market needs (Pre-study Worksheet)
- Identifying common Climate Change Adaptation & Nature-Based Solutions measures as examples
- Utilizing existing resilience standard programs to help streamline access to C-PACE (FORTIFIED)
- Indicating how other resilience measures can be submitted for review/acceptance
- Adapt the program/guidelines accordingly in the future

Eligibility & Requirements



- **Applicable standard C-PACE eligibility requirements:**

- commercial property
- participating municipality
- lender consent

- **Exemptions:**

- $SIR > 1$ is not applicable

- **New Requirement:**

- Resilience Study w/assessment of cost savings included

- **Pre-Study Worksheet**

- **Resilience Study**

- Property overview
- Identification of vulnerabilities
- Adaptation proposal
- Assessment of cost savings
- Implementation timeline

- **FORTIFIED** supporting documentation, applicable forms and back-up documentation submitted to the project's evaluator for review and determination of compliance.

Public Comments



- **Received public comments from the C-PACE Alliance (CPA)**, an organization of ~28 members, including capital providers that lend in the CT C-PACE program.
- Many comments **required simple clarification, with the exception of one comment** regarding raising the maximum % of financing available projects using the new construction technical standards Appendix N.
- In summary, the request was to **raise the max % of C-PACE financing available to 40-45% of the Total Eligible Construction Cost (TECC)** to account for additional resilience improvement expenses.
- Staff's response is summarized as: **by allowing resilience improvements to be financed as stand-alone improvements following the technical standards in Appendix O, and by expanding the "Bonus Measures" to include resilience improvements, we feel that we are expanding the accessibility to financing for resilience improvements without needing to increase the overall maximum of C-PACE financing.**
- ***Therefore, the max % of C-PACE financing for New Construction remains 35% of the TECC***

New Addition- Roof Improvements



In order to improve the guidelines regarding resilience improvements, we propose a new requirement that roof replacements/improvements meet a minimum resiliency standard of designing to FORTIFIED Roof standards.

When using the **Standard SIR Technical** approach:

- Roof improvements can still be considered an energy improvement OR a “related cost” to an energy improvement and included in the SIR calculation

When using the **Resilience Technical Standard** approach:

- Roof replacements/improvements must be designed according to the FORTIFIED Roof Standards in order to demonstrate a minimum level of resilience

Resolution #4

NOW, therefore be it:

RESOLVED, the Green Bank Board of Directors (the “Board”) approves the proposed changes to Program Guidelines and Appendix N, and the inclusion of Appendix O, substantially in the form of attached to the Memorandum;

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents and instruments as they shall deem necessary and desirable to affect the above-mentioned Program Guidelines.

Board of Directors

Agenda Item #5a1

Investment Programs Updates and
Recommendations

PosiGen

Amendment and Equity Participation

Investment Modification

- Dec 21 – [REDACTED] Series E Round
- Aug 22 – additional [REDACTED]m (convertible promissory notes)
- Feb – Apr 23 – additional [REDACTED]m (convertible promissory notes)
- June 23 – “Lead Investors” provide [REDACTED]m of [REDACTED] raise
- Aug 23 – Remaining Investors (including Green Bank) to invest [REDACTED]
- **Existing Green Bank investment ~ [REDACTED]**
- **Proposed incremental investment ~ [REDACTED]**
- Structured to maintain Green Bank’s ownership position / avoid dilution
- Range of outcomes from 100% loss to a feasible gain [REDACTED]
- Closing by March 15, 2024

Resolution #5



NOW, therefore be it:

RESOLVED, that the Board authorizes the Green Bank to enter into the Amended and Restated Note Purchase Agreement with PosiGen and other investors to fully participate in the purchase of a secured convertible promissory note of PosiGen. not to exceed [REDACTED] and executing amendment number four to the June 2023 Note Purchase Agreement, as set forth in the Board Memo;

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and negotiate and deliver all other documents and instruments as they shall deem necessary and desirable to effect the above-mentioned legal instruments.

Board of Directors

Agenda Item #5a2

Investment Programs Updates and Recommendations

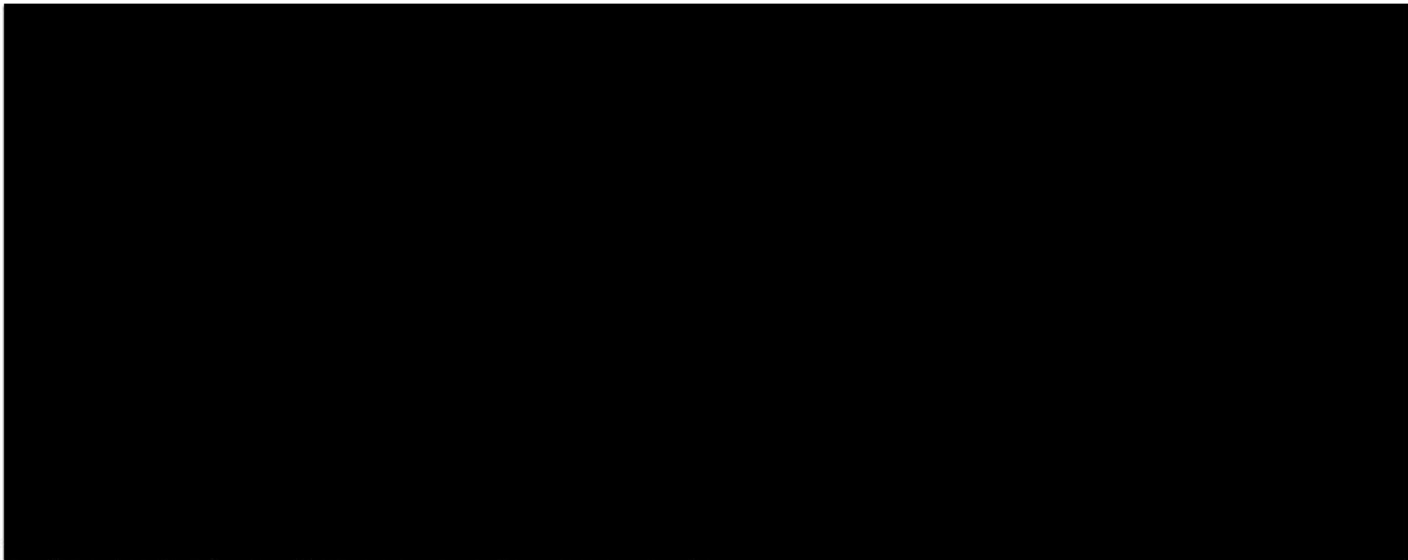
PosiGen Amendment

PosiGen 1st & 2nd Lien Facility



Limits Approved Dec 2022 & Jan 2024

PosiGen Asset Backed Facility (FLCF & SLCF)
For Completed / Activated Leases



* Excluding

** Represents the Forbright First Lien Limits before upsized #1 by Brookfield

*** Note: First Lien Amount was upsized by Brookfield *before* upside is [REDACTED] and Green Bank advances under Second Lien Term Loan were made in February and March pursuant to upsized #1 in this column

This column represents upsized #2 by Brookfield (being documented / closed March 2024)

Resolution #6



NOW, therefore be it:

RESOLVED, that the Board authorizes the Green Bank to amend its existing 2nd lien facility as part of the BL Facility to allow for an upsized Green Bank position together with the first lien lender, Brookfield (itself upsizing its position and expanding its collateral base), as set forth in the Board Memo;

RESOLVED, that the Board authorizes the Green Bank to advance up to [REDACTED] in Term Loans under the 2nd lien financing associated with the New BL Facility, excluding the Connecticut PBI Term Loans and excluding the Capital Solutions Tax Equity Bridge facility, and inclusive of third-party participation, as set forth in the Board Memo; and

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and negotiate and deliver all other documents and instruments as they shall deem necessary and desirable to effect the above-mentioned legal instruments.

Submitted by: Bert Hunter, EVP and CIO

Board of Directors

Agenda Item #5b

Investment Programs Updates and
Recommendations

Capital for Change

Modification and Extension Request

Capital For Change

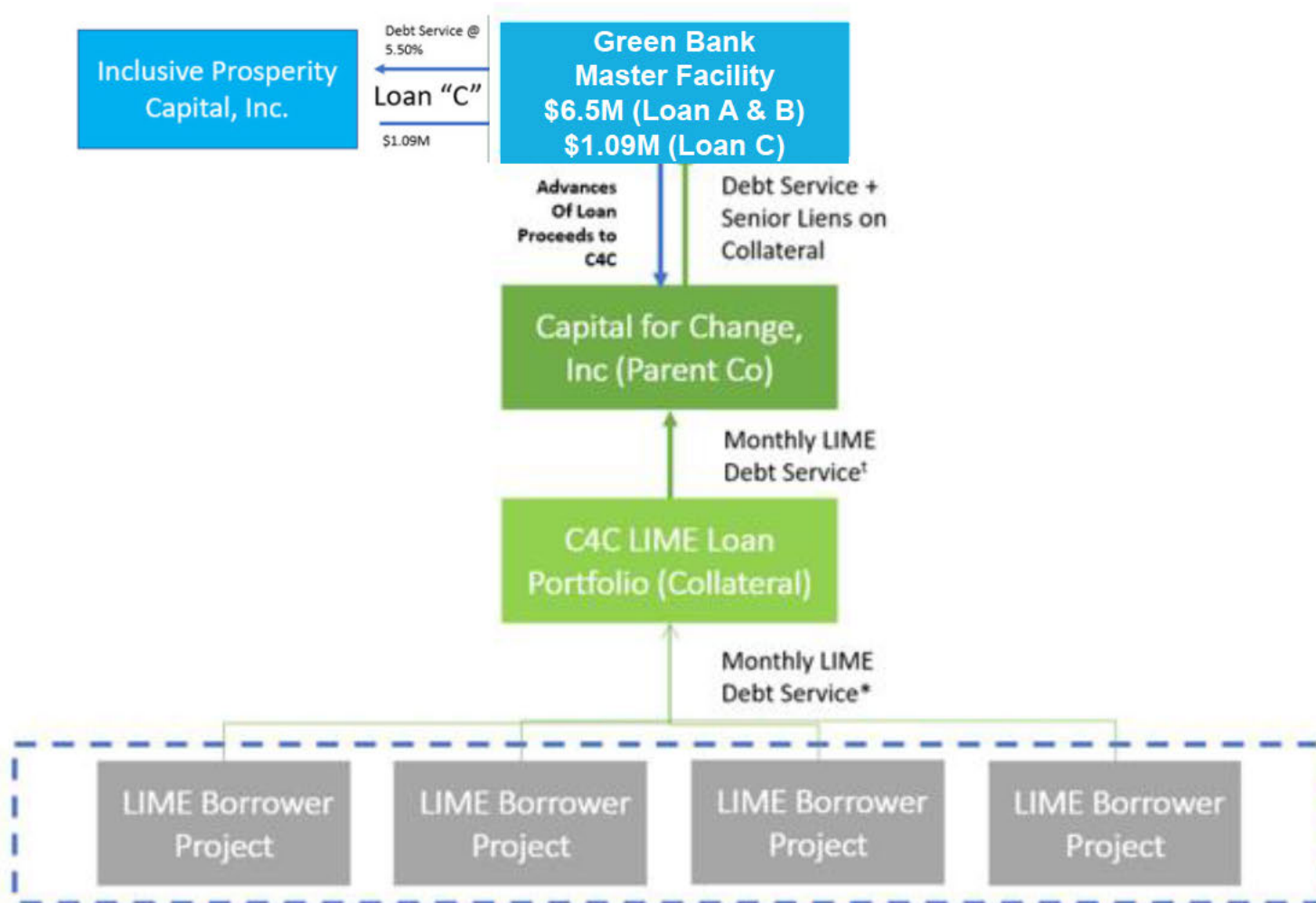
LIME Program Extension



- Capital for Change (“C4C”) and Green Bank had a previous facility (“Original Facility”) dating back to 2015 and amended in 2016 that provided C4C with \$3.5M worth of capital.
- At the October 25, 2019 meeting of the Board, the Board approved \$3.0 M (total of \$6.5 M) of additional capital for LIME.
- C4C has a pipeline of transactions for the LIME facility, but the availability period expires in March 2024. Facility was extended for 1 year in March 2023.
- C4C has requested and Green Bank staff supports an extension of the availability period to March 31, 2025 with identical terms and conditions.
- Board Approval needed for the extension.

Capital For Change

LIME Program Extension



Capital For Change

LIME Program Extension



Project Name	Balance Outstanding*
*Cove Harbor Condo Association	188,261.15
*Middletown Heritage Associates	653,446.41
*Access Senior Housing of Willington Woods	34,703.75
*Plaza Green Limited Partnership	1,665,034.17
* Dorothy Apartments, LLC	150,803.15
* East Meadow Condo Association Inc	<u>640,045.02</u>
	\$3,332,293.65

*** All current**

Resolution #7



NOW, therefore be it:

RESOLVED, that the Board approves the extension of the availability period under the Master Facility until a date not to exceed March 31, 2025;

RESOLVED, that the President of the Green Bank; and any other duly authorized officer of the Green Bank, is authorized to execute and deliver, any contract or other legal instrument necessary to effect the extension of the availability period under the Master Facility for the LIME program on such terms and conditions as are materially consistent with the memorandum submitted to the Board on March 8, 2024; and

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents as they shall deem necessary and desirable to effect the above-mentioned legal instrument.

Board of Directors

Agenda Item #6

Legislative Process

2024 Legislative Session

Legislative Update



Public Hearings:

23 Legislative Committee's will have completed the Public Hearing portion of their work by today - 3/15. Only APP, FIN, JUD & PH remain will continue.

JF Deadlines:

Vary between 3/14 and 4/5. E&T 3/26 & ENV 3/27.

HB 5004 - "Green Monster Bill". Public Hearing on 3/8 (*CGB Written Testimony*)

2024 Omnibus Bill with 22 sections as of 3/15. DEEP to develop a NBS solution plan by 12/31/24. Establishes a CT Clean Economy Council (CGB Member), ESS expansion to (1,000MW), CGB with DEEP/PURA to develop & implement plan for heat pump deployment. *Will be proposed JFS Language in ENV. Date TBD.*

HB 5232 – E&T Legislation. Public Hearing on 2/27/24. (*Live – Bryan, Brian, Mackey*)

Uniform Capacity Tax / Clarification for BASA. Elements to be rolled into HB 5004.

Section 8: CONNSSA limiting CGB ability to finance commercial solar in CT (MAP)

Section 10: DEEP/DAS to standardize process of solar at state facilities. (SAP)

2024 Legislative Session

Legislative Update



HB 5231 – Seeks to eliminate cap on NRES for 2025 solicitation and until Federal Funding is eliminated. CGB tracking, will be involved in ongoing negotiations.

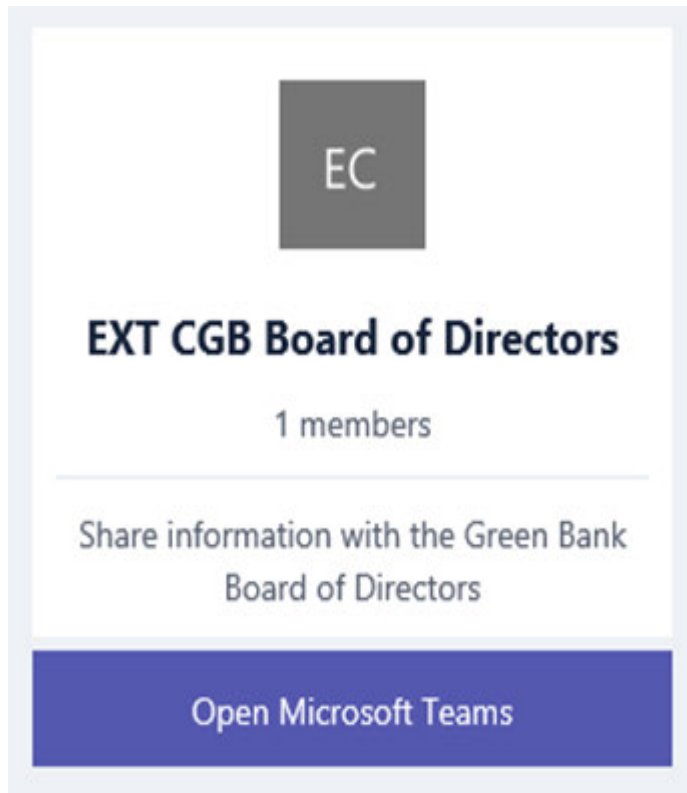
SB 191 – DEEP Agency Bill. By 1/1/2025 any generator of 26 tons per year of organic material must adopt a written policy for food donation. Also designates residentially generated food scraps as an item to be recycled (Blue Bins). By 1/1/2028 DEEP shall require each municipality to establish a program requiring residents to separate food scraps. Fiscal Note, Funding TBD. JF on 3/15 in ENV.

SB 11 – Governor's - "Resiliency Legislation" Public Hearing on 2/28 (*Written Testimony*) Resiliency Improvement Districts which Incorporates definition of "Increased Savings", POCD changes to require climate change vulnerability assessments, hazard mitigation plans to consider sea level rise, integrated GIS & would update state building codes for commercial and residential structures. Proposed JFS 3/15 in ENV.

2024 Legislative Session Bill Tracking



Interactive Bill Tracking will go live on 3/15 for Board Members



52 – Pieces of legislation being Tracked

- 6 Support

- 3 Oppose

- 43 Track (TBD)

6– Public Hearing Testimony

- 2 Live Testimony

- 4 Written Testimony

HYDROPOWER TASK FORCE

Summary:



2023 Legislative Session (Special Act 23-8)

AA Establishing A Task Force to Study the State's Hydropower Assets

House Majority Leader Appointment:

Mariana Trief (CGB)



House Bill No. 5628

Special Act No. 23-8

AN ACT ESTABLISHING A TASK FORCE TO STUDY THE STATE'S HYDROPOWER ASSETS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (*Effective from passage*) (a) There is established a task force to study existing hydropower assets in the state and review the benefits of such assets.

(b) The task force shall consist of the following members:

- (1) One appointed by the speaker of the House of Representatives, who shall have expertise in hydropower;
- (2) One appointed by the president pro tempore of the Senate;
- (3) One appointed by the majority leader of the House of Representatives;
- (4) One appointed by the majority leader of the Senate;
- (5) One appointed by the minority leader of the House of Representatives;
- (6) One appointed by the minority leader of the Senate;
- (7) The Commissioner of Energy and Environmental Protection, or

Mandate:

To study existing hydropower assets in the state and review the benefits of such assets and submit a report on it's findings and considerations

Policy Considerations:

(4) Proposed Policy Considerations

HYDROPOWER TASK FORCE

Policy Considerations



Task Force policy considerations intend to:

- (i) encourage existing and new hydropower projects to respect environmental concerns,
- (ii) provide steady and predictable cash flows so investments can be made to improve aging infrastructure.

Steady cash flows would allow the projects to secure financing from entities like the Green Bank to finance those improvements.

Policy Considerations:

- #1: DEEP solicitation of hydro power**
- #2: Standard Service Tariff for Hydropower**
- #3: Changes to the Class I definition**
- #4: Changes to the Non-Residential Renewable Energy Solutions (NRES) Program**



Board of Directors

Agenda Item #7

Other Business

Board of Directors

Agenda Item #8

Adjourn



**BOARD OF DIRECTORS OF THE
CONNECTICUT GREEN BANK**
Regular Meeting Minutes

Friday, January 26, 2024
9:00 a.m. – 11:00 a.m.

A regular meeting of the Board of Directors of the **Connecticut Green Bank** (the “Green Bank”) was held on January 26, 2024.

Board Members Present: Bettina Bronisz, Thomas Flynn, Dominick Grant, John Harrity, Robert Hotaling, Adrienne Houël, Matthew Ranelli, Lonnie Reed, Hank Webster, Brenda Watson

Board Members Absent: Joanna Wozniak-Brown

Staff Attending: Emily Basham, David Beech, Priyank Bhakta, Larry Campana, Shawne Cartelli, Sergio Carrillo, James Desantos, Catherine Duncan, Mackey Dykes, Emma Ellis, Brian Farnen, Bryan Garcia, Bert Hunter, Alex Kovtunen, Stephanie Layman, Alysse Lembo-Buzzelli, Cheryl Lumpkin, Desiree Miller, Jane Murphy, Ariel Schneider, Katie Shelton, Eric Shrager, Dan Smith, Mariana Trief, Leigh Whelpton

Others present: Ben Healey and Tom Neyhart from PosiGen

1. Call to Order

- Lonnie Reed called the meeting to order at 9:04 am.

2. Public Comments

- No public comments.

3. Consent Agenda

a. Meeting Minutes of December 15, 2023

Resolution #1

Motion to approve the meeting minutes of the Board of Directors for December 15, 2023.

b. C-PACE Project Extensions

Subject to Changes and Deletions

Resolution #2

WHEREAS, pursuant to Conn. Gen. Stat. 16a-40g (the "Act") the Connecticut Green Bank ("Green Bank") is directed to, amongst other things, establish a commercial sustainable energy program for Connecticut, known as Commercial Property Assessed Clean Energy ("C-PACE");

WHEREAS, pursuant to the C-PACE program, the Connecticut Green Bank Board of Directors (the "Board") or the Connecticut Green Bank Deployment Committee ("DC"), as may be applicable, approved and authorized the President of the Green Bank to execute financing agreements for the C-PACE projects described in this Memo submitted to the Board on January 19, 2024 (the "Finance Agreements");

WHEREAS, the Finance Agreements were authorized to be consistent with the terms, conditions, and memorandums submitted to the Board or DC, as may be applicable, and executed no later than 120 days from the date of such Board or DC approval; and

WHEREAS, due to delays in fulfilling pre-closing requirements the Green Bank will need more time to execute the Finance Agreements.

NOW, therefore be it:

RESOLVED, that the Board extends authorization of the Finance Agreements to no later than 120 days from January 19, 2024 and consistent in every other manner with the original Board or DC authorization for the Finance Agreement.

c. Under \$500,000 and No More in Aggregate than \$1,000,000

Resolution #3

WHEREAS, on January 18, 2013, the Connecticut Green Bank (the "Green Bank") Board of Directors (the "Board") authorized the Green Bank staff to evaluate and approve funding requests less than \$300,000 which are pursuant to an established formal approval process requiring the signature of a Green Bank officer, consistent with the Green Bank Comprehensive Plan, approved within Green Bank's fiscal budget and in an aggregate amount not to exceed \$500,000 from the date of the last Deployment Committee meeting, on July 18, 2014 the Board increased the aggregate not to exceed limit to \$1,000,000 ("Staff Approval Policy for Projects Under \$300,000"), on October 20, 2017 the Board increased the finding requests to less than \$500,000 ("Staff Approval Policy for Projects Under \$500,000"); and

WHEREAS, Green Bank staff seeks Board review and approval of the funding requests listed in the Memo to the Board dated January 26, 2024 which were approved by Green Bank staff since the last Deployment Committee meeting and which are consistent with the Staff Approval Policy for Projects Under \$500,000;

NOW, therefore be it:

RESOLVED, that the Board approves the funding requests listed in the Memo to the Board dated January 19, 2024 which were approved by Green Bank staff since the last Deployment Committee meeting. The Board authorizes Green Bank staff to approve funding

Subject to Changes and Deletions

requests in accordance with the Staff Approval Policy for Projects Under \$500,000 in an aggregate amount to exceed \$1,000,000 from the date of this Board meeting until the next Deployment Committee meeting.

Upon a motion made by Robert Hotaling and seconded by Hank Webster, the Board of Directors voted to approve the Consent Agenda which consists of Resolutions 1 – 3. None opposed or abstained. Motion approved unanimously.

4. Committee Updates and Recommendations

a. Audit, Compliance, and Governance Committee

i. Auditors of Public Account

- Jane Murphy summarized the findings of the FY20 and FY21 audits which had two minor findings, a lack of penalty for false statement language in contracts and agreements, and the agency does not identify or track surplus funds from bond issuances. Both issues have been corrected and the team was happy with the results of the audit.

b. Budget, Operations, and Compensation Committee

i. FY24 Targets and Budget including Greenhouse Gas Reduction Fund Contingent Option – Proposed Revisions

- Eric Shrago reviewed the FY24 organizational targets starting with the Incentive Programs, which are increasing the number of projects but decreasing the investment total and MW deployed.

- Sergio Carrillo added that for ESS, particularly on the Residential side, there is low deployment primarily due to the absence of Original Equipment Manufacturers and Third Party Owners as well as issues caused by affordability. The application process is also more complicated than contractors would like and so solutions to simplify the process are being investigated. As for affordability, the cost to install is too steep for most customers and the upfront incentive seems inadequate for the cost of the battery. In reality, installing a battery system is at least double what was originally expected. Until the issues are resolved, it will continue to be an uphill battle.

- Bettina Bronisz asked what the impact is to LMI communities. Sergio Carrillo answered that due to the \$30,000 cost for a battery, it is not accessible to many including those in LMI communities, but for LMI customers it would be through Third Party Owners, but many of the companies that were expected to join the program have not been able to. PosiGen has joined but they haven't fully been able to deploy batteries.

- Eric Shrago continued with summarizing the targets for the Financing Program, which includes decreases for the number of projects, capital invested, and MW deployed. This is mostly due to PPA reductions.

- Eric Shrago summarized the proposed changes to the budget including revenues, expenses, and compensation structure changes.

- Hank Webster asked for further explanation to the cuts to the incentives, such as which programs. Eric Shrago answered it is due to lower forecasts around the cleanup of SHREC and the reduction in battery storage. Hank Webster asked for clarification about the information as presented and Dan Smith responded that the adjustment was for the PBIs and EPBBs, so the lower number is what was paid versus what was expected. The adjustment does not actually include a change to ESS. Dominick Grant asked if that was

Subject to Changes and Deletions

a lagging adjustment and Eric Shrago stated there is a delay between project completion and incentive paid, but the battery storage incentive target should be adjusted down.

Resolution #4

WHEREAS, pursuant to Section 5.2.2 of the Bylaws, the Connecticut Green Bank's Budget, Operations, and Compensation Committee has reviewed and recommended to the Board of Directors to approve (1) the revised FY2024 Targets and Budget, (2) the update to the salary structure presented, and (3) extend the professional services agreements (PSAs) with the aforementioned strategic partners for fiscal year 2024 with the amounts of each PSA not to exceed the applicable approved budget line item;

NOW, therefore be it:

RESOLVED, that Connecticut Green Bank Board of Directors approves of the: (1) the revised FY2024 Targets and Budget, (2) the update to the salary structure presented, (3) extend the professional services agreements (PSAs) with the aforementioned strategic partners for fiscal year 2024 with the amounts of each PSA not to exceed the applicable approved budget line item, and (4) approves of the two accompanying job descriptions.

Upon a motion made by Robert Hotaling and seconded by Brenda Watson, the Board of Directors voted to approve Resolution 4. None opposed or abstained. Motion approved unanimously.

c. Deployment Committee

i. Under \$500,000 and No More in Aggregate than \$1,000,000 Staff Transaction Approval Process – Proposed Revision

- Brian Farnen summarized the history of the Staff Approval process and the proposed changes after receiving feedback from the Deployment Committee. The primary issue was that the queue was filling too quickly due to Financing and ESS program approvals being in the same bucket. The proposed change would separate Financing projects and ESS projects into their own queues. Mackey Dykes added further clarification of the example presented, showing how in the past the one-bucket approval process caused issues.

Resolution #5

WHEREAS, At the October 20, 2017 Board of Directors (Board) meeting of the Connecticut Green Bank (Green Bank) the Board approved a process for the Green Bank staff to evaluate and approve funding requests less than \$500,000 and in an aggregate amount not to exceed \$1,000,000 from the date of the last Deployment Committee meeting (Under \$500,000 Approval Process for Financing Programs).

WHEREAS, at its June 24, 2022 meeting, the Board approved a process for the Green Bank staff to evaluate and approve upfront incentives for projects participating in the ESS Program (ESS Approval Process). The approval process for ESS incentives below \$500,000 is identical and subject to the same aggregate limit as the Under \$500,000 Approval Process for Financing Programs.

WHEREAS, the Deployment Comment recommended at its December 15, 2023 Special

Subject to Changes and Deletions

Meeting a modification of the Under \$500,000 Approval Process for Financing Programs and ESS Approval Process as described in the memorandum to the Board dated January 19, 2024 (the "Memo").

NOW, therefore be it:

RESOLVED, that the Green Bank Board approves the modification of the Under \$500,000 Approval Process for Financing Programs and ESS Approval Process as more particularly described in the Memo.

Upon a motion made by Matthew Ranelli and seconded by Hank Webster, the Board of Directors voted to approve Resolution 5. None opposed or abstained. Motion approved unanimously.

5. Investment Programs Updates and Recommendations **a. Energy Storage Solutions – Wesleyan University**

- Sergio Carrillo summarized a project for Wesleyan University for a 4,900 kW battery storage system for 10.360 kWh, to be owned by CPower, for \$4.4million. The expected upfront incentive would be just over \$1million. He reviewed how the incentives are calculated, which is to multiple the kWh of the project to the applicable incentive rate, which is based on the system size. The expected 10-year performance incentive is \$3.4million. Sergio Carrillo then explained some of the other metrics for the project which show the project to be favorable overall.

Resolution #6

WHEREAS, in its June 24, 2022 meeting, the Connecticut Green Bank Board of Directors ("Board") approved the implementation of Upfront Incentive Project Approval procedures ("Procedures") for non-residential projects under the Energy Storage Solutions Program ("Program") with an estimated upfront incentive payment greater than \$500,000 and procedures for less than \$500,000;

WHEREAS, as part of the Procedures, Green Bank staff shall present Program projects via the consent agenda utilizing a standard form Tear Sheet process described in the memorandum to the Board dated June 24, 2022;

WHEREAS, in its December 9, 2022 meeting, the Board approved updated Procedures to better align with the Program process; and

WHEREAS, Green Bank Staff reviewed funding requests for projects with incentives below \$500,000, and approved them via Project Approval Forms for a total amount of \$560,400 and intends to issue Reservation of Fund letters.

NOW, therefore be it:

RESOLVED, that the Green Bank Board hereby approves the estimated upfront incentives for one (1) non-residential project above \$500,000 totaling \$1,036,000, consistent with the approved Procedures and this memorandum dated January 19, 2024; and,

Subject to Changes and Deletions

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and execute and deliver any and all documents and regulatory filings as they shall deem necessary and desirable to affect the above-mentioned incentives consistent with the Procedures.

Upon a motion made by Bettina Bronisz and seconded by Adrienne Houël, the Board of Directors voted to approve Resolution 6. None opposed and Matthew Ranelli abstained. Motion approved.

6. Financing Programs Updates and Recommendations **a. C-PACE Project – Cheshire**

- Catherine Duncan reviewed the details of a previously approved project in Cheshire, CT, as the owner has decided to reduce the payment term from 20-years down to 5-years, which required the operating company to come in as a co-borrower. As well, the dollar amount for financing has changed a bit. It is a 5-year term with an interest rate of 5% for a \$750,834 loan. She reviewed the key metrics for the project loan.
 - Matthew Ranelli asked why the customer had to rewrite the loan. Catherine Duncan stated the loan had not yet been closed but if it had, pre-payment penalties would have applied.

Resolution #7

WHEREAS, pursuant to Connecticut General Statute Section 16a-40g (the "Statute"), the Connecticut Green Bank ("Green Bank") has established a commercial sustainable energy program for Connecticut, known as Commercial Property Assessed Clean Energy ("C-PACE");

WHEREAS, the Green Bank Board of Directors (the "Board") has approved a \$40,000,000 C-PACE construction and term loan program;

WHEREAS, the Green Bank seeks to provide a \$750,833.85 construction and term loan under the C-PACE program to 30 Grandview Court, LLC, the building owner of 30 Grandview Court, Cheshire, Connecticut (the "Loan"), to finance the construction of specified clean energy measures in line with the State's Comprehensive Energy Strategy and the Green Bank's Strategic Plan as more particularly described in the memorandum submitted to the Green Bank Board of Directors dated January 19, 2024 (the "Memo"); and

NOW, therefore be it:

RESOLVED, that the President of the Green Bank and any other duly authorized officer of the Green Bank is authorized to execute and deliver the Loan in an amount not to be greater than one hundred ten percent of the Loan amount with terms and conditions consistent with the Memo, and as he or she shall deem to be in the interests of the Green Bank and the ratepayers no later than 120 days from the date of authorization by this resolution;

RESOLVED, that before executing the Loan, the President of the Green Bank and any other duly authorized officer of the Green Bank shall receive confirmation that the C-PACE transaction meets the statutory obligations of the Statute, including but not limited to the savings to investment ratio and lender consent requirements; and

Subject to Changes and Deletions

RESOLVED, that the duly authorized Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents and instruments as they shall deem necessary and desirable to affect the above-mentioned legal instruments.

Upon a motion made by Matthew Ranelli and seconded by Hank Webster, the Board of Directors voted to approve Resolution 7. None opposed or abstained. Motion approved unanimously.

b. C-PACE Resiliency

- Mackey Dykes summarized the history of the statutory changes to C-PACE to include Resiliency financing and desire to present to the Board before the changes go into a Public Comment period. Alysse Lembo-Buzzelli reviewed Public Act 22-6, the statute's definition of resiliency, its impact on C-PACE and the market, and the Green Bank's approach so far. She reviewed the program eligibility and requirements as well as some examples. Mackey Dykes added that the Institute for Business & Home Safety (IBHS) governs the FORTIFIED standard being used and is an association of all the major insurance companies. Alysse Lembo-Buzzelli explained the different levels of FORTIFIED certification, other resiliency measures being considered, and highlighted that resilience measures can be incorporated into new construction projects.

- Robert Hotaling asked what the general timeframe it takes to pull together an assessment and what the costs are, whether that would inhibit them from participating. Alysse Lembo-Buzzelli said for the timeline, she wasn't sure as there haven't been any projects of this type yet and there are many variables that could affect it. As for cost, the intent of using this type of financing would be to allow property owners to make the improvements if they weren't able to before.

- Adrienne Houël asked how these standards relate to all the other regulations for contractors, in terms of conflicting or superseding requirements. Alysse Lembo-Buzzelli stated she hasn't compared all the standards, but there may be some carryover between them. A closer examination would be needed. Mackey Dykes added that the team tries to make C-PACE as accessible as possible and to align with pre-existing standards when possible.

- Adrienne Houël asked if there is any financing available for resiliency hubs. Mackey Dykes responded that it is a bit too early to know how it could affect resiliency hubs, but his feeling is that they may be public buildings. However, if it were a private building, then C-PACE could be a source of financing. For public buildings, C-PACE could not be used unfortunately.

- Robert Hotaling asked that in a future Board meeting for a comparison of standards to understand the overlap between them. Bryan Garcia agreed that the comparison could be put together then elaborated more on recent research and efforts on resiliency.

- Matthew Ranelli asked in the chat before he had to leave the meeting: I have to jump off but three quick questions (1) if the SIR>1.2 does not apply what SIR applies? (2) how does this SIR translate for LMI incentives and (3) how are we requiring the recipient to insure the end building or work against storm, flood and other hazards? Mackey Dykes stated that follow up would be done with him in an email, but for the meeting today he responded the SIR does not apply to resiliency as there is no requirement. He did not understand the second question, and for the third question he responded that on the lending side there are insurance requirements from the borrower though for other lenders at the program level, there is no insurance requirement and it is

Subject to Changes and Deletions

up to the private market to determine which requirements they want to put in place.

Brenda Watson and Matthew Ranelli left the meeting at 10:00 am.

7. Investment Programs Updates and Recommendations

a. PosiGen Recommendation and DOE / LPO SEFI Update

- Bert Hunter and Bryan Garcia summarized the impact of the partnership with PosiGen under the Solar For All campaign. Bert Hunter reviewed the current 1st Lien and 2nd Lien facilities and the expansion of them, bringing the Green Bank's maximum exposure from \$9,250,000 to \$17,250,000. He reviewed the Risk Assessment, noting the portfolio is strong with a high and stable collection rate. He also explained that staff and PosiGen are working with the U.S. Department of Energy's Loan Production Office ("LPO") under its State Energy Financing Institution ("SEFI") Program to enable PosiGen to obtain debt funding from the SEFI Program. Mr. Hunter and Mr. Healey discussed the progress PosiGen was making with LPO to move PosiGen's application along. Bert Hunter explained that staff expects to bring forward a proposal for the Board's approval in the spring, potentially in March.
- Ben Healy and Tom Neyhart explained how the Green Bank and work within Connecticut has driven PosiGen's progress and that they are committed to investment and growth within Connecticut.
 - Robert Hotaling noted the hard work done by PosiGen and appreciated their efforts especially within LMI communities.

Resolution #8

WHEREAS, the Connecticut Green Bank ("Green Bank") has an existing partnership with PosiGen, PBC (together with its affiliates and subsidiaries, "PosiGen") to support PosiGen in delivering a solar lease (including battery storage) and energy efficiency financing offering to LMI households in Connecticut;

WHEREAS, the Green Bank Board of Directors (the "Board") previously authorized approval for Green Bank's participation in a back leverage credit facility (the "BL Facility") collateralized by all of PosiGen's solar PV system and energy efficiency leases in the United States as part of PosiGen's strategic growth plan, as well as a facility to finance performance based incentives earned by PosiGen on its solar PV portfolio in Connecticut;

WHEREAS, PosiGen is now in the process of upsizing its BL Facility with Brookfield Asset Management ("Brookfield"), as explained in the memorandum to the Board dated January 23, 2024 (the "Board Memo");

WHEREAS, PosiGen's repayment performance on its existing obligations remains consistent and satisfactory;

NOW, therefore be it:

RESOLVED, that the Board authorizes the Green Bank to amend its existing 2nd lien facility as part of the BL Facility to allow for an upsized Green Bank position together with the first lien lender, Brookfield (itself upsizing its position and expanding its collateral base), as set forth in the Board Memo;

Subject to Changes and Deletions

RESOLVED, that the Board authorizes the Green Bank to advance up to \$24 million in 2nd lien financing associated with the New BL Facility, inclusive of third-party participation, as set forth in the Board Memo; and

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and negotiate and deliver all other documents and instruments as they shall deem necessary and desirable to affect the above-mentioned legal instruments.

Upon a motion made by Hank Webster and seconded by Robert Hotaling, the Board of Directors voted to approve Resolution 8. None opposed or abstained. Motion approved unanimously.

b. FuelCell Energy Derby – Transaction Approval

- David Beech summarized two FuelCell Energy projects in Derby, one is a 2.8 MW Shared Clean Energy Facility and the other is a 14 MW DEEP solicitation project with a total project cost of \$99 million, with the Green Bank in a Senior Term Loan of \$3 million and a Subordinate Term Loan of \$3.5 million, for a total exposure of \$6.5 million. He reviewed the term financing of the Senior and Subordinate loans, the loan structures, and risk mitigations,
 - John Harrity asked how much carbon is saved through these fuel cells over conventional power production. David Beech responded that it would be about half of the CO₂ emissions of the New England grid, so about half of the carbon savings for every kilowatt hour produced, leading to about 418,000 tonnes of CO₂ over the lifetime of the projects. As well, the projects are able to run on hydrogen. John Harrity asked if there were any plans to bring the projects to green hydrogen use. David Beech responded not at this point, but perhaps in the future if the cost of green hydrogen were more cost competitive and if there were any State policies requiring the use of green hydrogen.
- David Beech summarized the Subscriber benefits from the 2.8 MW SCEF project.

Resolution #9

WHEREAS, in accordance with (1) the statutory mandate of the Connecticut Green Bank (“Green Bank”) to foster the growth, development, and deployment of clean energy sources that serve end-use customers in the State of Connecticut, (2) the State’s Comprehensive Energy Strategy (“CES”) and Integrated Resources Plan (“IRP”), and (3) Green Bank’s Comprehensive Plan in reference to the CES and IRP, Green Bank continuously aims to develop financing tools to further drive private capital investment into clean energy projects;

WHEREAS, FuelCell Energy, Inc., of Danbury, Connecticut (“FCE”) has used previously committed funding (the “Bridgeport Loan”) from Green Bank to successfully develop a 15 megawatt fuel cell facility in Bridgeport, Connecticut (the “Bridgeport Project”), and FCE has operated and maintained the Bridgeport Project without material incident, is current on payments under this loan;

WHEREAS, FCE has used previously committed funding (the “Master Refinance Loan Projects”) from Green Bank to successfully refinance a portfolio of six fuel cell projects, with 68% of the nameplate capacity being Connecticut sited projects, and FCE has operated and maintained the Master Refinance Loan Projects without material incident, is current on payments under this loan;

Subject to Changes and Deletions

WHEREAS, FCE has used previously committed funding (the "Groton Loan Project") from Green Bank to successfully develop a 7.4 megawatt fuel cell project in Groton, Connecticut located on the U.S. Navy submarine base and supported by a power purchase agreement ("PPA") with the Connecticut Municipal Electric Energy Cooperative ("CMEEC"), and FCE has operated and maintained the Groton Loan Project without material incident, is current on payments under this loan ;

WHEREAS, FCE has requested financing in support of private capital from the Green Bank to develop a 2.8 megawatt fuel cell Shared Clean Energy Facility project (the "SCEF Project") and a 14 megawatt fuel cell Department of Energy and Environmental Protection solicitation project (the "DEEP" Project"), both in Derby, Connecticut (together the "Derby Projects");

WHEREAS, staff has considered the financing needs for the Derby Projects, collaboratively with the senior lender, Liberty Bank of Middletown Connecticut ("Liberty"), and have structured a term loan facility whereby the Green Bank would participate on an equivalent security basis with Liberty for a senior term loan (the "Senior Loan") and separately Green Bank would provide an additional loan (the "Subordinated Loan") subordinated to the Senior Loan;

WHEREAS, staff has considered the merits of the Derby Projects and the ability of FCE to construct, operate and maintain each facility, support the obligations under the Senior Loan and the Subordinated Loan (together being the "Credit Facility") throughout their respective terms, and as set forth in the due diligence memorandum dated January 23, 2024 (the "Board Memo"), has recommended this support be in the form of funding not to exceed \$3,000,000 in respect of the Senior Loan and funding not to exceed \$3,500,000 in respect of the Subordinated Loan, secured by all project assets, contracts and revenues as described in the Board Memo;

NOW, therefore be it:

RESOLVED, that the Green Bank Board of Directors (the "Board") hereby approves the Credit Facility in an amount not to exceed \$3,000,000 in respect of the Senior Loan and funding not to exceed \$3,500,000 in respect of the Subordinated Loan, as a strategic selection and award pursuant to Green Bank Operating Procedures Section XII; and

RESOLVED, that the President of the Green Bank and any other duly authorized officer is authorized to take appropriate actions to provide the Credit Facility to FCE (or a special purpose entity wholly-owned by FCE) in an amount not to exceed \$3,000,000 in respect of the Senior Loan and funding not to exceed \$3,500,000 in respect of the Subordinated Loan with terms and conditions consistent with the Board Memo, and as he or she shall deem to be in the interests of the Green Bank and the ratepayers no later than 180 days from the date of authorization by the Board; and

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents and instruments as they shall deem necessary and desirable to affect the above-mentioned Term Loan.

Upon a motion made by Robert Hotaling and seconded by Adrienne Houël, the Board of Directors voted to approve Resolution 9. None opposed or abstained. Motion approved unanimously.

c. IPC Loan Expansion – Transaction Approval

- Mariana Trief summarized the current arrangement of the two IPC Loan Facilities and the changes proposed to them, which is a request to enter into a new or amended construction loan and term loan facility in a total amount not to exceed \$15 million with changes to the total investment, interest rate, ability to draw on the Investment Tax Credit amount, and allowance for how ITC can be monetized.
 - Robert Hotaling asked what the utilization of the construction financing facility is. Marianna Trief responded that the total amount that has been utilized has been low but there is still the desire to keep the facility to allow IPC to draw on it for construction if needed, and it is a revolving facility. Robert Hotaling responded that the clarification was helpful and he understands.

Resolution #10

WHEREAS, the Connecticut Green Bank (“Green Bank”) Board of Directors approved at its meeting held on October 26, 2018 debt funding to finance third party ownership platforms like Inclusive Prosperity Capital (“IPC”);

WHEREAS, CEFIA Holdings LLC subsequently entered into a \$5,000,000 term loan facility with Inclusive Solar Manager CT I, LLC and \$5,000,000 construction facility with Inclusive Solar Company II, LLC (both, “Existing Loan Facilities”);

WHEREAS, given the rate of utilization of the Existing Loan Facilities and need to allow for flexibility to monetize the Investment Tax Credit (“ITC”), Green Bank staff proposes providing financing to new entities owned by IPC for the purpose of owning any solar projects it develops in the future;

NOW, therefore be it:

RESOLVED, that the Board approves staff’s request to enter into either a new or amended construction and term facility in an amount not to exceed \$15,000,000 (“New Loan Facilities”) with IPC entities, such amount being inclusive of amounts outstanding under the Existing Loan Facilities);

RESOLVED, that the President of the Green Bank; and any other duly authorized officer of the Green Bank, is authorized to execute and deliver, any contract or other legal instrument necessary to effect the modification of the Existing Loan transaction or to enter into additional documentation for the New Loan Facilities on such terms and conditions as are materially consistent with the Board Memo; and

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents as they shall deem necessary and desirable to affect the above-mentioned legal instrument.

Upon a motion made by Robert Hotaling and seconded by John Harrity, the Board of Directors voted to approve Resolution 10. None opposed or abstained. Motion approved unanimously.

d. Bausch Project – Restructuring Approval

- Desiree Miller summarized the three separate contracts with Bausch, for a Solar Lease, for Energy Efficiency C-PACE, and for Solar C-PACE, and their histories. For the Solar Lease there was underproduction and issues with repairs and diagnostics, so during that time Bausch withheld payments and has not paid since July 2021. She reviewed the proposed restructuring of the contracts which includes converting the Solar Lease into a PPA to bring it up to today's contractual standard, and one payment would be waived to compensate for the underproduction. For all three contracts, the payment terms would be extended equal to the number of payments not made and to waive late fees, which would cost the Green Bank \$70,000 over the three contracts' lifetimes. These measures are meant to compensate Bausch for underproduction, acknowledge their negative customer experience, and avoid litigation.
 - Robert Hotaling asked what the negative possibilities are. Desiree Miller stated that it is essentially litigation avoidance and risk mitigation. Brian Farnen added that it has been a difficult experience and the Green Bank is at the point where the settlement is accepted or the case goes to court.
 - John Harrity asked what the Trina module is if it extends beyond these installations. Desiree Miller responded Trina is a solar panel manufacturer and the voltage-to-ground issue is being seen on other systems with the same model of module, and so the Green Bank is going through the warranty process to address the issues. In this case, the underperformance was significant compared to others so the issue was identified here and is now being addressed for those other sites.
 - Robert Hotaling asked how systemic the issue with Trina and Chinese modules is and what the wider risk is. Desiree Miller responded it is not all Trina modules but is just the ones from this specific manufacturing run. It is about 5 to 6 sites and is a relatively small issue with them already being addressed. Bert Hunter stated the process is well known and it is not a major concern. It is not a systemic issue.

Resolution #11

WHEREAS, pursuant to Section 16a-40g of the Connecticut General Statutes (as amended, the "Act"), the Connecticut Green Bank ("Green Bank") established a commercial sustainable energy program for Connecticut, known as Commercial Property Assessed Clean Energy ("C-PACE");

WHEREAS, pursuant to the Act and its Bylaws, Green Bank entered into three certain Financing Agreement dated October 16, 2015, January 7, 2019 and April 24, 2019 ("Three Separate Contracts") with SBB Inc, the building owner of 115 Nod Road, Clinton CT, to finance the construction of certain clean energy measures through the Solar Lease and C-PACE programs.

WHEREAS, on June 13, 2018, the Green Bank Board of Directors ("Board") approved the Loan Loss Decision Framework and Process, set forth in that certain memo to the Board dated June 13, 2018 (the "Loss Process"), which established the process of dealing with provisional loss reserves, restructurings, and write-offs for assets on Green Bank's balance sheet; and

WHEREAS, in accordance with the Loss Process, Green Bank staff seeks the Green Bank Board approval to restructure the Three Separate Contracts by extending the duration, waiving late fees, waiving one Lease semi-annual payment and converting the Solar Lease into a Power Purchase Agreement, as more particularly described in the memorandum submitted to

Subject to Changes and Deletions

the Board of Directors dated January 19, 2024 (the "Memo").

NOW, therefore be it:

RESOLVED, that the President of the Green Bank and any other duly authorized officer of the Green Bank is authorized to execute and deliver the Three Restructured Contracts, with terms and conditions materially consistent with the Memo, as he or she shall deem to be in the interests of the Green Bank and the ratepayers no later than 120 days from the date of this Deployment Committee meeting; and

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents and instruments as they shall deem necessary and desirable to affect the above-mentioned legal instruments.
Submitted by: Bryan Garcia, President and CEO, Bert Hunter, EVP and CIO, Mackey Dykes, Vice President, Commercial and Industrial Programs, Brian Farnen, General Counsel and CLO.

Upon a motion made by John Harry and seconded by Robert Hotaling, the Board of Directors voted to approve Resolution 11. None opposed or abstained. Motion approved unanimously.

8. Legislative Process

- James Desantos summarized the upcoming regular Legislative session expectations at a high-level, including how it will interact with various legislations under the Energy & Technology Committee, Environment Committee, and some other sources.
 - John Harry asked if the legislation about heat pump would include heat pump loops, which is a newer technology. Brian Farnen responded that it may be considered a new technology and would likely not fall into this legislation.
 - John Harry commented that his representative, Rep Mark Anderson, seemed very interested in nuclear energy and wanted to let the Green Bank know. James Desantos added that Rep John Steinberg and Rep Pat Callahan also were recently discussing small, nuclear modular reactors and there may be a Task Force established to investigate it further. Brian Farnen stated that the Green Bank cannot finance nuclear projects.

9. Other Business

a. Residential Renewable Energy Solutions (Affordable Housing) – Annual Review

- Mackey Dykes summarized the history and work done towards scaling up solar deployment in the Affordable Multifamily sector including the definition expansion, tariff change impact, benefits and distributions, the IRA impact, Solar MAP expansion into affordable housing, proposed Green Bank Solar Lease, and an example through the New Haven Housing Authority.
 - John Harry asked if it is only for multifamily or if single family homeowners could benefit. Mackey Dykes responded that the statute defines it for multifamily, so 5 units or more, but single-family homes are eligible for RRES through the State or by going through PosiGen.

Bettina Bronisz left the meeting at 11:30 am.

b. Energy Storage Solutions – Annual Review

- Sergio Carrillo summarized the program progress for Energy Storage Solutions, which had massive uptake in the Non-Residential sector but extremely slow uptake for Residential customers, indicating very little interest in the Residential program but because of their size they can come online fairly quickly. In the Non-Residential sector, uptake is large with decent project approval but extremely slow project installation due to problems with the inter-connection queue. He reviewed the changes between Year 2 and Year 3 for the program.

10. Adjourn

Upon a motion made by John Harrity and seconded by Hank Webster, the Board of Directors meeting adjourned at 11:34 am.

Respectfully submitted,

Lonnie Reed, Chairperson

Memo

To: Connecticut Green Bank Board of Directors

From: Catherine Duncan, Associate Director, Financing Programs; Mackey Dykes, Vice President, Financing Programs;

CC: Bryan Garcia, President & CEO; Alex Kovtunenکو, Deputy General Counsel, Financing Programs; Brian Farnen, General Counsel and CLO

Date: March 8, 2024

Re: Extending timeline for closing certain C-PACE transactions

Summary

The Connecticut Green Bank Board of Directors (the “Board”) or the Connecticut Green Bank Deployment Committee (“DC”), as may be applicable, has previously approved and authorized C-PACE financing for the following properties:

Project Address	Approved & Extended	Expiration	Project Amount
20 Elm Street, Branford, CT 06405	4/21/2023	8/19/2023	\$1,003,474.00

The financing agreement(s) listed above (the “Financing Agreements”) were authorized to be consistent with the terms, conditions, and memorandums submitted to the Board/DC and made no later than 120 days from the date of Board/DC approval. Green Bank underwriting team refreshed the financial analysis given the amount of time that has passed since the initial project approval and the project continues to meet financial underwriting metrics. A copy of the refreshed approval memo is attached.

Due to delays in fulfilling pre-closing requirements, including tariff awards, the C-PACE program staff requests more time from the Board or DC, as may be applicable, to close and execute the Financing Agreements. The staff requests an additional 120 days from the date of this meeting to execute the Financing Agreements for the transaction(s) listed above.

Resolutions

WHEREAS, pursuant to Conn. Gen. Stat. 16a-40g (the “Act”) the Connecticut Green Bank (“Green Bank”) is directed to, amongst other things, establish a commercial sustainable

energy program for Connecticut, known as Commercial Property Assessed Clean Energy (“C-PACE”);

WHEREAS, pursuant to the C-PACE program, the Connecticut Green Bank Board of Directors (the “Board”) or the Connecticut Green Bank Deployment Committee (“DC”), as may be applicable, approved and authorized the President of the Green Bank to execute financing agreements for the C-PACE projects described in this Memo submitted to the Board on January 19, 2024 (the “Finance Agreements”);

WHEREAS, the Finance Agreements were authorized to be consistent with the terms, conditions, and memorandums submitted to the Board or DC, as may be applicable, and executed no later than 120 days from the date of such Board or DC approval; and

WHEREAS, due to delays in fulfilling pre-closing requirements the Green Bank will need more time to execute the Finance Agreements.

NOW, therefore be it:

RESOLVED, that the Board extends authorization of the Finance Agreements to no later than 120 days from March 15, 2024, and consistent in every other manner with the original Board or DC authorization for the Finance Agreement.

Submitted by: Bryan Garcia, President & CEO; Alex Kovtunenکو, Deputy General Counsel, Financing Programs; Brian Farnen, General Counsel and CLO

C-PACE Project Reapproval Memo

To: The Green Bank Board of Directors

From: David Beech, Senior Manager, Investments

CC: Bryan Garcia, CEO; Bert Hunter, EVP and CIO; Brian Farnen, General Counsel and CLO; Mackey Dykes, VP, Financing Programs; and Priyank Bhakta, Senior Manager, Underwriting

Date: March 8, 2024

Re: Underwriting Update for C-PACE Project at 20 Elm Street, Branford, CT

Summary

A C-PACE project for 20 Elm Street, Branford, Connecticut totaling \$1,003,474 was previously approved in April 2023 by the Connecticut Green Bank Board of Directors. The project was delayed after not winning an NRES tariff bid in the February 2023 NRES auction. The project later won a tariff in the August 2023 auction. Staff is requesting the Board of Directors to reapprove the transaction given the amount of time that has passed since the initial approval. As highlighted in the table below, the project continues to meet financial underwriting metrics since initial approval in April 2023. A copy of the original approval memo is attached as an Appendix.

Proposed Changes	Original Approval (April 2023)	Reapproval (March 2024)
Solar PV C-Pace Project	\$1,003,474	No Change
Term	20 Years	No Change
Interest Rate	5.75%	No Change
Co-Borrower	Cherry Hill Glass Company, INC	No Change
S.I.R	1.74x	No Change
Average DSCR (PropCo / OpCo)		
Annual C-PACE Assessment	\$85,096	No Change
Lien-to-Value		No Change
Loan-to-Value		

The property at 20 Elm Street, Branford, CT (the “Property”) is owned by Elm Harbor Realty LLC (the “Company”). The property is comprised of two commercial buildings, and is solely occupied by Cherry Hill Glass Company, INC (the “Operating Company”). The Operating Company manufactures and designs structural glass products for large corporate and education customers and has been in business since 1992. Both the Company and the Operating Company are owned by Kevin O’Neill (the “Owner”). One of the buildings on the Property houses the Operating Company’s corporate offices and the other is a glass manufacturing facility.



[REDACTED]

[REDACTED]

Operating Company Financials:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

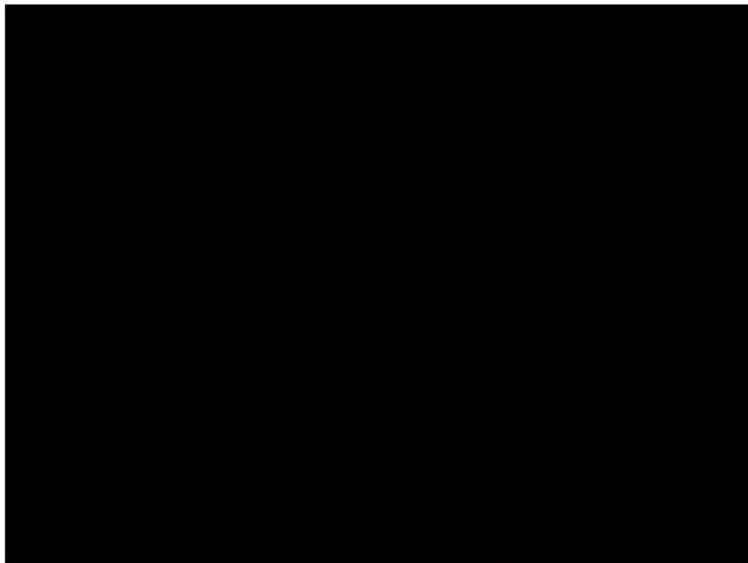
[REDACTED]

[REDACTED]

20 Elm Street
C-PACE Project in Branford, CT

Diligence Memo

April 21, 2023



Document Purpose: This document contains background information and due diligence on the 20 Elm Street property, owned by Elm Harbor Realty LLC in Branford, CT. This information is provided to the Connecticut Green Bank officers, senior staff and the Board of Directors for the purposes of reviewing and approving recommendations made by staff of the Connecticut Green Bank. In some cases, this package may contain among other things, trade secrets, and commercial or financial information given to the Green Bank in confidence and should be excluded under C.G.S. §1-210(b) and §16-245n(D) from any public discourse under the Connecticut Freedom of Information Act. If such information is included in this package, it will be noted as confidential.

20 Elm Street: A C-PACE Project in Branford, CT

Address	20 Elm Street, Branford, CT 06405			
Owner	Elm Harbor Realty LLC			
Proposed Assessment	\$1,003,474.00			
Term (years)	20			
Term Remaining (months)	Pending construction completion			
Annual Interest Rate	5.75%			
Annual C-PACE Assessment	\$85,096.08			
Savings-to-Investment Ratio	1.74			
Average DSCR	[REDACTED]			
Lien-to-Value	[REDACTED]			
Loan-to-Value	[REDACTED]			
Projected Energy Savings (mmBTU)		EE	RE	Total
	Per year		1,337	1,337
	Over EUL		31,483	31,483
Estimated Cost Savings (incl. ZRECs and tax benefits)	Per year		\$97,204.00	\$97,204.00
	Over EUL		\$2,916,105.00	\$2,916,105.00
Objective Function	32.3 kBTU / ratepayer dollar at risk			
Location	Branford, CT			
Type of Building	Industrial			
Year of Build	2002			
Building Size (sf)	61,127			
Year Acquired by Owner	9/17/2003			
As-Complete Appraised Value	[REDACTED]			
Mortgage Lender Consent	[REDACTED]			
Proposed Project Description	330.2 kW DC PV system - 2 roofs			
Est. Date of Construction Completion	Pending closing			
Current Status	Awaiting Deployment Committee Approval			
Energy Contractor	[REDACTED]			



Memo

To: Board of Directors of the Connecticut Green Bank

From: Bryan Garcia (President and CEO)

Cc: Jane Murphy (EVP of Finance and Administration), Eric Shrago (VP of Operations), and Dan Smith (Associate Director of Financial Reporting)

Date: February 20, 2024

Re: Q2 of FY24 Financial Package (Abridged)

Overview

Following on the recommendation of the Chair¹ of and discussions with the Audit, Compliance, and Governance Committee ("ACG Committee")² and Board of Directors,³ we are continuing to provide an abridged quarterly financial package for the Connecticut Green Bank ("Green Bank") for the purposes of helping members of the board communicate four key messages consistent with its Comprehensive Plan – (1) making an impact,⁴ (2) mobilizing private investment,⁵ (3) achieving sustainability,⁶ and (4) monitoring state budget allocation. Each of these areas is elaborated on further below with an explanation of what transpired at a "high level" within that area in each respective quarter.

Making an Impact – Board Member Dashboards

Given a primary goal of the Green Bank is to continuously deliver benefits to our communities, and need to communicate that impact to our stakeholders, we have created dashboards for each member of the board that shows the organization's impact to your community or is most relevant to your appointer. For example, with Rob Hotaling's role at DECD and his interests in state-level impact, we have provided a link to the impact metrics the Green Bank has made for the state:

"The Green Bank has enabled \$2,506,042,378 of investment in clean energy in Connecticut helping 70,617 families and businesses reduce the burden of energy costs while creating 27,104 job years in our communities and avoiding 11,208,296 tons of CO2 emissions causing global climate change."⁷

¹ Tom Flynn

² May 17, 2022 ACG Committee meeting – [click here](#)

³ June 24, 2022 BOD meeting – [click here](#)

⁴ Goal 2 – to strengthen Connecticut's communities, especially vulnerable communities, by making the benefits of the green economy inclusive and accessible to all individuals, families, and businesses.

⁵ Goal 1 – to leverage limited public resources to scale-up and mobilize private capital investment in the green economy of Connecticut.

⁶ Goal 3 – to pursue investment strategies that advance market transformation in green investing while supporting the organization's pursuit of financial sustainability.

⁷ February 15, 2024

Given our goal to ensure that “no less than 40 percent of investment and benefits are directed to vulnerable communities by 2025,” you will see that we also include those breakdowns.

Mobilizing Private Investment – Balance Sheet

Given a primary goal of the Green Bank is to invest public funds wisely to mobilize multiples of private capital investment, the strength of the balance sheet (e.g., total assets, net position) is important to attracting private partners.

There is an increase in total assets in Q2 from \$262.4 million to \$263.9 million (i.e., increase of \$1.5 million from Q1), with specific growth in investments in program loans of \$8.9 million during the quarter. The total liabilities decreased in Q2 from \$118.3 million to \$113.2 million (i.e., decrease of \$5.1 million from Q1). In Q2 of FY24, public revenues were invested in 138 loans closed totaling \$16.2 million.

Achieving Sustainability – Organizational P&L

Given a primary goal of the Green Bank is to pursue organizational sustainability, the realization of revenues (i.e., specifically earned revenues) and management of operating expenses (i.e., specifically personnel-related operating expenses) is important.

The key observation from Q2 of FY24 is that earned revenues (i.e., \$13.6 million⁸) are not only ahead of budget, but continue to exceed personnel related operating expenses (i.e., \$6.4 million), as well as total operating expenses (i.e., \$10.9 million). These are continuing trends as the Green Bank makes steady progress towards organizational sustainability as planned in FY18.⁹

Monitoring State Budget Allocation

And lastly, to track the impact of the long-term structural budget deficit issues with respect to pension and healthcare liabilities, the Green Bank tracks the State of Connecticut Comptroller Employer SERS Rate (i.e., 59.6%) to a hypothetical market rate (i.e., 35.0%) to discern the amount the Green Bank overpays for such benefits causing increased pressure on organizational sustainability.

The key observation from Q2 of FY24 is that the Green Bank paid the State of Connecticut nearly \$1.4 million more than it would have paid in a competitive environment for pension and healthcare benefits for its employees. This additional payment slows down progress of the Green Bank towards organizational sustainability.

Conclusion

For those interested in further details beyond the “Abridged” version of the Q2 of FY24 financial package, see the “Comprehensive” version attached.

⁸ Less the \$0.6 MM in Energy System Sales noted in the statement footnotes

⁹ December 15, 2017 BOD meeting – [click here](#)



Connecticut Green Bank

December 2023 Quarterly Financial Package
(Abridged)

Connecticut Green Bank
December 2023 Financial Package
Table of Contents

<u>Connecticut Green Bank:</u>	Page
1. Impact in Your Community - Making an Impact.....	1
2. Mobilizing Private Investment - Balance Sheet.....	2-3
3. Achieving Sustainability - Organizational P&L.....	4-5
4. Monitoring State Budget Allocation.....	6


Connecticut Green Bank

Making an Impact

Board Member Dashboard


So that you can best articulate our ongoing impact to the Green Bank's stakeholders, we have created the below linked dashboards that show the organization's impact to your community or is most relevant to your appointer.

<https://www.ctgreenbank.com/boardimpact/>




**Welcome to the Connecticut Green Bank KPI
(Key Performance Indicator)**
This dashboard shows our impact in various geographical areas.


HOME SOLUTIONS




INVESTMENT SOLUTIONS



BUILDING SOLUTIONS



CONTRACTOR SOLUTIONS



Click to Navigate to a Page

Home
State of CT
Council of Governments (COG)
Adrienne Farrar Houel - Bridgeport
Rob Hotaling - State of CT
Brenda Watson - Bloomfield
Brenda Watson - House District 1
Dominick Grant - Middlefield
Joanna Wozniak-Brown - State of CT
John Harritty - East Hartland
Lonnie Reed - Branford
Matt Ranelli - New Haven
Matt Ranelli - Senate District 11
Bettina Bronisz - State of CT
Tom Flynn - Fairfield
Tom Flynn - Senate District 21
Hank Webster - State of CT

When you access the site, you will see the different dashboards on the righthand side. Please click on the one you wish to view. The dashboards default to our performance and impact since inception but you may filter them by calendar or fiscal year in the top right. The top has a summary statement of the performance and impact for that geographic area. The bottom tables are further cross sections of this performance for vulnerable communities, Community Reinvestment Act Eligible Projects, and projects in Distressed Communities.

Please forward me your feedback and suggestions at eric.shrago@ctgreenbank.com.

CGB-Primary Government Mobilizing Private Investment Balance Sheet

		CGB-Primary Government As of 12/31/2023	CGB-Primary Government As of 06/30/2023	CGB-Primary Government YTD \$ Change
Assets				
Current Assets				
Cash and Cash Equivalents (1)	{a}	27,416,251	37,225,614	(9,809,363)
Due From Component Units (SL2/SL3/CSS)	{b}	54,511,528	59,088,724	(4,577,196)
Other Current Assets	{c}	8,561,203	9,614,984	(1,053,781)
Total Current Assets		90,488,982	105,929,322	(15,440,340)
Noncurrent Assets				
Program Loans/Notes Receivable and Other Investments	{d}	136,802,482	116,497,356	20,305,126
Capital Assets, net	{e}	14,862,246	15,164,675	(302,429)
Restricted Assets (1)	{f}	21,761,064	19,243,259	2,517,805
Total Noncurrent Assets		173,425,792	150,905,290	22,520,502
Total Assets		263,914,774	256,834,612	7,080,162
Liabilities				
Current Liabilities	{g}	13,573,552	14,068,418	(494,866)
Noncurrent Liabilities				
Bonds Payable-SHREC ABS 1	{h}	18,976,073	19,899,482	(923,409)
Bonds Payable-Green Liberty Bonds	{i}	34,353,000	37,163,000	(2,810,000)
Total RSIP Bonds Payable		53,329,073	57,062,482	(3,733,409)
Bonds Payable-CREBs	{j}	8,566,962	9,272,525	(705,563)
Notes Payable-CGB (GLN)		0	2,742,250	(2,742,250)
Lease Liability	{k}	2,088,417	2,088,417	0
Pension & OPEB Liabilities	{l}	35,674,586	35,674,586	0
Total Noncurrent Liabilities		99,659,038	106,840,260	(7,181,222)
Total Liabilities		113,232,590	120,908,678	(7,676,088)
Deferred Inflows of Resources	{m}	3,981,219	3,981,219	0
Total Net Position		146,700,965	131,944,715	14,756,250

(1) The \$27.4M unrestricted balance at 12/31/2023 was mostly due to the issuance of two series of Special Capital Reserve Fund (SCRF) backed Green Liberty Bonds in FY21. The purpose of these issuances was to refinance expenditures of the Green Bank related to its Residential Solar Incentive Program (RSIP) per CGS 16-245ff. As of 12/31/23, unfunded and committed Solar PV incentives related to the RSIP program totaled approximately \$15.9M, to be paid to third parties over the next five fiscal years using the proceeds from these two bond issuances. Additionally, \$10.3M of RGGI funds are committed to Class 1 Renewable projects under the Regional Greenhouse Gas Initiative and not yet spent as of 12/31/23.

	Actual	Adj for RSIP/RGGI Commitments	Total
Cash - Unrestricted	\$ 27,416,251	\$ (26,200,000)	\$ 1,216,251
Cash - Restricted	21,761,064	26,200,000	47,961,064
Total Cash	\$ 49,177,315	\$ -	\$ 49,177,315

* Additionally, Pursuant to CGS 16-245n(h), the State cannot impair the Green Bank's rights or obligations contained in contracts it has with third parties unless the State otherwise makes the third party whole pursuant to the Green Bank's unique non-impairment clause. As such, please contact the Green Bank before any material funding reductions or sweeps to ensure this non-impairment clause is not triggered. This could impact the Green Bank's or the State's credit and bond rating, if applicable.

Appendix

- {a} Cash and Cash Equivalents includes all unrestricted cash accounts for the CT Green Bank and all entities included within the Primary Government for financial reporting purposes.
- {b} Due from Component Units represents the balance due to CGB's primary government through intercompany receivable accounts, the bulk of which relates to investment made in the CTSL2 and CTSL3 programs via CEFIA Solar Services Inc.
- {c} Other Current Assets are made up of Accounts Receivable, Utility Remittance Receivable, Interest Receivable, Other Receivables and Prepaid Expenses
- {d} Program Loans/Notes Receivable and Other Investments include the principal balances of all outstanding Program Loans, SBEA Notes, Solar Lease 1 Notes as well as some additional smaller investments made.
- {e} Capital Assets, net represent the cost of all capital assets that are owned by entities of the Primary Government, including Solar PV systems, furniture and equipment, leasehold improvements and computer hardware.
- {f} Restricted Assets includes all restricted cash accounts such as loan loss reserves, Special Capital Reserve Funds (SCRFs) related to the bonds outstanding and other contractually restricted cash accounts
- {g} Current Liabilities includes accounts payable and accrued expenses (including accrued incentives), accrued interest, and custodial liabilities
- {h} SHREC ABS 1 Bonds Payable represent the outstanding principal remaining on \$38.6M in bonds issued in March 2019. These bonds were collateralized by revenue from sales of SHRECs for two tranches of approx. 14,000 residential Solar PV systems to two CT utilities. These mature in 2033.
- {i} Green Liberty bonds represent the outstanding principal remaining on the \$16.8M Series 2020 and \$24.8M Series 2021 Green Liberty Bonds, collateralized by revenues from sales of SHRECs related to Tranche 3(Series 2020) and Tranche 4 (Series 2021). These mature in 2037.
- {j} Bonds Payable- CREBs are two separate Clean Energy Renewable Energy bonds issued in February 2017 for just under \$3.0M(Meriden Hydro project) and December 2017 for \$9.1M (CSCUs project). These mature in 2038.
- {k} Lease liability represents the amount owed on the two leases of office space (Hartford & Stamford). The amount is determined per GASB 87, which included a present value of payments expected to be made during the lease term at the onset of the lease (both of which include 10.5 year terms beginning in Fiscal year 2021).
- {l} Pension and OPEB Liabilities represent the actuarially determined Pension and OPEB liabilities allocated to the CT Green Bank out of the SERS retirement plans. This number is uncontrollable by the Green Bank, with the amount to be booked provided by the actuarial valuation on an annual basis.
- {m} Deferred inflows of resources are a governmental accounting function which represents an acquisition of net position that applies to future periods and will not be recognized until that time. Amounts included here are functions of the Pension and OPEB actuarial valuations and are updated on an annual basis.

**CGB-Primary Government
Achieving Sustainability
Organizational P&L**

		Consolidated 7/1/2023 Through 12/31/2023			
		Actual	Budget	Variance	Prior Year Actual Variance
Total Revenues					
Public Revenues	{a}	17,347,803	17,947,879	(600,076)	16,750,044 597,759
Earned Revenues (**)	{b}	13,622,761	11,626,786	1,995,975	11,409,362 2,213,399
Total Revenues		30,970,564	29,574,665	1,395,899	28,159,406 2,811,158
Total Operating Expenses					
Personnel Related Operating Expenses	{c}	6,427,285	7,834,540	(1,407,255)	5,413,005 1,014,280
Non-Personnel Related Operating Expenses (**)	{d}	4,481,073	6,730,468	(2,249,395)	5,020,275 (539,202)
Total Operating Expenses		10,908,358	14,565,008	(3,656,650)	10,433,280 475,078
Margin (\$) - All Revenues		20,062,206	15,009,657		17,726,126
Margin (%) - All Revenues		64.8%	50.8%		62.9%
 Margin (\$) - Pre Public Revenues		 2,714,403	 (2,938,222)		 976,082
Margin (%) - Pre Public Revenues		8.8%	-9.9%		3.5%
 Total Non-Operating Expenses					
Program Incentives and Grants	{e}	3,644,451	4,390,380	(745,929)	3,731,575 (87,124)
Non-Operating Expenses	{f}	1,661,505	1,879,983	(218,478)	2,218,175 (556,670)
Total Non-Operating Expenses		5,305,956	6,270,363	(964,407)	5,949,750 (643,794)
Total Expenses		16,214,314	20,835,371	(4,621,057)	16,383,030 (168,716)
Net Margin (\$) - All Revenues (*)		14,756,250	8,739,294	6,016,956	11,776,376 2,979,874
Net Margin (%) - All Revenues		47.6%	29.5%		41.8%

* Net Margin represents the Operating Results of the Green Bank before impact of State Pension and OPEB allocation of costs based on the annual actuarial valuation performed of the benefit plans. As such, the benefit/expense related to these actuarial determined amounts are not included in this presentation. See Detailed Quarterly and Annual ACFR for more details on these amounts.

** The Earned revenues and non-personnel related operating expenses both include \$0.6M in Energy System Sales that occurred in the current period, where the revenues and cost of sales net to zero. These items both have a budget of \$0. The prior year actuals include \$0.3M in similar items in the first period of the fiscal year. See Detailed Quarterly report for more details on these amounts.

Appendix

- {a} Public Revenues include system benefit charges from electric ratepayers and RGGI allowance proceeds.
- {b} Earned Revenues include interest income, REC sales, PPA income and other revenues earned by the Primary Government.
- {c} Personnel Related Operating Expenses include Salaries, benefits and payroll taxes.
- {d} Non-Personnel Related Operating Expenses include all other operating expenses not related to personnel, including O&M, tech support costs, IPC human capital, marketing, consulting, rent, insurance, IT and other office expenses.
- {e} Program Incentives and Grants are included in Non-Operating Expenses, and relate mostly to PBI & Battery Storage incentives paid out.
- {f} Non-Operating Expenses include Interest expense (mostly on bonds), loan loss reserve expense, and Interest Rate Buydowns using ARRA funds.

Connecticut Green Bank
Monitoring State Benefit Allocation
September 30, 2023

	FYTD 12/31/23 Actual	FYE 6/30/23 Actual	FYE 6/30/22 Actual	FYE 6/30/21 Actual	FYE 6/30/20 Actual	FYE 6/30/19 Actual
<u>Compensation:</u>	\$ 3,549,543	\$ 5,902,859	\$ 4,813,293	\$ 4,476,214	\$ 3,931,596	\$ 4,204,855
<u>Employee Benefits:</u>						
State Retirement Plan Contributions	\$ 2,168,784	\$ 3,995,132	\$ 3,317,054	\$ 2,903,780	\$ 2,411,864	\$ 2,869,823
Medical Dental Rx Premiums	459,232	791,620	610,627	625,480	553,908	545,779
Total Employee Benefits	2,628,016	4,786,752	3,927,681	3,529,260	2,965,772	3,415,602
Total Compensation and Benefits	\$ 6,177,559	\$ 10,689,611	\$ 8,740,974	\$ 8,005,474	\$ 6,897,368	\$ 7,620,457
* Retirement Plan Contributions as a % of Salary	61.10%	67.68%	68.91%	64.87%	61.35%	68.25%
Medical Dental Rx Premiums as a % of Salary	12.94%	13.41%	12.69%	13.97%	14.09%	12.98%
Total Benefits and Taxes as a % of Salary	74.04%	81.09%	81.60%	78.84%	75.43%	81.23%
** State of CT Comptroller Employer SERS Rate	59.57%	67.40%	65.90%	64.14%	59.99%	64.30%
* Retirement Plan Contributions include Pension & OPEB, included Employer contributions to the Tier IV Defined Contribution for associated employees in that plan.						
** State of CT Comptroller Employer SERS Rate provided via the annual "Fringe Benefit Recover Rate" memo issued 7/1 of each year by the State Comptroller.						
Total Benefits Cost @ Hypothetical Benefits Rate	35% 1,242,340	2,066,001	1,684,653	1,566,675	1,376,059	1,471,699
Actual Total Compensation and Benefits	6,177,559	10,689,611	8,740,974	8,005,474	6,897,368	7,620,457
Less Total Compensation and Benefits @ Hypothetical Rate	(4,791,883)	(7,968,860)	(6,497,946)	(6,042,889)	(5,307,655)	(5,676,554)
Incremental HR cost due to State Benefits Charge	1,385,676	2,720,751	2,243,028	1,962,585	1,589,713	1,943,903



Connecticut Green Bank

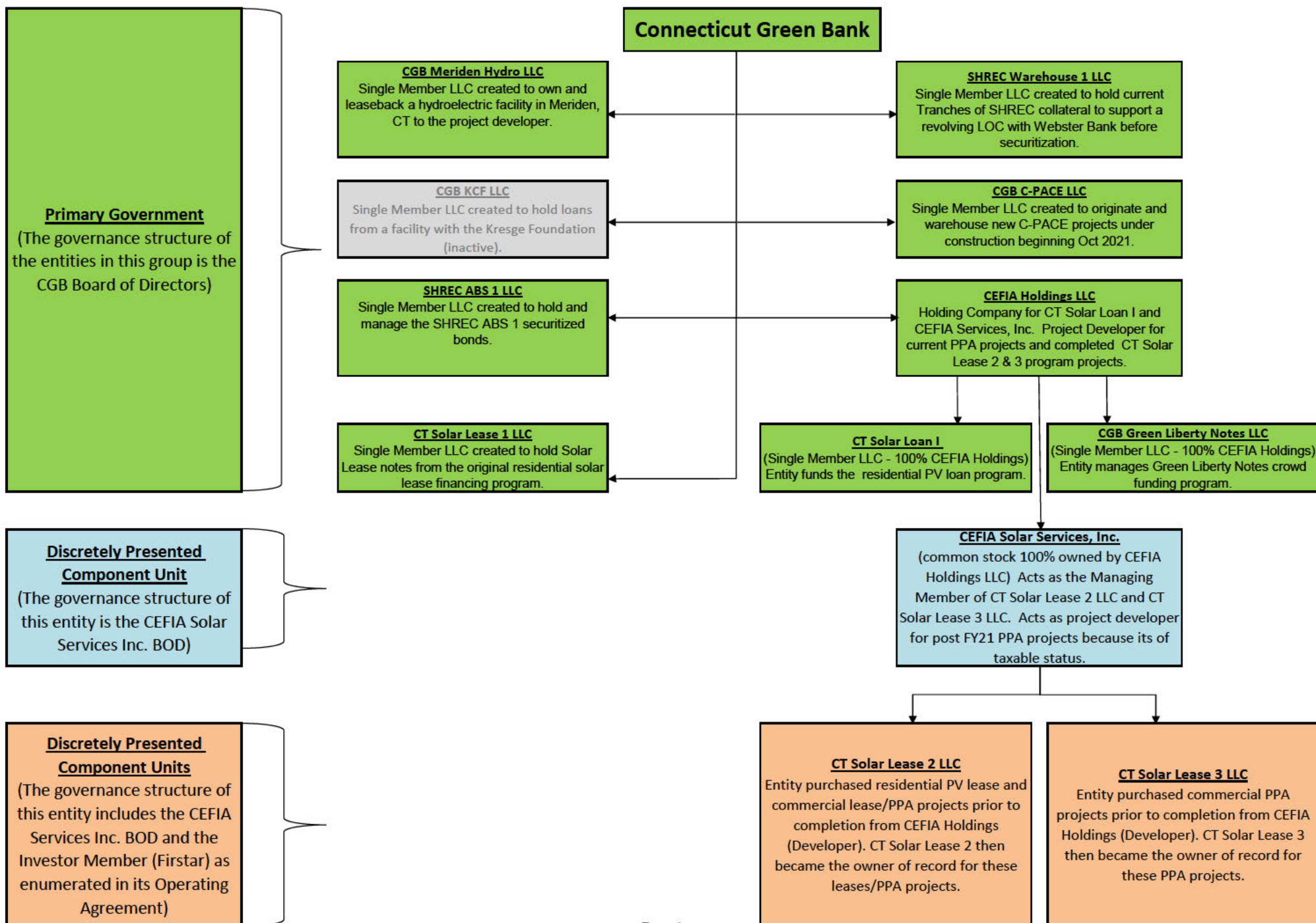
December 2023 Quarterly Financial Package
(Comprehensive)

Connecticut Green Bank
December 2023 Financial Package
Table of Contents

<u>Connecticut Green Bank:</u>	Page
1. Entity Roadmap.....	1
1a. Executive Summary.....	2
2. CGB (Primary Government) Balance Sheet.....	3
3. CGB (Primary Government) Statement of Revenues and Expenditures.....	4
4. CGB (Primary Government) Budget to Actual Report (By Financing, Incentive, and Environmental Infrastructure Programs).....	5
5. CGB Analysis of Compensation and Benefits.....	6
5a. CGB Historical Analysis of Compensation and Benefits.....	7
6. CGB Summary of Unfunded Commitments.....	8
7. CGB Summary of Loan Guarantees.....	9
8. CGB Program Loans, Notes and Loan Loss Reserve Analysis.....	10
<u>Consolidated Financial Statements:</u>	
9. Consolidated Balance Sheet.....	11-12
10. Consolidated Statement of Revenues and Expenditures.....	13-14
11. Consolidated Statement of Cash Flows.....	15-16

The Connecticut Green Bank and its Component Units (as of 12/31/2023)

See the Annual Comprehensive Financial Report of the Connecticut Green Bank for more details.



Connecticut Green Bank
Executive Summary
December 2023

Overview

This financial package contains financial information for the Connecticut Green Bank (CGB) for Fiscal Year ending June 30, 2024 with comparisons to June 30, 2023 for balance sheet, comparisons to the same period ended December 31, 2022 for the statement of revenue and expenditures, and versus Budget for the Statement of Revenue and Expenditures. Schedules of compensation and benefits, unfunded commitments, loan guarantees, and program loans, notes and loan loss reserves are also presented. See Consolidated Balance Sheet, Consolidated Statement of Revenues and Expenditures and Consolidated Statement of Cash Flows for more details on the entities that make up the Primary Government for purposes of this Reporting.

Balance Sheet - Primary Government

- ✓ CGB's current assets decreased by \$20.6M compared to June 2023, which is mostly a function of timing of reporting current portions of loans/notes receivable (done for ACFR purposes annually at fiscal year end). Taking out the \$9.7M decrease in current assets related to this, the remaining current assets decreased \$10.9M in the two quarters of FY24. The largest contributing factor to the decrease is due to cash and cash equivalents decreasing \$9.8M. The cash decrease is mostly due to approx. \$29.9M in investment disbursements year to date outpacing the cash received from operating income and repayments of program loans receivable in the period.
- ✓ Noncurrent assets increased \$27.6M compared to June 30, 2023, due in part to the aforementioned reclassification of \$9.7M done for fiscal year end, as well as the approx. \$29.9M of program loan investment disbursements in the quarter outpacing the approx. \$9.7M received on program loans outstanding previously discussed.
- ✓ As of December 31, 2023, 86.5% of accounts receivable is aged 30 days or lower, and 0% of accounts receivable aged 60+ days - showing no significant collectability issues on accounts receivable as the primary driver of receivables being aged 30+ days were receivables amounting to \$0.4M from Posigen which are collected on a quarterly basis. Utility Remittance receivables are all aged under 30 days, and Other Receivables represent disbursements made for development of projects and don't have specific aging/invoice due dates at any given time.
- ✓ Liabilities have decreased \$7.7M compared to June 30, 2023, mostly attributable to approx. \$5.2M in payments made on debt and \$2.7M decrease in due to component units at December 31, 2023 compared to June 30, 2023, which was an ACFR reclassification for reporting purposes at fiscal year end.
- ✓ Net Position for the Primary Government has increased \$14.8M due to the period's income as seen on Statement of Revenues and Expenditures below.

Statement of Revenues and Expenditures vs. Prior Year - Primary Government

Change in Net Position for FY24 was approximately \$14.8M of Income.

- ✓ Operating Revenues increased \$2.7M from the same period of the prior year and Operating expenses increased \$0.4M from the same period of the prior year, resulting in Operating income increasing \$2.3M from the same period of the prior year. The revenue increase is mostly due to the \$0.9M increase in the RGGI revenues and a \$0.8M increase in interest income on program loans and notes receivable.
- ✓ Operating Expenses had increases of \$0.3M in Cost of Goods Sold-Energy Systems and \$0.4M in program administrative expenses compared to the same period of the prior year, respectively.
- ✓ Nonoperating Revenues (expenses) showed an decrease in expenses of \$0.5M to expenses of \$0.3M compared to the same period of the prior year. This decrease is mostly due to a decrease in interest expense on long term debt of \$0.2M for the same period year over year.

Statement of Revenues and Expenditures vs. Budget - Primary Government

Fiscal Year to Date Net Revenues Over Expenses of \$14.8M was \$6.0M better than budget for the first six months of FY24.

- ✓ Revenues were \$1.4M higher than budget mostly due to \$0.7M in sales of energy systems that were not budgeted for, \$0.6M higher interest income than budget, and \$0.5M higher REC sales than budget. Slightly offset by RGGI Revenues being \$0.6M lower than budget.
- ✓ Operating Expenses were \$3.6M under budget; however if we exclude the Costs of Sales of Energy Systems and its \$0.7M variance over a budget of zero, the remaining Operating expenses were \$4.3M below budget. The biggest factors to this were \$1.4M lower compensation and benefits, \$1.5M lower program development and administration expenses, and \$0.4M lower for each of marketing and EM&V expenses. See breakout of budget to actual for financing programs, incentive programs and environmental infrastructure programs for more details.
- ✓ Program incentives and grants were approx. \$0.7M lower than the recast budget for the fiscal year due ESS incentives falling \$0.6M below budget for the period.
- ✓ Non-operating expenses were approximately \$0.2M under budget, driven mostly by \$0.2M lower ARRA interest rate buydowns than budget in the period.

Unfunded Commitments

CGB has a total of \$78.1M in unfunded commitments at December 31, 2023, a decrease of \$12.8M from \$90.9M of unfunded commitments as of June 30, 2023. The decrease is mostly due to the significant amount of investment made in the first six months of the fiscal year (\$29.9M in investments - see CGB program loans, notes and loan loss reserve analysis page for more details). Offsetting this investment level is the approval of new projects as well as the expiration of board approvals of some CPACE projects since year end (each project as 120 days to close from Board approval to remain as unfunded commitments).

CGB-Primary Government Balance Sheet

	CGB-Primary Government 12/31/2023	CGB-Primary Government 6/30/2023	CGB-Primary Government \$ Change
Assets			
Current Assets			
Cash and Cash Equivalents	27,416,251	37,225,614	(9,809,363)
Accounts Receivable	2,659,205	4,135,781	(1,476,576)
Utility Remittance Receivable	2,013,298	1,852,329	160,969
Interest Receivable	1,821,480	1,621,350	200,130
Other Receivables	1,356,844	1,245,627	111,217
Prepaid Expenses and Other Assets	710,376	759,895	(49,519)
Current Portion of Solar Lease Notes	0	1,019,733	(1,019,733)
Current Portion of SBEA Promissory Notes	0	1,448,595	(1,448,595)
Current Portion of Program Loans, Net of Reserves	0	7,236,384	(7,236,384)
Total Current Assets	35,977,454	56,545,308	(20,567,854)
Noncurrent Assets			
Restricted Assets	21,761,064	19,243,259	2,517,805
Investments	939,394	852,427	86,967
Program Loans, net of reserves	130,019,922	102,369,925	27,649,997
Solar Lease I Promissory Notes, net of reserves	1,586,832	1,078,443	508,389
Renewable Energy Certificates	174,306	174,306	0
SBEA Promissory Notes, net of reserves	4,081,927	2,317,443	1,764,484
Due From Component Units	54,511,528	59,088,724	(4,577,196)
Investment in Component Units	100	100	0
Capital Assets, net	14,862,247	15,164,675	(302,428)
Total Noncurrent Assets	227,937,320	200,289,302	27,648,018
Total Assets	263,914,774	256,834,610	7,080,164
Deferred Outflows of Resources			
Deferred Amount for Pensions	7,301,972	7,301,972	0
Deferred Amount for OPEB	6,353,565	6,353,565	0
Total Deferred Outflows of Resources	\$ 13,655,537	\$ 13,655,537	\$ 0
Liabilities			
Current Liabilities			
Accounts Payable	92,853	879,346	(786,493)
Accrued Payroll and Related Liabilities	1,175,855	1,175,855	0
Accrued Expenses	10,043,655	9,646,769	396,886
Notes Payable- Green Liberty Notes	1,200,000	1,000,000	200,000
Current Maturities of Long-Term Debt	224,825	5,426,387	(5,201,562)
Custodial Liability	796,281	1,074,803	(278,522)
Deferred Revenue	36,578	66,818	(30,240)
Total Current Liabilities	13,570,047	19,269,978	(5,699,931)
Noncurrent Liabilities			
Due to Component Units	3,505	2,742,250	(2,738,745)
Bonds Payable-SHREC ABS 1	18,976,073	18,213,482	762,591
Bonds Payable-CREBs	8,566,962	8,566,963	(1)
Bonds Payable-Green Liberty Bonds	34,353,000	34,353,000	0
Lease Liability, less current maturities	2,088,417	2,088,417	0
Pension Liability	17,632,888	17,632,888	0
OPEB Liability	18,041,698	18,041,698	0
Total Noncurrent Liabilities	99,662,543	101,638,698	(1,976,155)
Total Liabilities	113,232,590	120,908,676	(7,676,086)
Deferred Inflows of Resources			
Deferred Pension Inflow Liability	6,176,916	6,176,916	0
Deferred OPEB Inflow Liability	11,459,840	11,459,840	0
Total Deferred Inflows of Resources	17,636,756	17,636,756	0
Net Position			
Net Investment in Capital Assets	14,862,246	15,164,675	(302,429)
Restricted-Energy Programs	21,761,064	19,243,260	2,517,804
Unrestricted Net Position	110,077,655	97,536,780	12,540,875
Total Net Position	146,700,965	131,944,715	14,756,250

CGB-Primary Government Statement of Revenues and Expenditures

	CGB-Primary Government Fiscal YTD 12/31/2023	CGB-Primary Government Fiscal YTD 12/31/2022	CGB-Primary Government \$ Change
Change in Net Position			
Operating Income (Loss)			
Operating Revenues			
Utility Remittances	12,722,877	13,039,756	(316,879)
Interest Income-Promissory Notes	4,047,643	3,266,935	780,708
RGGI Auction Proceeds	4,624,926	3,710,289	914,637
Energy System Sales	665,419	335,622	329,797
REC Sales	7,244,841	6,793,320	451,521
Other Income	997,016	437,751	559,265
Total Operating Revenues	30,302,722	27,583,673	2,719,049
Operating Expenses			
Cost of Goods Sold-Energy Systems	665,419	335,623	329,796
Provision for Loan Losses	646,002	854,441	(208,439)
Grants and Incentive Payments	3,657,452	3,894,420	(236,968)
Program Administration Expenses	7,396,368	6,957,282	439,086
General and Administrative Expenses	2,894,492	2,760,851	133,641
Total Operating Expenses	15,259,733	14,802,617	457,116
Operating Income (Loss)	15,042,989	12,781,056	2,261,933
Nonoperating Revenue (Expenses)			
Interest Income-Short Term Cash Deposits	671,073	591,372	79,701
Interest Income-Component Units	36,778	35,887	891
Interest Expense-ST Debt	(25,748)	(5,833)	(19,915)
Interest Expense-LT Debt	(958,233)	(1,126,553)	168,320
Debt Issuance Costs	(5,000)	(5,000)	-
Net change in fair value of investments	(5,608)	(1,014)	(4,594)
Total Nonoperating Revenue (Expenses)	(286,738)	(511,141)	224,403
Change in Net Position	14,756,251	12,269,915	2,486,336

**CT Green Bank Primary Government
Budget to Actual Financial Analysis
December 2023**

	CGB Primary Government 07/01/2023 Through 12/31/2023			Incentive Programs 07/01/2023 Through 12/31/2023			Financing Programs 07/01/2023 Through 12/31/2023			Environmental Infrastructure 07/01/2023 Through 12/31/2023		
	Actual	Budget	Variance	Actual	Budget	Variance	Actual	Budget	Variance	Actual	Budget	Variance
Revenue												
Operating Income												
Utility Customer Assessments	12,722,877	12,747,879	(25,002)	0	0	0	12,722,877	12,747,879	(25,002)	0	0	0
RGGI Auction Proceeds-Renewables	4,624,926	5,200,000	(575,074)	0	0	0	4,624,926	5,200,000	(575,074)	0	0	0
CPACE Closing Fees	201,332	60,000	141,332	0	0	0	201,332	60,000	141,332	0	0	0
REC Sales	6,994,196	6,514,769	479,427	6,994,196	6,514,769	479,427	0	0	0	0	0	0
Sales of Energy Systems	665,419	0	665,419	0	0	0	665,419	0	665,419	0	0	0
Grant Income-Federal Programs	111	20,000	(19,889)	0	0	0	111	20,000	(19,889)	0	0	0
Grant Income-Private Foundations	30,239	75,000	(44,761)	0	0	0	30,239	75,000	(44,761)	0	0	0
PPA Income	268,594	250,000	18,594	0	0	0	268,594	250,000	18,594	0	0	0
LREC/ZREC Income	250,645	234,000	16,645	0	0	0	250,645	234,000	16,645	0	0	0
Total Operating Income	25,758,339	25,101,648	656,691	6,994,196	6,514,769	479,427	18,764,143	18,586,879	177,264	0	0	0
Interest Income	4,596,402	4,002,025	594,378	266,450	21,300	245,150	4,329,952	3,980,725	349,228	0	0	0
Interest Income, Capitalized	119,084	30,000	89,083	0	0	0	119,083	30,000	89,083	0	0	0
Other Income	496,739	440,993	55,747	369,768	381,993	(12,224)	126,972	59,000	67,971	0	0	0
Total Revenue	\$ 30,970,564	\$ 29,574,665	\$ 1,395,899	\$ 7,630,414	\$ 6,918,062	\$ 712,353	\$ 23,340,150	\$ 22,656,604	\$ 683,546	\$ 0	\$ 0	\$ 0
Operating Expenses												
Compensation and Benefits	6,427,285	7,834,540	(1,407,255)	1,450,596	1,884,756	(434,160)	4,551,589	5,577,940	(1,026,350)	425,100	371,844	53,256
Program Development & Administration	927,057	2,441,934	(1,514,877)	629,755	1,270,759	(641,003)	295,232	1,031,176	(735,945)	2,070	140,000	(137,930)
Cost of Sales Energy Systems	665,419	0	665,419	0	0	0	665,419	0	665,419	0	0	0
Lease Origination Services	1,089	2,000	(911)	0	0	0	1,089	2,000	(911)	0	0	0
Marketing Expense	471,549	856,575	(385,026)	67,329	236,400	(169,072)	404,221	620,175	(215,954)	0	0	0
E M & V	142,759	515,002	(372,243)	99,909	412,502	(312,593)	42,850	102,500	(59,650)	0	0	0
Research and Development	40,302	179,000	(138,698)	0	0	0	17,902	110,000	(92,098)	22,400	69,000	(46,600)
Consulting and Professional Fees	838,412	1,048,858	(210,445)	118,492	305,500	(187,008)	719,920	718,358	1,563	0	25,000	(25,000)
Rent and Location Related Expenses	525,434	553,571	(28,138)	60,787	72,325	(11,538)	446,785	465,269	(18,485)	17,862	15,976	1,885
Office, Computer & Other Expenses	869,051	1,133,528	(264,477)	238,347	301,453	(63,106)	602,619	802,928	(200,308)	28,086	29,148	(1,062)
Total Operating Expenses	10,908,358	14,565,008	(3,656,650)	2,665,214	4,483,694	(1,818,480)	7,747,626	9,430,346	(1,682,720)	495,518	650,969	(155,451)
Program Incentives and Grants	\$ 3,644,451	\$ 4,390,380	\$ (745,929)	\$ 3,463,973	\$ 4,120,380	\$ (656,407)	\$ 180,478	\$ 270,000	\$ (89,522)	\$ 0	\$ 0	\$ 0
Operating Income/(Loss)	\$ 16,417,755	\$ 10,619,277	\$ 5,798,479	\$ 1,501,227	\$ (1,686,013)	\$ 3,187,240	\$ 15,412,046	\$ 12,956,258	\$ 2,455,788	\$ (495,518)	\$ (650,969)	\$ 155,451
Non-Operating Expenses	\$ 1,661,505	\$ 1,879,983	\$ (218,478)	\$ 920,720	\$ 1,153,197	\$ (232,477)	\$ 740,785	\$ 726,786	\$ 13,998	\$ 0	\$ 0	\$ 0
Net Revenues Over (Under) Expenses	\$ 14,756,251	\$ 8,739,294	\$ 6,016,957	\$ 580,507	\$ (2,839,209)	\$ 3,419,716	\$ 14,671,261	\$ 12,229,472	\$ 2,441,790	\$ (495,518)	\$ (650,969)	\$ 155,451

**Connecticut Green Bank
December 2023 Financial Package
Analysis of Compensation and Benefits**

	FY 2024 YTD		Budget Variance	FY 2023 YTD	Prior Year Variance
	Actual	Budget		Actual	
<u>Compensation:</u>					
Full Time Employees	\$ 3,487,395	\$ 4,060,822	\$ (573,427)	\$ 2,793,982	\$ 693,413
Interns	46,289	72,800	\$ (26,511)	61,382	(15,093)
Temporary Employees	-	-	\$ -	-	-
Overtime	15,859	-	\$ 15,859	11,866	3,993
Total Compensation	\$ 3,549,543	\$ 4,133,622	\$ (584,079)	\$ 2,867,229	\$ 682,314
<u>Employee Benefits:</u>					
State Retirement Plan Contributions	\$ 2,168,784			\$ 1,961,015	\$ 207,769
Medical Dental Rx Premiums	459,232			375,330	83,902
Payroll and Unemployment Taxes	228,323			192,766	35,558
Life, Disability & WC Premiums	21,403			16,665	4,738
Total Employee Benefits	2,877,742	1,633,251	1,244,491	2,545,775	331,967
Total Compensation and Benefits	\$ 6,427,285	\$ 5,766,873	\$ 660,412	\$ 5,413,005	\$ 1,014,281
Benefits and Taxes as a % of Salary	81.07%	39.51%		88.79%	

Actual vs. Budget

Total Employee compensation and benefit costs were \$1.4M under budget. Full time employee costs are \$573k under budget mostly due to \$505k of 1 open positions and \$58k due to budgeted promotion pool not yet being utilized in FY24. Benefits and Taxes are approx. \$823k less than budget due to favorable employee compensation variances previously noted as well as an approx 8.0% rate variance compared to budget. This is due to the SERS determined by the state of CT decreasing from 67.40% in FY23 to 59.57% in FY24 (note: CGB does not help to determine this actual rate). Additional actual benefits and taxes being significantly lower than budget (81.07% actual vs a budgeted 89.53% of total compensation for the period to date).

Actual vs. Prior Year

Compensation costs increased \$682k and benefit costs increased \$332k, respectively over the same period of the prior year. Two items are offsetting these variances year over year. First, July 2022 included 3 pay periods and July 2023 only including 2 pay periods, so there is one more pay period in than in FY24. Offsetting the volume decrease is an increase in total employees (53 in December 2023 compared to 47 in December 2022). Actual benefit percentages decreased from 88.79% in the prior period, to 81.07% in the current period mostly due to the aforementioned decrease in SERS recovery prior year. Additionally, actual contributions to the State employee retirement plan decreased from 70.2% to 62.2% of full time employee compensation year.

**Connecticut Green Bank
December 2023 Financial Package
Historical Analysis of Compensation and Benefits**

	FYTD 12/31/23 YTD Actual	FYE 6/30/23 Actual	FYE 6/30/22 Actual	FYE 6/30/21 Actual	FYE 6/30/20 Actual	FYE 6/30/19 Actual
Compensation:						
Full Time Employees	\$ 3,549,543	\$ 5,902,859	\$ 4,813,293	\$ 4,476,214	\$ 3,929,354	\$ 4,195,593
Temporary Employees	-	-	-	-	2,242	9,262
Total Compensation	\$ 3,549,543	\$ 5,902,859	\$ 4,813,293	\$ 4,476,214	\$ 3,931,596	\$ 4,204,855
Employee Benefits:						
State Retirement Plan Contributions	\$ 2,168,784	\$ 3,995,132	\$ 3,317,054	\$ 2,903,780	\$ 2,411,864	\$ 2,869,823
Medical Dental Rx Premiums	459,232	791,620	610,627	625,480	553,908	545,779
Payroll and Unemployment Taxes	228,323	417,828	353,405	305,032	269,295	306,091
Life, Disability & WC Premiums	21,403	35,115	28,223	23,840	27,567	46,944
Total Employee Benefits	2,877,742	5,239,695	4,309,308	3,858,132	3,262,634	3,768,636
Total Compensation and Benefits	\$ 6,427,285	\$ 11,142,554	\$ 9,122,602	\$ 8,334,346	\$ 7,194,230	\$ 7,973,491
Medical Dental Rx Premiums as a % of Salary	12.94%	13.41%	12.69%	13.97%	14.09%	12.98%
* Retirement Plan Contributions as a % of Salary	61.10%	67.68%	68.91%	64.87%	61.35%	68.25%
Total Benefits and Taxes as a % of Salary	81.07%	88.77%	89.53%	86.19%	82.98%	89.63%
** State of CT Comptroller Employer SERS Rate	59.57%	67.40%	65.90%	64.14%	59.99%	64.30%
<p>* Retirement Plan Contributions include Pension & OPEB, included Employer contributions to the Tier IV Defined Contribution for employees in that plan.</p> <p>** State of CT Comptroller Employer SERS Rate provided via the annual "Fringe Benefit Recover Rate" memo issued 7/1 of each year by the State Comptroller.</p>						
Total Benefits Cost @ Hypothetical Benefits Rate	35% 1,242,340	2,066,001	1,684,653	1,566,675	1,376,059	1,471,699
Actual Total Compensation and Benefits	6,427,285	11,142,554	9,122,602	8,334,346	7,194,230	7,973,491
Less Total Compensation and Benefits @ Hypothetical Rate	(4,791,883)	(7,968,860)	(6,497,946)	(6,042,889)	(5,307,655)	(5,676,554)
Incremental HR cost due to State Benefits Charge	1,635,402	3,173,694	2,624,656	2,291,457	1,886,575	2,296,937

Analysis:

As noted above, the cost of benefits per employee has been in excess of 81% of salary for every year since FYE 6/30/19, with retirement plan contributions making up 61-69% of the total cost of salary in each of these years. It is noted that the medical/dental/Rx costs have remained fairly consistent over the period presented above (approx. 12-14%). The main driver of the benefits rate is the State of CT Comptroller Employer SERS rate that is a tool the state uses to allocate expenses across all SERS employees. The allocation is done only based on salary of the employees, regardless of the demographic information or tier level of the benefit plans that each employee is eligible for. The Green Bank has a fairly young staff, with 17 Tier III and 28 Tier IV employees of the total 53 full-time employees of the Green Bank at 12/31/23 (where Tier III and Tier IV are lower cost pension arrangements than Tier IIa and Tier II where the Green Bank only has 8 employees). This rate is a cost of doing business to the Green Bank as a quasi-public agency of the state, and management of the Green Bank has no control to manage this rate provided to us. Due to the demographics of our staff, we also believe the rate charged to the Green Bank based on its broad allocation to not be representative of the Tier of employees, where the Green Bank would likely pay a lower rate than what is being charged if employee demographic information as it relates to what Tier SERS plan they are enrolled in was used in the allocation. As further noted above, if we were to apply a standard 35% benefits rate to our salaries over the time period presented, we would save approx. **\$2 - 3M per year**.

Connecticut Green Bank
Summary of Unfunded Commitments
As of December 31, 2023
(In thousands)

	EPBB	PBI	CPACE	Non CPACE	All Projects		
	Balance	Balance	Loans	Loans	Balance	Balance	Increase /
	12/31/2023	12/31/2023	Balance	Balance	12/31/2023	6/30/2023	(Decrease)
	12/31/2023	12/31/2023	12/31/2023	12/31/2023	12/31/2023	6/30/2023	(Decrease)
Solar - SHREC Eligible	1,317	14,413	0	0	15,730	19,975	(4,245)
Solar - Not SHREC Eligible	5	174	0	0	179	234	(55)
CPACE	0	0	13,536	0	13,536	22,911	(9,375)
Multifamily/LMI Solar PV & EE	0	0	0	14,486	14,486	15,053	(567)
SBEA	0	0	0	15,450	15,450	15,857	(407)
Solar PPAs/IPC	0	0	0	18,393	18,393	9,537	8,856
Fuel Cells	0	0	0	0	0	7,000	(7,000)
Hydropower	0	0	0	330	330	330	0
Total Unfunded Commitments	<u>\$ 1,322</u>	<u>\$ 14,587</u>	<u>\$ 13,536</u>	<u>\$ 48,659</u>	<u>\$ 78,104</u>	<u>\$ 90,897</u>	<u>\$ (12,793)</u>

**Connecticut Green Bank
Summary of Loan Guarantees
As of December 31, 2023**

Guarantor	Issuer	Beneficiary	Relationship of guarantor to Issuer	Type of obligation guaranteed	Maximum amount of guaranty	Obligations guaranteed as of 12/31/2023	Obligations guaranteed as of 6/30/2023
CT Green Bank	Owners of multifamily dwellings in Connecticut	Housing Development Fund	Issuers participate in program administered by CGB and the Housing Development Fund to install energy upgrades in multifamily dwellings	Commercial and consumer loan products with various terms	\$ 5,000,000	\$ 2,944,497	\$ 3,004,188
CT Green Bank	New England Hydropower Company	Webster Bank	Issuer is the developer of hydropower project in Connecticut approved by the CGB Board of Directors.	Line of Credit	300,000	300,000	300,000
CEFIA Holdings LLC	CEFIA Solar Services Inc.	CHFA	Holdings is the sole shareholder of Services and an affiliate of CGB	Promissory Note for funds received from CHFA upon their issuance of Qualified Energy Conservation Bonds (QECBs) for State Sponsored Housing Projects (SSHP)	1,895,807	1,224,374	1,271,769
CT Green Bank	Canton Hydro, LLC	Provident Bank	Issuer is the developer of hydropower project in Connecticut approved by the CGB Board of Directors.	Unfunded guaranty not to exceed \$500,000, decreased to \$250,000 in December 2022.	500,000	500,000	500,000
					\$ 7,695,807	\$ 4,968,871	\$ 5,075,957

Connecticut Green Bank
Program Loans, Notes and Loan Loss Reserve Analysis
As of December 31, 2023

Legal Entity	Loan Program	Project	Loan Portfolio Balance 7/1/2023	FY24 YTD Investments	FY24 YTD Repayments	Loan Portfolio Balance As of December 31, 2023	Loan Loss Reserve Balance 7/1/2023	FY24 YTD Increase / Decrease to Reserve	Loan Loss Reserve Balance As of December 31, 2023	Reserve as a % of Portfolio Balance	Loan Portfolio Carrying Value As of December 31, 2023
CGB	CPACE Program	Various	\$ 48,326,723	\$ -	\$ (1,677,308)	\$ 46,649,415	(4,832,672)	\$ (314,500)	\$ (5,147,172)	11.0%	\$ 41,502,243
CGB	Fuel Cell Projects	FCE Corp-Master Refinance Facility	9,851,763	-	(444,156)	9,407,607	(985,176)	-	(985,176)	10.5%	8,422,431
		FCE Corp-Bridge Loan	3,000,000	-	(3,000,000)	-	(300,000)	-	(300,000)	0.0%	(300,000)
		FCE Corp-Promissory Note	-	8,000,000	-	8,000,000	-	-	-	0.0%	8,000,000
CGB	CHP Pilot	Bridgeport MicroGrid	381,500	-	(11,346)	370,154	(19,075)	-	(19,075)	5.2%	351,079
CGB	Anaerobic Digester	Quantum Biopower	1,120,765	-	(66,580)	1,054,185	(56,038)	-	(56,038)	5.3%	998,147
		Fort Hill Ag-Grid LLC	607,193	-	(28,579)	578,613	(30,360)	-	(30,360)	5.2%	548,254
CGB	Other Loans	Nu Power Thermal	427,000	-	-	427,000	(427,000)	-	(427,000)	100.0%	-
		Terrace Heights Condos	43,216	-	(18,147)	25,069	(4,322)	-	(4,322)	17.2%	20,747
CGB	Multifamily / Affordable Housing / Credit Challenged / LMI	Capital for Change	3,470,544	-	(103,371)	3,367,173	(347,055)	-	(347,055)	10.3%	3,020,119
		CEEFCo	8,520,000	6,480,000	-	15,000,000	(852,000)	-	(852,000)	5.7%	14,148,000
		Pre-Dev Loans	11,306	-	(11,306)	(0)	(2,261)	-	(2,261)	0.0%	(2,261)
		Posigen	20,965,655	5,827,270	(1,283,272)	25,509,653	(2,096,566)	-	(2,096,566)	8.2%	23,413,087
CGB	Energy Efficiency Financing	RENEW Energy Efficiency Bridgeport	78,182	-	(16,182)	62,000	(7,818)	-	(7,818)	12.6%	54,182
CGB	Alpha Program	Anchor Science	150,000	-	(150,000)	-	(149,999)	149,999	-	0.0%	-
CGB	Op Demo Program	New England Hydropower Co.	500,000	-	(500,000)	-	(499,999)	499,999	-	0.0%	-
CGB	Wind Financing	Wind Colebrook	1,358,487	-	(61,822)	1,296,665	(135,849)	-	(135,849)	10.5%	1,160,816
CGB	Hydro Projects	Canton Hydro	704,457	-	(11,869)	692,589	(35,223)	-	(35,223)	5.1%	657,366
CGB	Sunwealth Note	Sunwealth	794,813	-	(27,101)	767,712	(39,741)	-	(39,741)	5.2%	727,971
CGB	IPC Note Receivable	IPC	850,000	-	-	850,000	-	-	-	0.0%	850,000
CGB	Budgeted LLR Adj (to be adjusted at fiscal year end)	Various	-	-	-	-	-	(331,500)	(331,500)	0.0%	(331,500)
CGB	Budderfly	Budderfly	5,111,306	-	(420,123)	4,691,182	(511,132)	-	(511,132)	10.9%	4,180,051
CEFIA Holdings	Sunwealth Note	Sunwealth	696,293	-	(33,483)	662,810	(34,815)	-	(34,815)	5.3%	627,996
CEFIA Holdings	Skyview Notes	Skyview	7,106,804	419,395	(244,510)	7,281,689	(355,340)	-	(355,340)	4.9%	6,926,349
CEFIA Holdings	SBEA Loans	SBEA	(4,523)	-	5,494	971	-	-	-	0.0%	971
CEFIA Holdings	Inclusive Solar Manager	IPC	3,085,998	1,707,461	(98,542)	4,694,916	(61,720)	-	(61,720)	1.3%	4,633,196
CT Solar Loan 1	Solar Loans	CT Solar Loan 1	603,135	-	(81,147)	521,988	(30,157)	-	(30,157)	5.8%	491,831
CT Solar Lease 1	Solar Lease Notes	CT Solar Lease 1	2,331,307	-	(511,344)	1,819,963	(233,131)	-	(233,131)	12.8%	1,586,832
CGB CPACE LLC	CPACE Program	Various	3,655,485	6,212,032	(48,590)	9,818,926	-	-	-	0.0%	9,818,926
CGB Green Liberty Notes LLC	SBEA Loans	SBEA	4,147,523	1,207,731	(806,705)	4,548,549	-	-	-	0.0%	4,548,549
Total:			\$ 127,894,932	\$ 29,853,889	\$ (9,649,991)	\$ 148,098,831	\$ (12,047,447)	\$ 3,998	\$ (12,043,449)	8.1%	\$ 136,055,382
CGB:											
	CPACE Loans		\$ 48,326,723	\$ -	\$ (1,677,308)	\$ 46,649,415	\$ (4,832,672)	\$ (314,500)	\$ (5,147,172)	11.0%	\$ 41,502,243
	Posigen		\$ 20,965,655	\$ 5,827,270	\$ (1,283,272)	\$ 25,509,653	\$ (2,096,566)	\$ -	\$ (2,096,566)	8.2%	\$ 23,413,087
	Sunwealth		\$ 794,813	\$ -	\$ (27,101)	\$ 767,712	\$ (39,741)	\$ -	\$ (39,741)	5.2%	\$ 727,971
	Program Loans		\$ 36,185,719	\$ 14,480,000	\$ (4,843,481)	\$ 45,822,238	\$ (4,363,306)	\$ 318,498	\$ (4,044,808)	8.8%	\$ 41,777,430
	Total CGB:		\$ 106,272,910	\$ 20,307,270	\$ (7,831,163)	\$ 118,749,017	\$ (11,332,284)	\$ 3,998	\$ (11,328,286)	9.5%	\$ 107,420,731
	CEFIA Holdings		\$ 10,884,573	\$ 2,126,856	\$ (371,041)	\$ 12,640,387	\$ (451,875)	\$ -	\$ (451,875)	3.6%	\$ 12,188,513
	CT Solar Loan 1		\$ 603,135	\$ -	\$ (81,147)	\$ 521,988	\$ (30,157)	\$ -	\$ (30,157)	5.8%	\$ 491,831
	CT Solar Lease 1		\$ 2,331,307	\$ -	\$ (511,344)	\$ 1,819,963	\$ (233,131)	\$ -	\$ (233,131)	12.8%	\$ 1,586,832
	CGB CPACE LLC		\$ 3,655,485	\$ 6,212,032	\$ (48,590)	\$ 9,818,926	\$ -	\$ -	\$ -	0.0%	\$ 9,818,926
	CGB Green Liberty Notes LLC		\$ 4,147,523	\$ 1,207,731	\$ (806,705)	\$ 4,548,549	\$ -	\$ -	\$ -	0.0%	\$ 4,548,549
											\$ 136,055,382

Connecticut Green Bank - Primary Government
Consolidated Balance Sheet
As of December 31, 2023

	Connecticut Green Bank As of 12/31/2023	CGB Meriden Hydro LLC As of 12/31/2023	CGB KCF LLC As of 12/31/2023	SHREC ABS 1 LLC As of 12/31/2023	SHREC Warehouse 1 LLC As of 12/31/2023	CT Solar Lease 1 LLC As of 12/31/2023	CGB C-PACE LLC As of 12/31/2023	CT Solar Loan 1 LLC As of 12/31/2023	CEFIA Holdings LLC As of 12/31/2023	CGB Green Liberty Notes LLC As of 12/31/2023	Eliminations As of 12/31/2023	CGB-Primary Government As of 12/31/2023
Assets												
Current Assets												
Cash and Cash Equivalents	18,066,374	36,859	-	234,131	69,350	-	1,787,697	1,995,802	1,754,229	3,471,809	-	27,416,251
Accounts Receivable	2,621,619	-	-	-	-	-	37,584	-	1	-	-	2,659,205
Utility Remittance Receivable	2,013,298	-	-	-	-	-	-	-	-	-	-	2,013,298
Interest Receivable	1,745,498	-	-	-	-	-	73,077	2,905	-	-	-	1,821,481
Other Receivables	29,175	-	-	-	-	82,267	-	4,820	1,240,582	-	-	1,356,844
Prepaid Expenses and Other Assets	79,008	29,017	-	17,333	-	-	-	-	585,017	-	-	710,375
Total Current Assets	24,554,972	65,876	-	251,464	69,350	82,267	1,898,358	2,003,527	3,579,829	3,471,809	-	35,977,454
Noncurrent Assets												
Restricted Assets												
Cash and Cash Equivalents	16,024,825	-	-	760,848	4,861,341	-	-	85,815	28,236	-	-	21,761,064
Investments	939,394	-	-	-	-	-	-	-	-	-	-	939,394
Program Loans, net of reserves	107,420,731	-	-	-	-	-	9,919,819	491,832	12,187,541	-	-	130,019,922
Solar Lease I Promissory Notes, net of reserves	-	-	-	-	-	1,586,832	-	-	-	-	-	1,586,832
Renewable Energy Certificates	174,306	-	-	-	-	-	-	-	-	-	-	174,306
SBEA Promissory Notes, net of reserves	-	-	-	-	-	-	-	-	874	4,081,053	-	4,081,927
Due From Component Units	84,189,729	-	-	30,515,204	5,784,455	-	-	-	11,351,414	-	(77,329,274)	54,511,528
Investment in Component Units	100,100	-	-	-	-	-	-	-	100	-	(100,100)	100
Capital Assets, net	11,276,648	3,585,598	-	-	-	-	-	-	-	-	-	14,862,246
Total Noncurrent Assets	220,125,733	3,585,598	-	31,276,052	10,645,796	1,586,832	9,919,819	577,647	23,568,164	4,081,053	(77,429,374)	227,937,320
Total Assets	244,680,705	3,651,474	-	31,527,516	10,715,146	1,669,099	11,818,178	2,581,174	27,147,993	7,552,863	(77,429,374)	263,914,774
Deferred Outflows of Resources												
Deferred Amount for Pensions	7,301,972	-	-	-	-	-	-	-	-	-	-	7,301,972
Deferred Amount for OPEB	6,353,565	-	-	-	-	-	-	-	-	-	-	6,353,565
Total Deferred Outflows of Resources	13,655,537	-	-	-	-	-	-	-	-	-	-	13,655,537
Liabilities												
Current Liabilities												
Accounts Payable	91,743	-	-	-	-	-	-	1,110	0	-	-	92,853
Accrued payroll and related liabilities	1,175,855	-	-	-	-	-	-	-	-	-	-	1,175,855
Accrued Expenses	9,852,798	-	-	43,809	-	-	-	-	118,937	28,110	-	10,043,655
Notes Payable-Green Liberty Notes	-	-	-	-	-	-	-	-	-	1,200,000	-	1,200,000
Current Maturities of Long-Term Debt	224,825	-	-	-	-	-	-	-	-	-	-	224,825
Custodial Liability	54,209	-	-	-	-	-	-	-	742,071	-	-	796,280
Deferred Revenue	36,579	-	-	-	-	-	-	-	-	-	-	36,579
Total Current Liabilities	11,436,009	-	-	43,809	-	-	-	1,110	861,009	1,228,110	-	13,570,047
Noncurrent Liabilities												
Due to Component Units	36,299,659	5,909,180	21,918	-	-	1,614,926	11,085,000	2,215,000	13,924,418	6,262,678	(77,329,274)	3,505
Long-term debt	45,008,379	-	-	18,976,073	-	-	-	-	-	-	-	63,984,452
Pension Liability	17,632,888	-	-	-	-	-	-	-	-	-	-	17,632,888
OPEB Liability	18,041,698	-	-	-	-	-	-	-	-	-	-	18,041,698
Total Noncurrent Liabilities	116,982,624	5,909,180	21,918	18,976,073	-	1,614,926	11,085,000	2,215,000	13,924,418	6,262,678	(77,329,274)	99,662,543
Total Liabilities	128,418,633	5,909,180	21,918	19,019,882	-	1,614,926	11,085,000	2,216,110	14,785,426	7,490,789	(77,329,274)	113,232,590
Deferred Inflows of Resources												
Deferred Pension Inflow Liability	6,176,916	-	-	-	-	-	-	-	-	-	-	6,176,916
Deferred OPEB Inflow Liability	11,459,840	-	-	-	-	-	-	-	-	-	-	11,459,840
Total Deferred Inflows of Resources	17,636,756	-	-	-	-	-	-	-	-	-	-	17,636,756
Net Position												
Net Investment in Capital Assets	11,276,648	3,585,598	-	-	-	-	-	-	-	-	-	14,862,246
Restricted-Energy Programs	16,024,825	-	-	760,848	4,861,341	-	-	85,815	28,236	-	-	21,761,064
Unrestricted Net Position	84,979,380	(5,843,304)	(21,918)	11,746,786	5,853,805	54,174	733,178	279,249	12,334,331	62,074	(100,100)	110,077,655
Total Net Position	112,280,853	(2,257,706)	(21,918)	12,507,634	10,715,146	54,174	733,178	365,064	12,362,567	62,074	(100,100)	146,700,965

**Connecticut Green Bank
Consolidated Balance Sheet
As of December 31, 2023**

	CGB-Primary Government As of 12/31/2023	CT Solar Lease 2 LLC As of 12/31/2023	CT Solar Lease 3 LLC As of 12/31/2023	CEFIA Solar Services Inc. As of 12/31/2023	Eliminations As of 12/31/2023	Consolidated As of 12/31/2023	Consolidated As of 6/30/2023	Consolidated YOY Change
Assets								
Current Assets								
Cash and Cash Equivalents	27,416,251	2,225,747	3,511,385	584,930	-	33,738,313	41,785,219	(8,046,906)
Accounts Receivable	2,659,205	38,763	9,869	75,798	-	2,783,635	4,252,424	(1,468,788)
Current Portion of Program Loans, Net of Reserves	-	-	-	-	-	-	7,236,385	(7,236,385)
Utility Remittance Receivable	2,013,298	-	-	-	-	2,013,298	1,852,328	160,969
Current Portion of Solar Lease Notes	-	-	-	-	-	-	1,019,733	(1,019,733)
Current Portion of SBEA Promissory Notes	-	-	-	-	-	-	1,455,172	(1,455,172)
Current Portion of Lease Receivable	-	1,019,815	-	2,628	-	1,022,443	1,022,443	-
Interest Receivable	1,821,481	9,385	-	-	-	1,830,866	1,627,117	203,749
Other Receivables	1,356,844	787,373	318,795	4,451,844	-	6,914,856	1,709,204	5,205,652
Prepaid Expenses and Other Assets	710,375	206,691	5,364	721,490	-	1,643,921	1,686,574	(42,653)
Current Portion of Prepaid Warranty Management	-	-	-	-	-	-	260,389	(260,389)
Total Current Assets	35,977,454	4,287,774	3,845,413	5,836,691	-	49,947,332	63,906,987	(13,959,655)
Noncurrent Assets								
Restricted Assets								
Cash and Cash Equivalents	21,761,064	1,878,293	-	384,473	-	24,023,830	22,364,466	1,659,363
Investments	939,394	-	-	-	-	939,394	852,427	86,968
Program Loans, net of reserves	130,019,922	-	-	-	-	130,019,922	102,369,925	27,649,998
Solar Lease I Promissory Notes, net of reserves	1,586,832	-	-	-	-	1,586,832	1,078,443	508,389
Renewable Energy Certificates	174,306	-	-	-	-	174,306	174,306	-
SBEA Promissory Notes, net of reserves	4,081,927	-	-	-	-	4,081,927	2,317,443	1,764,484
Lease Receivable, less current portion	-	15,218,710	-	63,640	-	15,282,350	15,282,350	-
Other	-	-	-	-	-	-	7,400,518	(7,400,518)
Due From Component Units	54,511,528	3,505	-	7,655,389	(62,170,422)	-	0	(0)
Investment in Component Units	100	-	-	31,528,253	(31,566,153)	(37,800)	-	(37,800)
Prepaid Warranty Management, less current portion	-	3,068,164	-	-	-	3,068,164	2,951,923	116,241
Fair Value - Interest Rate Swap	-	211,533	-	-	-	211,533	345,708	(134,175)
Capital Assets, net	14,862,246	46,061,119	9,183,704	380,779	168,322	70,656,170	72,589,044	(1,932,874)
Total Noncurrent Assets	227,937,320	66,441,323	9,183,704	40,012,533	(93,568,253)	250,006,628	227,726,553	22,280,074
Total Assets	263,914,774	70,729,097	13,029,117	45,849,224	(93,568,253)	299,953,959	291,633,540	8,320,420
Deferred Outflows of Resources								
Deferred Amount for Pensions	7,301,972	-	-	-	-	7,301,972	7,301,972	-
Deferred Amount for OPEB	6,353,565	-	-	-	-	6,353,565	6,353,565	-
Deferred Amount for Asset Retirement Obligations	-	1,590,015	369,126	-	-	1,959,141	2,027,042	(67,901)
Total Deferred Outflows of Resources	13,655,537	1,590,015	369,126	-	-	15,614,678	15,682,579	(67,901)
Liabilities								
Current Liabilities								
Accounts Payable	92,853	594	10,503	46,291	-	150,241	987,666	(837,425)
Accrued payroll and related liabilities	1,175,855	-	-	-	-	1,175,855	1,175,855	-
Accrued Expenses	10,043,655	40,493	-	32,977	-	10,117,125	10,239,031	(121,906)
Notes Payable-Green Liberty Notes	1,200,000	-	-	-	-	1,200,000	1,000,000	200,000
Current Maturities of Long-Term Debt	224,825	-	-	-	-	224,825	6,624,849	(6,400,023)
Custodial Liability	796,280	-	-	6,383	-	802,663	859,484	(56,821)
Deferred Revenue	36,579	(24,358)	-	-	-	12,220	68,798	(56,578)
Total Current Liabilities	13,570,047	16,729	10,503	85,650	-	13,682,929	20,955,683	(7,272,753)
Noncurrent Liabilities								
Due to Component Units	3,505	18,531,985	-	43,634,932	(62,170,422)	(0)	-	(0)
Asset Retirement Obligation	-	3,617,777	648,160	-	-	4,265,937	4,208,724	57,213
Long-term debt	63,984,452	8,078,197	-	1,224,374	-	73,287,024	71,736,406	1,550,618
Pension Liability	17,632,888	-	-	-	-	17,632,888	17,632,888	-
OPEB Liability	18,041,698	-	-	-	-	18,041,698	18,041,698	-
Total Noncurrent Liabilities	99,662,543	30,227,959	648,160	44,859,306	(62,170,422)	113,227,547	111,619,716	1,607,830
Total Liabilities	113,232,590	30,244,688	658,663	44,944,957	(62,170,422)	126,910,476	132,575,399	(5,664,923)
Deferred Inflows of Resources								
Deferred Pension Inflow Liability	6,176,916	-	-	-	-	6,176,916	6,176,916	-
Deferred OPEB Inflow Liability	11,459,840	-	-	-	-	11,459,840	11,459,840	-
Deferred Lease Inflow Liability	-	15,635,019	-	65,378	-	15,700,397	15,700,397	-
Total Deferred Inflows of Resources	17,636,756	15,635,019	-	65,378	-	33,337,153	33,337,153	-
Net Position								
Net Investment in Capital Assets	14,862,246	46,061,119	9,183,704	380,779	168,322	70,656,170	72,589,044	(1,932,874)
Restricted-Energy Programs	21,761,064	1,878,293	-	384,473	-	24,023,830	21,504,981	2,518,849
Unrestricted Net Position	110,077,655	(21,500,006)	3,555,875	73,638	(31,566,153)	60,641,009	47,309,542	13,331,467
Total Net Position	146,700,965	26,439,405	12,739,580	838,890	(31,397,831)	155,321,008	141,403,567	13,917,442

Connecticut Green Bank - Primary Government
Consolidated Statement of Revenues and Expenditures
For the Period July 1, 2023 to December 31, 2023

	Connecticut Green Bank	CGB Meriden Hydro LLC	SHREC ABS 1 LLC	SHREC Warehouse 1 LLC	CT Solar Lease 1 LLC	CGB C-PACE LLC	CT Solar Loan I LLC	CEFIA Holdings LLC	CGB Green Liberty Notes LLC	Eliminations	CGB-Primary Government
	Fiscal YTD 12/31/2023	Fiscal YTD 12/31/2023	Fiscal YTD 12/31/2023	Fiscal YTD 12/31/2023	Fiscal YTD 12/31/2023	Fiscal YTD 12/31/2023	Fiscal YTD 12/31/2023	Fiscal YTD 12/31/2023	Fiscal YTD 12/31/2023	Fiscal YTD 12/31/2023	Fiscal YTD 12/31/2023
Operating Income (Loss)											
Operating Revenues											
Utility Remittances	12,722,877	-	-	-	-	-	-	-	-	-	12,722,877
Interest Income-Promissory Notes	3,472,204	-	-	-	60,744	180,740	18,515	229,920	85,520	-	4,047,643
RGGI Auction Proceeds	4,624,926	-	-	-	-	-	-	-	-	-	4,624,926
Energy System Sales	-	-	-	-	-	-	-	665,419	-	-	665,419
REC Sales	2,692,974	-	2,797,328	1,754,539	-	-	-	-	-	-	7,244,841
Other Income	774,061	-	-	-	-	182,960	127	39,868	-	-	997,016
Total Operating Revenues	24,287,042	-	2,797,328	1,754,539	60,744	363,699	18,642	935,207	85,520	-	30,302,722
Operating Expenses											
Cost of Goods Sold-Energy Systems	-	-	-	-	-	-	-	665,419	-	-	665,419
Provision for Loan Losses	646,002	-	-	-	-	-	-	-	-	-	646,002
Grants and Incentive Payments	3,657,452	-	-	-	-	-	-	-	-	-	3,657,452
Program Administration Expenses	7,004,549	126,473	27,000	85,486	41,940	-	6,989	91,429	12,500	-	7,396,368
General and Administrative Expenses	2,874,736	-	2,625	1,072	-	406	1,333	947	13,374	-	2,894,493
Total Operating Expenses	14,182,740	126,473	29,625	86,558	41,940	406	8,322	757,795	25,874	-	15,259,733
Operating Income (Loss)	10,104,302	(126,473)	2,767,703	1,667,981	18,804	363,293	10,320	177,412	59,646	-	15,042,989
Nonoperating Revenue (Expenses)											
Interest Income-Short Term Cash Deposits	651,376	-	18,730	75	-	-	674	218	-	-	671,073
Interest Income-Component Units	36,778	-	-	-	-	-	-	-	-	-	36,778
Interest Expense-ST Debt	-	-	-	-	-	-	-	-	(25,748)	-	(25,748)
Interest Expense-LT Debt	(441,062)	-	(517,171)	-	-	-	-	-	-	-	(958,233)
Debt Issuance Costs	-	-	-	-	-	-	-	-	(5,000)	-	(5,000)
Unrealized Gain (Loss) on Investments	(5,608)	-	-	-	-	-	-	-	-	-	(5,608)
Total Nonoperating Revenue (Expenses)	241,483	-	(498,441)	75	-	-	674	218	(30,748)	-	(286,738)
Change in Net Position	10,345,786	(126,473)	2,269,262	1,668,057	18,804	363,293	10,994	177,630	28,898	-	14,756,251

Connecticut Green Bank
Consolidated Statement of Revenues and Expenditures
For the Period July 1, 2023 to December 31, 2023

	CGB-Primary Government Fiscal YTD 12/31/2023	CT Solar Lease 2 LLC Fiscal YTD 12/31/2023	CT Solar Lease 3 LLC Fiscal YTD 12/31/2023	CEFIA Solar Services Inc. Fiscal YTD 12/31/2023	Eliminations Fiscal YTD 12/31/2023	Consolidated Fiscal YTD 12/31/2023	Consolidated Fiscal YTD 12/31/2022	Consolidated YOY Variance
Operating Income (Loss)								
Operating Revenues								
Utility Remittances	12,722,877	-	-	-	-	12,722,877	13,039,756	(316,879)
Interest Income-Promissory Notes	4,047,643	-	-	-	-	4,047,643	3,266,935	780,708
RGGI Auction Proceeds	4,624,926	-	-	-	-	4,624,926	3,710,288	914,638
Energy System Sales	665,419	-	-	1,293,621	-	1,959,040	1,328,079	630,961
REC Sales	7,244,841	387,631	229,745	9,776	-	7,871,993	7,291,717	580,276
Lease Income	-	722,522	-	2,292	-	724,814	751,590	(26,776)
Other Income	997,016	431,786	178,942	546,449	(76,805)	2,077,387	1,248,704	828,683
Total Operating Revenues	30,302,722	1,541,940	408,686	1,852,137	(76,805)	34,028,680	30,637,069	3,391,611
Operating Expenses								
Cost of Goods Sold-Energy Systems	665,419	-	-	1,293,621	-	1,959,040	1,328,079	630,961
Provision for Loan Losses	646,002	-	-	-	-	646,002	854,441	(208,439)
Grants and Incentive Payments	3,657,452	-	-	-	-	3,657,452	3,982,427	(324,975)
Program Administration Expenses	7,396,368	1,716,026	273,259	366,079	(168,322)	9,583,410	9,202,399	381,011
General and Administrative Expenses	2,894,493	90,009	6,750	12,240	(76,805)	2,926,686	2,759,673	167,014
Total Operating Expenses	15,259,733	1,806,035	280,009	1,671,940	(245,127)	18,772,590	18,127,019	645,571
Operating Income (Loss)	15,042,989	(264,095)	128,677	180,197	168,322	15,256,090	12,510,050	2,746,040
Nonoperating Revenue (Expenses)								
Interest Income-Short Term Cash Deposits	671,073	518	1,935	608	-	674,134	593,649	80,485
Interest Income-Component Units	36,778	-	-	27,116	(63,894)	-	-	-
Interest Expense-Component Units	-	(63,894)	-	-	63,894	-	-	-
Interest Expense-ST Debt	(25,748)	-	-	-	-	(25,748)	(5,834)	(19,914)
Interest Expense-LT Debt	(958,233)	(218,200)	-	(15,552)	-	(1,191,984)	(1,396,777)	204,793
Debt Issuance Costs	(5,000)	-	-	-	-	(5,000)	(5,000)	-
Distributions to Member	-	-	(22,801)	-	-	(22,801)	(302,770)	279,969
Unrealized Gain on Interest Rate Swap	-	(134,175)	-	-	-	(134,175)	252,598	(386,773)
Net change in fair value of investments	(5,608)	(226,757)	(98,955)	-	-	(331,320)	(53,799)	(277,521)
Total Nonoperating Revenue (Expenses)	(286,738)	(642,507)	(119,822)	12,172	-	(1,036,895)	(917,932)	(118,962)
Change in Net Position	14,756,251	(906,602)	8,856	192,369	168,322	14,219,195	11,592,118	2,627,078

Connecticut Green Bank - Primary Government
Consolidated Statement of Cash Flows
For the Period July 1, 2023 to December 31, 2023

	Connecticut Green Bank Fiscal YTD 12/31/2023	CGB Meriden Hydro LLC Fiscal YTD 12/31/2023	CGB KCF LLC Fiscal YTD 12/31/2023	SHREC ABS 1 LLC Warehouse 1 LLC Fiscal YTD 12/31/2023	SHREC CT Solar Lease 1 LLC Fiscal YTD 12/31/2023	CGB C-PACE LLC Fiscal YTD 12/31/2023	CT Solar Loan I LLC Fiscal YTD 12/31/2023	CEFIA Holdings LLC Fiscal YTD 12/31/2023	CGB Green Liberty Notes LLC Fiscal YTD 12/31/2023	Eliminations Fiscal YTD 12/31/2023	CGB-Primary Government Fiscal YTD 12/31/2023	
Operating Activities												
Change in Net Position	10,345,786	(126,473)	-	2,269,262	1,668,057	18,804	363,293	10,994	177,630	28,898	-	14,756,251
Adjustments to reconcile change in net position to net cash provided by (used in) operating activities												
Depreciation	268,241	76,020	-	-	-	-	-	-	-	-	-	344,261
Provision for Loan Losses	(3,998)	-	-	-	-	-	-	-	-	-	-	(3,998)
Gain (Loss) on Investments	5,608	-	-	-	-	-	-	-	-	-	-	5,608
Noncash exercise of warrants	(121,322)	-	-	-	-	-	-	-	-	-	-	(121,322)
Changes in operating assets and liabilities:												
Accounts Receivable	1,361,446	-	-	-	-	-	100,555	-	14,575	-	-	1,476,576
Utility Remittance Receivable	(160,969)	-	-	-	-	-	-	-	-	-	-	(160,969)
Interest Receivables	(218,744)	-	-	-	-	-	(16,853)	355	35,111	-	-	(200,131)
Other Receivables	125,957	-	-	-	-	-	-	(3,762)	(377,076)	143,664	-	(111,217)
Due from Component Units	(6,253,001)	-	-	(1,800,000)	-	-	-	-	1,871,723	-	-	(6,181,278)
Prepaid Expenses and Other Assets	86,824	50,454	-	26,000	-	-	-	-	(113,757)	-	-	49,520
Accounts Payable and Accrued Expenses	(417,179)	(8,714)	-	739	(2,222)	-	-	64	27,239	10,467	-	(389,607)
Due to Component Units	1,800,000	-	-	-	-	(530,148)	6,250,000	-	3,505	496,371	-	8,019,728
Custodial Liability	(167,492)	-	-	-	-	-	-	-	(111,030)	-	-	(278,522)
Deferred Revenue	(30,239)	-	-	-	-	-	-	-	-	-	-	(30,239)
Net cash provided by (used in) operating activities	6,620,917	(8,714)	-	496,001	1,665,834	(511,344)	6,696,995	7,650	1,527,919	679,400	-	17,174,659
Investing Activities												
Purchase of Capital Assets	(41,833)	-	-	-	-	-	-	-	-	-	-	(41,833)
Program Loan Disbursements	(20,307,270)	-	-	-	-	-	(6,212,032)	-	(2,126,856)	(1,117,028)	-	(29,763,186)
Return of Principal on Program Loans	7,859,909	-	-	-	-	511,344	(52,303)	81,147	370,970	806,705	-	9,577,773
Net cash provided by (used in) investing activities	(12,489,194)	-	-	-	-	511,344	(6,264,335)	81,147	(1,755,886)	(310,323)	-	(20,227,246)
Financing Activities												
Proceeds from Green Liberty Notes	-	-	-	-	-	-	-	-	-	700,000	-	700,000
Repayments of Debt	(3,515,563)	-	-	(923,409)	-	-	-	-	-	(500,000)	-	(4,938,972)
Net cash provided by (used in) financing activities	(3,515,563)	-	-	(923,409)	-	-	-	-	-	200,000	-	(4,238,972)
Net increase (decrease) in cash and cash equivalents	(9,383,839)	(8,714)	-	(427,408)	1,665,834	-	432,660	88,798	(227,967)	569,077	-	(7,291,558)
Cash and Cash Equivalents, Beginning of Period												
Unrestricted	28,222,711	45,573	-	652,399	157,588	-	1,355,036	1,907,678	1,981,895	2,902,733	-	37,225,614
Restricted	15,252,327	-	-	769,988	3,107,268	-	-	85,141	28,537	-	-	19,243,260
Cash and Cash Equivalents, Beginning of Period	43,475,038	45,573	-	1,422,387	3,264,856	-	1,355,036	1,992,819	2,010,432	2,902,733	-	56,468,874
Cash and Cash Equivalents, End of Period												
Unrestricted	18,066,374	36,859	-	234,131	69,350	-	1,787,697	1,995,802	1,754,229	3,471,809	-	27,416,251
Restricted	16,024,825	-	-	760,848	4,861,341	-	-	85,815	28,236	-	-	21,761,064
Cash and Cash Equivalents, End of Period	34,091,199	36,859	-	994,978	4,930,691	-	1,787,697	2,081,617	1,782,465	3,471,809	-	49,177,315

Connecticut Green Bank
Consolidated Statement of Cash Flows
For the Period July 1, 2023 to December 31, 2023

	CGB-Primary Government Fiscal YTD 12/31/2023	CT Solar Lease 2 LLC Fiscal YTD 12/31/2023	CT Solar Lease 3 LLC Fiscal YTD 12/31/2023	CEFIA Solar Services Inc. Fiscal YTD 12/31/2023	Eliminations Fiscal YTD 12/31/2023	Consolidated Fiscal YTD 12/31/2023
Operating Activities						
Change in Net Position	14,756,251	(906,602)	8,856	192,369	-	14,050,874
Adjustments to reconcile change in net position to net cash provided by (used in) operating activities						
Depreciation	344,261	1,275,127	324,116	7,623	-	1,951,127
Accretion	-	46,820	10,393	-	-	57,213
Provision for Loan Losses	(3,998)	-	-	-	-	(3,998)
Loss on Fixed Asset Disposals/Solar Lease Buyouts	-	226,757	-	-	-	226,757
Gain (Loss) on FV of Interest Rate Swap	-	134,175	-	-	-	134,175
Gain (Loss) on Investments	5,608	-	-	-	-	5,608
Noncash exercise of warrants	(121,322)	-	-	-	-	(121,322)
Changes in operating assets and liabilities:						
Accounts Receivable	1,476,576	50,269	15,649	(73,707)	-	1,468,787
Utility Remittance Receivable	(160,969)	-	-	-	-	(160,969)
Interest Receivable	(200,131)	(358)	-	-	-	(200,489)
Other Receivables	(111,217)	131,535	75,628	2,098,921	-	2,194,867
Due from Component Units	(6,181,278)	(3,505)	-	(27,116)	6,211,899	-
Prepaid Expenses and Other Assets	49,520	273,386	35,258	(174,623)	-	183,541
Accounts Payable and Accrued Expenses	(389,607)	(115,786)	(46,133)	(202,327)	-	(753,853)
Due to Component Units	8,019,728	63,894	-	(1,871,723)	(6,211,899)	-
Custodial Liability	(278,522)	-	-	-	-	(278,522)
Deferred Revenue	(30,239)	(24,358)	(1,980)	-	-	(56,578)
Net cash provided by (used in) operating activities	17,174,659	1,151,354	421,787	(50,583)	0	18,697,217
Investing Activities						
Purchase of Capital Assets	(41,833)	-	-	-	-	(41,833)
Proceeds from sale of Capital Assets/Solar Lease Buyouts	-	33,046	-	-	-	33,046
Program Loan Disbursements	(29,763,186)	-	-	-	-	(29,763,186)
Return of Principal on Program Loans	9,577,773	-	-	-	-	9,577,773
Investment in Component Units	-	-	-	(263,954)	-	(263,954)
Net cash provided by (used in) investing activities	(20,227,246)	33,046	-	(263,954)	-	(20,458,154)
Financing Activities						
Proceeds from Green Liberty Notes	700,000	-	-	-	-	700,000
Repayments of Debt	(4,938,972)	(363,039)	-	(47,395)	-	(5,349,406)
Distributions to Investor Member	-	-	22,801	-	-	22,801
Net cash provided by (used in) investing activities	(4,238,972)	(363,039)	22,801	(47,395)	-	(4,626,604)
Net increase (decrease) in cash and cash equivalents	(7,291,558)	821,361	444,588	(361,932)	0	(6,387,542)
Cash and Cash Equivalents, Beginning of Period						
Unrestricted	37,225,614	1,404,824	3,066,796	947,470	-	42,644,704
Restricted	19,243,260	1,877,855	-	383,866	-	21,504,981
Cash and Cash Equivalents, Beginning of Period	56,468,874	3,282,679	3,066,796	1,331,336	-	64,149,685
Cash and Cash Equivalents, End of Period						
Unrestricted	27,416,251	2,225,747	3,511,385	584,930	-	33,738,313
Restricted	21,761,064	1,878,293	-	384,473	-	24,023,830
Cash and Cash Equivalents, End of Period	49,177,315	4,104,040	3,511,385	969,404	-	57,762,143

Memo

To: Connecticut Green Bank Senior Team

From: Inclusive Prosperity Capital Staff

Date: February 14, 2024

Re: IPC Quarterly Reporting – Q2 FY24 (October 1, 2023 – December 31, 2023)

Progress to targets for Fiscal Year 2024, as of 12/31/2023

Product	Number of Projects	Projects Target	% to goal	Total Financed Amount	Financed Target	% to goal	MW Installed	MW Target	% to goal
Smart-E Loan	792	1204	65.8%	\$16,224,974	\$22,423,925	72.3%	0.9	0.9	100%
Multi-Family H&S	0	0	n/a	\$0	\$0	n/a	n/a	n/a	n/a
Multi-Family Pre-Dev.	0	0	n/a	\$0	\$0	0%	0.0	0.0	0%
Multi-Family Term	1	0	n/a	\$1,420,295	\$0	n/a	0.0	0.0	n/a
Solar PPA	0	10	0%	\$0	\$10,650,000	0%	0	4.7	0%

PSA 5410 – Smart-E Loan

The Smart-E loan program continues to be in high demand for contractors and homeowners. In the second quarter specifically, 355 loans were closed for \$7,513,413 (141 in October, 119 in November and 95 in December). HVAC projects continue to be the dominant installation but solar installations continue to rise. As of result of the 1st and 2nd quarter success, the Smart-E fiscal year goals have been increased for the remainder of the year.

PSA 5411 – Multifamily

- South Eagleville, a development project funded by a 2016 Navigator Predevelopment Loan to the Mansfield Housing Authority and Mansfield Nonprofit Housing Development Corporation, closed on its CHFA & DOH permanent financing package for ~\$20M, ~\$17.7M of which was financing, \$1,420,295 of which was for energy improvements at the property.
- The Bridgeport Neighborhood Trust ECT H&S RLF loan has been fully repaid, providing for ~\$100k of H&S funds available for deployment.

PSA 5412 – Solar PPA

- To-date, no solar PPA projects have closed in FY24.
- IPC staff responded to PPA pricing requests received by CTGB staff, particularly extensive scenarios to support the Solar MAP initiative.
- IPC staff continues to survey and monitor pricing competitiveness across installer and developer channels. General feedback is that our current pricing offering is competitive (for those projects requesting pricing), although the combination of increased labor costs and the transition to the NRES program has capped PPA deployment potential.
- IPC staff continues to enhance its use of IPC Salesforce Platform to provide formatted installer/developer pricing responses.
- Staff continue to coordinate with CTGB staff on funding Solar MAP Round 2 projects throughout 2024.
- Staff continues to coordinate as part of the CGB-IPC Storage Product Working Group to identify market opportunities, structures and products to leverage the Green Bank's new storage incentive program.

Use of DEEP Proceeds

Energize CT Health & Safety Revolving Loan Fund

- The Bridgeport Neighborhood Trust ECT H&S RLF loan has been fully repaid, providing for ~\$100k of H&S funds available for deployment

General Updates

Below are updates for the second quarter of FY24:

- **Capital raising:**

- No investment capital raising in Q2 FY24, focus was on GGRF applications.
- IPC received \$600K in operating grant support in Q2 FY24 for its expansion activities from Kresge Foundation and McKnight Foundation.
- IPC will begin raising investment and general operating capital in Q3 FY24 ahead of GGRF funds flowing later in 2024, including negotiating with CGB on amendments to the PPA facility for construction and permanent debt.
- **Business/Product Development/Initiatives of interest to Connecticut:**
 - Smart-E/NGEN technical partner discussions
 - Working with LoanStar and KoolOwl/Greentech on strategic partnerships to offer additional functionality around instant pre-approval to contractors and better integration into lender origination systems. Each would be a non-exclusive arrangement and come with different cost structures. IPC expects to ultimately work with a number of potential tech providers on the front-end interface with contractors and consumers, as options offered to lenders and contractors for a fee.
 - Software licensing agreement for the NGEN platform
 - Advanced discussions for NGEN licensing with CAETFA. Have worked through numerous CA contracting and procurement challenges and expect to execute a contract in Q3 FY24.
 - Discussions continue with Colorado Clean Energy Fund and Energy Trust of Oregon on potential NGEN licensing.
 - Full Smart-E Program Implementation
 - Working with Inclusiv, Smart-E launch has launched in NM (public launch event on 4/22) and AZ (public launch event on 5/19) with TX to follow early in 2024 (signed first lenders in TX) with funding provided by Wells Fargo Foundation. This is for a lender-led model, meaning no green bank or state energy office sponsoring the program, and with IPC being compensated to manage the program. IPC closed a \$2.5M guarantee with the Community Investment Guarantee Program for a credit enhancement for participating lenders.
 - Advanced discussions with Indiana Energy Independence Fund to launch a co-branded Smart-E program in the state and expect to execute a contract in Q3 FY24.
 - Continue to work on potential Smart-E programs in various geographies, many led by lender interest, some by green bank or state/local government interest. Discussions ongoing with partners in over 20 states. Most are waiting for GGRF funding to flow, though a few might be in a position to launch ahead of that.
 - Continue to work with a number of green banks, state energy offices, local governments, community-based lenders (including CDFIs), etc. on leveraging IPC's products and financing strategies.

Administrative:

Below are changes to staff and our talent acquisition process:

Additions and Departures:

Additions:

Michael DesRoches, Controller (6-month contract) – December 29, 2023

Autumn Clark, Manager, People & Culture – November 30, 2023

Departures:

Nicholas Nedd, People and Culture Administrator – October 5, 2023

Racquel Hall, Senior Accountant – October 19, 2023

Vijay Dora, Accounting Manager- October 26, 2023

Current Vacancies: There are currently no vacancies.

Associate/Senior Associate, Clean Energy Transactions (To Be Posted)

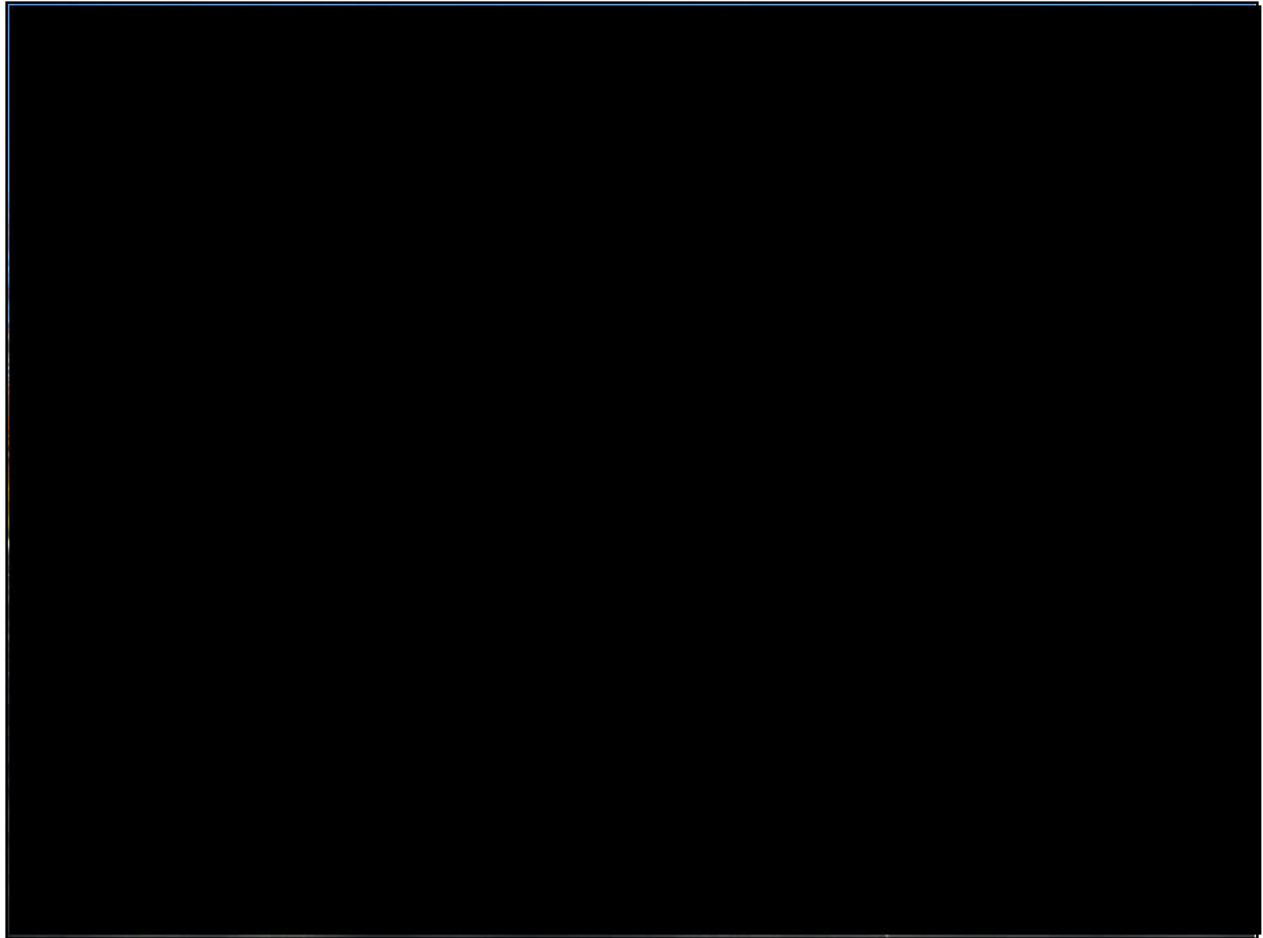
Recruiting & Staff Updates:

We successfully hired and onboarded a new Staff Accountant (replacement role) and a Controller (6-month contract role). On that same accounting team, we promoted Kyara Wiggins to Accounting Manager and she will report directly to the Controller. The Staff Accountant will report directly to the Accounting Manager. Our goal is to better systematize and streamline the workstreams, outputs, and overall team dynamics of the Accounting team, which has had some turnover in the past 18 months. We are preparing to recruit and hire an Associate or Senior Associate of Clean Energy Transactions. In all, 2023 brought a revamping of our recruiting, hiring, and onboarding practices. We focused on improving the candidate experience by reducing the number of interviews from 4-6 per candidate to a three-phase interview process. We focused on increasing the diversity of candidates both in our candidate pool and in the final prospects that were presented to hiring managers. We also focused on ensuring that the interview process allowed various cross functional teams to connect with candidates before selection. In all, we were able to hire some stellar team members and gain insights on ways that we can continue to improve.

126 Hyde Road, Farmington, CT 06032

C-PACE Project Diligence Memo

March 8, 2024



Document Purpose: This document contains background information and due diligence on a potential C-PACE transaction described herein. This information is provided to the Connecticut Green Bank ("Green Bank") officers, senior staff and the Connecticut Green Bank Board of Directors for the purposes of reviewing and approving recommendations made by staff of the Connecticut Green Bank. In some cases, this package may contain among other things, trade secrets, and commercial or financial information given to the Green Bank in confidence and should be excluded under C.G.S. §1-210(b) and §16-245n(D) from any public disclosure under the Connecticut Freedom of Information Act. If such information is included in this package, it will be noted as confidential.

To: Green Bank Board of Directors
From: Priyank Bhakta, Senior Manager Investments & Underwriting
CC: Bryan Garcia, President and CEO; Bert Hunter, EVP and CIO; Brian Farnen, General Counsel and CLO; Mackey Dykes, VP of Financing Programs and Officer; Alex Kovtunenکو, Deputy General Counsel
Date: March 8, 2024
Re: C-PACE Project Located at 126 Hyde Road, Farmington, CT 06032

Request: The Property Owner is seeking 20-year, \$678,946 in C-PACE financing for the installation of a 276.4 kW DC ground mount solar system by [REDACTED]. A C-PACE assessment through the Town of Farmington will provide security. The Operating Company will also be a co-borrower on the C-PACE loan.

Summary

Property Information		
Property Address	126 Hyde Road, Farmington, CT 06032	
Municipality	Hartford County	
Property Owner	Emmett & Associates, LLC	
Type of Building	Flex Industrial	
Building Size (sf)	23,890 sf	
Year of Build / Most Recent Renovation	1962 / 2024	
Environmental Screening Report	See Narrative	
Project Information		
Proposed Project Description	276.4 kW DC ground mount solar system	
Energy Contractor	[REDACTED]	
Objective Function	40.41 kBTU / ratepayer dollar at risk	
		Total
Projected Energy Savings (mmBTU)	Per Year (avg)	1,372
	Over EUL	27,439
Estimated Cost Savings (incl. ZRECs/Tariff and tax benefits)	Per Year (avg)	\$113,193
	Over EUL	\$2,263,862
Financial Metrics		
Proposed C-PACE Assessment	\$678,946	
Term Duration (years)	20 years	
Term Rate	5.75% annually	
Construction Rate	5.00% annually	
Annual C-PACE Assessment	\$57,565	
Average DSCR (OpCo / PropCo)	[REDACTED]	
Savings-to-Investment Ratio	1.90x	
Lien-to-Value (LiTV)	[REDACTED]	
Loan-to-Value (LTV)	[REDACTED]	
Appraisal Value ¹	[REDACTED]	
Mortgage Lender Consent	Pending [REDACTED]	
Co-Borrower	Turbine Technologies, Inc (DBA: Burke Aerospace)	

¹ Appraised value per December 2023 appraisal of \$ [REDACTED] of the C-PACE project investment & roof repair hard costs.

Memo

To: Connecticut Green Bank Board of Directors

From: Mackey Dykes, Vice President, Financing Programs, Alex Kovtunenکو, Deputy General Counsel, Financing Programs and Alysse Lembo-Buzzelli, Associate Director, Financing Programs

Date: March 12, 2024

Re: C-PACE Program Guidelines Update for Resilience

Overview

Conn. Gen. Stat. Section 16a-40g authorizes what has come to be known as the Commercial Property Assessed Clean Energy Program (“C-PACE”), designates the Connecticut Green Bank (“Green Bank”) as the state-wide administrator of the program and charges Green Bank to “develop program guidelines governing the terms and conditions under which state and third-party financing may be made available to the commercial sustainable energy program.” Since 2013, Green Bank has developed and maintained the “Program Guidelines” for the C-PACE program in accordance with this statutory requirement.

After the required thirty-day public comment period, Green Bank Staff is seeking approval from the Board on a previously proposed draft (in the Board of Directors meeting held on 1/26/24) to update the Program Guidelines to include: 1) guidelines for defining and approving resilience improvements in the Program Guidelines, 2) amendments to the “New Construction Technical Standards”, Appendix N that incorporate pathways to include resilience improvements in new construction projects, and 3) inclusion of a new “Resilience Technical Standards” appendix, Appendix O.

C-PACE Statute Changes

An amendment to the C-PACE Statute in Public Act 22-6 included the ability to finance zero-emission vehicle refueling infrastructure and resilience improvements with C-PACE. Both were exempt from the requirement that the cost savings of the improvements over the useful life of such improvements exceed the costs of such improvements (the Savings-to-Investment Ratio of >1). However, a resilience study and assessment of cost savings are required for any project applying for C-PACE financing for resilience improvements.

Approach

Staff's approach was to define resilience improvements, explain eligibility for C-PACE financing, outline the requirements to apply, and incorporate that information into the existing guidelines seamlessly. Staff identified climate change adaptation and nature-based solution examples in the proposed guidelines to encourage these solutions, but did not limit other possible resilience projects that meet the statutory definition from being presented.

Property owners can utilize C-PACE to finance resilience improvements that provide the "ability to prepare for and adapt to changing conditions and withstand and recover rapidly from deliberate attacks, accidents or naturally occurring threats or incidents, including, but not limited to, threats or incidents associated with the impacts of climate change"¹. Given the broad definition of resilience, Staff designed the guidelines and appendices to accommodate all types of resilience improvements to help understand the market needs.

Additions & Amendments

In order to give developers, capital providers, and borrowers a way to use C-PACE for financing for resilience improvements while still preserving the program's public policy aspects, Staff made the following changes and presented them for public comment:

- **C-PACE Guidelines**
 - Amended sections throughout to incorporate resilience language
 - Amended language throughout to indicate resilience improvements are exempt from the Savings-to-Investment ratio (SIR) requirement
 - Added a subsection to "Defining the Scope of Work" section for resilience improvements
 - Added a section that defines the "Resilience Technical Review" process
 - Added a defined term, "Resilience Improvements"
- **Appendix N- New Construction Technical Standards**
 - Amended the "Overview" section to incorporate language for resilience improvements
 - Amended the "Supporting Documentation" section to include 2 subsections for a) energy and b) resilience
 - Added a new section for "Resilience Determination"
 - Re-labeled the "Bonus Technologies" section to "Bonus Measures", and included 2 new points to allow applicant to add resilience improvements as a way to access additional percentages of the TECC in C-PACE financing
 - Added a new section for "Resilience Determination" to outline the two ways to access C-PACE financing for resilience improvements in a New Construction Project:
 - Adding prescriptive resilience measures to an energy project as Bonus Measure(s), for a maximum of 10% additional of the TECC in C-PACE financing

¹ Section 16-244aa of the Connecticut General Statutes

- Using the FORTIFIED² program and designing for one of the 3 levels of building standards to qualify for up to 20% of the TECC in C-PACE financing. Projects choosing to meet one of the FORTIFIED standards may also incorporate additional Bonus Measures, for up to an additional 10% of the TECC in C-PACE financing. Lastly, Projects that are also designing for Net Zero may be eligible for up to the maximum of 35% of the TECC in C-PACE financing.
 - Added a new table (Table 3) to outline the “Resilience for New Construction Total Eligible C-PACE Financed Amounts”
- **Appendix O- Resilience Technical Standards**
 - A new appendix to the C-PACE Guidelines that outlines the following:
 - An overview of “Resilience Projects”
 - Examples of resilience improvements
 - Climate change adaptation examples
 - Nature-based solution examples
 - FORTIFIED designation
 - Other resilience improvements
 - Information regarding supporting documentation, including two Exhibits for the following:
 - “Pre-Study Worksheet” (Exhibit I)
 - “Resilience Study Requirements” (Exhibit II)

Public Comments

As discussed during the January 26, 2024 Board meeting, the draft revised program guidelines, draft revised Appendix N, and draft Appendix O (as summarized above) were posted for a public comment period. The public comment period ran for 30 days, ending on March 8, 2024. During the public comment period, Green Bank Staff received comments submitted by The C-PACE Alliance (CPA). CPA is an organization that consists of 28 total members, including capital provider partners that lend in CT’s C-PACE program. Many of CPA’s comments required simple wording clarification or clarification as to where to find the answers within the drafts, with the exception of one comment, summarized below. CPA’s full comments can be found in Exhibit A of this memo. Green Bank Staff will address all of CPA’s comments through email communications and/or virtual meetings/phone calls:

- For projects using the new construction technical standards appendix, raise the maximum percentage of C-PACE financing available for a project to 40-45% to account for additional expenses related to resilience improvements.
 - STAFF’S RESPONSE SUMMARY: by allowing resilience improvements to be financed as stand-alone improvements following the technical standards in Appendix O, and by expanding the “Bonus Measures” to include resilience improvements, we feel that we are expanding the accessibility to financing for

² The FORTIFIED construction method is a voluntary construction standard backed by decades of research, that roofing contractors and builders can use to help protect commercial and residential properties against severe weather.

resilience improvements without needing to increase the overall maximum of C-PACE financing.

Future Considerations

In order to improve the guidelines further with regard to resilience improvements, Staff proposes a new requirement that roof replacements meet a minimum resiliency standard of designing to FORTIFIED Roof standards. This change would be considered substantive and would require the standard public comment period before official approval of such changes by the Board. Staff will initiate this public comment period following discussion with the Board in the March 15, 2024 meeting.

Recommendation

Staff recommends that the Green Bank Board of Directors (the “Board”) recommend approval of the amended C-PACE Program Guidelines and Appendix N, as well as the inclusion of the newly created “Resilience Technical Standards” of Appendix O, in accordance with this memorandum. The previously drafted Program Guidelines, Appendix N & Appendix O have already gone through a thirty-day public comment period, and minor changes have been made as a result of comments received. If approved by the Board, CGB staff will proceed with the implementation of such C-PACE Program Guidelines.

In addition, Staff requests that the Board direct it to incorporate language setting minimum requirements for a roof replacement to be eligible for C-PACE financing for resilience. While Staff believes this change is necessary, adoption of the Program Guidelines should not be delayed while the public comment period is held and the change is formally adopted.

Resolution

WHEREAS, Conn. Gen. Stat. Section 16a-40g (the “Authorizing Statute”) authorizes what has come to be known as the Commercial Property Assessed Clean Energy Program (“C-PACE”), the Authorizing Statute designates the Connecticut Green Bank (“Green Bank”) as the state-wide administrator of the program;

WHEREAS, the Authorizing Statute charges Green Bank to develop program guidelines (the “Program Guidelines”) governing the terms and conditions under which state and third-party financing may be made available to C-PACE;

WHEREAS, Green Bank staff drafted proposed changes to the Program Guidelines and Appendix N, and included Appendix O; and

WHEREAS, The proposed changes to the Program Guidelines and Appendix N, and the inclusion of Appendix O, went through a thirty-day public comment period in accordance with Conn. Gen. Stat. Section 1-120 et seq, and staff has made further minor changes to the Guidelines to address certain public comments which were received, as more particularly described in that memorandum to the Board dated March 12, 2024 (the “Memorandum”).

NOW, therefore be it:

RESOLVED, the Green Bank Board of Directors (the “Board”) approves the proposed changes to Program Guidelines and Appendix N, and the inclusion of Appendix O, substantially in the form of attached to the Memorandum;

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents and instruments as they shall deem necessary and desirable to affect the above-mentioned Program Guidelines.



SPARKED BY
CONNECTICUT GREEN BANK

C-PACE PROGRAM GUIDELINES

Version Date: March 15, 2024

Connecticut Green Bank

75 Charter Oak Ave, Suite 1 – 103

Hartford, CT 06106

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Table of Contents

ARTICLE I. INTRODUCTION	2
ARTICLE II. OUTLINE OF C-PACE BENEFITS.....	3
ARTICLE III. C-PACE STATUTORY AND PROGRAMMATIC REQUIREMENTS.....	5
Section 1. Mortgage Lender Consent	5
Section 2. Real Property Eligibility.....	5
Section 3. Project Eligibility	6
Section 4. Restrictions on completed Qualifying Projects and consolidated Qualifying Projects	7
Section 5. Restrictions on Refinancing within the C-PACE Program.....	7
Section 6. Billing and Collection	7
ARTICLE IV. TECHNICAL STANDARDS OVERVIEW	8
Section 1. Defining a Scope of Work	8
Section 2. Standard SIR Technical Review	9
Section 3. Resilience Technical Review	10
Section 4. Commissioning; Measurement and Verification	10
Section 5. Alternative to Standard SIR Technical Review Process.....	11
Section 6. New Construction, Repositioning, and Gut Rehabilitation	11
Section 7. Technical Review Auditing.....	11
ARTICLE V. C-PACE OPEN MARKET AND ELIGIBILITY CRITERIA FOR C-PACE CAPITAL PROVIDERS	12
Section 1. Concept of ‘Open Market’	12
Section 2. C-PACE Approved Third-Party Capital Providers.....	12
ARTICLE VI. DEFINED TERMS	13

Article I. INTRODUCTION

Capitalized terms used below which are not otherwise defined shall have the meaning ascribed to them in Article VI hereof.

The C-PACE Legislation (defined below) authorized the commercial sustainable energy program more commonly known as the Commercial & Industrial Property Assessed Clean Energy Program (“C-PACE”). C-PACE is a financing program that allows Connecticut building owners to access cleaner, cheaper, and more reliable energy, as well as financing for resiliency and Zero-Emission Vehicle Refueling Infrastructure. The C-PACE Legislation authorized Connecticut Green Bank, a Connecticut quasi-public agency (“Green Bank”), to administer C-PACE and establish program guidelines for the implementation of the program.

C-PACE allows qualifying commercial real property owners to access financing to undertake eligible energy and resilience improvements on their buildings, or build greener, more resilient and more efficient new buildings and repay the investment through an additional charge/assessment, similar to a real property tax, sewer, or water bill. Like a sewer assessment, projects financed through C-PACE are secured by a benefit assessment lien on the improved real property, which lien is a non-accelerating, senior lien, and repaid over time. The repayment obligation transfers automatically to the next owner if the property is sold and in the event of default, only the payments in arrears come due. This arrangement spreads the cost of eligible improvements – such as energy efficient boilers, upgraded insulation, new windows, solar photovoltaic (PV) installations, resilience improvements, or electric vehicle (EV) chargers – over the expected life of the measure. Because the payment is secured by a senior lien, C-PACE projects are seen as less risky than typical financing.

Benefit assessments are a familiar tool that municipalities levy on real estate parcels to finance projects including street paving, water and sewer systems, and street lighting. C-PACE builds on a long history of using such benefit assessments and serves a public purpose through reducing energy costs, stimulating the economy, improving property valuation, reducing greenhouse gas emissions, improving resiliency and creating jobs. C-PACE is a proven and effective tool to attract private capital into the market. The Green Bank, as program administrator, bills and collects the scheduled payments for all benefit assessment liens in the manner of property taxes in the Participating Municipality.

This document sets forth the program guidelines established by Green Bank for the implementation of C-PACE (as may be updated, supplement, amended or otherwise modified by Green Bank, the “Program Guidelines”), which Program Guidelines govern all C-PACE participants.

All Appendixes attached hereto are supplemental program documents used by Green Bank in implementation of the Program Guidelines and may be modified or amended by Green Bank, in its sole discretion, from time to time. Current versions of all Appendixes may be found at www.cpace.com/guidelines.

Article II. OUTLINE OF C-PACE BENEFITS

PACE offers multiple benefits to a broad range of stakeholders, including but not limited to building owners, municipalities, mortgage holders, lenders, and energy efficiency/renewable energy contractors.

Section 1. For Building Owners

C-PACE helps minimize the up-front investment, installation, and performance risk of energy upgrades, while helping owners lower their operating costs, improve the resilience, value and market competitiveness of their asset, and comply with energy mandates. C-PACE does this in several ways:

- *Many owners lack capital to implement energy and resilience improvements.* C-PACE provides up to 100%, long-term financing to property owners for qualified energy and resilience upgrades. Audits, resilience studies, construction costs, commissioning and post-construction performance measurement and verification (M&V) can be wrapped into C-PACE financing.
- *Owners often want to sell the building before the energy or resilience improvement financing is repaid.* The C-PACE assessment obligation is attached to the property and can transfer to the new owner. Payments do not accelerate in case of default.
- *Many owners feel energy improvements do not yield an adequate return on investment.* The C-PACE program requires that the estimated energy savings from an efficiency retrofit or renewable energy project exceed the investment and financing costs, leading the expected cash flow to be positive over the useful life of the equipment. Moreover, C-PACE requires an independent third-party technical review of the project energy savings estimates, thereby ensuring confidence in the projected energy savings. Deeper energy upgrades and savings are possible because assessments match the useful life of equipment, which for certain improvements can extend up to 25 years.
- *Other owners are uncertain that energy savings will perform as advertised.* C-PACE helps building owners understand their future energy savings by requiring that an energy audit and/or feasibility study be conducted to estimate energy savings and commissioning to ensure that equipment is installed correctly. An audit for a refueling installation assesses the impact of a charging station on a building's energy profile. Building owners should consider developing a measurement & verification plan to track energy consumption or production over time.
- *Owners need tenants to share in the costs of energy upgrades.* As a benefit assessment, C-PACE payments – as well as energy savings – may, if permitted by the lease agreement, be passed along to tenants.

Section 2. For Energy Auditors, Contractors and Developers

The biggest barrier to converting leads to deals for energy or resilience improvements is the lack of access to acceptable finance terms from traditional lenders. C-PACE solves this by allowing a property owner to access up to 100% financing for up to 25 years, affording deeper energy efficiency, clean energy, and resilience improvements. The Green Bank also provides energy auditors, contractors and developers access to training, support services, market research, and marketing materials.

Section 3. For Municipalities

C-PACE is an economic development tool for municipalities. Energy and resilience improvements create a more competitive environment for retaining and attracting new businesses by lowering energy and/or

operating costs. Energy and resilience improvements also create jobs, reduce greenhouse gases and other pollutants, and help building owners adapt to vulnerabilities that could threaten daily business operations. The Green Bank coordinates with municipalities interested in entering into the Participation Agreement and facilitates municipal outreach to commercial property owners.

Section 4. For Capital Providers

C-PACE is a secure financing product for Capital Providers. The security comes from its position similar to a tax lien on a property. The lien, like other public benefit assessments, sits in a senior position to other encumbrances on the property, including mortgage debt and liens other than municipal real property tax liens. The Green Bank bills, collects, and remits funds in its role as program administrator.

The C-PACE Legislation requires C-PACE approved projects, other than zero-emission vehicle refueling infrastructure upgrades and resilience improvements, to have a “Savings to Investment Ratio” (SIR) greater than one, meaning that projected lifetime savings from the measures must exceed the total investment, inclusive of financing costs, over the lifetime of the measures. Connecticut streamlined the C-PACE program by establishing a single statewide C-PACE program administered by the Green Bank. Connecticut’s C-PACE program maintains an open market approach, encouraging private capital to be the primary financier of these assessments and supporting building owners who wish to source their own C-PACE lender (see Article V below). Additionally, the Green Bank currently has dedicated capital to invest in C-PACE projects.

Section 5. For Mortgage Holders

The structure of C-PACE allows participating building owners to pay for improvements to their property out of the savings the project creates. With the exception of zero-emission vehicle refueling infrastructure and resilience improvement projects, Connecticut statutes require C-PACE approved projects to have an SIR greater than 1, meaning that projected lifetime savings from the energy measures must exceed the total investment, inclusive of financing costs, over the lifetime of the measures. The Green Bank has instituted technical underwriting standards for C-PACE that provides a robust framework for measuring the estimated SIR (Appendix D), which all efficiency and renewable energy C-PACE Projects must meet. Under the C-PACE financing structure, the building should experience increased net operating income, often an immediate return on investment, and therefore becomes more attractive to current and potential tenants and future buyers. Additionally, C-PACE Assessments do not accelerate. In the event of a foreclosure of the property for any reason, only the amount of the C-PACE assessment currently due and/or in arrears, a relatively small proportion of the entire C-PACE assessment, would come due. In the event of a property sale, C-PACE assessments automatically transfer to the new property owner unless the buyer or seller decides to prepay the assessment. Finally, the C-PACE Legislation requires that property owners receive the written consent of their existing mortgage holder before being eligible for C-PACE financing (Appendix C). Mortgage lenders will be at the table helping to determine whether a property can undertake this voluntary assessment.

Article III. C-PACE STATUTORY AND PROGRAMMATIC REQUIREMENTS

This section outlines certain requirements set forth in the C-PACE Legislation as well as additional programmatic requirements established by the Green Bank.

Section 1. Mortgage Lender Consent

- A. Pursuant to the C-PACE Legislation, Benefited Property Owners must:
 - a. Provide written notice to any existing mortgage holder of the Qualifying Property (as defined below), at least thirty days before the recording of a benefit assessment lien on such property, of the property owner's intent to finance a project through C-PACE, and
 - b. Obtain the written consent to the C-PACE financing from any existing mortgage holder of the Qualifying Property.
- B. Green Bank's model mortgage holder notice and consent is attached as Appendix C. C-PACE participants may elect to use a different agreement to evidencing mortgage holder notice and consent, however any other such agreement will be subject to review and approval by Green Bank in its sole discretion.
- C. In accordance with the U.S. Department of Housing and Urban Development ("HUD") Notice H2017-01 dated January 11, 2017, as may be modified, amended or superseded, in the event that the mortgage holder is HUD, the mortgage holder notice and consent as well as the Financing Agreement associated with such consent shall provide, in the event of a default on the associated Benefit Assessment Lien payment, for notice and a reasonable opportunity for the mortgage holder to cure any such non-payment.

Section 2. Real Property Eligibility

To be considered a "Qualifying Property" eligible for C-PACE Financing, a Qualifying Commercial Real Property must meet the following requirements:

- A. Must be located within a Participating Municipality, or multiple abutting Participating Municipalities.
- B. Must be owned by a Benefited Property Owner, who is not a state, municipality, or any political subdivision thereof.
- C. Must not be a Residential Dwelling of four units or less. Multifamily properties of five units or more are eligible. Mixed-use, not-for-profit, and agricultural properties may also be eligible. If the eligibility of a certain property is not clear, Green Bank may determine property eligibility in its reasonable discretion based on site specific considerations including, but not limited to, zoning designation and current/past/future land use. Multiple abutting parcels may be included in the legal description of one Benefit Assessment Lien if (1) each parcel, by itself, is a Qualifying Property (2) each parcel is owned by the same Benefited Property Owner, and (3) each parcel benefits from the same Qualifying Project.
- D. Must not be subject to any mortgage, deed of trust or other equivalent consensual security interest securing a loan primarily for personal, family or household use in a Residential Dwelling

of four units or less or on land on which a person intends to construct a Residential Dwelling of four units or less.

Section 3. Project Eligibility

To be considered a “Qualifying Project” eligible for C-PACE Financing, an Energy Improvement project must meet the following requirements:

- A. Contain at least one Energy Improvement.
- B. All costs associated with the Energy Improvement and the financing thereof (e.g., closing/lender fees, consultant/development fees, soft costs, or other associated project costs, each being an “Associated Cost”) may, subject to Green Bank approval, be included in the Financed Amount.
- C. Obtain an energy audit, feasibility study, or resilience study for the proposed Energy Improvement(s).
- D. The term of the Benefit Assessment associated with the Qualifying Project may not exceed the weighted average effective useful life (“EUL”) of the Energy Improvement(s), except in the context of Restructuring, in which case the term of the Benefit Assessment may be extended beyond the weighted average EUL of the Energy Improvement(s). EUL is determined through the energy audit or resilience study, based on industry best practice, and is subject to approval by (1) either the Technical Administrator or a Technical Reviewer, and/or (2) the Green Bank. Regardless of a project’s EUL, the term of the Benefit Assessment may not exceed 25 years unless approved by Green Bank, in its sole discretion.
- E. For all Energy Improvements that meet the following definition “(A) participation in a district heating and cooling system by qualifying commercial real property, (B) participation in a microgrid, as defined in section 16-243y, including any related infrastructure for such microgrid, by qualifying commercial real property, provided such microgrid and any related infrastructure incorporate clean energy, as defined in section 16-245n, (C) any improvement, renovation or retrofitting of qualifying commercial real property to reduce energy consumption or improve energy efficiency, (D) installation of a renewable energy system to service qualifying commercial real property, (E) installation of a solar thermal or geothermal system to service qualifying commercial real property,” Projected Total Cost Savings must exceed the Projected Financing Cost. In other words, the savings-to investment ratio (“SIR”) of the project must be greater than one. To demonstrate that the SIR requirement has been satisfied the project must be either (1) reviewed and approved by the Technical Administrator, (2) reviewed and approved by a Technical Reviewer, (3) be certified as Investor Ready Energy Efficiency by the Investor Confidence Project (as defined by the Investor Confidence Project, see <http://www.eepperformance.org>), (4), for certain projects which include third party-owned renewable energy system(s), reviewed and approved by Green Bank, or certified by an Approved Capital Provider as applicable and more particularly described in Appendix L. For the avoidance of doubt, the SIR calculation for the project must meet the requirements set forth in Article IV below and shall not be applicable for Zero-emission Vehicle Refueling Infrastructure or Resilience Improvements.
- F. For all Resilience Improvements, the requirement for the project to complete Standard SIR Technical Review process is not applicable. Instead, C-PACE financing eligibility for resilience projects will be based on an identification of Resilience Improvements and completion of an assessment of resilience cost savings through a resilience study. See Appendix O.

- G. All Projects require the written approval of the Green Bank, as the statewide administrator of the C-PACE Program.
- H. All Benefited Property Owner(s) associated with the project must sign a Disclosure of Risk Form.
- I. If the Energy Improvement(s) are wholly owned by any party or parties which is/are not the Benefited Property Owner(s), then such project must meet the requirements set forth in Appendix L.

Section 4. Restrictions on completed Qualifying Projects and consolidated Qualifying Projects

Qualifying Project improvements which have already been made to a Qualifying Property may be eligible for financing if such Qualifying Project was completed less than a calendar year prior to the complete submission of documents necessary for Green Bank approval (See Appendix F) of such Qualifying Project. Additionally, subsequent Energy Improvement(s) made to a Qualifying Property which has previously received C-PACE financing for a previous Qualifying Project, made within one calendar year from the close of C-PACE financing for the initial Qualifying Project, may be considered as one Qualifying Project for the purposes herein.

Section 5. Restrictions on Refinancing within the C-PACE Program

Qualifying Projects which closed on C-PACE financing are not eligible for Refinancing through the C-PACE Program. For the avoidance of doubt, nothing in the Program Guidelines is intended to prohibit Restructuring, at any time during the term of the applicable Benefit Assessment, through the C-PACE Program.

Section 6. Billing and Collection

Benefit Assessment Liens are billed in the same manner as real property taxes. As such, any payment schedule associated with any Benefit Assessment Liens will follow the billing cycle and due dates for real property taxes in the applicable Participating Municipality. Billing and collection of recorded Benefit Assessment Liens are conducted in accordance with the applicable Participation Agreement, as may be amended. If such Participation Agreement provides for Green Bank to conduct the billing and collection of Benefit Assessment Liens in such Participating Municipality then Green Bank will conduct such billing and collection in accordance with Appendix M.

Article IV. TECHNICAL STANDARDS OVERVIEW

The following provides a summary of the technical review process. Please refer to the Technical Standards (Appendices D & E & N & O) for a full description of audit and study requirements, technical review methodology and standards, and eligible and ineligible measures. For projects with Energy Improvements that require the SIR is greater than one, technical review may be completed by the Green Bank's selected Technical Administrator or an Approved Technical Reviewer, in accordance with the Technical Standards. As an alternative to this process, the Green Bank will also accept Investor Confidence Project-certified Investor Ready Energy Efficiency Projects (as defined by the Investor Confidence Project, see <http://www.eepperformance.org>) that demonstrate the SIR is greater than one. For Resilience Improvement and Zero-Emission Vehicle Refueling Infrastructure projects, the Green Bank will perform the technical review. Additionally, Green Bank may, in its sole discretion, perform technical review for projects which include third party-owned renewable energy system(s), as more particularly described in Appendix L.

Section 1. Defining a Scope of Work

I) Energy Improvements (excluding Resilience Improvements)

Benefited Property Owners should work with a qualified energy auditor and/or contractor with demonstrated experience to define a scope of work for their proposed project. This scope can range from installation of a single Energy Improvement, such as a new high efficiency boiler or a renewable energy system, to a whole building energy upgrade involving multiple, interactive Energy Improvements. A general list of eligible Energy Improvements and their typical energy saving characteristics can be found in the Technical Standards. The scope of work for the proposed project should be prepared and submitted by a Qualified Contractor or Registered Contractor. Projects require the applicant to conduct an energy audit or renewable energy feasibility study. For all projects involving the installation of Energy Improvements, depending on project type, size and complexity, the energy audit may range from a simple walkthrough of the building to an investment grade audit.¹ The Qualified Contractor or Registered Contractor will determine the minimum required energy audit level consistent with the Technical Standards (Appendix D). The audit should identify the building's representative baseline energy use (except for in the case of zero-emission vehicle refueling), identify and recommend Energy Improvements, estimate the useful life of each Energy Improvement, determine total project capital cost and the projected energy savings that can be confidently achieved, and evaluate key financial metrics. All projects involving a renewable energy system are required to complete a feasibility study. Green Bank recommends that any feasible study follow the guidelines set forth in Technical Standards (Appendix E).

II) Resilience Improvements

Benefited Property Owners should work with a qualified professional and/or FORTIFIED evaluator to identify vulnerabilities to define a scope of work for their proposed resilience project. This scope can

¹ Connecticut utilities may provide what can be considered an ASHRAE Level I audit at no cost to applicants. The Green Bank can provide applicants referrals to qualified energy auditors to do higher level audits, the costs of which may be included in C-PACE financing.

range from the installation of a single Resilience Improvement, such as switching from impervious-to-pervious surfaces to improve water filtration and reduce flooding, to a whole building/property approach involving multiple Resilience Improvements. A list of climate change adaptation and nature-based solution examples of resilience can be found in Appendix O. Projects that include Resilience Improvements require the applicant to conduct a resilience study that assesses the cost savings of the resilience project. The resilience study should include the identification of the vulnerabilities of the building/property, proposal on how to apply adaptation measures proposed to reduce risks, and an assessment of the cost savings of such adaptation measures. A resilience pre-study should also be completed, when applicable, as an aid to help identify possible Resilience Improvements. Pre-study Worksheet and resilience study requirements can be found as Exhibits (I & II) in Appendix O. FORTIFIED Designation can also be used as a means to access C-PACE financing for Resilience Improvements and must meet all requirements set forth by the FORTIFIED program. A summary of the FORTIFIED program, as well as further informational links, can be found in Appendix O.

Section 2. Standard SIR Technical Review

For projects with an SIR requirement, the Technical Administrator or Technical Reviewer will conduct a technical review, the purpose of which is to validate the reasonableness of project costs and energy savings projections. The Technical Administrator or Technical Reviewer will also confirm the projected SIR of the project is greater than one.

In addition, the methodology for tracking energy savings over an agreed upon term will be reviewed, thereby verifying for project stakeholders the extent to which projected energy savings are being achieved in an ongoing fashion.

Technical Review consists of three tasks:

- A. Verify that the building's baseline energy consumption is representative and reasonable, e.g., weather normalized.
- B. Validate the reasonableness of projected energy savings; and
- C. Confirm that an adequate commissioning plan exists.

The first two tasks are necessary to determine the SIR on the project and verify that it is greater than one. The third task ensures a property owner and the contractor have planned to confirm the correct installation and operational performance of the installed measures.

The Green Bank has developed a methodology for this technical review process, which relies upon two established industry protocols:

- A. **Baseline Energy Use:** ASTM E2797-15, Building Energy Performance Assessment (BEPA) standard directed at data collection and baseline calculations for the energy audit.
- B. **Energy Improvement & Energy Savings:** ASHRAE Level I, Level II and Level III Energy Audit Guidelines.

The Technical Administrator or a Technical Reviewer will qualify the proposed Energy Improvement(s) and validate the projected energy savings are consistent with these protocols and, in conjunction with the applicant, will confirm a baseline financing scenario that meets the SIR criteria.

Section 3. Resilience Technical Review

For Resilience Improvement projects without an SIR requirement, the Green Bank will conduct a technical review. The purpose of which is to confirm the eligibility of the improvements presented, as well as review the required resilience study and assessment of cost savings. In the case of a New Construction project that includes Resilience Improvement(s), the Technical Administrator will conduct the technical review.

Technical Review for Resilience Improvements consists of two tasks:

- A. Confirm the eligibility of the Resilience Improvement(s)
- B. Confirm a resilience study, complete with an assessment of cost savings, was completed according to the resilience study requirements found in Exhibit II of Appendix O

The Green Bank or the Technical Administrator will qualify the proposed Resilience Improvement(s) to validate the above criteria has been met, and, in conjunction with the applicant, will confirm a baseline financing scenario.

Section 4. Commissioning; Measurement and Verification

To verify that the project was installed according to the evaluated scope, projects are required to include a commissioning plan. A commissioning plan by a Qualified Contractor, Registered Contractor, Technical Reviewer, the Technical Administrator, or Green Bank can confirm the measures were properly installed and that the project is operating as intended.

Additionally, to (i) evaluate the energy savings effectiveness of the measures after they have been installed, and (ii) to collect energy consumption and/or clean energy production data, property owners are encouraged to work with their contractor(s) to implement an adequate measurement and verification plan. The International Performance Measurement and Verification Protocol (IPMVP) provides guidance for measurement and verification of the energy savings, for additional information see the Technical Standards.

The Green Bank may elect to facilitate M&V for projects submitted to the Green Bank for financing and may elect to offer the same services to third-party financed projects, at Green Bank's discretion and subject to additional costs/fees. M&V activities may be financed as an Associated Cost of any Qualifying Project.

Section 5. Alternative to Standard SIR Technical Review Process

As an alternative to the Standard SIR Technical Review process (described in Section 2 and the Technical Standards), Green Bank will also consider projects that meet one of the following requirements as having met the technical review requirement of this Article:

- A. Projects that demonstrate a receipt of an Investor Ready Energy Efficiency certification from the Investor Confidence Project (“ICP”) and provide a letter from the ICP Quality Assurance Provider stating that the SIR for the project is greater than one; or
- B. Certain projects which include third party-owned renewable energy system(s), reviewed, and approved by Green Bank, as more particularly described in Appendix L.

Section 6. New Construction, Repositioning, and Gut Rehabilitation

C-PACE provides financing that allows new construction, repositioning and gut rehabilitation projects (each being a “New Construction Project”) to be greener, more resilient, and more efficient.

Given the lack of a pre-improvement energy baseline against which to measure energy savings and the difficulty of isolating and assigning portions of New Construction Project costs to specific Energy Improvements, the Standard SIR Technical Review process is not applicable. When seeking financing for energy-related measures, C-PACE eligibility for New Construction Projects will instead be determined by the overall energy performance of the property above the applicable building energy code. Energy-related New Construction Projects must demonstrate a minimum level of energy performance, above the applicable building energy code. See Appendix N.

For energy-related measures, the Green Bank’s Technical Administrator will evaluate the base line and design levels of energy modeling submitted by Qualified Projects and determine the percentage by which the design exceeds the base line. The Green Bank will determine the Total Eligible Construction Costs (TECC) and identify the total C-PACE funding available. See Appendix F for costs and details.

When seeking C-PACE financing for Resilience Improvements (non-energy related), the Standard SIR Technical Review process is also not applicable. Instead, projects must assess cost savings through a resilience study. Based on the assessment of cost savings of Resilience Improvements by the Green Bank, a percentage of the project’s TECC will be eligible for C-PACE financing. See Appendix O.

Section 7. Technical Review Auditing

Green Bank may select and retain a Technical Review Auditor or Technical Review Auditors to conduct periodic reviews of the technical review work performed by any Technical Reviewer, the Technical Administrator, or the Green Bank to evaluate compliance with the Program Guidelines and Technical Standards.

Article V. C-PACE OPEN MARKET AND ELIGIBILITY CRITERIA FOR C-PACE CAPITAL PROVIDERS

Section 1. Concept of ‘Open Market’

Connecticut maintains an “open market” approach to its C-PACE program, encouraging capital providers to be the primary financiers of Qualifying Projects and supporting Benefited Property Owners who wish to source their own capital provider. For capital providers wishing to directly offer C-PACE financing, thereby becoming an “Approved Capital Provider” or “ACP”, the Green Bank has created terms and conditions, attached hereto as Appendix F (the “Third-Party Capital Provider Terms and Conditions”), which outline the requirements and process for Approved Capital Provider to directly offer C-PACE financing to Benefited Property Owners and interact with Green Bank, as the program administrator.

Additionally, the Green Bank currently maintains dedicated capital to finance C-PACE projects. Benefited Property Owners looking to finance any Qualifying Project with Green Bank sourced capital may apply directly to Green Bank and follow the process outlined in Appendix F.

The ‘open market’ program offers multiple financing options to Benefited Property Owners, enabling the Green Bank to achieve its mission of making financing accessible and affordable.

Section 2. C-PACE Approved Third-Party Capital Providers

A Capital Provider must be approved by the C-PACE Program to offer financing directly to building owners in Connecticut. A Request for Qualifications (RFQ) can be found at <https://www.cpace.com/Capital-Provider/Get-Started>. The process for project origination, funding, and administration follows. Please review Appendix F, Third-Party Capital Provider Term Sheet for further details.

- A. The ACP or Benefited Property Owners may submit a completed C-PACE application and all associated documents necessary to demonstrate any project’s compliance with the Program Guidelines and any other applicable requirements set forth in the Third-Party Capital Provider Terms and Conditions.
- B. Green Bank shall review such documents for compliance with the Program Guidelines and Third-Party Capital Provider Terms and Conditions, and, in its sole discretion, provide its approval of the Qualifying Project (thereby becoming an “Approved Project”).
- C. The ACP may then enter into a Financing Agreement with Benefited Property Owner for such Approved Project (thereby becoming a “Closed Project”).
- D. Concurrently or shortly thereafter, the ACP shall enter into an Administration Agreement with the Green Bank for such Closed Project.
- E. Green Bank will facilitate the filing and assignment to the ACP of a Benefit Assessment Lien, pursuant to the Administration Agreement.
- F. Green Bank will work with the ACP to collect any payments received pursuant the Benefit Assessment Lien and remit such payments to the ACP, pursuant to the Administration Agreement.

The ACP shall maintain its own financial underwriting criteria and financing terms and conditions for a C-PACE transaction, subject to the requirements set forth in the Program Guidelines.

Article VI. DEFINED TERMS

“Approved Capital Provider” or “ACP” shall mean a Third-party Capital Provider that (1) has been approved by Green Bank as a **Capital Provider** and (2) is in good standing with the Green Bank.

“Associated Cost” shall have the meaning ascribed to it in Article III Section 3(B).

“Benefit Assessment” shall mean an assessment authorized by the C-PACE Legislation. In an event of a conflict between this definition and that which is ascribed in the C-PACE Legislation, the C-PACE Legislation shall govern.

“Benefit Assessment Lien” shall mean a lien which evidences a Benefit Assessment and is recorded by a Participating Municipality on the land records against a Qualifying Property at Green Bank’s direction pursuant to the Participation Agreement. The form of such Benefit Assessment Lien is attached hereto as Appendix K, as may be modified or amended from time to time by Green Bank, in its sole discretion.

“Benefited Property Owner” shall mean an owner of Qualifying Commercial Real Property who desires to install Energy Improvements and provides free and willing consent to the Benefit Assessment against the Qualifying Commercial Real Property. In an event of a conflict between this definition and that which is ascribed in the C- PACE Legislation, the C-PACE Legislation shall govern.

“C-PACE” shall have the meaning ascribed to it in Article I.

“C-PACE Legislation” shall mean Section 16a-40g of the Connecticut General Statutes, as may be amended, attached hereto as Appendix A.

“Commercial or Industrial Property” shall mean any real property other than a Residential Dwelling containing less than five dwelling units. In an event of a conflict between this definition and that which is set forth in the C- PACE Legislation, the C-PACE Legislation shall govern.

“Disclosure of Risk Form” shall mean the disclosure of risk form associated with C-PACE, attached hereto as Appendix H, as may be modified or amended from time to time by Green Bank, in its sole discretion.

“District Heating and Cooling System” shall mean a local system consisting of a pipeline or network providing hot water, chilled water or steam from one or more sources to multiple buildings. In an event of a conflict between this definition and that which is ascribed in the C-PACE Legislation, the C-PACE Legislation shall govern.

“Energy Engineer” shall mean a professional or entity who/which meets one of the following: (1) holds a Certified Energy Manager or Certified Energy Auditor accreditation, (2) is a Professional Engineer with demonstrated relevant energy experience, or (3) a contractor with relevant demonstrated experience as determined by the Technical Administrator.

“Energy Improvement” shall mean (A) participation in a District Heating and Cooling System by Qualifying Commercial Real Property, (B) participation in a microgrid, as defined in Section 16-243y of the Connecticut General Statutes, including any related infrastructure for such microgrid, by Qualifying Commercial Real Property, provided such microgrid and any related infrastructure incorporate clean energy, as defined in Section 16-245n of the Connecticut General Statutes, (C) any improvement, renovation or retrofitting of Qualifying Commercial Real Property to reduce energy consumption or improve energy efficiency, (D) installation of a renewable energy system to service qualifying commercial real property, or (E) installation of a solar thermal or geothermal system to service qualifying commercial real property, or (F) installation of refueling infrastructure for zero-emission vehicles to a Qualifying Commercial Real Property, or (G) installation of resilience improvements to a Qualifying Commercial Real Property, provided such renovation, retrofit or installation described in subparagraph (C) to (G), inclusive, is permanently fixed to such Qualifying Commercial Real Property. In an event of a conflict between this definition and that which is ascribed in the C-PACE Legislation, the C-PACE Legislation shall govern.

“EUL” shall have the meaning ascribed to it in Article III Section 3(D).

“Financed Amount” means the combined costs of the Energy Improvement(s) and Associated Cost(s) which has been or will be financed through C-PACE for any Qualifying Project.

“Financing Agreement” shall mean a written agreement between a Benefited Property Owner and either an Approved Capital Provider or the Green Bank, or any of its subsidiaries, for the financing, leasing, or purchasing power from, a Qualifying Project. Such financing agreement shall contain, among other things, a provision which allows the Benefited Property Owner to rescind the agreement not later than three business days from the date of such agreement.

“Green Bank” shall have the meaning ascribed to it in Article I.

“Participating Municipality” shall mean a municipality, as defined in Section 7-369 of the Connecticut General Statutes, that has entered into a Participation Agreement. In an event of a conflict between this definition and that which is ascribed in the C-PACE Legislation, the C-PACE Legislation shall govern.

“Participation Agreement” shall mean a written agreement between Green Bank and a Participating Municipality, as approved by its legislative body, pursuant to which the municipality has agreed to assess and assign, Benefit Assessments to Green Bank in return for Energy Improvements for Benefited Property Owners within such municipality and costs reasonably incurred in performing such duties. The template participation agreement is attached hereto as Appendix B, as may be modified or amended from time to time by Green Bank, in its sole discretion.

“Professional Engineer” shall mean an individual, or company which employs such individual, who is licensed as a professional engineer and in good standing with the relevant licensing authorities in the State of Connecticut.

“Program Guidelines” shall have the meaning ascribed to it in Article I.

“Projected Associated Savings” shall mean non-energy savings that have a close nexus to the Energy Improvement(s) that are part of a Project. Examples include, but are not limited to, federal tax credits,

depreciation, and revenues from the sale of environmental attributes. Green Bank, in its sole discretion, may determine which types of savings may be considered to fall under this definition.

“Projected Energy Savings” shall mean the estimated energy savings, calculated in accordance with the Technical Standards, from any Energy Improvement(s) over the EUL of such improvements.

“Projected Financing Cost” shall mean the total projected debt service associated with the Financed Amount for a Qualifying Project including, but not limited to, all principal, interest, and any fees over the term of the financing. This does not include any potential capitalized interest during constructions, late fees or penalties.

“Projected Total Cost Savings” shall mean the combined value of the Projected Energy Savings and the Projected Associated Savings for any Qualifying Project.

“Qualified Contractor” shall mean an individual or entity who/that meets one of the following: (1) holds a Certified Energy Manager or Certified Energy Auditor accreditation, (2) is a Professional Engineer with demonstrated relevant energy experience, or (3) a contractor with relevant demonstrated experience.

“Qualifying Commercial Real Property” shall mean any Commercial or Industrial Property, regardless of ownership, that meets the qualifications established for the C-PACE program. In an event of a conflict between this definition and that which is provided in the C-PACE Legislation shall govern.

“Qualifying Project” shall mean an energy improvement project which meets all the requirements set forth in Article III Section 3.

“Qualifying Property” shall mean a Qualifying Commercial Real Property which meets all the requirements set forth in Article III Section 2.

“Refinancing” means, in the context of any existing Financing Agreement, a Benefited Property Owner entering into a new Financing Agreement with any C-PACE ACP other than the capital provider (or its successors or assigns) who is a party to the applicable existing Financing Agreement for the purpose of repaying or refinancing the existing Financing Agreement and Benefit Assessment, including but not limited to, filing of a new Benefit Assessment associated with the same Qualifying Project.

“Registered Contractor” shall mean a contractor who has registered with Green Bank, via the contractor registration process (<https://www.cpace.com/Contractor/Get-Started/Contractor-Sign-Up>), and remains in good standing with Green Bank.

“Residential Dwelling” shall mean a structure used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons. Residential dwelling shall not include any structure which is:

- A. A home or residence which is part of public or private institution, if such residence is incidental to provision of medical, geriatric, educational, counseling, religious, or similar services,
- B. A campground, hotel, motel, extended stay facility, vacation residential facility, boardinghouse, fraternal or social organization, or similar lodgings, and
- C. Primarily used for business, commercial, charitable, not-for-profit, or agricultural purposes.

“Resilience Improvement” shall mean an improvement made to Qualifying Commercial Real Property that improves the property’s ability to prepare for and adapt to changing conditions and withstand and recover rapidly from deliberate attacks, accidents or naturally occurring threats or incidents, including, but not limited to, threats or incidents associated with the impacts of climate change.

“Restructuring” means, in the context of any existing Financing Agreement, a Benefited Property Owner entering into a new Financing Agreement or any modification of the existing Financing Agreement with the C-PACE ACP (or its successors or assigns) who is a party to the applicable existing Financing Agreement for the purpose of restructuring, amending, restating, or otherwise modifying the existing Financing Agreement and Benefit Assessment, including but not limited to, releasing the existing Benefit Assessment and entering into a new Financing Agreement and filing of a new Benefit Assessment associated with the same Qualifying Project, subject to all other applicable program requirements.

“SIR” shall have the meaning ascribed to it in Article III Section 3(G).

“Technical Administrator” shall mean the entity, selected by Green Bank pursuant to an RFP process, which may conduct technical review as well as provide Green Bank with guidance and consultation in the development and implementation of the Technical Standards and Program Guidelines. The Technical Administrator may also work with contractors to help them develop a building’s baseline energy consumption and energy savings estimates for projects.

“Technical Reviewer” shall mean an entity which has been approved by and in good standing with Green Bank in accordance with the standard set forth in Appendix J. Technical reviewers may be proposed to Green Bank for approval by ACP. For a list of Technical Reviewers that are currently approved and in good standing with Green Bank, please visit www.cpace.com/technicalreviewers.

“Technical Review Auditor” shall mean an entity or entities, selected by Green Bank pursuant to an RFP process, which may conduct periodic reviews of the technical review work performed by any Technical Reviewer, the Technical Administrator or the Green Bank to evaluate compliance with the Program Guidelines and Technical Standards.

“Technical Standards” shall mean the complete description of energy audit requirements, technical review methodology and standards, and eligible and ineligible measures for C-PACE, attached hereto as Appendix D, as may be amended or modified from time to time by Green Bank in its sole discretion.

“Approved Capital Provider” means an entity, other than the Green Bank or any of its subsidiaries, that enters into one or more Financing Agreement(s). In an event of a conflict between this definition and that which is ascribed in the C-PACE Legislation, the C-PACE Legislation shall govern.

“Zero-emission Vehicle Refueling Infrastructure” means infrastructure used to refuel Zero-emission Vehicles.

“Zero-emission Vehicle” shall mean a battery electric vehicle, hybrid electric vehicle, range-extended electric vehicle and any vehicle that is certified by the executive officer of the California Air Resources Board to produce zero emissions of any criteria pollutant under all operational modes and conditions. In

an event of a conflict between this definition and that which is ascribed in the C-PACE Legislation, the C-PACE Legislation shall govern.

Appendix N: C-PACE NEW CONSTRUCTION, REPOSITIONING AND GUT REHABILITATION TECHNICAL STANDARDS AND APPROVAL PROCESS

1. Defined Terms
2. Overview
3. Supporting Documentation
 - a. Energy
 - b. Resilience
4. Total Eligible Construction Cost (TECC) Determination
5. Energy Performance Determination
 - a. Whole Building Energy Model Path
 - b. Home Energy Rating System (HERS) Index Multifamily Path
6. Resilience Determination
 - a. Bonus Measures
 - b. FORTIFIED
7. Bonus Measures & Net Zero Design Determination
 - a. Bonus Measures
 - b. Net Zero Design
8. Total Eligible C-PACE Financed Amount Determination
9. Clean Energy Generation for New Construction
10. Project Examples

1. Defined Terms

This document is an appendix to the C-PACE program guidelines (the “Program Guidelines”) published by the Connecticut Green Bank (the “Green Bank”). Pursuant to the Program Guidelines, this appendix may be modified or amended by Green Bank, in its sole discretion, from time to time. Capitalized terms used but not defined herein have the meaning ascribed to them in the Program Guidelines.

2. Overview

C-PACE provides financing that allows new construction, repositioning and gut rehabilitation projects (each being a “New Construction Project”) to be greener, more resilient, and more efficient.

Given the lack of a pre-improvement energy baseline against which to measure energy savings, and the difficulty of isolating and assigning portions of New Construction Project costs to particular Energy Improvements, the Standard SIR Technical Review process (described in Article IV, Section 2 of the Program Guidelines) is not applicable. When seeking financing for energy-related measures, C-PACE eligibility for New Construction Projects will instead be determined by the overall energy performance of the property above the applicable building energy code. Energy-related New Construction Projects must demonstrate a minimum level of energy performance, above the applicable building energy code, using one of the two paths outlined below.

When seeking C-PACE financing for Resilience Improvements (non-energy related), the Standard SIR Technical Review process (described in Article IV, Section 2 of the Program Guidelines) is also not

applicable. Instead, projects must assess cost savings through a resilience study, using one of the two paths outlined below.

Based on the determination of energy performance and/or assessment of cost savings of Resilience Improvements, a percentage of the project's TECC will be eligible for C-PACE financing ("C-PACE Eligible Finance Amount"). Fees and interest associated with the C-PACE financing can be added to the C-PACE Eligible Finance Amount to determine the total C-PACE benefit assessment amount.

3. Supporting Documentation

The applicant must submit the following documents to the Green Bank and the Technical Administrator, in a form acceptable to both in their discretion:

- a. Energy
 - Narrative describing the New Construction Project and scope (typically prepared by the modeler)
 - Energy modeling input and output files
 - Supporting spreadsheet calculations, if any
 - Design drawings
 - Equipment cutsheets and AHRI certificates
 - Detailed construction budget
 - Letter of agreement from utility programs, if applicable
 - For projects opting to use the HERS Index Multifamily path (as described in Section 4(b) below):
 - HERS Index Rating analyses
 - Data collection sheets for non-residential spaces
- b. Resilience
 - Pre-Study Worksheet (optional, but encouraged)
 - Resilience Study, including an assessment of cost savings (see Resilience Study Requirements Exhibit II)
 - If designing for FORTIFIED:
 - Assessment of cost savings
 - All applicable forms and back-up documentation submitted to the project's evaluator for review and determination of compliance. This could include, but is not limited to the following examples. See all requirements and how to get started with FORTIFIED here (<https://fortifiedhome.org/getting-started/>):
 - Project summary
 - Site photographs
 - Architectural & structural drawings
 - Design & construction specifications
 - Roof system design

4. Total Eligible Construction Cost (TECC) Determination

For a New Construction Project, the sum of construction hard and soft costs directly related to a building's design and construction (the "Total Eligible Construction Cost" or "TECC"), shall be determined by the Green Bank and Technical Administrator pursuant to this Section. The applicant must submit a detailed construction budget that includes the itemized hard costs and soft costs in an .xls or .csv format. The Technical Administrator will review the budget and send comments and questions to the applicant regarding specific line items to determine eligibility. Based on the applicant's submitted materials and responses, the Technical Administrator will provide a final TECC determination.

The following list contains examples of eligible costs that may be included in the TECC calculation. The Green Bank and Technical Administrator will ultimately determine the maximum TECC for each New Construction Project:

- Architectural, engineering, and design services
- Energy modeling services
- Construction hard costs
- Resilience study services/fees
- Evaluator services/fees for resilience
- Certification/Designation fees
- Environmental studies
- Plumbing
- Landscaping
- Energy consuming equipment and energy saving measures
- Resilience improvements, including nature-based solutions and climate change adaptation measures
- Permits
- Administrative fees and project management
- Developer fees
- Appraisal costs
- Lender inspection costs
- General liability Insurance
- Builder's risk insurance
- Building safety systems such as sprinklers and fire alarms
- Utility connection and impact fees
- Legal and accounting fees
- Construction period interest
- Financing fees
- Operating losses during construction
- Interest reserves
- Contingencies

The following costs are NOT eligible to be included in the TECC calculation. The Green Bank and Technical Administrator will ultimately determine the maximum TECC for each New Construction Project:

- Costs related to land acquisition
- Marketing expenses
- Plug-in equipment (appliances, bulbs, etc.)
- Furniture, fixtures, and equipment
- Interior decorations such as artwork
- Any items not affixed to the property

5. Energy Performance Determination

There are two paths that a New Construction Project can use to demonstrate it meets a required levels of energy performance:

- (a) Whole Building Energy Model Path, and
- (b) HERS Index Multifamily Path

Applicants are strongly encouraged to discuss and review their projects with the Green Bank and Technical Administrator before applying for project approval. This step will help the applicant determine which path may be best for a New Construction Project and answer any questions related to the requirements set forth below.

Technical review of a New Construction Project must be completed by the Technical Administrator.

a. Whole Building Energy Model Path

A New Construction Project using this path must use a whole building energy model to demonstrate that the proposed building's energy performance will exceed, to a minimum level, a baseline building energy performance. The baseline building energy performance is based on a building that is designed and built to meet Connecticut building and energy code requirements applicable at the time building permits are obtained (<https://portal.ct.gov/DAS/Office-of-State-Building-Inspector/Connecticut-State-Building-Code>). All C-PACE New Construction projects can use this path, including projects for commercial, industrial, multifamily, and other C-PACE eligible properties, as well as gut rehabilitation or repositioning to change the use of an existing facility at C-PACE eligible properties.

For projects using IECC 2021 as the baseline code, a minimum improvement in energy performance of 5% over the baseline building is required to be eligible for C-PACE financing. The C-PACE Eligible Finance Amount for such a building that demonstrates a 5% improvement over the baseline will be 20% of the TECC. Buildings that demonstrate an energy performance of 10% over the baseline will be eligible for 25% of the TECC (as summarized in Table 1 below).

For projects using a baseline of IECC 2018 or prior, a minimum improvement in energy performance of 10% over the baseline building is required to be eligible for C-PACE financing. The C-PACE Eligible Finance Amount for such a building that demonstrates a 10% improvement over the baseline will be 20% of the TECC. Buildings that demonstrate an energy performance of 20% over the baseline will be 25% of the TECC (as summarized in Table 1 below).

The following energy modeling software can be used to model the baseline and proposed buildings' energy performance. Software other than those outlined below can be utilized upon review and approval by the Technical Administrator:

- eQuest
- Energy Plus (Open Studio)
- Trane Trace or Trace 3D
- Design Builder

Submittals made to the Connecticut public utilities Energy Conscious Blueprint Program in support of energy efficiency program incentives would be acceptable documentation to provide in support of the C-PACE technical requirements. The Connecticut public utilities energy modeling guidelines can be found

here (<https://energizect.com/your-business/solutions-list/Energy-Conscious-Blueprint>). These submittals will be subject to the review of the technical administrator to ensure conformity with the C-PACE program guidelines.

An example of a project using the Whole Building Energy Model Path can be found in Section 8 (Project Examples).

b. HERS Index Multifamily Path

C-PACE New Construction projects for multifamily properties, or eligible mixed-use properties which include multifamily, can use this path to demonstrate that the proposed building's energy performance will exceed, to a minimum level, a baseline building energy performance through the Home Energy Rating System ("HERS") Index.

The HERS index is a nationally recognized system for inspecting, calculating, and estimating residential and multifamily energy performance (<https://www.hersindex.com/>). The HERS index rating is determined by a certified Home Energy Rater, who assesses the energy efficiency of a residence or multifamily dwelling unit and assigns it a relative performance rating. Every point below 100 on the HERS index translates to roughly 1% energy savings compared to a IECC 2006 code-built residence or multifamily dwelling unit. The lower the rating, the more efficient the dwelling unit. For multifamily buildings, each unique dwelling unit type receives a HERS index rating. After a rating is determined for each dwelling unit type, a weighted average of the total units is calculated based on the quantity of each dwelling unit type. This weighted average is used as the overall HERS index rating. For example, if there 3 unit types (A with a HERS index rating of 40, B with a HERS index rating of 45, and C with a HERS index rating of 60) and there are 10 each of A and B, and 20 of C (for a total of 40 units), then the weighted average HERS index rating would be 51.25.

For the purposes of the HERS Index Multifamily Path, only corridors, stairwells, exterior lighting, and lobbies are considered to be common areas in multifamily buildings (collectively being "Common Areas"). All other spaces, including but not limited to, clubhouses, gymnasiums, enclosed parking areas, swimming pools, etc. will be considered commercial spaces (collectively being "Commercial Spaces").

For Common Areas and Commercial Spaces for mixed-use facilities, the Technical Administrator will provide data collection sheets for commonly applicable energy technologies/measures. These completed data collection sheets need to be provided by the applicant along with the other relevant project documentation, including the HERS index rating analyses. The data collection sheets will be used to compare the specifications of proposed equipment in non-residential spaces to code-compliant or industry standard practice baseline equipment.

For projects using IECC 2021 as the baseline code, a maximum weighted HERS index rating of 40 is required to be eligible for C-PACE financing. For projects where the weighted HERS index rating is 35 and under, the equipment serving the Common Areas and Commercial Spaces would need to meet IECC 2021 code requirements, at minimum. For projects where the weighted HERS index rating is between 36 and 40, the efficiencies of the equipment serving the Common Areas and Commercial Spaces would need to exceed IECC 2021 code requirements by at least 5%. For such projects, the C-PACE Eligible Finance amount is of 20% of the TECC. For projects where the weighted HERS index rating is 30 and under, the equipment serving the Common Areas and Commercial Spaces would need to meet IECC

2021 code requirements, at minimum. For projects where the weighted HERS index rating is between 31 and 35, the efficiencies of the equipment serving the Common Areas and Commercial Spaces would need to exceed IECC 2021 code requirements by at least 10%. For such projects, the C-PACE Eligible Finance amount is of 25% of the TECC.

For projects using a baseline of IECC 2018 or prior, please refer to Table 2 below for the weighted HERS index rating required to be eligible for C-PACE financing.

The following tools, accredited by the Residential Energy Services Network (RESNET), can be used to determine the HERS index rating including:

- REM/Rate
- EnergyGauge® USA
- Ekotrope

Energy efficiency incentive submittals made to the Connecticut utilities Residential New Construction Program would be acceptable documentation to provide in support of the C-PACE technical requirements (<https://energizect.com/your-home/solutions-list/residential-new-construction-program>). These submittals will be subject to the review of the technical administrator to ensure conformity with the C-PACE program guidelines.

The following multifamily properties are NOT eligible to use the HERS Index Multifamily Path. These properties would need to use the “Whole Building Energy Model Path” as outlined above in Section 4a. Please contact the Technical Administrator in situations that need further clarification:

- Multifamily facilities with dwelling units served by central plants (including geothermal)
- Mixed-use facilities with significant process loads such as refrigeration, compressed air, manufacturing processes, etc.
- Mixed-use facilities where the commercial space, as referenced earlier in this section, is greater than 20% of total occupied space
- Historic buildings as designated by the state of CT (https://portal.ct.gov/DECD/Content/Historic-Preservation/01_Programs_Services/Historic-Designations/State-Registry-of-Historic-Places)

An example of a project using the HERS Index Multifamily Path can be found in Section 8 (Path Examples).

6. Resilience Determination

Aside from generally qualifying to be included in the TECC calculation as defined above in Section 4,

Resilience Improvements can be incorporated into a C-PACE New Construction project in one of two ways (outlined below), and may or may not incorporate energy measures. Please note that Resilience Improvements can also be financed as a stand-alone C-PACE project and can follow the Resilience Technical Standards as outlined in Appendix O. Resilience Improvements following the Resilience Technical Standards as outlined in Appendix O could be eligible for up to 100% in C-PACE financing:

a. Adding prescriptive Resilience Improvements as Bonus Measure(s)

Applicants can add prescriptive Resilience Improvements to an energy project as Bonus Measure(s), defined in the New Construction Appendix N, for a maximum of 10% additional of the TECC in C-PACE financing. The addition of Resilience Improvements as Bonus Measures will require an assessment of savings as part of a resilience study.

b. Using FORTIFIED Commercial or Multifamily program

In an effort to reduce damage to residential, commercial and multifamily structures and help businesses re-open more quickly following severe weather, the Insurance Institute for Business & Home Safety (IBHS) developed FORTIFIED™ Commercial, a voluntary, resilient construction and re-roofing standard and designation/compliance program. FORTIFIED employs an incremental approach with three levels of designations available so design professionals can work with building owners to choose a desired level of protection that best suits their budgets and resilience goals.

Projects using the FORTIFIED Commercial or Multifamily program and designing for one of the 3 designation levels (Roof, Silver or Gold) may qualify for up to 20% of the TECC in C-PACE financing. Projects designing for one of the 3 designation levels may also incorporate additional Bonus Measures, for up to an additional 10% of the TECC in C-PACE financing. Lastly, projects that are also designing for Net Zero may be eligible for up the maximum of 35% of the TECC in C-PACE financing.

Refer to Table 3 found in this Appendix for a full overview of the different levels of available C-PACE financing for resilience improvements in New Construction projects.

7. Bonus Measures & Net Zero Design Determination

a. Bonus Measures

In order to promote emerging clean energy technologies, resilience, state policy goals, and energy transition goals, if a New Construction Project design contains at least two of the measures listed below (each being a “Bonus Measure” and collectively being “Bonus Measures”), an additional 5% of C-PACE financing is made available. If a New Construction Project design contains at least four of the measures listed below, an additional 10% of C-PACE financing is made available (as summarized in Table 1, Table 2 & Table 3).

- Electric vehicle charging stations (Level 2 or better)
- Battery storage systems sized appropriately for the project (behind the meter)
- High-efficiency heat pumps (air, ground, or water source, better than code & facility-wide)
- Networked lighting controls (facility-wide)
- Hard wired smart plug load controls (facility-wide)
- Heat pump water heaters (facility-wide)
- Passive window shading system, sized appropriately for the project
- Non-energy related Resilience Improvement, such as impervious-to-pervious surface transitions, rain gardens, or natural ecosystem creation (i.e. wetlands or saltwater marshes), sized appropriately for the project
- Commercial organic recycling improvements such as more efficient food service and/or on-site compost management, sized appropriately for the project
- Fuel cell, sized appropriately for the project, in combined heat and power mode (please note that these systems can either be included as a Bonus Technology under the Whole Building Energy Model path OR as a clean energy electric generation measure as defined in Section 7)
- Solar PV, sized appropriately for the project (please note that these systems can either be included as a Bonus Technology under the Whole Building Energy Model path OR as a clean energy electric generation measure as defined in Section 7)

b. Net Zero Design

If a New Construction project is designed to be all-electric and to achieve net zero, as defined by the New Buildings Institute (NBI), the C-PACE Eligible Finance amount is 35% of the TECC (as summarized in Table 1, Table 2 & Table 3 in this Appendix). Table 3 in the NBI document titled “Zero Energy Commercial Building Targets” (<https://newbuildings.org/wp-content/uploads/2019/09/ZeroEnergyCommercialBuildingTargets.pdf>) specifies the energy use intensity (EUI) that needs to be achieved for various building types prior to the implementation of on-site renewables. Connecticut falls under climate zone 5A and should be referenced when determining the desired EUI. If a building type is not specified or clearly identified in the referenced NBI document, please reach out to the Green Bank and Technical Administrator for guidance on how to determine the appropriate target EUI. A detailed review of project documentation and proposed designs would be conducted by the Technical Administrator in order to approve a net zero design and eligibility to receive 35% of the TECC.

8. Total Eligible C-PACE Financed Amount Determination

Based on determinations made by the Green Bank and Technical Administrator pursuant to the requirements above, the total eligible C-PACE financed amounts for New Construction Projects are set forth in tables 1, 2 and 3.

Table 1- Whole Building Energy Model Path Eligible Financed Amount

IECC Code Year	Min. Energy Performance Above Code to be eligible for C-PACE Financing	C-PACE Financed Amt. of TECC	C-PACE Financed Amt. after Addition of Min. 2 Bonus Measures	C-PACE Financed Amt. after Addition of Min. 4 Bonus Measures	C-PACE Financed Amt. Designed for Net Zero
2021	5%	20%	25%	30%	35%
2021	10%	25%	30%	35%	
2018 or prior	10%	20%	25%	30%	
2018 or prior	20%	25%	30%	35%	

Table 2- HERS Index Multifamily Path Eligible C-PACE Financed Amount

IECC Code Year	Weighted HERS Index Rating*	Min. Common Area and Commercial Space equip. efficiency requirement	C-PACE Financed Amt. of TECC	C-PACE Financed Amt. after Addition of Min. 2 Bonus Measures	C-PACE Financed Amt. after Addition of Min. 4 Bonus Measures	C-PACE Financed Amt. Designed for Net Zero
2021	35 and under	Meets code	20%	25%	30%	35%
	36-40	5% > code	20%	25%	30%	
2021	30 and under	Meets code	25%	30%	35%	
	31-35	10% > code	25%	30%	35%	
2018 & 2015	46 and under	Meets code	20%	25%	30%	
	47-51	10% > code	20%	25%	30%	
2018 & 2015	36 and under	Meets code	25%	30%	35%	
	37-41	20% > code	25%	30%	35%	
2012	55 and under	Meets code	20%	25%	30%	
	56-60	10% > code	20%	25%	30%	
2012	45 and under	Meets code	25%	30%	35%	
	46-50	20% > code	25%	30%	35%	
2009	70 and under	Meets code	20%	25%	30%	
	71-75	10% > code	20%	25%	30%	
2009	60 and under	Meets code	25%	30%	35%	
	61-65	20% > code	25%	30%	35%	
2006	85 and under	Meets code	20%	25%	30%	
	86-90	10% > code	20%	25%	30%	
2006	75 and under	Meets code	25%	30%	35%	
	76-80	20% > code	25%	30%	35%	

*Please note: At this time, the values listed as the "Weighted HERS Index Rating" for 2021 in Table 2 above are an estimate. Once IECC 2021 code has been finalized, we will finalize those values, if needed.

Table 3- Resilience for New Construction-Total FORTIFIED Path Eligible C-PACE Financed Amount

FORTIFIED Designation Level	C-PACE Financed Amt. Of TECC (High wind)	C-PACE Financed Amt. Of TECC (Hurricane)	C-PACE Financed Amt. after Addition of Min. 2 Bonus Measures	C-PACE Financed Amt. after Addition of Min. 4 Bonus Measures	C-PACE Financed Amt. Designed for Net Zero
Roof	5%	5%	10%	15%	35%
Silver	10%	15%	20%	25%	
Gold	15%	20%	25%	30%	

* The FORTIFIED Commercial & Multifamily standards have different requirements for Hurricane regions (locations where wind speed for Risk Category II buildings is greater than 115 mph in ASCE-7 wind maps) and High Wind regions (everywhere else).

9. Clean Energy Electric Generation for New Construction

C-PACE financing for Class I Renewable Energy Sources (as defined in Conn. Gen. Stat. Sec. 16-1(a)) as part of a new construction project, can either be included as a Bonus Technology when using the Whole Building Energy Model Path OR as an Energy Improvement using standard SIR methodology. If included using the standard SIR methodology, these costs cannot be included in the TECC or in the energy model as an efficiency measure. The impact of the generation on the associated building's energy performance will not be included in the assessment of energy savings against the Baseline Building Energy Performance. If approved, the total eligible C-PACE-financed cost associated with the clean energy electric generation measure will be added to the C-PACE Eligible Finance Amount allowable under New Construction.

Geothermal systems must be included in a whole building energy model as part of the new construction analysis since they are not electric generation systems and not subject to treatment as clean energy electric generation as outlined in this section.

C-PACE New Construction clean energy electric generation measures shall be reviewed by the Technical Administrator.

10. Project Examples

Whole Building Energy Model Path Example

If a project has a TECC of \$10 million and is modeled to have an improvement in energy performance over the IECC 2021 energy code of 7%, it will be eligible for 20% of the TECC in C-PACE financing (\$2 million in this case). If that same project also includes four Bonus Technologies, it will be eligible for 30% of the TECC in C-PACE financing (\$3 million in this case). If the same project was permitted prior to the Connecticut adoption of IECC 2021, it would need to exceed the applicable IECC code by at least 10%. The percentage of TECC eligibility for C-PACE financing remains the same.

HERS Index Rating Path Example

A 200,000 square foot C-PACE eligible new construction multifamily building consisting of 175,000 square feet of residential space and 25,000 square feet of Common Areas and Commercial Space has a TECC of \$20 million. The applicable energy code for the project is IECC 2015. The facility is modeled by a HERS rater to have a weighted HERS index rating of 50. If the Common Area and Commercial Space equipment is at least 10% more efficient than the IECC 2015 code requirements, the project would be eligible for 20% of the TECC in C-PACE financing (\$4 million in this case). If the facility had a weighted HERS index rating of 46 or under, then the Common Area and Commercial Space equipment would only need to meet the IECC 2015 code to be eligible for 20% of the TECC in C-PACE financing. If that same project also includes two Bonus Technologies, it will be eligible for 25% of the TECC in C-PACE financing (\$5 million in this case).

Appendix O: C-PACE RESILIENCE TECHNICAL STANDARDS

1. Defined Terms
2. Overview
3. Examples of Resilience Improvements
 - a. Climate Change Adaptation Examples
 - b. Nature-based Solution Examples
 - c. FORTIFIED Designation
 - d. Other
4. Supporting Documentation
5. Resilience for New Construction

1. Defined Terms

This document is an appendix to the C-PACE Program Guidelines (the “Program Guidelines”) published by the Connecticut Green Bank (the “Green Bank”). Pursuant to the Program Guidelines, this appendix may be modified or amended by Green Bank, in its sole discretion, from time to time. Capitalized terms used but not defined herein have the meaning ascribed to them in the Program Guidelines.

2. Overview

Due to Public Act 22-6, an amendment to the C-PACE Statute (https://www.cga.ct.gov/current/pub/chap_298.htm#sec_16a-40g), the Standard SIR Technical Review process (described in Article IV, Section 2 of the Program Guidelines) for a project that improves the resilience of a property (each being a “Resilience Project”) is not applicable. Instead, C-PACE eligibility for Resilience Projects will be determined by the completion of resilience study that assesses the expected resilience cost savings of the Resilience Improvements over the useful life of such improvements before approving financing. While there is no minimum requirement of dollar savings that needs to be achieved, an assessment of cost savings, if any, must be completed. Resilience Projects should meet all current building codes, when applicable. Based on an identification of Resilience Improvements and completion of an assessment of resilience cost savings through a resilience study, the project will be eligible for C-PACE financing (“C-PACE Eligible Finance Amount”). Fees and interest associated with the C-PACE financing can be added to the C-PACE Eligible Finance Amount to determine the total C-PACE benefit assessment amount.

3. Examples of Resilience Improvements

Resilience Improvements help a building/property adapt to vulnerabilities that could interrupt business operations and impede the property owner's ability to stay open and functional. C-PACE financing for Resilience Projects is available to aid in these situations by providing the funding needed to adapt to such vulnerabilities. The following are examples of Resilience Improvements that can be assessed through a resilience study and considered for C-PACE financing:

- a. Climate change adaptation examples: The following are examples of challenges caused by climate change that can have negative effects on buildings and properties. Adapting to these challenges caused by climate change by reinforcing their structures through resilient building practices can help property and business owners stay open, functional, and operational.
 - a. Flood Management
 - b. Storm events/Extreme Weather
 - c. Wind
 - d. Fire
 - e. Sea Level Rise
 - f. Extreme Heat (MFH)
- b. Nature-based solutions: Infrastructure, including natural infrastructure, which promotes stormwater management, healthy vegetation, soils, and aquatic ecosystems to provide ecosystem services such as flood control and hazard risk reduction, e.g. bioswales, rain gardens, pervious surfaces, tree planting (native species and/or shade trees) and removal of dead trees, or natural ecosystem restoration (i.e. wetland, marshland, or other natural assets)
- c. FORTIFIED Designations: In an effort to reduce damage to residential, commercial and multifamily structures and help businesses re-open more quickly following severe weather, the Insurance Institute for Business & Home Safety (IBHS) developed FORTIFIED™ Commercial, a voluntary, resilient construction and re-roofing standard and designation/compliance program. FORTIFIED employs an incremental approach with three levels of designations available (listed below) so design professionals can work with building owners to choose a desired level of protection that best suits their budgets and resilience goals.
 - a. FORTIFIED Roof
 - b. FORTIFIED Silver
 - c. FORTIFIED Gold
- d. Other: Other vulnerabilities that could impede a building's ability to operate and are not listed above can also be reviewed for C-PACE financing. In order to be considered, a resilience study must still be completed, including an assessment of the cost savings associated with the proposed Resilience Improvement(s) and all other requirements listed in Section 4b. and Exhibit II of this Appendix.

4. Supporting Documentation

The applicant must submit the following documents to the Green Bank, in a form acceptable in their discretion. All additional supporting documents, including but not limited to, calculations, analyses, photos, previous studies/reports, and design/construction documentation should also be submitted for review:

- a. Pre-Study Worksheet, if applicable (Exhibit I)
- b. Resilience Study that must include the following, as outlined in Exhibit II:
 - Property Overview
 - Identification of Vulnerabilities
 - Adaptation Proposal
 - Assessment of Cost Savings Analysis
 - Implementation Timeline
- c. FORTIFIED supporting documentation, applicable forms and back-up documentation submitted to the project's evaluator for review and determination of compliance. See all requirements and how to get started with FORTIFIED here (<https://fortifiedhome.org/getting-started/>). Only applicable if designing for a FORTIFIED Designation.

5. Resilience for New Construction

Aside from generally qualifying to be included in the TECC calculation as defined above in Section 4, Resilience Improvements can be incorporated into a C-PACE New Construction project in one of two ways (outlined below), and may or may not incorporate energy measures. Please note that Resilience Improvements can also be financed as a stand-alone C-PACE project and can follow the Resilience Technical Standards as outlined in Appendix O. Resilience Improvements following the Resilience Technical Standards as outlined in Appendix O could be eligible for up to 100% in C-PACE financing.
~~Resilience Improvements can be incorporated into a C-PACE New Construction project in one of two ways (outlined below), and may or may not incorporate energy measures:~~

- Adding prescriptive resilience measures to an energy project as Bonus Measure(s), defined in the New Construction Appendix N, for a maximum of 10% additional of the TECC in C-PACE financing
- Using the FORTIFIED program and designing for one of the 3 levels of building standards to qualify for up to 20% of the TECC in C-PACE financing. Projects choosing to meet one of the FORTIFIED standards may also incorporate additional Bonus Measures, for up to an additional 10% of the TECC in C-PACE financing. Lastly, Projects that are also designing for Net Zero may be eligible for up the maximum of 35% of the TECC in C-PACE financing.

Refer to Table 3 found in Appendix N for a full overview of the different levels of available C-PACE financing for Resilience in New Construction projects.

Exhibit I - Pre-Study Worksheet

To be completed prior to conducting a resilience study

Business Overview:

Property Ownership Entity Name: _____

Property Owner Contact Name & Title: _____

Contact Phone Number: _____ Contact Email: _____

Property Address: _____

Property Type: _____ Non-Profit: ☐ YES ☐ NO

Property Overview:

FEMA Flood Zone: ☐ YES ☐ NO (If YES, complete Box 1. If NO, complete Box 2)

1.

FEMA Flood Zone of Structure: _____ BFE _____; Adjacent Flood Zone: _____ BFE _____

FEMA Flood Zone of Additional Property: _____ BFE _____; Adjacent Flood Zone: _____ BFE _____

2.

Do you have local site-specific flooding: ☐ YES ☐ NO

If YES, please describe: _____

Building Plans Available: ☐ YES ☐ NO Structure Age: _____ Historic: Y N Maybe

First Floor Elevation (FFE): _____ Elevation of Lowest Horizontal Beam *if on pilings*: _____

Structure: ☐ Wood Frame ☐ Steel Frame ☐ Cement Block ☐ Masonry

Foundation: ☐ Slab-on-grade ☐ Crawl Space ☐ Basement ☐ Pilings/Pier

Number of Steps to First Floor: _____ steps **UP / DOWN**

First Floor Contains: _____

Water Supply (check all that apply)

☐ Well ☐ Public Water System ☐ We are a regulated non-community water system

Sanitary Wastewater (check all that apply)

☐ Septic System ☐ Sanitary Sewer System ☐ Treatment System

☐ Regulated large ☐ Subsurface sewage disposal

Version: March 15th, 2024

How long have you owned the building? _____

Do you have any intention of selling this building? ____ YES ____ NO If so, when? _____

Property Overview Continued:

What building or site improvements have you already made, if any?

What measures do you have in place to address potential hazards?

What resources do you utilize, or what groups do you belong to, that may be able to provide support during an emergency?

Outbuildings

System	Description	Notes
External Features	External Flood Control	__Seawall __Bulkhead __Bern
	External Wall Material	
	Grading Around Site	__Towards __Away __Neither
First Floor (FF)	Floor Material	__Hardwood __Cement __Carpet
	Internal Wall Material	__Drywall __Wood __Cement __Metal
	Major Appliances	
Basement (if applicable)	Floor Material	__Hardwood __Cement __Carpet
	Internal Wall Material	__Drywall __Wood __Cement __Metal
	Major Appliances	
Low Entry Points into Building	Doorways	
	Windows	
	Utility Openings	
	Other	
Utility Room (U.R.)	Contains	
	Location	__Basement __First Floor __Upper Level __Outdoors
	Notes	

Property Event History

	Coastal Flood		Riverine Flood		High Wind		Heavy Snow		Tropical Event		Extreme Heat		Other Event:	
	Date: _____		Date: _____		Date: _____		Date: _____		Date: _____		Date: _____		Date: _____	
Impact <i>Circle selection</i>	Site	Structure	Site	Structure	Site	Structure	Site	Structure	Site	Structure	Site	Structure	Site	Structure
	Equipment	Inventory	Equipment	Inventory	Equipment	Inventory	Equipment	Inventory	Equipment	Inventory	Equipment	Inventory	Equipment	Inventory
	Human	Access	Human	Access	Human	Access	Human	Access	Human	Access	Human	Access	Human	Access
	Tech & Data	Business Closed	Tech & Data	Business Closed	Tech & Data	Business Closed	Tech & Data	Business Closed	Tech & Data	Business Closed	Tech & Data	Business Closed	Tech & Data	Business Closed
Event Name														
Description of Loss														
Remediation Implemented														
Loss Due to Event (A)														
Remediation Cost (B)														
Total Loss Incurred (A+B)														
Notes														

Power Outages:

Please complete below questions if your business has ever lost power:

Were these outages during extreme weather events? ___Yes ___No

Was the business closed due to these outages? ___Yes ___No

How many days was your business closed? _____ days

How many days were you without power? _____ days

Did you use a generator to operate through the outage? ___Yes ___No

Was the generator already on-site or did you transport one to the property? _____

Was Heat available during the outage? ___Yes ___No

Was AC available during the outage? ___Yes ___No

Was potable water available from the faucet during the outage? ___Yes ___No

Could you dispose of sanitary wastewater during the outage? ___Yes ___No

Was anything lost due to the power outage? (i.e. equipment, food, supplies, IT, data) ___Yes ___No

What was lost?

What caused the loss? (i.e. lack of refrigeration)

Has an outage affected your customers? ___Yes ___No

Has an outage affected communications? ___Yes ___No

Is your business located in a microgrid? ___Yes ___No

A microgrid is a system of buildings or properties connected to an independent power source.

Have you utilized any resources during an outage, such as Chamber of Commerce, to help speed up restorations?

If so, please elaborate: _____

Property Flooding:

Please complete below questions if your business *is* in a flood zone:

Name of Flood Source (river name, coastal, etc): _____

Scenario from Exposure Analysis: _____

Distance from High Water Mark: _____

Do you have an Elevation Certificate? YES NO

Have you had difficulty accessing your building due to street flooding?

- If yes, how frequently? _____

Do you have space to store storm preparedness materials (Sandbags, plywood, etc)? Y N

Is the business located on the coastline? __ YES __ NO (If yes, please complete table)

Type:	Wetland	Beach	Dune	Bluff	Notes	
Material:	Sand	Gravel	Boulder	Bedrock		
Environment:	Erosive	Depositional				
Stabilization:	Vegetation	Rip – Rap	Seawall / Bulkhead Groin / Breakwater		Wood/Cement/ Metal/Stone/Other	

Utility	Location				Relative Elevation	Notes
	U.R	Basement	FF	Outdoors		
Elevator					____ ft	
HVAC: Condensers					____ ft	
A/C – window / wall					____ ft	
Water Heater					____ ft	
Furnace					____ ft	
Electrical Panel					____ ft	
Electrical into Building					____ ft	
Electrical Outlets					____ ft	
Plumbing: Potable					____ ft	
Fuel Tanks					____ ft	
Generator					____ ft	
Dumpster					____ ft	
Other					____ ft	

Property Flooding Cont.: *Please complete below questions if your business is in a flood zone*

	Secure	Other
Fuel tanks / Generators	Y / N ?	
Garage and Bay Doors	Y / N ?	
Chemical Storage	Y / N ?	
Moorings	Y / N ?	
Dock	Y / N ?	
Parked Vehicles / Boats	Y / N ?	
Septic Tank	Y / N ?	
Generator	Y / N ?	
Dumpster / Spent Oil	Y / N ?	
Material that could become debris	Y / N ?	
Buildings / Out Structure	Y / N ?	
Fence (non-seawall)	Y / N ?	
Equipment	Y / N ?	
Laydown or Storage Areas	Y / N ?	
Other	Y / N ?	

Disaster Preparedness Questions:

What are the hazards that could impact your business? _____

Which hazards do you perceive as the biggest threat? _____

Are you concerned about your business' future hazard exposure? ___ Yes ___ No

Do you feel you are financially prepared for a disaster? ___ Yes ___ No

Do you have access to onsite/offsite storage for inventory, chemicals, equipment) ___ Yes ___ No

Do you have electronic data backups for your business files? ___ Yes ___ No

Do you have a formal plan in place for:

Preparations for an event? ___ Yes ___ No

Response during an event? ___ Yes ___ No

Recovery from an event? ___ Yes ___ No

Are your employees aware of the details of these plans? ___ Yes ___ No

Have you created an Emergency Employee Contact List? ___ Yes ___ No

How are employees notified in the event a natural disaster requires the business to close? _____

What support is available for employees if the business is closed for an extended period? _____

Do you communicate closures/schedule changes to customers? ___ Yes ___ No

Do you communicate with suppliers/customers if your building is inaccessible? ___ Yes ___ No

Have you experienced supply chain disruptions? ___ Yes ___ No

How long would you be able to stay in business if you had to close for an extended period of time? _____

Under what conditions would you relocate or take special storage precautions? _____

Who would you contact for information/assistance during an extreme weather event? (i.e. state/local government, chamber, etc.)? _____

Insurance and Risk Reduction Questions

Do you have flood insurance for the building? ___Yes ___No

Do you have contents insurance? ___Yes ___No

Do you have other disaster insurance? ___Yes ___No

How aware of you of the details of your insurance policy, such as what is covered under your policy? *Completely Unaware* 1 2 3 4 5 *Completely Aware*

Is there insurance information you feel would be helpful to receive? ___Yes ___No

What kind of information? _____

What would be the most effective method of delivery for this information (brochure, workshop, Webinar)? _____

Are you aware of risk reduction assistance programs? ___Yes ___No

Are you aware of risk reduction options? ___Yes ___No

Are these risk reduction options accessible to you? ___Yes ___No

Exhibit II - RESILIENCE STUDY REPORT REQUIREMENTS

The outline below is the required list of information to be included in a resilience study that will be presented to the Green Bank for consideration for approval of C-PACE financing. A Pre-Study Worksheet (Exhibit I) should be completed prior to a resilience study, but is not required in all cases. If designing for a FORTIFIED designation, all applicable forms and back-up documentation submitted to the project's evaluator for review and determination of compliance can be used as a resilience study. This could include, but is not limited to: site photos, design & structural drawings, and/or construction specifications. Please note that an assessment of the cost savings is always required in order to be considered for approval of C-PACE financing.

1. **Property Overview:** a narrative describing the location (full address), age of structure(s), property's use history, ownership structure, etc. ~~It should also include information about any outstanding property secured debt (such as a mortgage), with details about term, outstanding balance, interest rate, etc. Lastly, it~~ should also include a description of any previous environmental remediation work and/or resilience measures completed.
2. **Identification of Vulnerabilities:** a detailed summary of the vulnerabilities to be addressed. Please include information about recent events that may have impacted the property, including any photo/written documentation of damage/losses, estimated costs of previous losses or impacts to your business, and previous actions taken to prevent losses, if any.
3. **Adaptation Proposal:** a proposal and narrative describing in detail the adaptation measures to be completed to address the above identified vulnerabilities. The proposal should also include a detailed breakdown of each cost that will be associated with the adaptation proposal. Drawings, plans, previous proposals, etc. should be included as attachments to the resilience study and referenced in the narrative.
4. **Proposed Savings Analysis:** calculations accompanied by a narrative describing the savings, if any, that will be associated with the proposed adaptation measures. Savings should be represented in a dollar value and can include such things as operational savings, lost capital avoided, insurance savings, etc. All backup documentation associated with the savings calculations (i.e. insurance costs, previous maintenance bills, lost revenue due to business closure) should be included as attachments to the resilience study and referenced in the narrative. Please note that while there is no minimum requirement of savings that needs to be achieved, an assessment of cost savings, if any, must be completed.
5. **Implementation Timeline:** narrative describing the proposed timeline for implementing the adaptation measures described in the study, including anticipated start date, project duration, phases of completion, etc.

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PosiGen

Green Bank Equity Investment Modification Memorandum

March 8, 2024



Document Contents: This document contains background information and due diligence on a Recapitalization of PosiGen Inc. ("PosiGen"). The information herein is provided to the Connecticut Green Bank Board of Directors for the purposes of reviewing and approving recommendations made by the staff of the Connecticut Green Bank.

In some cases, this package may contain, among other things, trade secrets and commercial or financial information given to the Connecticut Green Bank in confidence and should be excluded under C.G.S. §1-210(b) and §16-245n(D) from any public disclosure under the Connecticut Freedom of Information Act. If such information is included in this package, it will be noted as confidential.

Investment Modification Memo

To: Connecticut Green Bank Board of Directors
CC: Bryan Garcia, President and CEO; Jane Murphy, Executive Vice President of Accounting and Financial Reporting; Brian Farnen, General Counsel and CLO; Eric Shrago, Managing Director of Operations; Sergio Carrillo, Director of Incentive Programs
From: Bert Hunter, EVP and CIO; Larry Campana, Associate Director of Investments
Date: March 8, 2024
Re: Modification of Green Bank Equity Investment in PosiGen

Background

At its October 16, 2020 meeting, the Board of Directors (the “Board”) of the Connecticut Green Bank (the “Green Bank”) approved staff’s request to exercise its warrants with PosiGen, Inc. (together with its subsidiaries, “PosiGen”) in exchange for penalty interest that PosiGen owed and a reduction in yield. The exercise of the warrants on February 3, 2021 exchanged value of [REDACTED] of Series D-3B Preferred Stock.

On June 13, 2023 the Green Bank’s 5 [REDACTED] shares of common stock (at a 15:1 conversation ratio).

On August 3, 2023, the Board authorized the Green Bank to enter into the Amended and Restated Note Purchase Agreement with PosiGen Inc. and other investors to fully participate in the purchase of a secured convertible promissory note of PosiGen Inc. for [REDACTED].

Total equity invested by Green Bank to date is [REDACTED].

Operations Update

A new CEO, Peter Shaper, began with PosiGen in October of 2023 following a nation-wide search by the PosiGen Board. Focus for the team in 2024 is people, process, and technology, as the organization implements tactics to double its installs in 2024 compared to 2023. This increase is largely driven by an expansion of PosiGen’s channel platform, which is active in 13 states and is supported by approximately 12 partner contractors. 2023 profitability margins have improved due to a variety of factors, including IRA tax credit adders. PosiGen constituted about 4+% of all Low-Income Community adder applications in the fall of 2023, and has been awarded 90% of its submissions to date. Finally, PosiGen has applied, been approved, and transitioned to a Public Benefit Corporation legal entity, which more closely aligns with its values and goals. Its new legal name is PosiGen, PBC, formerly known as PosiGen, Inc.

Additional Financing

Three financing raises are planned and progressing for 2024. A “Series 2” equity round has been offered and is advancing. This round will raise capital and give a current market valuation, and in turn, a value for Connecticut Green Bank’s equity position. Multiple, notable, large companies are in advanced discussions to participate as tax equity sponsors. Finally, PosiGen is on track for a [REDACTED] facility with the Department of Energy and Loan Programs Office with Connecticut Green Bank as the proposed State

Energy Financing Institution participant (with other SEFIs expected to participate). Presentation of this facility will be made separately to the Board, currently planned for April 26, 2024.

In addition to these 3 sources of capital, a group of “lead” investors for PosiGen have agreed to an additional [REDACTED] in the company. These funds will be used to 1) strengthen the balance sheet to increase confidence to counterparties in advance of near-term financings; 2) implement planned technology improvements as they are approved, as opposed to waiting until a future capital raise, which would delay growth; and 3) allow the company to stay cash positive during a projected mid-year low, without a timing constraint for a debt or equity raise. This current financing, including the [REDACTED] and any additional pro rata investors, will be identical to notes from June of 2023, with the following exceptions: 1) will be senior to June 2023 notes, 2) will receive [REDACTED] discount (OID), and 3) includes an exchange mechanic to pull up the June 2023 notes to this same form.

The Green Bank, along with a group of minority investors, have been invited to participate in this current financing, along with the [REDACTED]. The Green Bank maximum pro rata investment of \$[REDACTED] consideration, is based on its June 2023 investment. The form of this investment will be a Class 1 Convertible Promissory Note. A term sheet and Class One Form of Note are attached as Exhibit A and B, respectively.

In addition to the decision requested of the Board in regard to the incremental equity investment, AMENDMENT NO. 4 TO THE NOTE PURCHASE AGREEMENT has been proposed, which requires Connecticut Green Bank’s signature in order to be effectuated. The amendment subordinates the June 2023 notes to this March 2024 group of Secured Convertible Notes, including the investment currently under consideration by the Green Bank. The amendment is attached as Exhibit C.

Staff has considered this investment from both the perspective of Return On Investment of the proposed incremental capital and also the Green Bank’s comprehensive position. Equity investments have been made by the Green Bank over the past 3.5 years and the company continues to grow by multiple metrics including revenue, size, and profitability. PosiGen consistently expanded and aligned itself closely with the energy and equity goals of the Green Bank. Given the growth and success, the incremental decision to invest additional capital during this financing has a lower risk profile than in previous years when the original investment was approved. This investment is not being made by itself, but alongside Green Bank’s existing investments and will support the company during its growth as Green Bank considers a future, and significantly larger, debt facility in partnership with the DOE and LPO (with the new facility with LPO replacing existing Green Bank financings with PosiGen - to be explained in detail during the April Board meeting). The Green Bank also benefits, beyond its additional equity participation, by supporting the company during a time of growth and signaling confidence to current and future investors. Both these factors will improve the value of Green Bank’s current investment position and provide an improved opportunity for future investment.

Recommendation

Given the low incremental investment and the positive trajectory of PosiGen’s performance, Green Bank staff recommends financing participation in Class 1 Secured Convertible Note for [REDACTED] and signing the Amendment Number 4 to the June 2023 Note Purchase Agreement.

Resolutions

WHEREAS, the Connecticut Green Bank (“Green Bank”) has an existing partnership with PosiGen, Inc. (together with its affiliates and subsidiaries, “PosiGen”) to support PosiGen in delivering a solar lease (including battery storage) and energy efficiency financing offering to low to moderate income households in Connecticut;

WHEREAS, the Green Bank Board of Directors (the “Board”) previously authorized approval for Green Bank’s participation in equity financing through the exercise of warrants for [REDACTED] of Series D-3B of PosiGen, Inc. which was exercised in February 2021 (the “Prior Preferred Shares”);

WHEREAS, in June 2023 PosiGen has exchanged the Prior Preferred Shares for [REDACTED] shares of common stock of PosiGen Inc. and the opportunity to purchase Series 1 Preferred Stock;

WHEREAS, in August 2023 the “Board previously authorized approval for Green Bank’s participation in equity financing through the purchase of a secured convertible promissory note of \$ [REDACTED]

WHEREAS, staff has analyzed the current state of PosiGen relation to the proposed incremental investment in Class 1 Secured Convertible Note and related financing and has concluded that the investment risk is worth the potential upside return, and recommends the Board approve the incremental investment not to exceed [REDACTED] as more fully explained in a memorandum to the Board dated March 8, 2024 (the “Board Memo”);

NOW, therefore be it:

RESOLVED, that the Board authorizes the Green Bank to enter into the Amended and Restated Note Purchase Agreement with PosiGen and other investors to fully participate in the purchase of a secured convertible promissory note of PosiGen. not to exceed [REDACTED] and executing amendment number four to the June 2023 Note Purchase Agreement, as set forth in the Board Memo;

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and negotiate and deliver all other documents and instruments as they shall deem necessary and desirable to effect the above-mentioned legal instruments.

Submitted by: Bert Hunter, EVP and CIO

Exhibit A
Term Sheet
(attached)

Exhibit B
Class One Form of Note
(attached)

Exhibit C
AMENDMENT NO. 4 TO THE NOTE PURCHASE AGREEMENT
(attached)

EXHIBIT D

CLASS ONE FORM OF NOTE

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THIS NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT. THE COMPANY AGREES TO PROVIDE TO THE HOLDER OF THIS NOTE, UPON WRITTEN REQUEST, THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE AND YIELD TO MATURITY. ANY SUCH WRITTEN REQUEST SHOULD BE MADE PURSUANT TO SECTION **Error! Reference source not found.** OF THIS NOTE AND SECTION 9(h) OF THE NOTE PURCHASE AGREEMENT.

POSIGEN, PBC

FORM OF SECURED CONVERTIBLE PROMISSORY NOTE

[\$\$\$]

[], 2024

FOR VALUE RECEIVED, PosiGen, PBC, a Delaware public benefit corporation (the “**Company**”) unconditionally promises to pay to the order of [INVESTOR] or its registered assigns (“**Investor**”), in lawful money of the United States of America the principal sum of [] AND NO/100 ([\$\$\$]) DOLLARS (the “**Original Principal Amount**”) as such amount may be increased pursuant to the payment of PIK Interest according to **Section 1** hereto or reduced pursuant to any conversion, redemption, or repayment effected in accordance with the terms hereof (the “**Outstanding Principal Amount**”), together with interest thereon from the date of this Secured Convertible Promissory Note (this “**Note**”) on the unpaid Outstanding Principal Amount at the rates specified in **Section 1** hereof. The Outstanding Principal Amount, together with any then unpaid and accrued interest and other amounts payable hereunder, to the extent not earlier converted, exchanged or repaid, shall be due and payable in full on the earlier of (i) June 13, 2025 (the “**Scheduled Maturity Date**”), or (ii) when, upon the occurrence and during the continuance of an Event of Default, such amounts are declared due and payable by Investor or made automatically due and payable, in each case, in accordance with the terms hereof (the “**Accelerated Maturity Date**”). This Note is one of the “Notes” issued pursuant to the Note Purchase Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Note Purchase Agreement.

The following is a statement of the rights of Investor and the conditions to which this Note is subject, and to which Investor, by the acceptance of this Note, agrees:

1. **Payment Interest.** This Note shall bear interest as follows:

(a) [Reserved]

(b) Interest payable in kind (“**PIK Interest**”) shall accrue on the Outstanding Principal Amount of this Note at a rate per annum of [REDACTED] and shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing on March 31, 2024, by adding such accrued PIK Interest to the Outstanding Principal Amount. By notice to the Investor at least one Business Day prior to the applicable interest payment date, the Company may elect to pay the applicable accrued PIK Interest, in whole or in part, in cash on any such interest payment date. The portion of such required PIK Interest paid in cash shall not, for the avoidance of doubt, be added to the Outstanding Principal Amount. In addition to the foregoing, accrued and unpaid interest shall be added to the Outstanding Principal Amount as PIK Interest in connection with, and on the date of, (i) a conversion of this Note pursuant to **Section 4(a)** or **4(b)** or (ii) a redemption of this Note pursuant to **Section 4(c)** or **4(d)**.

(c) Interest shall be computed on the basis of a 365-day year and the actual number of days elapsed in such period. If any interest payment would be payable on a day that is not a Business Day, such interest payment will be postponed to the immediately succeeding day that is a Business Day.

2. **Events of Default.** The occurrence of any of the following shall constitute an “**Event of Default**” under this Note and the other Note Documents:

(a) *Failure to Pay.* The Company shall fail to pay (i) when due any principal payment on the due date hereunder or (ii) any other payment required under the terms of this Note or any other Note Document on the date due and such payment shall not have been made within five (5) days of the Company’s failure to pay; or

(b) *Breaches of Covenants.* The Company shall fail to observe or perform any other covenant, obligation, condition or agreement contained in this Note or the other Note Documents (other than those specified in **Section 2(a)**) and such failure shall continue for ten (10) days after such failure; or

(c) *Representations and Warranties.* Any representation, warranty, certificate, or other statement (financial or otherwise) made or furnished by or on behalf of the Company to Investor in writing in connection with this Note or any of the other Note Documents, or as an inducement to Investor to enter into this Note and the other Note Documents, shall be false, incorrect, incomplete or misleading when made or furnished; or

(d) *Voluntary Bankruptcy or Insolvency Proceedings.* The Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of its or any of its creditors, (iii) be dissolved or liquidated, (iv) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts

under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (v) take any action for the purpose of effecting any of the foregoing;

(e) *Involuntary Bankruptcy or Insolvency Proceedings.* Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company, or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or any of its subsidiaries, if any, or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within 45 days of commencement;

(f) *Change of Control.* A Change of Control shall occur; or

(g) *Material Indebtedness.* The Company or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness when and as the same shall become due and payable and such failure shall continue beyond any applicable grace period or any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity.

3. **Rights of Investor upon Default.** Upon the occurrence of any Event of Default (other than an Event of Default described in **Sections 2(d)** or **2(e)**) and at any time thereafter during the continuance of such Event of Default, Investor may, by written notice to the Company, declare all outstanding Obligations payable by the Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Note Documents to the contrary notwithstanding. Upon the occurrence of any Event of Default described in **Sections 2(d)** and **2(e)**, immediately and without notice, all outstanding Obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Note Documents to the contrary notwithstanding. Upon the occurrence of an Event of Default, the PIK Interest due under this Note shall be increased to 18%. In addition to the foregoing remedies, upon the occurrence and during the continuance of any Event of Default, Investor may exercise any other right, power or remedy granted to it by the Note Documents or otherwise permitted to it by law, either by suit in equity or by action at law, or both.

4. **Conversion and Redemption.**

(a) *Voluntary Conversion upon Post-Closing Equity Financing.* Until and including the time at which the Company successfully completes a Qualified Equity Raise, if a Post-Closing Equity Financing occurs on or prior to the Scheduled Maturity Date, then the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK

Interest pursuant to the last sentence of Section 1(b) hereof) shall be, at the time such Post-Closing Equity Financing (including any Qualified Equity Raise), convertible in full or in part at the option of the Investor into fully paid and nonassessable shares issued in the Post-Closing Equity Financing, or shares ranked junior to such shares with the same rights and privileges (including with respect to economic and governance terms) as those issued in the Post-Closing Equity Financing, if required by the terms of such Post-Closing Equity Financing (the “**Conversion Shares**”) in a number equal to the quotient obtained by dividing (A) the product of 130%, of such portion of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof) as such Investor elects to convert by (B) the price per share of the Equity Securities issued in the Post-Closing Equity Financing (such quotient being the “**Conversion Ratio**”); provided, that (x) if such shares will be *pari passu* with such Equity Securities issued in the Post-Closing Equity Financing, upon the affirmative election of Majority in Interest of Lead Investors or (y) if such shares will be ranked junior to such Equity Securities issued in the Post-Closing Equity Financing, upon the affirmative election of three Lead Investors (which shall include Magnetar), the voluntary conversion rights in this **Section 4(a)** shall be deemed mandatory and the Investor shall be deemed to have elected to convert in full such Investor’s Note into Conversion Shares pursuant to the terms of the Note.

(b) *Voluntary Conversion upon Maturity.* If no Qualified Equity Raise occurs on or prior to the Maturity Date, then the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof) shall be convertible at the option of Investor into fully paid and nonassessable shares of the Company’s Series 1 Preferred Stock at a price per share equal to [REDACTED] (subject to appropriate adjustment from time to time for any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event).

(c) *Redemption upon Maturity.* On the earlier of the Scheduled Maturity Date or a liquidation, winding up or dissolution of the Company, whether voluntary or involuntary, the Company shall redeem this Note in an amount equal to 140% of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof), provided such Investor has not exercised in full its conversion right in accordance with Sections 4(a) or 4(b).

(d) *Mandatory Redemption upon a Sale Liquidation Event.* The Company shall notify the holders of then outstanding Notes of the closing of a Sale Liquidation Event (as defined below) at least fifteen (15) days prior to the expected closing of such Sale Liquidation Event. Upon the closing of such Sale Liquidation Event, each Investor shall receive in respect, and full satisfaction, of such Investor’s Note an amount equal to 200% of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof).

(e) *Conversion Procedure.*

(1) Conversion Pursuant to Section 4(a) and 4(b). Before Investor shall be entitled to convert this Note into shares of the Company’s Equity Securities in accordance with **Section 4(a)** and **4(b)**, it shall surrender this Note (or a notice to the effect that the original Note has been lost, stolen or destroyed and an agreement acceptable to the Company

whereby the holder agrees to indemnify the Company from any loss incurred by it in connection with this Note) and give written notice to the Company at its principal corporate office of its election to convert the same pursuant to **Section 4(a)** and **Section 4(b)** and shall state therein the amount of the unpaid principal amount of this Note to be converted. Upon such conversion of this Note, Investor hereby agrees to execute and deliver to the Company all transaction documents entered into by other purchasers of the relevant securities (as may be amended), including any purchase agreement, investor rights agreement and other ancillary agreements, as applicable, with customary representations and warranties and transfer restrictions (including, without limitation, a 180-day lock-up agreement in connection with an initial public offering), provided that, if Investor is already a party to such agreement(s), Investor shall not, by virtue of this **Section 4** be required to sign up to such agreement(s) unless separately approved by the parties required to amend such agreements (which may, for the avoidance of doubt, include the Investor). The Company shall, as soon as practicable thereafter, issue and deliver to such Investor a certificate or certificates for the number of shares to which Investor shall be entitled upon such conversion (or notice of issuance if the shares are uncertificated), including a check payable to Investor for any cash amounts payable as described in **Section 4(e)(2)**. Any conversion of this Note pursuant to **Section 4(a)** and **4(b)** shall be deemed to have been made upon the satisfaction of all of the conditions set forth in this **Section 4(e)(i)**, and on and after such date the Persons entitled to receive the shares issuable upon such conversion shall be treated for all purposes as the record holder of such shares.

(2) Fractional Shares; Effect of Conversion. No fractional shares shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Investor upon the conversion of this Note, the Company shall pay to Investor an amount equal to the product obtained by multiplying the applicable price per share of the Conversion Shares issued in the Post-Closing Equity Financing or Qualified Equity Raise, as applicable, by the fraction of a share not issued pursuant to the previous sentence. Upon conversion of this Note in full and the payment of the amounts specified in this paragraph, Company shall be forever released from all its obligations and liabilities under this Note and this Note shall be deemed of no further force or effect, whether or not the original of this Note has been delivered to the Company for cancellation.

(f) *Notices of Record Date.* In the event of:

(1) Any taking by Company of a record of the holders of any class of securities of Company for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right; or

(2) Any capital reorganization of Company, any reclassification or recapitalization of the capital stock of Company or any transfer of all or substantially all of the assets of Company to any other Person or any consolidation or merger involving Company; or

(3) Any voluntary or involuntary dissolution, liquidation or winding-up of Company,

Company will mail to Investor at least ten (10) days prior to the earliest date specified therein, a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and the amount and character of such dividend, distribution or right; or (B) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding-up is expected to become effective and the record date for determining stockholders entitled to vote thereon.

5. **[Reserved]**.

6. **Definitions**. As used in this Note, the following capitalized terms have the following meanings:

“**Activate**” means Activate Capital Partners II, LP and ACP II Executive, LP.

“**Agent Fee Letter**” means the Agent Fee Letter, dated as of July 17, 2023 executed by or on behalf of the Company in favor of Agent.

“**Amendment No. 4**” shall mean that certain Amendment No. 4 to Note Purchase Agreement, dated as of February 14, 2024, which amends the Note Purchase Agreement, dated as of June 13, 2023 (as amended, modified or supplemented), by and among the Company and the Investors (as defined in the Note Purchase Agreement) party thereto.

“**Backleverage Credit Agreement**” means that certain Credit Agreement, dated as of April 21, 2023, by and among the PosiGen Backleverage, LLC, a Delaware limited liability company, BID Administrator LLC, as administrative and collateral agent, and the lenders from time to time party thereto.

“**Builders**” means Builders PSGN LLC, Builders Fund II LP and Dolphin Builders LP.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

“**Capital Lease Obligations**” means the portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

“**Change of Control**” means:

- (i) a Sale Liquidation Event;
- (ii) any other liquidation, winding up or dissolution of the Company, whether voluntary or involuntary; or
- (iii) the occurrence of a “Change of Control” or similar term as defined in the definitive documentation for any Material Indebtedness.

“**Collateral**” shall mean all property and assets now owned or hereafter acquired, upon which a Lien is created or purported to be created by any Collateral Documents.

“Collateral Assignment of Contracts, Permits and Project Documents” means that certain Collateral Assignment of Contracts, Permits and Project Documents (as amended, modified or supplemented), made by the Guarantors party thereto, in form and substance satisfactory to the Agent and the Lead Investors.

“Collateral Documents” shall mean the Security Agreement, the Guaranty, the Control Agreements and the Collateral Assignment of Contracts, Permits and Project Documents, and any and all other agreements, instruments, consents or certificates now or hereafter executed and delivered by the Company or any other Person in connection with, or as security for the payment or performance of the Obligations or the Note Purchase Agreement, as such agreements may be amended, restated, supplemented or otherwise modified from time to time.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

“Control Agreement” means an agreement which establishes in Agent “control” (as used in Articles 8 and 9 of the UCC) of Collateral which is to be subject thereto and which is otherwise in form and substance satisfactory to the Agent and the Lead Investors.

“Defaulting Investor” means any Investor that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to fund any portion of its Commitment, unless such Investor notifies the Majority in Interest of Lead Investors in writing that such failure is the result of such Investor’s good faith determination that a condition precedent to funding (specifically identified and including the particular Event of Default, if any) has not been satisfied; (b) has notified the Company in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under the Note Purchase Agreement (unless such writing or public statement indicates that such position is based on such Investor’s good faith determination that a condition precedent to funding (specifically identified and including the particular Event of Default, if any, cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within three (3) Business Days after request by the Majority in Interest of Lead Investors or any other Investor, acting in good faith, to provide a certification in writing from an authorized officer of such Investor that it will comply with its obligations to fund under the Note Purchase Agreement, provided that such Investor shall cease to be a Defaulting Investor pursuant to this clause (c), upon the Majority in Interest of Lead Investors’, or such other Investor’s receipt of such certification in form and substance satisfactory to it; or (d) has become the subject of an action under the United States Bankruptcy Code or similar insolvency laws.

“Disposition” or **“Dispose”** means the sale, transfer, license, lease, exchange or other disposition (including any Sale and Leaseback Transaction and the sale or issuance of any Equity Securities by a Subsidiary of the Company) of any property by any Person, including any Disposition, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Stock” means any Equity Securities which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable for any consideration other than other Equity Securities (which would not constitute Disqualified Stock), pursuant to a sinking fund obligation or otherwise, or requires regular dividend payments in cash, or is redeemable for any consideration other than other Equity Securities (which would not constitute Disqualified Stock) at the sole option of the holder thereof, in whole or in part, in each case, on or prior to the date that is one hundred eighty one (181) days after the Scheduled Maturity Date.

“Escrow Agreement” means that certain Escrow Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Wilmington Trust, National Association, in its capacity as Escrow Agent.

“Equity Securities” shall mean the Company’s preferred stock or any securities conferring the right to purchase the Company’s preferred stock or securities convertible into, or exchangeable for (with or without additional consideration), the Company’s preferred stock, including convertible promissory notes and excluding any security granted, issued and/or sold by the Company to any director, officer, employee or consultant of the Company in such capacity for the primary purpose of soliciting or retaining their services.

“Event of Default” has the meaning given in **Section 2** hereof.

“Existing Notes” shall mean the notes issued pursuant to that certain Note Purchase Agreement, dated as of February 2, 2023, by and among the Company and the investors party thereto (as amended from time to time).

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time.

“Guarantee” of or by any Person (in this definition, the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guarantors” means, as of the Closing Date, PosiGen, LLC, a Louisiana limited liability company, PosiGen Developer, LLC, a Delaware limited liability company, and PosiGen Operations, LLC, a Delaware limited liability company.

“Guaranty” means that certain Guaranty Agreement (as amended, modified or supplemented), by and among the Company, the Guarantors and the Agent, in form and substance satisfactory to the Agent and the Lead Investors.

“Hedging Obligations” means obligations under (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a **“Master Agreement”**), including any such obligations or liabilities under any Master Agreement. Notwithstanding the foregoing, no convertible note or other equity-linked instrument shall be a hedging obligation.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding those incurred in the ordinary course of business which are not greater than sixty (60) days past the due date or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed by such Person, but limited to the lesser of (i) the amount of such Indebtedness and (ii) the fair market value of the property securing such Indebtedness, (f) all Guarantees by such Person of Indebtedness of others to the extent of the lesser of the amount of such Indebtedness and the maximum stated amount of such Guarantee, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit, letters of guaranty or similar instruments, (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (j) all Hedging Obligations, (k) attributable Indebtedness in respect of Sale and Leaseback Transactions and (l) any Disqualified Stock. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. For the avoidance of doubt, for the purpose of this definition, any lease that would be treated as an operating lease under GAAP in effect prior to January 1, 2019 shall not constitute Indebtedness hereunder.

“Intercreditor Agreement” means that certain Intercreditor Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Mizzen, in form and substance satisfactory to the Agent and the Lead Investors.

“Investment” means, with respect to a Person, all direct or indirect investments by such Person in other Persons (including, without limitation, Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions, purchases or other acquisitions for consideration of Indebtedness, Equity Securities or other securities, the acquisition of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of a Person or any other transaction that would be classified as investments on a balance sheet prepared in accordance with GAAP. For purposes of covenant compliance, the amount of any Investment shall be the amount actually made (measured at the time made) by the Company and its Subsidiaries, without adjustment for subsequent increases or decreases in the value of such Investment and regardless of whether such Investment is made with cash, the issuance of any Equity Securities or the incurrence of any Indebtedness convertible into Equity Securities, any other consideration or any combination thereof.

“Investor” shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the registered holder of this Note.

“Investors” shall mean the investors that have been issued Notes.

“Irradiant” means IROP Loan Aggregator, LP.

“Lead Investors” means Magnetar, Irradiant, Activate, 2040 Fund, and Builders entities; provided, that when a Defaulting Investor shall exist, Lead Investors as used herein shall not include any Defaulting Investor.

“Lien” means any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of such property, whether such obligation or claim is fixed or contingent, and including but not limited to a lien or security interest arising from a mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, pledge, security agreement, conditional sale, charge or trust receipt or a lease, consignment or bailment for security purposes.

“Lien Subordination Agreement” means that certain Lien Subordination Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Connecticut Green Bank.

“Magnetar” shall mean MTP Energy Opportunities Fund III LLC or MTP Opportunities Fund IV LLC.

“Majority in Interest of Investors” shall mean Investors (in any case, including Magnetar, Irradiant and Activate) holding more than 50% of the aggregate Outstanding Principal Amount of the Notes; provided, that when a Defaulting Investor shall exist, Outstanding Principal Amount of the Notes as used herein shall mean the percentage of the Outstanding Principal Amount disregarding any Defaulting Investor’s Commitments.

“Majority in Interest of Lead Investors” shall mean Lead Investors (in any case, including Magnetar, Irradiant and Activate) holding more than 50% of the aggregate Outstanding Principal Amount of the Notes held by Lead Investors; provided, that when a Defaulting Investor shall exist, Outstanding Principal Amount of the Notes as used herein shall mean the percentage of the Outstanding Principal Amount disregarding any Defaulting Investor’s Commitments.

“Management Incentive Plan” means any management incentive plan approved by the Company’s Board of Directors and stockholders.

“Material Contract” means, individually or collectively as the context requires, any agreement or contract entered into by the Company or any Subsidiary which is entered into outside the ordinary course.

“Material Indebtedness” means Indebtedness (other than the Notes) of the Company or any of its Subsidiaries in an aggregate principal amount exceeding \$1,000,000, including, for the avoidance of doubt, Indebtedness incurred pursuant to the Backleverage Credit Agreement, the Mizzen Inc. Credit Agreement and the Mizzen WIP Credit Agreement.

“Mizzen” means Mizzen Capital, LP, a Delaware limited partnership.

“Mizzen Inc. Credit Agreement” means that certain Credit Agreement, dated as of April 29, 2022, by and among the Company, Mizzen, in its capacity as lead arranger, administrative and collateral agent and lender, and Stonehenge Community Impact Fund LP, a Delaware limited partnership, in its capacity as lender, as amended by that First Amendment to Credit Agreement, dated as of June 24, 2022, as further amended by that certain Second Amendment to Credit Agreement, dated as of July 14, 2022, as further amended by that certain Third Amendment to Credit Agreement, dated September 13, 2022, as further amended by that certain Fourth Amendment to Credit Agreement dated as of September 30, 2022, as further amended by that certain Omnibus Modification Agreement, dated as of June 13, 2023, as further amended by that certain Fifth Amendment to Credit Agreement dated as of July 21, 2023, and as further amended by that certain Sixth Amendment to Credit Agreement, dated on or around February 14, 2024.

“Mizzen WIP Credit Agreement” means that certain Credit Agreement, dated as of March 30, 2021, by and among PosiGen, LLC, a Louisiana limited liability company, Mizzen, in its capacity as lead arranger, administrative and collateral agent and lender, Stonehenge Community Impact Fund LP, a Delaware limited partnership, in its capacity as lender, Reinvestment Fund, Inc., a Pennsylvania not-for-profit corporation, in its capacity as lender, the Company, as guarantor, and the other guarantors party thereto, as amended by that certain Omnibus Modification Agreement, dated as of June 15, 2023 and as further amended by that certain Amendment to Credit Agreement, dated on or around February 14, 2024.

“Non-Defaulting Investor” shall mean any Investor, as determined by the Agent (acting at the direction of a Majority in Interest of Investors), that is not a Defaulting Investor.

“Notes” shall mean the secured convertible promissory notes issued pursuant to the Note Purchase Agreement.

“Note Documents” shall mean the Note Purchase Agreement, the Notes, the Agent Fee Letter, the Guaranty, the Security Agreement, the Control Agreements, the Collateral Assignment of Contracts, Permits and Project Documents, the Intercreditor Agreement, the Lien Subordination Agreement, and the Escrow Agreement, and each other document and agreement evidencing or securing the Indebtedness, as the same may from time to time be amended, supplemented, restated or otherwise modified.

“Note Purchase Agreement” shall mean the Note Purchase Agreement, dated as of June 13, 2023 (as amended, modified or supplemented), by and among the Company and the Investors (as defined in the Note Purchase Agreement) party thereto.

“Obligations” shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Company to Investor of every kind and description, now existing or hereafter arising under or pursuant to the terms of this Note and the other Note Documents, including, all interest, fees, charges, expenses, attorneys’ fees and costs and accountants’ fees and costs chargeable to and payable by the Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 *et seq.*), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

“Organizational Documents” means (a) with respect to any corporation, its certificate or articles of incorporation, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership or formation, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, (d) with respect to any limited liability company, its certificate of formation or articles of organization, as amended, and its limited liability company agreement or operating agreement, as amended, and (e) any voting agreements, investors’ rights agreements, right of first refusal and co-sale agreements, and similar governance or organizational documents, in each case, as amended.

“Permitted Divestments” means a Disposition of any asset that is a:

- (i) disposition of obsolete, unmerchantable or otherwise unsalable inventory, including the return of damaged or defective equipment to the supplier or vendor thereof;
- (ii) sale of inventory in the ordinary course of business consistent with past practice;
- (iii) termination of a lease of real or personal property in the ordinary course of business;
- (iv) disposition of any project (a) in the ordinary course of business and consistent with past practice in one or a series of related transactions, provided that the disposition of any group of projects pursuant to this clause (a) in one or a series of related transactions or the aggregate value of all dispositions of projects in any 12 month period, in each case, does not

exceed \$2,000,000, (b) pursuant to a bona fide sale of such project to a customer or (c) pursuant to a bona fide sale or transfer to one of the Company's or its Subsidiaries' financing vehicle and/or tax equity partnership, solely to the extent such financing vehicle and/or tax equity partnership is existing as of the date hereof;

- (v) a consignment or bailment; and
- (vi) disposition of any immaterial asset.

“Permitted Indebtedness” means any of the following:

- (i) Indebtedness with respect to cash management services, commercial credit cards, and other banking products and services;
- (ii) guarantees entered into in the ordinary course of business consistent with past practice in support of obligations of any subsidiary;
- (iii) delayed drawing of funds from debt facilities previously approved by the Company's Board of Directors, not exceeding the total pre-approved amount of the facility;
- (iv) customary indemnification obligations granted in the ordinary course of business consistent with past practice;
- (v) trade payables for the purchase of goods and services in the ordinary course of business consistent with past practice;
- (vi) expense reimbursement obligations in the ordinary course of business consistent with past practice and consistent with the expense reimbursement policy of the Company, in each case, as of the Closing Date or any future policy approved in advance by the Majority in Interest of Investors;
- (vii) Capital Lease Obligations or purchase money obligations with respect to equipment and vehicles;
- (viii) any Indebtedness pursuant to insurance contracts; and
- (ix) any amendments to the forms or terms of any existing Indebtedness of any subsidiary of the Company (other than PosiGen Developer, LLC) that would not have an adverse economic effect on the Company.

“Permitted Investments” means any Investments in:

- (i) wholly-owned Subsidiaries formed after the Closing Date;

- (ii) tax equity, cash equity, and other partnerships and joint ventures formed after the Closing Date, provided that such partnership or joint venture was approved by the Majority in Interest of Investors;
- (iii) deposit and securities accounts of the company, any wholly owned subsidiary, or any partnership or joint venture in existence on the Closing Date or approved by the Majority in Interest of Investors; and
- (iv) Investments consisting of loans to employees, officers, or directors relating to the purchase of equity securities of the Company or its Subsidiaries pursuant to the Management Incentive Plan or other agreements approved by Company's Board of Directors, provided that the aggregate principal amount of all such loans made in cash and outstanding may not exceed [REDACTED] at any time.

"Permitted Liens" means any of the following:

- (i) Liens supporting any Permitted Indebtedness;
- (ii) Liens for taxes not yet due and delinquent or contested in good faith by appropriate proceedings and, in each case, for which sufficient reserves have been established in accordance with GAAP;
- (iii) statutory or common law Liens (including landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like liens) incurred in the ordinary course of business for amounts that are not yet due and payable or are being contested in good faith by appropriate proceedings and for which sufficient reserves have been established in accordance with GAAP;
- (iv) Liens incurred or deposits made to secure the performance of government tenders, bids, contracts, leases, statutory obligations and other similar obligations in the ordinary course of business consistent with past practice;
- (v) easements, rights-of-way, restrictions, covenants or other agreements of record, and other similar charges or encumbrances on real property; and
- (vi) customary rights of setoff and Liens securing fees and similar amounts upon deposits or securities accounts in favor of depository institutions or securities intermediaries.

"Person" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

"Post-Closing Equity Financing" shall mean a transaction or series of transactions pursuant to which the Company issues and sells shares of its Equity Securities (excluding all proceeds from the incurrence of indebtedness that is converted into such Equity Securities),

including, for the avoidance of doubt, the Qualified Equity Raise (provided, that following such Qualified Equity Raise, any further transaction or series of transactions pursuant to which the Company issues or sells shares of its Equity Securities shall no longer be deemed a “Post-Closing Equity Financing”).

“Preferred Stock” shall mean the Series E-1 Preferred Stock, the Series E-2 Preferred Stock, the Series D-1 Preferred Stock, the Series D-3A Preferred Stock and the Series D-3B Preferred Stock.

“Qualified Equity Raise” shall mean a transaction or series of transactions pursuant to which the Company issues and sells shares of its Equity Securities (excluding all proceeds from the incurrence of indebtedness that is converted into such Equity Securities) with net cash proceeds of such issuance in an amount not less than \$50,000,000 in the aggregate (excluding amounts funded pursuant to the conversion of the Notes and the Existing Notes).

“Recapitalization” shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification, or other similar event.

“Restricted Payment” means:

- (i) any dividend or other distribution or other payment (whether in cash, securities or other property) with respect to any Equity Securities in the Company or any Subsidiary, to any Person (in each case, solely in such Person’s capacity as holder of such Equity Securities or, in the case of any payment, to the direct or indirect holders of the Company’s or any of its Subsidiaries’ Equity Securities), including any dividend or distribution payable or payment made in connection with any Recapitalization or any merger, amalgamation or consolidation;
- (ii) any purchase, redemption, defeasance or other acquisition or retirement for value of any Equity Securities of the Company (including in connection with any Recapitalization or any merger, amalgamation or consolidation); and
- (iii) any principal payment on, or redemption, purchase, repurchase, defeasance or other acquisition or retirement for value, in each case, prior to any scheduled repayment, sinking fund payment or scheduled maturity, of any Indebtedness secured by Liens junior in priority to the Liens securing the Obligations hereunder or unsecured Indebtedness, of the Company or any Subsidiary, except (1) regularly scheduled interest and principal payments and (2) a payment of interest or principal at the stated maturity date thereof.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Sale and Leaseback Transaction” means any sale or other transfer of any property by any Person with the intent to lease such property as lessee.

“Sale Liquidation Event” means:

- (i) the acquisition of the Company by another entity by means of any transaction or series of related transactions to which the Company is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction retain, immediately after such transaction or series of transactions, as a result of shares in the Company held by such holders prior to such transaction, a majority of the total voting power represented by the outstanding voting securities of the Company;
- (ii) a Disposition of all or substantially all of the assets of the Company taken as a whole by means of any transaction or series of related transactions, except where such Disposition is to a wholly-owned subsidiary of the Company or otherwise in the ordinary course of business of the Company in connection with project financing transactions customary in the Company's industry that are approved by the Majority in Interest of Investors;
- (iii) an exclusive, irrevocable license of all or substantially all of the intellectual property of the Company to a third party taken as a whole by means of any transaction or series of related transactions, except where such exclusive, irrevocable license is to a wholly-owned subsidiary of the Company;

"Security Agreement" means that certain Security Agreement (as amended, modified or supplemented), by and among the Company, the Guarantors and the Agent, in form and substance satisfactory to the Agent and the Lead Investors.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which Equity Securities representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless the context otherwise clearly requires, references herein to a "Subsidiary" refer to a Subsidiary of the Company.

7. **Miscellaneous.**

- (a) *Successors and Assigns; Transfer of this Note or Securities Issuable on Conversion Hereof; No Transfers to Bad Actors; Notice of Bad Actor Status.*

(i) Subject to the restrictions on transfer described in this **Section 7(a)**, the rights and obligations of the Company and Investor shall be binding upon and inure to the benefit of the successors, assigns, heirs, administrators and transferees of the parties.

(ii) With respect to any offer, sale or other disposition of this Note or securities into which such Note may be converted, Investor will give written notice to the Company

prior thereto, describing briefly the manner thereof, together with a written opinion of Investor's counsel, or other evidence if reasonably satisfactory to the Company, to the effect that such offer, sale or other distribution may be effected without registration or qualification (under any federal or state law then in effect). Upon receiving such written notice and reasonably satisfactory opinion, if so requested, or other evidence, the Company, as promptly as practicable, shall notify Investor that Investor may sell or otherwise dispose of this Note or such securities, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this **Section 7(a)** that the opinion of counsel for Investor, or other evidence, is not reasonably satisfactory to the Company, the Company shall so notify Investor promptly after such determination has been made. Each Note thus transferred and each certificate, instrument or book entry representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Securities Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the Securities Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions. Subject to the foregoing, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company as provided in the Note Purchase Agreement. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal and interest hereon and for all other purposes whatsoever, whether or not this Note shall be overdue and the Company shall not be affected by notice to the contrary.

(iii) Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior written consent of a Majority in Interest of Investors.

(iv) Investor agrees not to sell, assign, transfer, pledge or otherwise dispose of any securities of the Company, or any beneficial interest therein, to any person (other than the Company) unless and until the proposed transferee confirms to the reasonable satisfaction of the Company that neither the proposed transferee nor any of its directors, executive officers, other officers that may serve as a director or officer of any company in which it invests, general partners or managing members nor any person that would be deemed a beneficial owner of those securities (in accordance with Rule 506(d) of the Securities Act) is subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act, except as set forth in Rule 506(d)(2)(ii) or (iii) or (d)(3) under the Securities Act and disclosed, reasonably in advance of the transfer, in writing in reasonable detail to the Company. Investor will promptly notify the Company in writing if Investor or, to Investor's knowledge, any person specified in Rule 506(d)(1) under the Securities Act becomes subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act.

(b) *Waiver and Amendment.* Any provision of this Note may be amended, waived or modified upon the written consent of the Company, the Agent and a Majority in Interest of Investors; provided, however, that no such amendment, waiver or consent shall, without Investor's written consent, (i) reduce the principal amount of, or interest rate on, this Note, (ii) extend the Scheduled Maturity Date by more than 180 days, (iii) directly or indirectly modify the definitions of the Conversion Ratio, Equity Securities, or Outstanding Common Shares, or (iv) directly or

indirectly modify the redemption calculations or Investors' redemption rights pursuant to **Sections 4(c)** and **4(d)**. Investor acknowledges that by the operation of this paragraph, the Majority in Interest of Investors will have the right and power to diminish or eliminate all rights of such Investor under this Note, except as otherwise provided in this **Section 7(b)**; provided, further, if any amendment, waiver or other modification to this Note operates in an adverse manner that treats any Investor different from other Investors, solely to the extent such amendment, waiver or modification relates to this Note as held by such Investor so adversely treated, the consent of such Investor so adversely treated shall be required for such amendment, waiver or modification.

- (c) *Notices.* All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and faxed, mailed or delivered to each party at the respective addresses of the parties as set forth in the Note Purchase Agreement, or at such other address or facsimile number as the Company shall have furnished to Investor in writing. All such notices and communications will be deemed effectively given the earlier of (i) when received, (ii) when delivered personally, (iii) one Business Day after being delivered by facsimile (with receipt of appropriate confirmation), (iv) one Business Day after being deposited with an overnight courier service of recognized standing or (v) four days after being deposited in the U.S. mail, first class with postage prepaid.
- (d) *Seniority of Notes.* The Investor hereby acknowledges and agrees that the payment of all or any portion of the Outstanding Principal Amount of this 2024 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof) shall be applied (i) *first*, pro rata in favor of the 2024 Notes and Unsubordinated 2023 Notes (as defined below) and any other obligations that secure all or any portion of the 2024 Notes and the Unsubordinated 2023 Notes, which shall be senior in right of payment and in all other respects to the 2023 Notes (other than the Unsubordinated 2023 Notes) and any other Notes issued pursuant to the Note Purchase Agreement (other than the 2024 Notes and the Unsubordinated 2023 Notes) or obligations that secure all or any portion of the 2023 Notes (other than the Unsubordinated 2023 Notes) or any other Notes (other than the 2024 Notes and the Unsubordinated 2023 Notes) and (ii) *second*, pro rata in favor of the 2023 Notes (other than the Unsubordinated 2023 Notes) and any other Notes (other than the 2024 Notes and Unsubordinated 2023 Notes) and any other obligations that secure all or any portion of the 2023 Notes (other than the Unsubordinated 2023 Notes) or any other Notes (other than the 2024 Notes and Unsubordinated 2023 Notes); *provided*, that the payment of all or any portion of the Outstanding Principal Amount of this 2024 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of Section 1(b) hereof) hereon shall be *pari passu* in right of payment and in all other respects to the other 2024 Notes; *provided, further*, the payment of all or any portion of the Outstanding Principal Amount of this 2024 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of Section 1(b) hereof) hereon shall be *pari passu* in right of payment and in all other respects to the other 2024 Notes and any 2023 Notes (the “**Unsubordinated 2023 Notes**”) held by Investors who have not signed

Amendment No. 4 or otherwise consented thereto (such consent, on a form as reasonably agreed to by the Majority in Interest of Lead Investors); *provided, further*, that upon the Investor holding such Unsubordinated 2023 Notes signing Amendment No. 4 or otherwise consenting thereto, such Unsubordinated 2023 Notes shall cease to be “Unsubordinated 2023 Notes”. In the event Investor receives payments in excess of its pro rata share of the Company’s payments to the Investors of all of the Notes, then Investor shall hold in trust all such excess payments for the benefit of the holders of the other Notes and shall pay such amounts held in trust to such other holders upon demand by such holders.

- (e) *Payment.* Unless converted into the Company’s equity securities pursuant to the terms hereof, payment shall be made in lawful tender of the United States.
- (f) *Usury.* In the event any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note, and the Company hereby waives any claims thereto to the fullest extent under applicable law.
- (g) *Waivers.* The Company hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.
- (h) *Governing Law.* This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law provisions of the State of Delaware, or of any other state.
- (i) *Waiver of Jury Trial; Judicial Reference.* By acceptance of this Note, Investor hereby agrees and the Company hereby agrees to waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of this Note or any of the Note Documents.
- (j) *Counterparts.* This Note may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Note.
- (k) *Attorneys’ Fees.* The Company shall be liable for, and hereby agrees to pay, all reasonable attorneys’ fees incurred in connection with this Note and the Note Purchase Agreement, to protect the Agent’s and Investor’s rights under this Note, to enforce this Note, to collect amounts due under this Note, and to take any other action relating to this Note, as set forth in the Note Purchase Agreement.
- (l) *Tax Withholding.* Notwithstanding any other provision to the contrary, the Company shall be entitled to deduct and withhold from any amounts payable or otherwise deliverable with respect to this Note such amounts as may be required to

be deducted or withheld therefrom under any provision of applicable law, and to be provided any necessary tax forms and information, including Internal Revenue Service Form W-9 or appropriate version of IRS Form W-8, as applicable, from each beneficial owner of the Note. To the extent such amounts are so deducted or withheld and paid over to the appropriate taxing authority, such amounts shall be treated for all purposes as having been paid to the person to whom such amounts otherwise would have been paid.

(Signature Page Follows)

This Note may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties have executed this Note as of the date first written above.

POSIGEN, PBC

a Delaware public benefit corporation

Peter Shaper

Chief Executive Officer and President

1

POSIGEN, PBC

AMENDMENT NO. 4 TO NOTE PURCHASE AGREEMENT

This Amendment No. 4 to Note Purchase Agreement (this “***Amendment No. 4***”) is effective as of February 14, 2024, by and among PosiGen, PBC (f/k/a PosiGen, Inc.), a Delaware public benefit corporation (the “***Company***”), Wilmington Trust, National Association, solely in its capacity as collateral agent (the “***Agent***”) and the undersigned Investors and, solely for purposes of Section 10 hereof, the Guarantors. Capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Purchase Agreement (defined below).

RECITALS

WHEREAS, the Company previously issued the 2023 Notes in an original aggregate principal amount of \$33,529,574.00 pursuant to that certain Note Purchase Agreement, dated June 13, 2023 (as amended by that certain Amendment No. 1 to Note Purchase Agreement, dated as of July 17, 2023, that certain Amendment No. 2 to Note Purchase Agreement, dated as of July 24, 2023, and that certain Amendment No. 3 to Note Purchase Agreement, dated as of December 21, 2023, and as further amended, amended and restated, supplemented or modified from time to time, the “***Purchase Agreement***”).

WHEREAS, the Company has proposed to amend the Purchase Agreement to issue new secured convertible notes under the Purchase Agreement (the “***2024 Note Financing***”) pursuant to the terms and conditions set forth herein.

WHEREAS, in connection with the 2024 Note Financing, the Company has requested, and the Agent and the Requisite Investors do hereby agree to consent to, the 2024 Note Financing pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and consent to the following:

AGREEMENT

1. Amendment No. 4. Subject to the conditions precedent contained in **Section 2** hereof, effective as of the Fourth Amendment Effective Date (as defined below):

- (a) each Class A Note issued prior to the date hereof is amended to (i) delete the red stricken text, (ii) add the blue double-underlined text and (iii) move the green stricken text to where shown in the green double-underlined text, in each case in a copy of the Form of Class A Note attached as **Exhibit A**;
- (b) each Class B Note issued prior to the date hereof is amended to (i) delete the red stricken text, (ii) add the blue double-underlined text and (iii) move the green stricken text to where shown in the green double-underlined text, in each case in a copy of the Form of Class B Note attached as **Exhibit B**; and
- (c) the Purchase Agreement is hereby amended to (i) delete the red stricken text, (ii) add the blue double-underlined text and (iii) move the green stricken text to where shown in the green double-underlined text as attached hereto as **Exhibit C**.

2. Conditions to Amendment. This Amendment No. 4 shall become effective on the date (such date, the “***Fourth Amendment Effective Date***”) when each of the following conditions is satisfied:

(a) Representations and Warranties. After giving effect to the terms of this Amendment No. 4, the representations and warranties set forth in Section 2 of the Purchase Agreement shall be true and correct (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct as of such earlier date or where are qualified as to materiality, in which case such representations shall be true and correct in all respects to the extent already qualified by materiality).

(b) Note Documents. The Company shall have duly executed and delivered to the Agent and the Investors:

- i. This Amendment No. 4;
- ii. That certain Sixth Amendment to Credit Agreement, dated on or around February 13, 2024, by and between PosiGen, PBC and Mizzen Capital, LP and that certain Amendment to Credit Agreement, dated on or around February 13, 2024, by and between PosiGen, LLC and Mizzen Capital, LP (together, the “***Mizzen Amendments***”);
- iii. A duly executed consent of the Board of Directors of the Company to the transactions contemplated herein;
- iv. A duly executed consent of the Stockholders of the Company to the transactions contemplated herein;
- v. An opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation, counsel to the Company, in form and substance reasonably satisfactory to the Lead Investors;
- vi. An opinion of Phelps Dunbar, LLP, counsel to the Company, in form and substance reasonably satisfactory to the Lead Investors; and
- vii. Any other documents, consents or agreements reasonably requested by the Requisite Investors.

3. Post-Closing Obligations.

(a) 2023 Note Subordination. The Company shall use best efforts to obtain the consent of any remaining holders of 2023 Notes (after giving effect to the exchange set forth in Section 1(i)(iv) of the Purchase Agreement) to subordinate the remaining 2023 Notes to the 2024 Notes.

(b) Escrow Agreement. Within thirty (30) days (as waived or such later date as agreed by the Majority in Interest of Lead Investors) of the Fourth Amendment Effective Date, the Company shall amend the Escrow Agreement such that the Majority in Interest of Lead Investors may, in their sole discretion, fund escrow amounts to the Company.

4. Full Force and Effect. To the extent not expressly amended hereby, the Purchase Agreement and the 2023 Notes remain in full force and effect. On and after the date hereof, each reference in the Purchase

Agreement to “this Agreement”, “the Agreement”, “hereunder”, “hereof”, or words of like import, and each reference to the Purchase Agreement in any other agreements, documents, or instruments executed pursuant to or in connection with, the Purchase Agreement, will mean and be a reference to the Purchase Agreement as amended by this Amendment No. 4.

5. Entire Agreement. This Amendment No. 4, together with the Note Documents and all exhibits thereto, represent the entire agreement of the parties and shall supersede any and all previous contracts, arrangements or understandings between the parties with respect to the subject matter herein.

6. Governing Law. This Amendment No. 4 shall be governed by and construed and interpreted under the laws of the State of Delaware without reference to conflicts of law principles.

7. Counterparts. This Amendment No. 4 may be executed in counterparts, each of which shall be declared an original, but all of which together shall constitute one and the same instrument. Executed copies of the signature pages of this Amendment No. 4 sent by facsimile or transmitted electronically shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment.

8. Legal Expenses. The Company hereby agrees to pay in accordance with Section 9(k) of the Purchase Agreement all reasonable and documented out-of-pocket fees and expenses of Ballard Spahr LLP, counsel to the Agent, and Kirkland & Ellis LLP, counsel to the Investors in connection with the preparation, negotiation and execution of this Amendment No. 4.

9. Agent Authorization. Each of the undersigned Investors, who collectively constitute the Requisite Investors under the Purchase Agreement, hereby (i) authorize and direct the Agent to execute and deliver this Amendment No. 4, that certain First Amendment to Intercreditor Agreement, dated as of February 14, 2024 (amending that certain Intercreditor Agreement, dated as of July 17, 2023) and any documents related thereto (ii) acknowledge and agree that the undersigned Investors constitute all of the Investors necessary to direct the Agent to execute such documents; and (iii) acknowledge and agree that the direction set forth in this Amendment No. 4 constitutes an instruction, consent and request of the Investors under the Note Documents, including Section 8 of the Purchase Agreement.

10. Consent to Mizzen Amendments and Amendment to February Note Purchase Agreement. Each of the undersigned Investors, who collectively constitute the Requisite Investors under the Purchase Agreement, hereby consent to (i) the Mizzen Amendments and (ii) that certain Amendment No. 4 to Note Purchase Agreement, dated as of February 13, 2024, which amends that certain Note Purchase Agreement, dated February 2, 2023, as amended, including pursuant to Section 7(h) of the Purchase Agreement.

11. Ratification. The Company and each Guarantor hereby ratifies and reaffirms the validity and enforceability of all of the Liens and security interests heretofore granted and pledged by it pursuant to the Security Agreement and the other Collateral Documents to the Agent as collateral security for the Obligations, and acknowledges that all of such Liens and security interests, and all Collateral heretofore granted, pledged or otherwise created as security for the Obligations continue to be and remain collateral security for the Obligations from and after the date hereof. The Company and each Guarantor hereby acknowledges and agrees that the Purchase Agreement, the Security Agreement and all other Note Documents remain in full force and effect, and the Company and each Guarantor confirms and ratifies all of its Obligations thereunder. Each Guarantor hereby agrees that the Guaranty shall continue in full force and effect, is valid and enforceable and is not impaired or otherwise affected by the execution of this Amendment No. 4.

(Signature Pages Follow)

The parties have executed this Amendment No. 4 to Note Purchase Agreement as of the date first written above.

POSIGEN, PBC
a Delaware public benefit corporation

DocuSigned by:
By: Peter Shaper
E032278A748A4D1...
Name: Peter Shaper
Title: Chief Executive Officer

**SOLELY WITH RESPECT TO SECTION
10:**

POSIGEN, LLC
By: PosiGen, PBC, as Sole Member of PosiGen, LLC

DocuSigned by:
By: Peter Shaper
E032278A748A4D1...
Name: Peter Shaper
Title: Chief Executive Officer of PosiGen, PBC

POSIGEN DEVELOPER, LLC
By: PosiGen Operations, LLC, as sole member of PosiGen Developer, LLC
By: PosiGen, LLC, as sole member of PosiGen Operations, LLC
By: PosiGen, PBC, as sole member of PosiGen, LLC

DocuSigned by:
By: Peter Shaper
E032278A748A4D1...
Name: Peter Shaper
Title: Chief Executive Officer

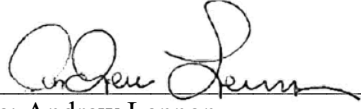
POSIGEN OPERATIONS, LLC
By: PosiGen, LLC, as sole member of PosiGen Operations, LLC
By: PosiGen, PBC, as sole member of PosiGen, LLC

DocuSigned by:
By: Peter Shaper
E032278A748A4D1...
Name: Peter Shaper
Title: Chief Executive Officer of PosiGen, PBC

The parties have executed this Amendment No. 4 to Note Purchase Agreement as of the date first written above.

AGENT

**WILMINGTON TRUST, NATIONAL
ASSOCIATION**

By:  _____
Name: Andrew Lennon
Title: Assistant Vice President

The parties have executed this Amendment No. 4 to Note Purchase Agreement as of the date first written above.

INVESTOR

MTP Opportunities IV Special Holdings B
LLC

By: MTP Infrastructure Partners LLC, its
managing member

By: MTP Energy Management LLC, its sole
Member

By: Magnetar Financial LLC, its sole member

By: 
Mike Turro (Feb 8, 2024 08:52 CST)
Name: Michael Turro
Title: Chief Compliance Officer

The parties have executed this Amendment No. 4 to Note Purchase Agreement as of the date first written above.

INVESTOR

MTP Energy Opportunities Fund III LLC

By: MTP Energy Management LLC, its managing member

By: Magnetar Financial LLC, its sole member

By: 
Mike Turro (Feb 8, 2024 08:52 CST)
Name: Michael Turro
Title: Chief Compliance Officer

The parties have executed this Amendment No. 4 to Note Purchase Agreement as of the date first written above.

INVESTOR

ACP II Executive, LP, as a Lead Investor

By: ACP II GP, LP, its General Partner

By: Activate Capital GP, LLC, its General Partner

A handwritten signature in black ink, appearing to be 'Anup Jacob', written over a horizontal line.

By: _____

Name: Anup Jacob

Title: Authorized Signatory

The parties have executed this Amendment No. 4 to Note Purchase Agreement as of the date first written above.

INVESTOR

Activate Capital Partners II, LP

By: ACP II GP, LP, its General Partner

By: Activate Capital GP, LLC, its General Partner

A handwritten signature in black ink, appearing to be 'Anup Jacob', written over a horizontal line.

By: _____

Name: Anup Jacob

Title: Authorized Signatory

The parties have executed this Amendment No. 4 to Note Purchase Agreement as of the date first written above.

INVESTOR

IROP Loan Aggregator, LP

By: _____

Name: Jonathan Levinson

Title: Managing Partner

The parties have executed this Amendment No. 4 to Note Purchase Agreement as of the date first written above.

INVESTOR

2040 Foundation, Inc.

By: 

Name: Mark Bruinooge

Title: Chief Investment Officer

The parties have executed this Amendment No. 4 to Note Purchase Agreement as of the date first written above.

INVESTOR

Spark Investment Partners, LLC

By: 
Name: Mark Bruinooge
Title: Chief Investment Officer

The parties have executed this Amendment No. 4 to Note Purchase Agreement as of the date first written above.

INVESTORS

BUILDERS FUND II LP, as a Lead Investor

By: BUILDERS II GP LLC, its Managing
Member

DocuSigned by:

By: _____
Name: Tripp Baird
Title: Managing Member

BUILDERS PSGN LLC, as a Lead Investor


By: BUILDERS II GP LLC, its Managing
Member

DocuSigned by:

By: _____
Name: Tripp Baird
Title: Managing Member

DOLPHIN BUILDERS LP, as a Lead Investor

By: The Builders Fund GP, LLC its General
Partner

DocuSigned by:

By: _____
Name: Tripp Baird
Title: Managing Member

The parties have executed this Amendment No. 4 to Note Purchase Agreement as of the date first written above.

INVESTOR

ECI 2022-2023 LLC


By:  Steve McDermid
Name: **Steve McDermid**
Title: **Authorized Signatory**

Exhibit A

CLASS A NOTE

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

POSIGEN, PBC

FORM OF SECURED CONVERTIBLE PROMISSORY NOTE

[\$\$\$]

[], 2023

FOR VALUE RECEIVED, PosiGen, PBC, a Delaware public benefit corporation (the “**Company**”) unconditionally promises to pay to the order of [INVESTOR] or its registered assigns (“**Investor**”), in lawful money of the United States of America the principal sum of [] AND NO/100 ([\$\$\$]) DOLLARS (the “**Original Principal Amount**”) as such amount may be increased pursuant to the payment of PIK Interest according to **Section 1** hereto or reduced pursuant to any conversion, redemption, or repayment effected in accordance with the terms hereof (the “**Outstanding Principal Amount**”), together with interest thereon from the date of this Secured Convertible Promissory Note (this “**Note**”) on the unpaid Outstanding Principal Amount at the rates specified in **Section 1** hereof. The Outstanding Principal Amount, together with any then unpaid and accrued interest and other amounts payable hereunder, to the extent not earlier converted, exchanged or repaid, shall be due and payable in full on the earlier of (i) June 13, 2025 (the “**Scheduled Maturity Date**”), or (ii) when, upon the occurrence and during the continuance of an Event of Default, such amounts are declared due and payable by Investor or made automatically due and payable, in each case, in accordance with the terms hereof (the “**Accelerated Maturity Date**”). This Note is one of the “Notes” issued pursuant to the Note Purchase Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Note Purchase Agreement.

The following is a statement of the rights of Investor and the conditions to which this Note is subject, and to which Investor, by the acceptance of this Note, agrees:

1. **Payment Interest.** This Note shall bear interest as follows:

- (a) [Reserved]

(b) Interest payable in kind (“**PIK Interest**”) shall accrue on the Outstanding Principal Amount of this Note at a rate per annum of [REDACTED] and shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing on June 30, 2023, by adding such accrued PIK Interest to the Outstanding Principal Amount. By notice to the Investor at least one Business Day prior to the applicable interest payment date, the Company may elect to pay the applicable accrued PIK Interest, in whole or in part, in cash on any such interest payment date. The portion of such required PIK Interest paid in cash shall not, for the avoidance of doubt, be added to the Outstanding Principal Amount. In addition to the foregoing, accrued and unpaid interest shall be added to the Outstanding Principal Amount as PIK Interest in connection with, and on the date of, (i) a conversion of this Note pursuant to **Section 4(a)** or **4(b)** or (ii) a redemption of this Note pursuant to **Section 4(c)** or **4(d)**.

(c) Interest shall be computed on the basis of a 365-day year and the actual number of days elapsed in such period. If any interest payment would be payable on a day that is not a Business Day, such interest payment will be postponed to the immediately succeeding day that is a Business Day.

2. **Events of Default.** The occurrence of any of the following shall constitute an “**Event of Default**” under this Note and the other Note Documents:

(a) *Failure to Pay.* The Company shall fail to pay (i) when due any principal payment on the due date hereunder or (ii) any other payment required under the terms of this Note or any other Note Document on the date due and such payment shall not have been made within five (5) days of the Company’s failure to pay; or

(b) *Breaches of Covenants.* The Company shall fail to observe or perform any other covenant, obligation, condition or agreement contained in this Note or the other Note Documents (other than those specified in **Section 2(a)**) and such failure shall continue for ten (10) days after such failure; or

(c) *Representations and Warranties.* Any representation, warranty, certificate, or other statement (financial or otherwise) made or furnished by or on behalf of the Company to Investor in writing in connection with this Note or any of the other Note Documents, or as an inducement to Investor to enter into this Note and the other Note Documents, shall be false, incorrect, incomplete or misleading when made or furnished; or

(d) *Voluntary Bankruptcy or Insolvency Proceedings.* The Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of its or any of its creditors, (iii) be dissolved or liquidated, (iv) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (v) take any action for the purpose of effecting any of the foregoing;

(e) *Involuntary Bankruptcy or Insolvency Proceedings.* Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company, or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or any of its subsidiaries, if any, or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within 45 days of commencement;

(f) *Change of Control.* A Change of Control shall occur; or

(g) *Material Indebtedness.* The Company or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness when and as the same shall become due and payable and such failure shall continue beyond any applicable grace period or any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity.

3. **Rights of Investor upon Default.** Upon the occurrence of any Event of Default (other than an Event of Default described in **Sections 2(d)** or **2(e)**) and at any time thereafter during the continuance of such Event of Default, Investor may, by written notice to the Company, declare all outstanding Obligations payable by the Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Note Documents to the contrary notwithstanding. Upon the occurrence of any Event of Default described in **Sections 2(d)** and **2(e)**, immediately and without notice, all outstanding Obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Note Documents to the contrary notwithstanding. Upon the occurrence of an Event of Default, the PIK Interest due under this Note shall be increased to 18%. In addition to the foregoing remedies, upon the occurrence and during the continuance of any Event of Default, Investor may exercise any other right, power or remedy granted to it by the Note Documents or otherwise permitted to it by law, either by suit in equity or by action at law, or both.

4. **Conversion and Redemption.**

(a) *Voluntary Conversion upon Post-Closing Equity Financing.* Until and including the time at which the Company successfully completes a Qualified Equity Raise, if a Post-Closing Equity Financing occurs on or prior to the Scheduled Maturity Date, then the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof) shall be, at the time such Post-Closing Equity Financing (including any Qualified Equity Raise), convertible in full or in part at the option of the Investor into fully paid and nonassessable shares issued in the Post-Closing Equity Financing, or shares ranked junior to such shares with the same rights and privileges (including with respect to economic and governance terms) as those issued in the Post-Closing Equity

Financing, if required by the terms of such Post-Closing Equity Financing (the “**Conversion Shares**”) in a number equal to the quotient obtained by dividing (A) the ~~sum~~product of (i) if the conversion date is prior to [REDACTED], of such portion of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof) as such Investor elects to convert by (B) the price per share of the Equity Securities issued in the Post-Closing Equity Financing (such quotient being the “**Conversion Ratio**”); provided, that (x) if such shares will be *pari passu* with such Equity Securities issued in the Post-Closing Equity Financing, upon the affirmative election of Majority in Interest of Lead Investors or (y) if such shares will be ranked junior to such Equity Securities issued in the Post-Closing Equity Financing, upon the affirmative election of three Lead Investors (which shall include Magnetar), the voluntary conversion rights in this **Section 4(a)** shall be deemed mandatory and the Investor shall be deemed to have elected to convert in full such Investor’s Note into Conversion Shares pursuant to the terms of the Note.

(b) *Voluntary Conversion upon Maturity.* If no Qualified Equity Raise occurs on or prior to the Maturity Date, then the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof) shall be convertible at the option of Investor into fully paid and nonassessable shares of the Company’s Series 1 Preferred Stock at a price per share equal to [REDACTED] (subject to appropriate adjustment from time to time for any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event).

(c) *Redemption upon Maturity.* On the earlier of the Scheduled Maturity Date or a liquidation, winding up or dissolution of the Company, whether voluntary or involuntary, the Company shall redeem this Note in an amount equal to [REDACTED] of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof), provided such Investor has not exercised in full its conversion right in accordance with Sections 4(a) or 4(b).

(d) *Mandatory Redemption upon a Sale Liquidation Event.* The Company shall notify the holders of then outstanding Notes of the closing of a Sale Liquidation Event (as defined below) at least fifteen (15) days prior to the expected closing of such Sale Liquidation Event. Upon the closing of such Sale Liquidation Event, each Investor shall receive in respect, and full satisfaction, of such Investor’s Note an amount equal to 200% of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof).

(e) *Conversion Procedure.*

(1) Conversion Pursuant to Section 4(a) and 4(b). Before Investor shall be entitled to convert this Note into shares of the Company’s Equity Securities in accordance with **Section 4(a)** and **4(b)**, it shall surrender this Note (or a notice to the effect that the original Note has been lost, stolen or destroyed and an agreement acceptable to the Company whereby the holder agrees to indemnify the Company from any loss incurred by it in connection with this Note) and give written notice to the Company at its principal corporate office of its

election to convert the same pursuant to **Section 4(a)** and **Section 4(b)** and shall state therein the amount of the unpaid principal amount of this Note to be converted. Upon such conversion of this Note, Investor hereby agrees to execute and deliver to the Company all transaction documents entered into by other purchasers of the relevant securities (as may be amended), including any purchase agreement, investor rights agreement and other ancillary agreements, as applicable, with customary representations and warranties and transfer restrictions (including, without limitation, a 180-day lock-up agreement in connection with an initial public offering), provided that, if Investor is already a party to such agreement(s), Investor shall not, by virtue of this **Section 4** be required to sign up to such agreement(s) unless separately approved by the parties required to amend such agreements (which may, for the avoidance of doubt, include the Investor). The Company shall, as soon as practicable thereafter, issue and deliver to such Investor a certificate or certificates for the number of shares to which Investor shall be entitled upon such conversion (or notice of issuance if the shares are uncertificated), including a check payable to Investor for any cash amounts payable as described in **Section 4(e)(2)**. Any conversion of this Note pursuant to **Section 4(a)** and **4(b)** shall be deemed to have been made upon the satisfaction of all of the conditions set forth in this **Section 4(e)(i)**, and on and after such date the Persons entitled to receive the shares issuable upon such conversion shall be treated for all purposes as the record holder of such shares.

(2) Fractional Shares; Effect of Conversion. No fractional shares shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Investor upon the conversion of this Note, the Company shall pay to Investor an amount equal to the product obtained by multiplying the applicable price per share of the Conversion Shares issued in the Post-Closing Equity Financing or Qualified Equity Raise, as applicable, by the fraction of a share not issued pursuant to the previous sentence. Upon conversion of this Note in full and the payment of the amounts specified in this paragraph, Company shall be forever released from all its obligations and liabilities under this Note and this Note shall be deemed of no further force or effect, whether or not the original of this Note has been delivered to the Company for cancellation.

(f) *Notices of Record Date.* In the event of:

(1) Any taking by Company of a record of the holders of any class of securities of Company for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right; or

(2) Any capital reorganization of Company, any reclassification or recapitalization of the capital stock of Company or any transfer of all or substantially all of the assets of Company to any other Person or any consolidation or merger involving Company; or

(3) Any voluntary or involuntary dissolution, liquidation or winding-up of Company,

Company will mail to Investor at least ten (10) days prior to the earliest date specified therein, a notice specifying (A) the date on which any such record is to be taken for the purpose of

such dividend, distribution or right and the amount and character of such dividend, distribution or right; or (B) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding-up is expected to become effective and the record date for determining stockholders entitled to vote thereon.

5. **[Reserved]**.

6. **Definitions.** As used in this Note, the following capitalized terms have the following meanings:

“**Activate**” means Activate Capital Partners II, LP and ACP II Executive, LP.

“**Agent Fee Letter**” means the Agent Fee Letter, dated as of July 17, 2023 executed by or on behalf of the Company in favor of Agent.

“**Amendment No. 4**” shall mean that certain Amendment No. 4 to Note Purchase Agreement, dated as of February 14, 2024, which amends the Note Purchase Agreement, dated as of June 13, 2023 (as amended, modified or supplemented), by and among the Company and the Investors (as defined in the Note Purchase Agreement) party thereto.

“**Backleverage Credit Agreement**” means that certain Credit Agreement, dated as of April 21, 2023, by and among the PosiGen Backleverage, LLC, a Delaware limited liability company, BID Administrator LLC, as administrative and collateral agent, and the lenders from time to time party thereto.

“**Builders**” means Builders PSGN LLC, Builders Fund II LP and Dolphin Builders LP.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

“**Capital Lease Obligations**” means the portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

“**Change of Control**” means:

- (i) a Sale Liquidation Event;
- (ii) any other liquidation, winding up or dissolution of the Company, whether voluntary or involuntary; or
- (iii) the occurrence of a “Change of Control” or similar term as defined in the definitive documentation for any Material Indebtedness.

“**Collateral**” shall mean all property and assets now owned or hereafter acquired, upon which a Lien is created or purported to be created by any Collateral Documents.

“**Collateral Assignment of Contracts, Permits and Project Documents**” means that certain Collateral Assignment of Contracts, Permits and Project Documents (as amended, modified

or supplemented), made by the Guarantors party thereto, in form and substance satisfactory to the Agent and the Lead Investors.

“Collateral Documents” shall mean the Security Agreement, the Guaranty, the Control Agreements and the Collateral Assignment of Contracts, Permits and Project Documents, and any and all other agreements, instruments, consents or certificates now or hereafter executed and delivered by the Company or any other Person in connection with, or as security for the payment or performance of the Obligations or the Note Purchase Agreement, as such agreements may be amended, restated, supplemented or otherwise modified from time to time.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

“Control Agreement” means an agreement which establishes in Agent “control” (as used in Articles 8 and 9 of the UCC) of Collateral which is to be subject thereto and which is otherwise in form and substance satisfactory to the Agent and the Lead Investors.

“Defaulting Investor” means any Investor that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to fund any portion of its Commitment, unless such Investor notifies the Majority in Interest of Lead Investors in writing that such failure is the result of such Investor’s good faith determination that a condition precedent to funding (specifically identified and including the particular Event of Default, if any) has not been satisfied; (b) has notified the Company in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under the Note Purchase Agreement (unless such writing or public statement indicates that such position is based on such Investor’s good faith determination that a condition precedent to funding (specifically identified and including the particular Event of Default, if any, cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within three (3) Business Days after request by the Majority in Interest of Lead Investors or any other Investor, acting in good faith, to provide a certification in writing from an authorized officer of such Investor that it will comply with its obligations to fund under the Note Purchase Agreement, provided that such Investor shall cease to be a Defaulting Investor pursuant to this clause (c), upon the Majority in Interest of Lead Investors’, or such other Investor’s receipt of such certification in form and substance satisfactory to it; or (d) has become the subject of an action under the United States Bankruptcy Code or similar insolvency laws.

“Disposition” or **“Dispose”** means the sale, transfer, license, lease, exchange or other disposition (including any Sale and Leaseback Transaction and the sale or issuance of any Equity Securities by a Subsidiary of the Company) of any property by any Person, including any Disposition, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Stock” means any Equity Securities which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable for any consideration other than other Equity

Securities (which would not constitute Disqualified Stock), pursuant to a sinking fund obligation or otherwise, or requires regular dividend payments in cash, or is redeemable for any consideration other than other Equity Securities (which would not constitute Disqualified Stock) at the sole option of the holder thereof, in whole or in part, in each case, on or prior to the date that is one hundred eighty one (181) days after the Scheduled Maturity Date.

“Escrow Agreement” means that certain Escrow Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Wilmington Trust, National Association, in its capacity as Escrow Agent.

“Equity Securities” shall mean the Company’s preferred stock or any securities conferring the right to purchase the Company’s preferred stock or securities convertible into, or exchangeable for (with or without additional consideration), the Company’s preferred stock, including convertible promissory notes and excluding any security granted, issued and/or sold by the Company to any director, officer, employee or consultant of the Company in such capacity for the primary purpose of soliciting or retaining their services.

“Event of Default” has the meaning given in **Section 2** hereof.

“Existing Notes” shall mean the notes issued pursuant to that certain Note Purchase Agreement, dated as of February 2, 2023, by and among the Company and the investors party thereto (as amended from time to time).

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time.

“Guarantee” of or by any Person (in this definition, the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guarantors” means, as of the Closing Date, PosiGen, LLC, a Louisiana limited liability company, PosiGen Developer, LLC, a Delaware limited liability company, and PosiGen Operations, LLC, a Delaware limited liability company.

“Guaranty” means that certain Guaranty Agreement (as amended, modified or supplemented), by and among the Company, the Guarantors and the Agent, in form and substance satisfactory to the Agent and the Lead Investors.

“Hedging Obligations” means obligations under (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a **“Master Agreement”**), including any such obligations or liabilities under any Master Agreement. Notwithstanding the foregoing, no convertible note or other equity-linked instrument shall be a hedging obligation.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding those incurred in the ordinary course of business which are not greater than sixty (60) days past the due date or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed by such Person, but limited to the lesser of (i) the amount of such Indebtedness and (ii) the fair market value of the property securing such Indebtedness, (f) all Guarantees by such Person of Indebtedness of others to the extent of the lesser of the amount of such Indebtedness and the maximum stated amount of such Guarantee, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit, letters of guaranty or similar instruments, (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (j) all Hedging Obligations, (k) attributable Indebtedness in respect of Sale and Leaseback Transactions and (l) any Disqualified Stock. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. For the avoidance of doubt, for the purpose of this definition, any lease that would be treated as an operating lease under GAAP in effect prior to January 1, 2019 shall not constitute Indebtedness hereunder.

“Intercreditor Agreement” means that certain Intercreditor Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Mizzen, in form and substance satisfactory to the Agent and the Lead Investors.

“Investment” means, with respect to a Person, all direct or indirect investments by such Person in other Persons (including, without limitation, Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions, purchases or other acquisitions for consideration of Indebtedness, Equity Securities or other securities, the acquisition of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of a Person or any other transaction that would be classified as investments on a balance sheet prepared in accordance with GAAP. For purposes of covenant compliance, the amount of any Investment shall be the amount actually made (measured at the time made) by the Company and its Subsidiaries, without adjustment for subsequent increases or decreases in the value of such Investment and regardless of whether such Investment is made with cash, the issuance of any Equity Securities or the incurrence of any Indebtedness convertible into Equity Securities, any other consideration or any combination thereof.

“Investor” shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the registered holder of this Note.

“Investors” shall mean the investors that have been issued Notes.

“Irradiant” means IROP Loan Aggregator, LP.

“Lead Investors” means [REDACTED]; provided, that when a Defaulting Investor shall exist, Lead Investors as used herein shall not include any Defaulting Investor.

“Lien” means any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of such property, whether such obligation or claim is fixed or contingent, and including but not limited to a lien or security interest arising from a mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, pledge, security agreement, conditional sale, charge or trust receipt or a lease, consignment or bailment for security purposes.

“Lien Subordination Agreement” means that certain Lien Subordination Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Connecticut Green Bank.

“Magnetar” shall mean MTP Energy Opportunities Fund III LLC or MTP Opportunities Fund IV LLC.

“Majority in Interest of Investors” shall mean Investors (in any case, including Magnetar, Irradiant and Activate) holding more than 50% of the aggregate Outstanding Principal Amount of the Notes; provided, that when a Defaulting Investor shall exist, Outstanding Principal Amount of the Notes as used herein shall mean the percentage of the Outstanding Principal Amount disregarding any Defaulting ~~Lender's~~Investor's Commitments.

“Majority in Interest of Lead Investors” shall mean Lead Investors (in any case, including Magnetar, Irradiant and Activate) holding more than 50% of the aggregate Outstanding Principal Amount of the Notes held by Lead Investors; provided, that when a Defaulting Investor shall exist, Outstanding Principal Amount of the Notes as used herein shall mean the percentage

of the Outstanding Principal Amount disregarding any Defaulting ~~Lender's~~Investor's Commitments.

“Management Incentive Plan” means any management incentive plan approved by the Company’s Board of Directors and stockholders.

“Material Contract” means, individually or collectively as the context requires, any agreement or contract entered into by the Company or any Subsidiary which is entered into outside the ordinary course.

“Material Indebtedness” means Indebtedness (other than the Notes) of the Company or any of its Subsidiaries in an aggregate principal amount exceeding \$1,000,000, including, for the avoidance of doubt, Indebtedness incurred pursuant to the Backleverage Credit Agreement, the Mizzen Inc. Credit Agreement and the Mizzen WIP Credit Agreement.

“Mizzen” means Mizzen Capital, LP, a Delaware limited partnership.

“Mizzen Inc. Credit Agreement” means that certain Credit Agreement, dated as of April 29, 2022, by and among the Company, Mizzen, in its capacity as lead arranger, administrative and collateral agent and lender, and Stonehenge Community Impact Fund LP, a Delaware limited partnership, in its capacity as lender, as amended by that First Amendment to Credit Agreement, dated as of June 24, 2022, as further amended by that certain Second Amendment to Credit Agreement, dated as of July 14, 2022, as further amended by that certain Third Amendment to Credit Agreement, dated September 13, 2022~~-and,~~ as further amended by that certain Fourth Amendment to Credit Agreement dated as of September 30, 2022~~-,~~ as further amended by that certain Omnibus Modification Agreement, dated as of June 13, 2023, as further amended by that certain Fifth Amendment to Credit Agreement dated as of July 21, 2023, and as further amended by that certain Sixth Amendment to Credit Agreement, dated on or around February 14, 2024.

“Mizzen WIP Credit Agreement” means that certain Credit Agreement, dated as of March 30, 2021, by and among PosiGen, LLC, a Louisiana limited liability company, Mizzen, in its capacity as lead arranger, administrative and collateral agent and lender, Stonehenge Community Impact Fund LP, a Delaware limited partnership, in its capacity as lender, Reinvestment Fund, Inc., a Pennsylvania not-for-profit corporation, in its capacity as lender, the Company, as guarantor, and the other guarantors party thereto, as amended by that certain Omnibus Modification Agreement, dated as of June 15, 2023 and as further amended by that certain Amendment to Credit Agreement, dated on or around February 14, 2024.

“Non-Defaulting Investor” shall mean any Investor, as determined by the Agent (acting at the direction of a Majority in Interest of Investors), that is not a Defaulting Investor.

“Notes” shall mean the secured convertible promissory notes issued pursuant to the Note Purchase Agreement~~by the Company.~~

“Note Documents” shall mean the Note Purchase Agreement, the Notes, the Agent Fee Letter, the Guaranty, the Security Agreement, the Control Agreements, the Collateral Assignment of Contracts, Permits and Project Documents, the Intercreditor Agreement, the Lien Subordination Agreement, and the Escrow Agreement, and each other document and agreement evidencing

or securing the Indebtedness, as the same may from time to time be amended, supplemented, restated or otherwise modified.

“Note Purchase Agreement” shall mean the Note Purchase Agreement, dated as of June 13, 2023 (as amended, modified or supplemented), by and among the Company and the Investors (as defined in the Note Purchase Agreement) party thereto.

“Obligations” shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Company to Investor of every kind and description, now existing or hereafter arising under or pursuant to the terms of this Note and the other Note Documents, including, all interest, fees, charges, expenses, attorneys’ fees and costs and accountants’ fees and costs chargeable to and payable by the Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 *et seq.*), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

“Organizational Documents” means (a) with respect to any corporation, its certificate or articles of incorporation, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership or formation, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, (d) with respect to any limited liability company, its certificate of formation or articles of organization, as amended, and its limited liability company agreement or operating agreement, as amended, and (e) any voting agreements, investors’ rights agreements, right of first refusal and co-sale agreements, and similar governance or organizational documents, in each case, as amended.

“Permitted Divestments” means a Disposition of any asset that is a:

- (i) disposition of obsolete, unmerchantable or otherwise unsalable inventory, including the return of damaged or defective equipment to the supplier or vendor thereof;
- (ii) sale of inventory in the ordinary course of business consistent with past practice;
- (iii) termination of a lease of real or personal property in the ordinary course of business;
- (iv) disposition of any project (a) in the ordinary course of business and consistent with past practice in one or a series of related transactions, provided that the disposition of any group of projects pursuant to this clause (a) in one or a series of related transactions or the aggregate value of all dispositions of projects in any 12 month period, in each case, does not exceed \$2,000,000, (b) pursuant to a bona fide sale of such project to a customer or (c) pursuant to a bona fide sale or transfer to one of the Company’s or its Subsidiaries’ financing vehicle and/or tax equity

partnership, solely to the extent such financing vehicle and/or tax equity partnership is existing as of the date hereof;

- (v) a consignment or bailment; and
- (vi) disposition of any immaterial asset.

“Permitted Indebtedness” means any of the following:

- (i) Indebtedness with respect to cash management services, commercial credit cards, and other banking products and services;
- (ii) guarantees entered into in the ordinary course of business consistent with past practice in support of obligations of any subsidiary;
- (iii) delayed drawing of funds from debt facilities previously approved by the Company’s Board of Directors, not exceeding the total pre-approved amount of the facility;
- (iv) customary indemnification obligations granted in the ordinary course of business consistent with past practice;
- (v) trade payables for the purchase of goods and services in the ordinary course of business consistent with past practice;
- (vi) expense reimbursement obligations in the ordinary course of business consistent with past practice and consistent with the expense reimbursement policy of the Company, in each case, as of the Closing Date or any future policy approved in advance by the Majority in Interest of Investors;
- (vii) Capital Lease Obligations or purchase money obligations with respect to equipment and vehicles;
- (viii) any Indebtedness pursuant to insurance contracts; and
- (ix) any amendments to the forms or terms of any existing Indebtedness of any subsidiary of the Company (other than PosiGen Developer, LLC) that would not have an adverse economic effect on the Company.

“Permitted Investments” means any Investments in:

- (i) wholly-owned Subsidiaries formed after the Closing Date;
- (ii) tax equity, cash equity, and other partnerships and joint ventures formed after the Closing Date, provided that such partnership or joint venture was approved by the Majority in Interest of Investors; ~~and~~

- (iii) deposit and securities accounts of the company, any wholly owned subsidiary, or any partnership or joint venture in existence on the Closing Date or approved by the Majority in Interest of Investors; and
- (iv) Investments consisting of loans to employees, officers, or directors relating to the purchase of equity securities of the Company or its Subsidiaries pursuant to the Management Incentive Plan or other agreements approved by Company's Board of Directors, provided that the aggregate principal amount of all such loans made in cash and outstanding may not exceed \$4,000,000 at any time.

“Permitted Liens” means any of the following:

- (i) Liens supporting any Permitted Indebtedness;
- (ii) Liens for taxes not yet due and delinquent or contested in good faith by appropriate proceedings and, in each case, for which sufficient reserves have been established in accordance with GAAP;
- (iii) statutory or common law Liens (including landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like liens) incurred in the ordinary course of business for amounts that are not yet due and payable or are being contested in good faith by appropriate proceedings and for which sufficient reserves have been established in accordance with GAAP;
- (iv) Liens incurred or deposits made to secure the performance of government tenders, bids, contracts, leases, statutory obligations and other similar obligations in the ordinary course of business consistent with past practice;
- (v) easements, rights-of-way, restrictions, covenants or other agreements of record, and other similar charges or encumbrances on real property; and
- (vi) customary rights of setoff and Liens securing fees and similar amounts upon deposits or securities accounts in favor of depository institutions or securities intermediaries.

“Person” shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

“Post-Closing Equity Financing” shall mean a transaction or series of transactions pursuant to which the Company issues and sells shares of its Equity Securities (excluding all proceeds from the incurrence of indebtedness that is converted into such Equity Securities), including, for the avoidance of doubt, the Qualified Equity Raise (provided, that following such Qualified Equity Raise, any further transaction or series of transactions pursuant to which the Company issues or sells shares of its Equity Securities shall no longer be deemed a “Post-Closing Equity Financing”).

“Preferred Stock” shall mean the Series E-1 Preferred Stock, the Series E-2 Preferred Stock, the Series D-1 Preferred Stock, the Series D-3A Preferred Stock and the Series D-3B Preferred Stock.

“Qualified Equity Raise” shall mean a transaction or series of transactions pursuant to which the Company issues and sells shares of its Equity Securities (excluding all proceeds from the incurrence of indebtedness that is converted into such Equity Securities) with net cash proceeds of such issuance in an amount not less than \$50,000,000 in the aggregate (excluding amounts funded pursuant to the conversion of the Notes and the Existing Notes).

“Recapitalization” shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification, or other similar event.

“Restricted Payment” means:

- (i) any dividend or other distribution or other payment (whether in cash, securities or other property) with respect to any Equity Securities in the Company or any Subsidiary, to any Person (in each case, solely in such Person’s capacity as holder of such Equity Securities or, in the case of any payment, to the direct or indirect holders of the Company’s or any of its Subsidiaries’ Equity Securities), including any dividend or distribution payable or payment made in connection with any Recapitalization or any merger, amalgamation or consolidation;
- (ii) any purchase, redemption, defeasance or other acquisition or retirement for value of any Equity Securities of the Company (including in connection with any Recapitalization or any merger, amalgamation or consolidation); and
- (iii) any principal payment on, or redemption, purchase, repurchase, defeasance or other acquisition or retirement for value, in each case, prior to any scheduled repayment, sinking fund payment or scheduled maturity, of any Indebtedness secured by Liens junior in priority to the Liens securing the Obligations hereunder or unsecured Indebtedness, of the Company or any Subsidiary, except (1) regularly scheduled interest and principal payments and (2) a payment of interest or principal at the stated maturity date thereof.

~~“Recapitalization” shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification, or other similar event.~~

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Sale and Leaseback Transaction” means any sale or other transfer of any property by any Person with the intent to lease such property as lessee.

“Sale Liquidation Event” means:

- (i) the acquisition of the Company by another entity by means of any transaction or series of related transactions to which the Company is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction retain, immediately after such transaction or series of transactions, as a result of shares in the Company held by such holders prior to such transaction, a majority of the total voting power represented by the outstanding voting securities of the Company;
- (ii) a Disposition of all or substantially all of the assets of the Company taken as a whole by means of any transaction or series of related transactions, except where such Disposition is to a wholly-owned subsidiary of the Company or otherwise in the ordinary course of business of the Company in connection with project financing transactions customary in the Company's industry that are approved by the Majority in Interest of Investors;
- (iii) an exclusive, irrevocable license of all or substantially all of the intellectual property of the Company to a third party taken as a whole by means of any transaction or series of related transactions, except where such exclusive, irrevocable license is to a wholly-owned subsidiary of the Company;

"Security Agreement" means that certain Security Agreement (as amended, modified or supplemented), by and among the Company, the Guarantors and the Agent, in form and substance satisfactory to the Agent and the Lead Investors.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which Equity Securities representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless the context otherwise clearly requires, references herein to a "Subsidiary" refer to a Subsidiary of the Company.

7. **Miscellaneous.**

- (a) *Successors and Assigns; Transfer of this Note or Securities Issuable on Conversion Hereof; No Transfers to Bad Actors; Notice of Bad Actor Status.*

(i) Subject to the restrictions on transfer described in this **Section 7(a)**, the rights and obligations of the Company and Investor shall be binding upon and inure to the benefit of the successors, assigns, heirs, administrators and transferees of the parties.

(ii) With respect to any offer, sale or other disposition of this Note or securities into which such Note may be converted, Investor will give written notice to the Company

prior thereto, describing briefly the manner thereof, together with a written opinion of Investor's counsel, or other evidence if reasonably satisfactory to the Company, to the effect that such offer, sale or other distribution may be effected without registration or qualification (under any federal or state law then in effect). Upon receiving such written notice and reasonably satisfactory opinion, if so requested, or other evidence, the Company, as promptly as practicable, shall notify Investor that Investor may sell or otherwise dispose of this Note or such securities, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this **Section 7(a)** that the opinion of counsel for Investor, or other evidence, is not reasonably satisfactory to the Company, the Company shall so notify Investor promptly after such determination has been made. Each Note thus transferred and each certificate, instrument or book entry representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Securities Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the Securities Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions. Subject to the foregoing, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company as provided in the Note Purchase Agreement. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal and interest hereon and for all other purposes whatsoever, whether or not this Note shall be overdue and the Company shall not be affected by notice to the contrary.

(iii) Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior written consent of a Majority in Interest of Investors.

(iv) Investor agrees not to sell, assign, transfer, pledge or otherwise dispose of any securities of the Company, or any beneficial interest therein, to any person (other than the Company) unless and until the proposed transferee confirms to the reasonable satisfaction of the Company that neither the proposed transferee nor any of its directors, executive officers, other officers that may serve as a director or officer of any company in which it invests, general partners or managing members nor any person that would be deemed a beneficial owner of those securities (in accordance with Rule 506(d) of the Securities Act) is subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act, except as set forth in Rule 506(d)(2)(ii) or (iii) or (d)(3) under the Securities Act and disclosed, reasonably in advance of the transfer, in writing in reasonable detail to the Company. Investor will promptly notify the Company in writing if Investor or, to Investor's knowledge, any person specified in Rule 506(d)(1) under the Securities Act becomes subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act.

(b) *Waiver and Amendment.* Any provision of this Note may be amended, waived or modified upon the written consent of the Company, the Agent and a Majority in Interest of Investors; provided, however, that no such amendment, waiver or consent shall, without Investor's written consent, (i) reduce the principal amount of, or interest rate on, this Note, (ii) extend the Scheduled Maturity Date by more than 180 days, (iii) directly or indirectly modify the definitions of the Conversion Ratio, Equity Securities, or Outstanding Common Shares, or (iv) directly or

indirectly modify the redemption calculations or Investors' redemption rights pursuant to **Sections 4(c)** and **4(d)**. Investor acknowledges that by the operation of this paragraph, the Majority in Interest of Investors will have the right and power to diminish or eliminate all rights of such Investor under this Note, except as otherwise provided in this **Section 7(b)**; provided, further, if any amendment, waiver or other modification to this Note operates in an adverse manner that treats any Investor different from other Investors, solely to the extent such amendment, waiver or modification relates to this Note as held by such Investor so adversely treated, the consent of such Investor so adversely treated shall be required for such amendment, waiver or modification.

- (c) *Notices.* All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and faxed, mailed or delivered to each party at the respective addresses of the parties as set forth in the Note Purchase Agreement, or at such other address or facsimile number as the Company shall have furnished to Investor in writing. All such notices and communications will be deemed effectively given the earlier of (i) when received, (ii) when delivered personally, (iii) one Business Day after being delivered by facsimile (with receipt of appropriate confirmation), (iv) one Business Day after being deposited with an overnight courier service of recognized standing or (v) four days after being deposited in the U.S. mail, first class with postage prepaid.
- (d) *~~Pari Passu~~ Seniority of Notes.* The Investor hereby acknowledges and agrees that the payment of all or any portion of the Outstanding Principal Amount of this 2023 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of Section 1(b) hereof) hereon shall be pari passu in right of payment and in all other respects to the other 2023 Notes; *provided that, if the Investor is party to Amendment No. 4 or has otherwise consented thereto (such consent, on a form as reasonably agreed to by the Majority in Interest of Lead Investors), the Investor hereby acknowledges and agrees that the payment of all or any portion of the Outstanding Principal Amount of this 2023 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of Section 1(b) hereof) shall be applied (i) first, pro rata in favor of the 2024 Notes and any 2023 Notes held by Investors who have not signed Amendment No.4 or otherwise consented thereto (such consent, on a form as reasonably agreed to by the Majority in Interest of Lead Investors) (the "Unsubordinated 2023 Notes"), and any other obligations that secure all or any portion of the 2024 Notes and the Unsubordinated 2023 Notes that may be outstanding from time to time and (ii) second, pro rata in favor of the 2023 Notes (other than the Unsubordinated 2023 Notes) and any other Notes issued pursuant to the Note Purchase Agreement (other than the 2024 Notes and Unsubordinated 2023 Notes) or obligations that secure all or any portion of the 2023 Notes (other than the Unsubordinated 2023 Notes) or any other Notes (other than the 2024 Notes and Unsubordinated 2023 Notes); provided, that the payment of all or any portion of the Outstanding Principal Amount of this 2023 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of Section 1(b) hereof) hereon shall be pari passu in right of payment and in all other respects to the other 2023 Notes (other than the Unsubordinated 2023 Notes).*

In the event Investor receives payments in excess of its pro rata share of the Company's payments to the Investors of all of the Notes, then Investor shall hold in trust all such excess payments for the benefit of the holders of the other Notes and shall pay such amounts held in trust to such other holders upon demand by such holders.

- (e) *Payment.* Unless converted into the Company's equity securities pursuant to the terms hereof, payment shall be made in lawful tender of the United States.
- (f) *Usury.* In the event any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note, and the Company hereby waives any claims thereto to the fullest extent under applicable law.
- (g) *Waivers.* The Company hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.
- (h) *Governing Law.* This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law provisions of the State of Delaware, or of any other state.
- (i) *Waiver of Jury Trial; Judicial Reference.* By acceptance of this Note, Investor hereby agrees and the Company hereby agrees to waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of this Note or any of the Note Documents.
- (j) *Counterparts.* This Note may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Note.
- (k) *Attorneys' Fees.* The Company shall be liable for, and hereby agrees to pay, all reasonable attorneys' fees incurred in connection with this Note and the Note Purchase Agreement, to protect the Agent's and Investor's rights under this Note, to enforce this Note, to collect amounts due under this Note, and to take any other action relating to this Note, as set forth in the Note Purchase Agreement.

(Signature Page Follows)

This Note may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties have executed this Note as of the date first written above.

POSIGEN, PBC

a Delaware public benefit corporation

Peter Shaper
Chief Executive Officer and President

Exhibit B

CLASS B NOTE

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

POSIGEN, PBC

FORM OF SECURED CONVERTIBLE PROMISSORY NOTE

[\$\$\$]

[], 2023

FOR VALUE RECEIVED, PosiGen, PBC, a Delaware public benefit corporation (the “**Company**”) unconditionally promises to pay to the order of [INVESTOR] or its registered assigns (“**Investor**”), in lawful money of the United States of America the principal sum of [] AND NO/100 ([\$\$\$]) DOLLARS (the “**Original Principal Amount**”) as such amount may be increased pursuant to the payment of PIK Interest according to **Section 1** hereto or reduced pursuant to any conversion, redemption, or repayment effected in accordance with the terms hereof (the “**Outstanding Principal Amount**”), together with interest thereon from the date of this Secured Convertible Promissory Note (this “**Note**”) on the unpaid Outstanding Principal Amount at the rates specified in **Section 1** hereof. The Outstanding Principal Amount, together with any then unpaid and accrued interest and other amounts payable hereunder, to the extent not earlier converted, exchanged or repaid, shall be due and payable in full on the earlier of (i) June 13, 2025 (the “**Scheduled Maturity Date**”), or (ii) when, upon the occurrence and during the continuance of an Event of Default, such amounts are declared due and payable by Investor or made automatically due and payable, in each case, in accordance with the terms hereof (the “**Accelerated Maturity Date**”). This Note is one of the “Notes” issued pursuant to the Note Purchase Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Note Purchase Agreement.

The following is a statement of the rights of Investor and the conditions to which this Note is subject, and to which Investor, by the acceptance of this Note, agrees:

1. **Payment Interest.** This Note shall bear interest as follows:

(a) [Reserved]

(b) Interest payable in kind (“**PIK Interest**”) shall accrue on the Outstanding Principal Amount of this Note at a rate per annum of [REDACTED] shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing on June 30, 2023, by adding such accrued PIK Interest to the Outstanding Principal Amount. By notice to

the Investor at least one Business Day prior to the applicable interest payment date, the Company may elect to pay the applicable accrued PIK Interest, in whole or in part, in cash on any such interest payment date. The portion of such required PIK Interest paid in cash shall not, for the avoidance of doubt, be added to the Outstanding Principal Amount. In addition to the foregoing, accrued and unpaid interest shall be added to the Outstanding Principal Amount as PIK Interest in connection with, and on the date of, (i) a conversion of this Note pursuant to **Section 4(a)** or **4(b)** or (ii) a redemption of this Note pursuant to **Section 4(c)** or **4(d)**.

(c) Interest shall be computed on the basis of a 365-day year and the actual number of days elapsed in such period. If any interest payment would be payable on a day that is not a Business Day, such interest payment will be postponed to the immediately succeeding day that is a Business Day.

2. **Events of Default.** The occurrence of any of the following shall constitute an “Event of Default” under this Note and the other Note Documents:

(a) *Failure to Pay.* The Company shall fail to pay (i) when due any principal payment on the due date hereunder or (ii) any other payment required under the terms of this Note or any other Note Document on the date due and such payment shall not have been made within five (5) days of the Company’s failure to pay; or

(b) *Breaches of Covenants.* The Company shall fail to observe or perform any other covenant, obligation, condition or agreement contained in this Note or the other Note Documents (other than those specified in **Section 2(a)**) and such failure shall continue for ten (10) days after such failure; or

(c) *Representations and Warranties.* Any representation, warranty, certificate, or other statement (financial or otherwise) made or furnished by or on behalf of the Company to Investor in writing in connection with this Note or any of the other Note Documents, or as an inducement to Investor to enter into this Note and the other Note Documents, shall be false, incorrect, incomplete or misleading when made or furnished; or

(d) *Voluntary Bankruptcy or Insolvency Proceedings.* The Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of its or any of its creditors, (iii) be dissolved or liquidated, (iv) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (v) take any action for the purpose of effecting any of the foregoing;

(e) *Involuntary Bankruptcy or Insolvency Proceedings.* Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company, or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or any of its subsidiaries, if any, or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall

be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within 45 days of commencement;

(f) *Change of Control.* A Change of Control shall occur; or

(g) *Material Indebtedness.* The Company or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness when and as the same shall become due and payable and such failure shall continue beyond any applicable grace period or any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity.

3. **Rights of Investor upon Default.** Upon the occurrence of any Event of Default (other than an Event of Default described in **Sections 2(d)** or **2(e)**) and at any time thereafter during the continuance of such Event of Default, Investor may, by written notice to the Company, declare all outstanding Obligations payable by the Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Note Documents to the contrary notwithstanding. Upon the occurrence of any Event of Default described in **Sections 2(d)** and **2(e)**, immediately and without notice, all outstanding Obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Note Documents to the contrary notwithstanding. Upon the occurrence of an Event of Default, the PIK Interest due under this Note shall be increased to 18%. In addition to the foregoing remedies, upon the occurrence and during the continuance of any Event of Default, Investor may exercise any other right, power or remedy granted to it by the Note Documents or otherwise permitted to it by law, either by suit in equity or by action at law, or both.

4. **Conversion and Redemption.**

(a) *Voluntary Conversion upon Post-Closing Equity Financing.* Until and including the time at which the Company successfully completes a Qualified Equity Raise, if a Post-Closing Equity Financing occurs on or prior to the Scheduled Maturity Date, then the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof) shall be, at the time such Post-Closing Equity Financing (including any Qualified Equity Raise), convertible in full or in part at the option of the Investor into fully paid and nonassessable shares issued in the Post-Closing Equity Financing, or shares ranked junior to such shares with the same rights and privileges (including with respect to economic and governance terms) as those issued in the Post-Closing Equity Financing, if required by the terms of such Post-Closing Equity Financing (the “**Conversion Shares**”) in a number equal to the quotient obtained by dividing (A) the ~~sum~~product of (i) if the conversion date is prior to [REDACTED] of such portion of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)**

hereof) as such Investor elects to convert by (B) the price per share of the Equity Securities issued in the Post-Closing Equity Financing (such quotient being the “**Conversion Ratio**”); provided, that (x) if such shares will be *pari passu* with such Equity Securities issued in the Post-Closing Equity Financing, upon the affirmative election of Majority in Interest of Lead Investors or (y) if such shares will be ranked junior to such Equity Securities issued in the Post-Closing Equity Financing, upon the affirmative election of three Lead Investors (which shall include Magnetar), the voluntary conversion rights in this **Section 4(a)** shall be deemed mandatory and the Investor shall be deemed to have elected to convert in full such Investor’s Note into Conversion Shares pursuant to the terms of the Note.

(b) *Voluntary Conversion upon Maturity.* If no Qualified Equity Raise occurs on or prior to the Maturity Date, then the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof) shall be convertible at the option of Investor into fully paid and nonassessable shares of the Company’s Series 1 Preferred Stock at a price per share equal to [REDACTED] (subject to appropriate adjustment from time to time for any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event).

(c) *Redemption upon Maturity.* On the earlier of the Scheduled Maturity Date or a liquidation, winding up or dissolution of the Company, whether voluntary or involuntary, the Company shall redeem this Note in an amount equal [REDACTED] of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof), provided such Investor has not exercised in full its conversion right in accordance with Sections 4(a) or 4(b).

(d) *Mandatory Redemption upon a Sale Liquidation Event.* The Company shall notify the holders of then outstanding Notes of the closing of a Sale Liquidation Event (as defined below) at least fifteen (15) days prior to the expected closing of such Sale Liquidation Event. Upon the closing of such Sale Liquidation Event, each Investor shall receive in respect, and full satisfaction, of such Investor’s Note an amount equal to 175% of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof).

(e) *Conversion Procedure.*

(1) Conversion Pursuant to Section 4(a) and 4(b). Before Investor shall be entitled to convert this Note into shares of the Company’s Equity Securities in accordance with **Section 4(a)** and **4(b)**, it shall surrender this Note (or a notice to the effect that the original Note has been lost, stolen or destroyed and an agreement acceptable to the Company whereby the holder agrees to indemnify the Company from any loss incurred by it in connection with this Note) and give written notice to the Company at its principal corporate office of its election to convert the same pursuant to **Section 4(a)** and **Section 4(b)** and shall state therein the amount of the unpaid principal amount of this Note to be converted. Upon such conversion of this Note, Investor hereby agrees to execute and deliver to the Company all transaction documents entered into by other purchasers of the relevant securities (as may be amended), including any purchase agreement, investor rights agreement and other ancillary agreements, as applicable, with

customary representations and warranties and transfer restrictions (including, without limitation, a 180-day lock-up agreement in connection with an initial public offering), provided that, if Investor is already a party to such agreement(s), Investor shall not, by virtue of this **Section 4** be required to sign up to such agreement(s) unless separately approved by the parties required to amend such agreements (which may, for the avoidance of doubt, include the Investor). The Company shall, as soon as practicable thereafter, issue and deliver to such Investor a certificate or certificates for the number of shares to which Investor shall be entitled upon such conversion (or notice of issuance if the shares are uncertificated), including a check payable to Investor for any cash amounts payable as described in **Section 4(e)(2)**. Any conversion of this Note pursuant to **Section 4(a)** and **4(b)** shall be deemed to have been made upon the satisfaction of all of the conditions set forth in this **Section 4(e)(i)**, and on and after such date the Persons entitled to receive the shares issuable upon such conversion shall be treated for all purposes as the record holder of such shares.

(2) Fractional Shares; Effect of Conversion. No fractional shares shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Investor upon the conversion of this Note, the Company shall pay to Investor an amount equal to the product obtained by multiplying the applicable price per share of the Conversion Shares issued in the Post-Closing Equity Financing or Qualified Equity Raise, as applicable, by the fraction of a share not issued pursuant to the previous sentence. Upon conversion of this Note in full and the payment of the amounts specified in this paragraph, Company shall be forever released from all its obligations and liabilities under this Note and this Note shall be deemed of no further force or effect, whether or not the original of this Note has been delivered to the Company for cancellation.

(f) *Notices of Record Date.* In the event of:

(1) Any taking by Company of a record of the holders of any class of securities of Company for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right; or

(2) Any capital reorganization of Company, any reclassification or recapitalization of the capital stock of Company or any transfer of all or substantially all of the assets of Company to any other Person or any consolidation or merger involving Company; or

(3) Any voluntary or involuntary dissolution, liquidation or winding-up of Company,

Company will mail to Investor at least ten (10) days prior to the earliest date specified therein, a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and the amount and character of such dividend, distribution or right; or (B) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding-up is expected to become effective and the record date for determining stockholders entitled to vote thereon.

5. **[Reserved]**.

6. **Definitions.** As used in this Note, the following capitalized terms have the following meanings:

“**Activate**” means Activate Capital Partners II, LP and ACP II Executive, LP.

“**Agent Fee Letter**” means the Agent Fee Letter, dated as of July 17, 2023 executed by or on behalf of the Company in favor of Agent.

“**Amendment No. 4**” shall mean that certain Amendment No. 4 to Note Purchase Agreement, dated as of February 14, 2024, which amends the Note Purchase Agreement, dated as of June 13, 2023 (as amended, modified or supplemented), by and among the Company and the Investors (as defined in the Note Purchase Agreement) party thereto.

“**Backleverage Credit Agreement**” means that certain Credit Agreement, dated as of April 21, 2023, by and among the PosiGen Backleverage, LLC, a Delaware limited liability company, BID Administrator LLC, as administrative and collateral agent, and the lenders from time to time party thereto.

“**Builders**” means Builders PSGN LLC, Builders Fund II LP and Dolphin Builders LP.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

“**Capital Lease Obligations**” means the portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

“**Change of Control**” means:

- (i) a Sale Liquidation Event;
- (ii) any other liquidation, winding up or dissolution of the Company, whether voluntary or involuntary; or
- (iii) the occurrence of a “Change of Control” or similar term as defined in the definitive documentation for any Material Indebtedness.

“**Collateral**” shall mean all property and assets now owned or hereafter acquired, upon which a Lien is created or purported to be created by any Collateral Documents.

“**Collateral Assignment of Contracts, Permits and Project Documents**” means that certain Collateral Assignment of Contracts, Permits and Project Documents (as amended, modified or supplemented), made by the Guarantors party thereto, in form and substance satisfactory to the Agent and the Lead Investors.

“**Collateral Documents**” shall mean the Security Agreement, the Guaranty, the Control Agreements and the Collateral Assignment of Contracts, Permits and Project Documents, and any

and all other agreements, instruments, consents or certificates now or hereafter executed and delivered by the Company or any other Person in connection with, or as security for the payment or performance of the Obligations or the Note Purchase Agreement, as such agreements may be amended, restated, supplemented or otherwise modified from time to time.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

“Control Agreement” means an agreement which establishes in Agent “control” (as used in Articles 8 and 9 of the UCC) of Collateral which is to be subject thereto and which is otherwise in form and substance satisfactory to the Agent and the Lead Investors.

“Defaulting Investor” means any Investor that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to fund any portion of its Commitment, unless such Investor notifies the Majority in Interest of Lead Investors in writing that such failure is the result of such Investor’s good faith determination that a condition precedent to funding (specifically identified and including the particular Event of Default, if any) has not been satisfied; (b) has notified the Company in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under the Note Purchase Agreement (unless such writing or public statement indicates that such position is based on such Investor’s good faith determination that a condition precedent to funding (specifically identified and including the particular Event of Default, if any, cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within three (3) Business Days after request by the Majority in Interest of Lead Investors or any other Investor, acting in good faith, to provide a certification in writing from an authorized officer of such Investor that it will comply with its obligations to fund under the Note Purchase Agreement, provided that such Investor shall cease to be a Defaulting Investor pursuant to this clause (c), upon the Majority in Interest of Lead Investors’, or such other Investor’s receipt of such certification in form and substance satisfactory to it; or (d) has become the subject of an action under the United States Bankruptcy Code or similar insolvency laws.

“Disposition” or **“Dispose”** means the sale, transfer, license, lease, exchange or other disposition (including any Sale and Leaseback Transaction and the sale or issuance of any Equity Securities by a Subsidiary of the Company) of any property by any Person, including any Disposition, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Stock” means any Equity Securities which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable for any consideration other than other Equity Securities (which would not constitute Disqualified Stock), pursuant to a sinking fund obligation or otherwise, or requires regular dividend payments in cash, or is redeemable for any consideration other than other Equity Securities (which would not constitute Disqualified Stock) at the sole option of the holder thereof, in whole or in part, in each case, on or prior to the date that is one hundred eighty one (181) days after the Scheduled Maturity Date.

“Escrow Agreement” means that certain Escrow Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Wilmington Trust, National Association, in its capacity as Escrow Agent.

“Equity Securities” shall mean the Company’s preferred stock or any securities conferring the right to purchase the Company’s preferred stock or securities convertible into, or exchangeable for (with or without additional consideration), the Company’s preferred stock, including convertible promissory notes and excluding any security granted, issued and/or sold by the Company to any director, officer, employee or consultant of the Company in such capacity for the primary purpose of soliciting or retaining their services.

“Event of Default” has the meaning given in **Section 2** hereof.

“Existing Notes” shall mean the notes issued pursuant to that certain Note Purchase Agreement, dated as of February 2, 2023, by and among the Company and the investors party thereto (as amended from time to time).

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time.

“Guarantee” of or by any Person (in this definition, the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guarantors” means, as of the Closing Date, PosiGen, LLC, a Louisiana limited liability company, PosiGen Developer, LLC, a Delaware limited liability company, and PosiGen Operations, LLC, a Delaware limited liability company.

“Guaranty” means that certain Guaranty Agreement (as amended, modified or supplemented), by and among the Company, the Guarantors and the Agent, in form and substance satisfactory to the Agent and the Lead Investors.

“Hedging Obligations” means obligations under (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate

swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a **“Master Agreement”**), including any such obligations or liabilities under any Master Agreement. Notwithstanding the foregoing, no convertible note or other equity-linked instrument shall be a hedging obligation.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding those incurred in the ordinary course of business which are not greater than sixty (60) days past the due date or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed by such Person, but limited to the lesser of (i) the amount of such Indebtedness and (ii) the fair market value of the property securing such Indebtedness, (f) all Guarantees by such Person of Indebtedness of others to the extent of the lesser of the amount of such Indebtedness and the maximum stated amount of such Guarantee, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit, letters of guaranty or similar instruments, (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (j) all Hedging Obligations, (k) attributable Indebtedness in respect of Sale and Leaseback Transactions and (l) any Disqualified Stock. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. For the avoidance of doubt, for the purpose of this definition, any lease that would be treated as an operating lease under GAAP in effect prior to January 1, 2019 shall not constitute Indebtedness hereunder.

“Intercreditor Agreement” means that certain Intercreditor Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Mizzen, in form and substance satisfactory to the Agent and the Lead Investors.

“Investment” means, with respect to a Person, all direct or indirect investments by such Person in other Persons (including, without limitation, Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions, purchases or other acquisitions for consideration of Indebtedness, Equity Securities or other securities, the acquisition of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of a Person or any other transaction that would be

classified as investments on a balance sheet prepared in accordance with GAAP. For purposes of covenant compliance, the amount of any Investment shall be the amount actually made (measured at the time made) by the Company and its Subsidiaries, without adjustment for subsequent increases or decreases in the value of such Investment and regardless of whether such Investment is made with cash, the issuance of any Equity Securities or the incurrence of any Indebtedness convertible into Equity Securities, any other consideration or any combination thereof.

“Investor” shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the registered holder of this Note.

“Investors” shall mean the investors that have been issued Notes.

“Irradiant” means IROP Loan Aggregator, LP.

“Lead Investors” means Magnetar, Irradiant, Activate~~and~~, 2040 Fund, and Builders entities; provided, that when a Defaulting Investor shall exist, Lead Investors as used herein shall not include any Defaulting Investor.

“Lien” means any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of such property, whether such obligation or claim is fixed or contingent, and including but not limited to a lien or security interest arising from a mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, pledge, security agreement, conditional sale, charge or trust receipt or a lease, consignment or bailment for security purposes.

“Lien Subordination Agreement” means that certain Lien Subordination Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Connecticut Green Bank.

“Magnetar” shall mean MTP Energy Opportunities Fund III LLC or MTP Opportunities Fund IV LLC.

“Majority in Interest of Investors” shall mean Investors (in any case, including Magnetar, Irradiant and Activate) holding more than 50% of the aggregate Outstanding Principal Amount of the Notes; provided, that when a Defaulting Investor shall exist, Outstanding Principal Amount of the Notes as used herein shall mean the percentage of the Outstanding Principal Amount disregarding any Defaulting ~~Lender’s~~Investor’s Commitments.

“Majority in Interest of Lead Investors” shall mean Lead Investors (in any case, including Magnetar, Irradiant and Activate) holding more than 50% of the aggregate Outstanding Principal Amount of the Notes held by Lead Investors; provided, that when a Defaulting Investor shall exist, Outstanding Principal Amount of the Notes as used herein shall mean the percentage of the Outstanding Principal Amount disregarding any Defaulting ~~Lender’s~~Investor’s Commitments.

“Management Incentive Plan” means any management incentive plan approved by the Company’s Board of Directors and stockholders.

“Material Contract” means, individually or collectively as the context requires, any agreement or contract entered into by the Company or any Subsidiary which is entered into outside the ordinary course.

“Material Indebtedness” means Indebtedness (other than the Notes) of the Company or any of its Subsidiaries in an aggregate principal amount exceeding \$1,000,000, including, for the avoidance of doubt, Indebtedness incurred pursuant to the Backleverage Credit Agreement, the Mizzen Inc. Credit Agreement and the Mizzen WIP Credit Agreement.

“Mizzen” means Mizzen Capital, LP, a Delaware limited partnership.

“Mizzen Inc. Credit Agreement” means that certain Credit Agreement, dated as of April 29, 2022, by and among the Company, Mizzen, in its capacity as lead arranger, administrative and collateral agent and lender, and Stonehenge Community Impact Fund LP, a Delaware limited partnership, in its capacity as lender, as amended by that First Amendment to Credit Agreement, dated as of June 24, 2022, as further amended by that certain Second Amendment to Credit Agreement, dated as of July 14, 2022, as further amended by that certain Third Amendment to Credit Agreement, dated September 13, 2022 ~~and~~, as further amended by that certain Fourth Amendment to Credit Agreement dated as of September 30, 2022, as further amended by that certain Omnibus Modification Agreement, dated as of June 13, 2023, as further amended by that certain Fifth Amendment to Credit Agreement dated as of July 21, 2023, and as further amended by that certain Sixth Amendment to Credit Agreement, dated on or around February 14, 2024.

“Mizzen WIP Credit Agreement” means that certain Credit Agreement, dated as of March 30, 2021, by and among PosiGen, LLC, a Louisiana limited liability company, Mizzen, in its capacity as lead arranger, administrative and collateral agent and lender, Stonehenge Community Impact Fund LP, a Delaware limited partnership, in its capacity as lender, Reinvestment Fund, Inc., a Pennsylvania not-for-profit corporation, in its capacity as lender, the Company, as guarantor, and the other guarantors party thereto, as amended by that certain Omnibus Modification Agreement, dated as of June 15, 2023 and as further amended by that certain Amendment to Credit Agreement, dated on or around February 14, 2024.

“Non-Defaulting Investor” shall mean any Investor, as determined by the Agent (acting at the direction of a Majority in Interest of Investors), that is not a Defaulting Investor.

“Notes” shall mean the secured convertible promissory notes issued pursuant to the Note Purchase Agreement ~~by the Company.~~

“Note Documents” shall mean the Note Purchase Agreement, the Notes, the Agent Fee Letter, the Guaranty, the Security Agreement, the Control Agreements, the Collateral Assignment of Contracts, Permits and Project Documents, the Intercreditor Agreement, the Lien Subordination Agreement, and the Escrow Agreement, and each other document and agreement evidencing or securing the Indebtedness, as the same may from time to time be amended, supplemented, restated or otherwise modified.

“Note Purchase Agreement” shall mean the Note Purchase Agreement, dated as of June 13, 2023 (as amended, modified or supplemented), by and among the Company and the Investors (as defined in the Note Purchase Agreement) party thereto.

“Obligations” shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Company to Investor of every kind and description, now existing or hereafter arising under or pursuant to the terms of this Note and the other Note Documents, including, all interest, fees, charges, expenses, attorneys’ fees and costs and accountants’ fees and costs chargeable to and payable by the Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 *et seq.*), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

“Organizational Documents” means (a) with respect to any corporation, its certificate or articles of incorporation, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership or formation, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, (d) with respect to any limited liability company, its certificate of formation or articles of organization, as amended, and its limited liability company agreement or operating agreement, as amended, and (e) any voting agreements, investors’ rights agreements, right of first refusal and co-sale agreements, and similar governance or organizational documents, in each case, as amended.

“Permitted Divestments” means a Disposition of any asset that is a:

- (i) disposition of obsolete, unmerchantable or otherwise unsalable inventory, including the return of damaged or defective equipment to the supplier or vendor thereof;
- (ii) sale of inventory in the ordinary course of business consistent with past practice;
- (iii) termination of a lease of real or personal property in the ordinary course of business;
- (iv) disposition of any project (a) in the ordinary course of business and consistent with past practice in one or a series of related transactions, provided that the disposition of any group of projects pursuant to this clause (a) in one or a series of related transactions or the aggregate value of all dispositions of projects in any 12 month period, in each case, does not exceed \$2,000,000, (b) pursuant to a bona fide sale of such project to a customer or (c) pursuant to a bona fide sale or transfer to one of the Company’s or its Subsidiaries’ financing vehicle and/or tax equity partnership, solely to the extent such financing vehicle and/or tax equity partnership is existing as of the date hereof;
- (v) a consignment or bailment; and

- (vi) disposition of any immaterial asset.

“Permitted Indebtedness” means any of the following:

- (i) Indebtedness with respect to cash management services, commercial credit cards, and other banking products and services;
- (ii) guarantees entered into in the ordinary course of business consistent with past practice in support of obligations of any subsidiary;
- (iii) delayed drawing of funds from debt facilities previously approved by the Company’s Board of Directors, not exceeding the total pre-approved amount of the facility;
- (iv) customary indemnification obligations granted in the ordinary course of business consistent with past practice;
- (v) trade payables for the purchase of goods and services in the ordinary course of business consistent with past practice;
- (vi) expense reimbursement obligations in the ordinary course of business consistent with past practice and consistent with the expense reimbursement policy of the Company, in each case, as of the Closing Date or any future policy approved in advance by the Majority in Interest of Investors;
- (vii) Capital Lease Obligations or purchase money obligations with respect to equipment and vehicles;
- (viii) any Indebtedness pursuant to insurance contracts; and
- (ix) any amendments to the forms or terms of any existing Indebtedness of any subsidiary of the Company (other than PosiGen Developer, LLC) that would not have an adverse economic effect on the Company.

“Permitted Investments” means any Investments in:

- (i) wholly-owned Subsidiaries formed after the Closing Date;
- (ii) tax equity, cash equity, and other partnerships and joint ventures formed after the Closing Date, provided that such partnership or joint venture was approved by the Majority in Interest of Investors; ~~and~~
- (iii) deposit and securities accounts of the company, any wholly owned subsidiary, or any partnership or joint venture in existence on the Closing Date or approved by the Majority in Interest of Investors; ~~and~~ and
- (iv) Investments consisting of loans to employees, officers, or directors relating to the purchase of equity securities of the Company or its Subsidiaries

pursuant to the Management Incentive Plan or other agreements approved by Company's Board of Directors, provided that the aggregate principal amount of all such loans made in cash and outstanding may not exceed \$4,000,000 at any time.

“Permitted Liens” means any of the following:

- (i) Liens supporting any Permitted Indebtedness;
- (ii) Liens for taxes not yet due and delinquent or contested in good faith by appropriate proceedings and, in each case, for which sufficient reserves have been established in accordance with GAAP;
- (iii) statutory or common law Liens (including landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like liens) incurred in the ordinary course of business for amounts that are not yet due and payable or are being contested in good faith by appropriate proceedings and for which sufficient reserves have been established in accordance with GAAP;
- (iv) Liens incurred or deposits made to secure the performance of government tenders, bids, contracts, leases, statutory obligations and other similar obligations in the ordinary course of business consistent with past practice;
- (v) easements, rights-of-way, restrictions, covenants or other agreements of record, and other similar charges or encumbrances on real property; and
- (vi) customary rights of setoff and Liens securing fees and similar amounts upon deposits or securities accounts in favor of depository institutions or securities intermediaries.

“Person” shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

“Post-Closing Equity Financing” shall mean a transaction or series of transactions pursuant to which the Company issues and sells shares of its Equity Securities (excluding all proceeds from the incurrence of indebtedness that is converted into such Equity Securities), including, for the avoidance of doubt, the Qualified Equity Raise (provided, that following such Qualified Equity Raise, any further transaction or series of transactions pursuant to which the Company issues or sells shares of its Equity Securities shall no longer be deemed a “Post-Closing Equity Financing”).

“Preferred Stock” shall mean the Series E-1 Preferred Stock, the Series E-2 Preferred Stock, the Series D-1 Preferred Stock, the Series D-3A Preferred Stock and the Series D-3B Preferred Stock.

“Qualified Equity Raise” shall mean a transaction or series of transactions pursuant to which the Company issues and sells shares of its Equity Securities (excluding all proceeds from the incurrence of indebtedness that is converted into such Equity Securities) with net cash proceeds of such issuance in an amount not less than [REDACTED] in the aggregate (excluding amounts funded pursuant to the conversion of the Notes and the Existing Notes).

“Recapitalization” shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification, or other similar event.

“Restricted Payment” means:

- (i) any dividend or other distribution or other payment (whether in cash, securities or other property) with respect to any Equity Securities in the Company or any Subsidiary, to any Person (in each case, solely in such Person’s capacity as holder of such Equity Securities or, in the case of any payment, to the direct or indirect holders of the Company’s or any of its Subsidiaries’ Equity Securities), including any dividend or distribution payable or payment made in connection with any Recapitalization or any merger, amalgamation or consolidation;
- (ii) any purchase, redemption, defeasance or other acquisition or retirement for value of any Equity Securities of the Company (including in connection with any Recapitalization or any merger, amalgamation or consolidation); and
- (iii) any principal payment on, or redemption, purchase, repurchase, defeasance or other acquisition or retirement for value, in each case, prior to any scheduled repayment, sinking fund payment or scheduled maturity, of any Indebtedness secured by Liens junior in priority to the Liens securing the Obligations hereunder or unsecured Indebtedness, of the Company or any Subsidiary, except (1) regularly scheduled interest and principal payments and (2) a payment of interest or principal at the stated maturity date thereof.

~~**“Recapitalization” shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification, or other similar event.**~~

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Sale and Leaseback Transaction” means any sale or other transfer of any property by any Person with the intent to lease such property as lessee.

“Sale Liquidation Event” means:

- (i) the acquisition of the Company by another entity by means of any transaction or series of related transactions to which the Company is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company

outstanding immediately prior to such transaction retain, immediately after such transaction or series of transactions, as a result of shares in the Company held by such holders prior to such transaction, a majority of the total voting power represented by the outstanding voting securities of the Company;

- (ii) a Disposition of all or substantially all of the assets of the Company taken as a whole by means of any transaction or series of related transactions, except where such Disposition is to a wholly-owned subsidiary of the Company or otherwise in the ordinary course of business of the Company in connection with project financing transactions customary in the Company's industry that are approved by the Majority in Interest of Investors;
- (iii) an exclusive, irrevocable license of all or substantially all of the intellectual property of the Company to a third party taken as a whole by means of any transaction or series of related transactions, except where such exclusive, irrevocable license is to a wholly-owned subsidiary of the Company;

"Security Agreement" means that certain Security Agreement (as amended, modified or supplemented), by and among the Company, the Guarantors and the Agent, in form and substance satisfactory to the Agent and the Lead Investors.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which Equity Securities representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless the context otherwise clearly requires, references herein to a "Subsidiary" refer to a Subsidiary of the Company.

7. **Miscellaneous.**

- (a) *Successors and Assigns; Transfer of this Note or Securities Issuable on Conversion Hereof; No Transfers to Bad Actors; Notice of Bad Actor Status.*

(i) Subject to the restrictions on transfer described in this **Section 7(a)**, the rights and obligations of the Company and Investor shall be binding upon and inure to the benefit of the successors, assigns, heirs, administrators and transferees of the parties.

(ii) With respect to any offer, sale or other disposition of this Note or securities into which such Note may be converted, Investor will give written notice to the Company prior thereto, describing briefly the manner thereof, together with a written opinion of Investor's counsel, or other evidence if reasonably satisfactory to the Company, to the effect that such offer, sale or other distribution may be effected without registration or qualification (under any federal or state law then in effect). Upon receiving such written notice and reasonably satisfactory opinion, if so requested, or other evidence, the Company, as promptly as practicable, shall notify Investor

that Investor may sell or otherwise dispose of this Note or such securities, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this **Section 7(a)** that the opinion of counsel for Investor, or other evidence, is not reasonably satisfactory to the Company, the Company shall so notify Investor promptly after such determination has been made. Each Note thus transferred and each certificate, instrument or book entry representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Securities Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the Securities Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions. Subject to the foregoing, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company as provided in the Note Purchase Agreement. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal and interest hereon and for all other purposes whatsoever, whether or not this Note shall be overdue and the Company shall not be affected by notice to the contrary.

(iii) Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior written consent of a Majority in Interest of Investors.

(iv) Investor agrees not to sell, assign, transfer, pledge or otherwise dispose of any securities of the Company, or any beneficial interest therein, to any person (other than the Company) unless and until the proposed transferee confirms to the reasonable satisfaction of the Company that neither the proposed transferee nor any of its directors, executive officers, other officers that may serve as a director or officer of any company in which it invests, general partners or managing members nor any person that would be deemed a beneficial owner of those securities (in accordance with Rule 506(d) of the Securities Act) is subject to any of the “bad actor” disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act, except as set forth in Rule 506(d)(2)(ii) or (iii) or (d)(3) under the Securities Act and disclosed, reasonably in advance of the transfer, in writing in reasonable detail to the Company. Investor will promptly notify the Company in writing if Investor or, to Investor’s knowledge, any person specified in Rule 506(d)(1) under the Securities Act becomes subject to any of the “bad actor” disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act.

(b) *Waiver and Amendment.* Any provision of this Note may be amended, waived or modified upon the written consent of the Company, the Agent and a Majority in Interest of Investors; provided, however, that no such amendment, waiver or consent shall, without Investor’s written consent, (i) reduce the principal amount of, or interest rate on, this Note, (ii) extend the Scheduled Maturity Date by more than 180 days, (iii) directly or indirectly modify the definitions of the Conversion Ratio, Equity Securities, or Outstanding Common Shares, or (iv) directly or indirectly modify the redemption calculations or Investors’ redemption rights pursuant to **Sections 4(c)** and **4(d)**. Investor acknowledges that by the operation of this paragraph, the Majority in Interest of Investors will have the right and power to diminish or eliminate all rights of such Investor under this Note, except as otherwise provided in this **Section 7(b)**; provided, further, if any amendment,

waiver or other modification to this Note operates in an adverse manner that treats any Investor different from other Investors, solely to the extent such amendment, waiver or modification relates to this Note as held by such Investor so adversely treated, the consent of such Investor so adversely treated shall be required for such amendment, waiver or modification.

- (c) *Notices.* All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and faxed, mailed or delivered to each party at the respective addresses of the parties as set forth in the Note Purchase Agreement, or at such other address or facsimile number as the Company shall have furnished to Investor in writing. All such notices and communications will be deemed effectively given the earlier of (i) when received, (ii) when delivered personally, (iii) one Business Day after being delivered by facsimile (with receipt of appropriate confirmation), (iv) one Business Day after being deposited with an overnight courier service of recognized standing or (v) four days after being deposited in the U.S. mail, first class with postage prepaid.
- (d) ***Pari Passu Seniority of Notes.*** The Investor hereby acknowledges and agrees that the payment of all or any portion of the Outstanding Principal Amount of this 2023 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of Section 1(b) hereof) hereon shall be pari passu in right of payment and in all other respects to the other 2023 Notes; provided that, if the Investor is party to Amendment No. 4 or has otherwise consented thereto (such consent, on a form as reasonably agreed to by the Majority in Interest of Lead Investors), the Investor hereby acknowledges and agrees that the payment of all or any portion of the Outstanding Principal Amount of this 2023 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of Section 1(b) hereof) shall be applied (i) first, pro rata in favor of the 2024 Notes and any 2023 Notes held by Investors who have not signed Amendment No.4 or otherwise consented thereto (such consent, on a form as reasonably agreed to by the Majority in Interest of Lead Investors) (the “Unsubordinated 2023 Notes”), and any other obligations that secure all or any portion of the 2024 Notes and the Unsubordinated 2023 Notes that may be outstanding from time to time and (ii) second, pro rata in favor of the 2023 Notes (other than the Unsubordinated 2023 Notes) and any other Notes issued pursuant to the Note Purchase Agreement (other than the 2024 Notes and Unsubordinated 2023 Notes) or obligations that secure all or any portion of the 2023 Notes (other than the Unsubordinated 2023 Notes) or any other Notes (other than the 2024 Notes and Unsubordinated 2023 Notes); provided, that the payment of all or any portion of the Outstanding Principal Amount of this 2023 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of Section 1(b) hereof) hereon shall be pari passu in right of payment and in all other respects to the other 2023 Notes (other than the Unsubordinated 2023 Notes). In the event Investor receives payments in excess of its pro rata share of the Company’s payments to the Investors of all of the Notes, then Investor shall hold in trust all such excess payments for the benefit of the holders of the other Notes and shall pay such amounts held in trust to such other holders upon demand by such holders.

- (e) *Payment.* Unless converted into the Company's equity securities pursuant to the terms hereof, payment shall be made in lawful tender of the United States.
- (f) *Usury.* In the event any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note, and the Company hereby waives any claims thereto to the fullest extent under applicable law.
- (g) *Waivers.* The Company hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.
- (h) *Governing Law.* This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law provisions of the State of Delaware, or of any other state.
- (i) *Waiver of Jury Trial; Judicial Reference.* By acceptance of this Note, Investor hereby agrees and the Company hereby agrees to waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of this Note or any of the Note Documents.
- (j) *Counterparts.* This Note may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Note.
- (k) *Attorneys' Fees.* The Company shall be liable for, and hereby agrees to pay, all reasonable attorneys' fees incurred in connection with this Note and the Note Purchase Agreement, to protect the Agent's and Investor's rights under this Note, to enforce this Note, to collect amounts due under this Note, and to take any other action relating to this Note, as set forth in the Note Purchase Agreement.

(Signature Page Follows)

This Note may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties have executed this Note as of the date first written above.

POSIGEN, PBC

a Delaware public benefit corporation

Peter Shaper
Chief Executive Officer and President

Exhibit C

PURCHASE AGREEMENT

NOTE PURCHASE AGREEMENT

This Note Purchase Agreement (~~this “Agreement”~~), dated as of June 13, 2023 (as amended by that certain Amendment No. 1 to Note Purchase Agreement, dated as of July 17, 2023, that certain Amendment No. 2 to Note Purchase Agreement, dated as of July 24, 2023, that certain Amendment No. 3 to Note Purchase Agreement, dated as of December 21, 2023, and that certain Amendment No. 4 to Note Purchase Agreement, dated as of February 14, 2024, this “Agreement”), is entered into by and among PosiGen, ~~Inc.~~ PBC, a Delaware public benefit corporation (the “**Company**”), the persons and entities listed on the schedule of investors attached hereto as **Schedule I** (each a “**Class A Investor**” and, collectively, the “**Class A Investors**”), ~~and~~ the persons and entities listed on the schedule of investors attached hereto as **Schedule II** (each a “**Class B Investor**” and, collectively, the “**Class B Investors**” and, together with the Class A Investors, collectively, the “2023 Investors”), the persons and entities listed on the schedule of investors attached hereto as Schedule IV (each a “Class One Investor” and, collectively, the “Class One Investors”), and the persons and entities listed on the schedule of investors attached hereto as Schedules V (each a “Class Two Investor” and, collectively, the “Class Two Investors” and, together with the Class One Investors, collectively, the “2024 Investors”, and the 2024 Investors with the 2023 Investors, collectively, the “Investors”) as and when such Schedule II or Schedule V is modified and such persons and entities become party hereto in accordance with **Section 9(d)** hereof, (in each case as such Schedules I ~~and~~ II, IV and V may be amended in accordance with **Section 9(a)** hereof).

RECITALS

- (a) ~~A.~~ On the terms and subject to the conditions set forth herein, each Class A Investor is willing to purchase from the Company, and the Company is willing to sell to such Class A Investor, at the Initial Class A Closing, a secured convertible promissory note in the principal amount set forth opposite such Class A Investor’s name on **Schedule I(a)** hereto.
- (b) ~~B.~~ On the terms and subject to the conditions set forth herein, each Class A Investor is willing to purchase from the Company, and the Company is willing to sell to such Class A Investor, at each Class A Delayed Draw Closing, a secured convertible promissory note in an aggregate principal amount not to exceed the aggregate principal amount set forth opposite such Class A Investor’s name on **Schedule I(b)** hereto.
- (c) ~~C.~~ On the terms and subject to the conditions set forth herein, each Class B Investor is willing to purchase from the Company, and the Company is willing to sell to such Class B Investor, at each Initial Class B Closing, a secured convertible promissory note in the principal amount set forth opposite such Class B Investor’s name on **Schedule II(a)** hereto.
- (d) ~~D.~~ On the terms and subject to the conditions set forth herein, each Class B Investor is willing to purchase from the Company, and the Company is willing to sell to such Class B Investor, at each Class B Delayed Draw Closing, a secured convertible promissory note in an aggregate principal amount not to exceed the aggregate principal amount set forth opposite such Class B Investor’s name on **Schedule II(b)** hereto.

- (e) On the terms and subject to the conditions set forth herein, each Class One Investor is willing to purchase from the Company, and the Company is willing to sell to such Class One Investor, at the Initial Class One Closing, a secured convertible promissory note in the principal amount set forth opposite such Class One Investor's name on **Schedule IV(a)** hereto.
- (f) On the terms and subject to the conditions set forth herein, each Class One Investor is willing to purchase from the Company, and the Company is willing to sell to such Class One Investor, at each Class One Delayed Draw Closing, a secured convertible promissory note in an aggregate principal amount not to exceed the aggregate principal amount set forth opposite such Class One Investor's name on **Schedule IV(b)** hereto.
- (g) On the terms and subject to the conditions set forth herein, each Class Two Investor is willing to purchase from the Company, and the Company is willing to sell to such Class Two Investor, at each Initial Class Two Closing, a secured convertible promissory note in the principal amount set forth opposite such Class Two Investor's name on **Schedule V(a)** hereto.
- (h) On the terms and subject to the conditions set forth herein, each Class Two Investor is willing to purchase from the Company, and the Company is willing to sell to such Class Two Investor, at each Class Two Delayed Draw Closing, a secured convertible promissory note in an aggregate principal amount not to exceed the aggregate principal amount set forth opposite such Class Two Investor's name on **Schedule V(b)** hereto.
- (i) ~~E~~. Capitalized terms not otherwise defined herein shall have the meaning set forth in the form of Class A Note (as defined below) attached hereto as **Exhibit A**.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and the representations, warranties, and conditions set forth below, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The Notes.

(a) Initial Closing - Class A. Subject to all of the terms and conditions set forth in **Section 4** hereof, the Company agrees to issue and sell to each of the Class A Investors, and each of the Class A Investors severally agrees to purchase, a secured convertible promissory note in the form of **Exhibit A** hereto (each, a "**Class A Note**" and, collectively, the "**Class A Notes**") in the principal amount (the "**Initial Class A Commitment**") set forth opposite the respective Investor's name on **Schedule I(a)** hereto (such closing, the "**Initial Class A Closing**") on the date hereof (the "**Initial Class A Closing Date**") or within eleven (11) Business Days of the Initial Class A Closing Date. The obligations of the Investors to purchase Notes at the Initial Class A Closing are several and not joint. The initial aggregate principal amount for all Class A Notes issued hereunder on the Initial Class A Closing Date shall not exceed the Initial Class A Commitments.

(b) Initial Closing - Class B. Subject to all of the terms and conditions set forth herein, the Company agrees to issue and sell to each of the Class B Investors, and each of the Class B Investors severally agrees to purchase, a secured convertible promissory note in the form of **Exhibit B** hereto (each, a "**Class B Note**" and, collectively, the "**Class B Notes**" and, together

with the Class A Notes, the “[2023 Notes](#)”) in the principal amount (the “**Initial Class B Commitment**”) set forth opposite the applicable Class B Investor’s name on **Schedule II(a)** hereto (each such closing, an “**Initial Class B Closing**”) on the applicable Class B Commitment Acceptance Date. The obligations of the Class B Investors to purchase Class B Notes pursuant to this **Section 1(b)** are several and not joint. The initial aggregate principal amount for all Class B Notes issued hereunder shall not exceed the Initial Class B Commitments.

(c) **Delayed Draw Closing - Class A.** Subject to all of the terms and conditions set forth in **Section 5** hereof, the Company agrees to issue and sell to each of the Class A Investors, and each of the Class A Investors severally agrees to purchase, Class A Notes in the principal amount (the “**Class A Delayed Draw Commitment**” and, together with the Initial Class A Commitment, the “**Class A Commitment**”) set forth opposite the respective Investor’s name on **Schedule I(b)** hereto (each such closing, a “**Class A Delayed Draw Closing**”) on the applicable Class A Commitment Acceptance Date or any other date or dates mutually agreed by the Company and the Majority in Interest of Lead Investors (each such date, a “**Class A Delayed Draw Closing Date**”); provided, that such Class A Delayed Draw Commitment shall expire on the one (1) year anniversary of the Initial Class A Closing Date (the “[2023 Commitment Expiration Date](#)”). The obligations of the Class A Investors to purchase Class A Notes at any Class A Delayed Draw Closing are several and not joint. The aggregate principal amount for all Class A Notes issued under this **Section 1(c)** shall not exceed the Class A Delayed Draw Commitments.

(d) **Delayed Draw Closing – Class B.** Subject to all of the terms and conditions set forth in **Section 5** hereof, the Company agrees to issue and sell to each of the Class B Investors, and each of the Class B Investors severally agrees to purchase, a Class B Note in the principal amount (the “**Class B Delayed Draw Commitment**” and, together with the Initial Class B Commitment, the “**Class B Commitment**” and, together with the Class A Commitment, the “[2023 Commitments](#)”) set forth opposite the respective Class B Investor’s name on **Schedule II(b)** hereto (such closing, the “**Class B Delayed Draw Closing**” and, together with the Initial Class A Closing, each Initial Class B Closing and the Class A Delayed Draw Closing, a “[2023 Closing](#)”) on each Class A Delayed Draw Closing Date (or, with respect to any Class B Commitment Acceptance Date that occurs after a Class A Delayed Draw Closing Date, on such applicable Class B Commitment Acceptance Date) (each such date, a “**Class B Delayed Draw Closing Date**” and, together with the Initial Class A Closing Date, each Initial Class B Closing Date and each Class A Delayed Draw Closing Date, a “[2023 Closing Date](#)”); provided, that such Class B Delayed Draw Commitment shall expire on the Commitment Expiration Date. The obligations of the Class B Investors to purchase Class B Notes at any Class B Delayed Draw Closing are several and not joint. The aggregate principal amount for all Class B Notes issued under this **Section 1(d)** shall not exceed the Class B Delayed Draw Commitments.

(e) **Initial 2024 Closing - Class One.** Subject to all of the terms and conditions set forth in **Section 4** hereof, the Company agrees to issue and sell to each of the Class One Investors, and each of the Class One Investors severally agrees to purchase, a secured convertible promissory note in the form of **Exhibit D** hereto (each, a “**Class One Note**” and, collectively, the “**Class One Notes**”) in the principal amount (the “**Initial Class One Commitment**”) set forth opposite the respective Investor’s name on **Schedule IV(a)** hereto (such closing, the “**Initial Class One Closing**”) on the date hereof (the “**Initial Class One Closing Date**”). The obligations of the Investors to purchase Notes at the Initial Class One Closing are several and not joint. The initial

aggregate principal amount for all Class One Notes issued hereunder on the Initial Class One Closing Date shall not exceed the Initial Class One Commitments.

(f) Initial 2024 Closing - Class Two. Subject to all of the terms and conditions set forth herein, the Company agrees to issue and sell to each of the Class Two Investors, and each of the Class Two Investors severally agrees to purchase, a secured convertible promissory note in the form of **Exhibit E** hereto (each, a “**Class Two Note**” and, collectively, the “**Class Two Notes**” and, together with the Class One Notes, the “**2024 Notes**”) in the principal amount (the “**Initial Class Two Commitment**”) set forth opposite the applicable Class Two Investor’s name on **Schedule V(a)** hereto (each such closing, an “**Initial Class Two Closing**”) on the applicable Class Two Commitment Acceptance Date. The obligations of the Class Two Investors to purchase Class Two Notes pursuant to this **Section 1(f)** are several and not joint. The initial aggregate principal amount for all Class Two Notes issued hereunder shall not exceed the Initial Class Two Commitments.

(g) Delayed Draw 2024 Closing - Class One. Subject to all of the terms and conditions set forth in **Section 5** hereof, the Company agrees to issue and sell to each of the Class One Investors, and each of the Class One Investors severally agrees to purchase, Class One Notes in the principal amount (the “**Class One Delayed Draw Commitment**” and, together with the Initial Class One Commitment, the “**Class One Commitment**”) set forth opposite the respective Investor’s name on **Schedule I(b)** hereto (each such closing, a “**Class One Delayed Draw Closing**”) on the applicable Class One Commitment Acceptance Date or any other date or dates mutually agreed by the Company and the Majority in Interest of Lead Investors (each such date, a “**Class One Delayed Draw Closing Date**”); provided, that such Class One Delayed Draw Commitment shall expire on the one (1) year anniversary of the Initial Class One Closing Date (the “**2024 Commitment Expiration Date**”). The obligations of the Class One Investors to purchase Class One Notes at any Class One Delayed Draw Closing are several and not joint. The aggregate principal amount for all Class One Notes issued under this **Section 1(g)** shall not exceed the Class One Delayed Draw Commitments.

(h) Delayed Draw 2024 Closing - Class Two. Subject to all of the terms and conditions set forth in **Section 5** hereof, the Company agrees to issue and sell to each of the Class Two Investors, and each of the Class Two Investors severally agrees to purchase, a Class Two Note in the principal amount (the “**Class Two Delayed Draw Commitment**” and, together with the Initial Class Two Commitment, the “**Class Two Commitment**” and, together with the Class One Commitment, the “**2024 Commitments**”, together with the 2023 Commitments, the “**Commitments**”) set forth opposite the respective Class Two Investor’s name on **Schedule V(b)** hereto (such closing, the “**Class Two Delayed Draw Closing**” and, together with the Initial Class One Closing, each Initial Class Two Closing and the Class One Delayed Draw Closing, a “**2024 Closing**”, together with the 2023 Closings, the “**Closings**”) on each Class One Delayed Draw Closing Date (or, with respect to any Class Two Commitment Acceptance Date that occurs after a Class One Delayed Draw Closing Date, on such applicable Class Two Commitment Acceptance Date) (each such date, a “**Class Two Delayed Draw Closing Date**” and, together with the Initial Class One Closing Date, each Initial Class Two Closing Date and each Class One Delayed Draw Closing Date, a “**2024 Closing Date**”, together with the 2023 Closing Dates, the “**Closing Dates**”); provided, that such Class Two Delayed Draw Commitment shall expire on the Commitment Expiration Date. The obligations of the Class Two Investors to purchase Class Two Notes at any

Class Two Delayed Draw Closing are several and not joint. The aggregate principal amount for all Class Two Notes issued under this **Section 1(h)** shall not exceed the Class Two Delayed Draw Commitments.

(i) ~~(e)~~ Closing; Delivery.

(i) The Initial Class A Closing shall take place remotely via the exchange of documents and signatures on the Initial Class A Closing Date. Each Initial Class B Closing shall take place remotely via the exchange of documents and signatures on the applicable Class B Commitment Acceptance Date. Each Class A Delayed Draw Closing and Class B Delayed Draw Closing shall take place remotely via the exchange of documents and signatures on the applicable Class A Delayed Draw Closing Date (or, with respect to any Class B Commitment Acceptance Date that occurs after a Class A Delayed Draw Closing Date, on such applicable Class B Commitment Acceptance Date). The Initial Class One Closing shall take place remotely via the exchange of documents and signatures on the Initial Class One Closing Date. Each Initial Class Two Closing shall take place remotely via the exchange of documents and signatures on the applicable Class Two Commitment Acceptance Date. Each Initial Class One Closing, Class One Delayed Draw Closing, Initial Class Two Closing and Class Two Delayed Draw Closing shall occur, for the avoidance of doubt, upon the Investors funding the applicable Commitments to the Company or the Escrow Account, as applicable. Each Class One Delayed Draw Closing and Class Two Delayed Draw Closing shall take place remotely via the exchange of documents and signatures on the applicable Class One Delayed Draw Closing Date (or, with respect to any Class Two Commitment Acceptance Date that occurs after a Class One Delayed Draw Closing Date, on such applicable Class Two Commitment Acceptance Date).

(ii) Following each applicable Closing, the Company will deliver to each of the Investors the Note to be purchased by such Investor, upon receipt by the Company of the corresponding purchase price (the “**Purchase Price**”) calculated in accordance with **Section 1** hereof, in each case, by wire transfer of immediately available funds.

(iii) At each Closing, the Company will deliver to each of the Investors participating in such Closing the Note to be purchased by such Investor, against receipt by the Company of the Purchase Price. Each of the Notes will be registered in such Investor’s name in the Company’s records.

(iv) Notwithstanding any provision contained in the 2023 Notes and subject to the terms and conditions set forth in this Agreement, each holder of 2023 Notes who is also a Class One Investor (the “**Exchanging Noteholder**”) hereby acknowledges and agrees that (i) at the Initial Class One Closing and each 2024 Closing thereafter, a proportion of the Outstanding Principal Amount (as defined in the 2023 Notes) (including accrued PIK Interest as defined in the 2023 Notes) of that Exchanging Noteholder’s 2023 Notes equal to (y) the total amount invested by such Exchanging Noteholder in such Closing divided by (z) that Exchanging Noteholder’s pro rata 2024 Commitment (the “**2023 Note Exchange Amount**” and any difference between a holder’s Outstanding Principal Amount and such holder’s Note Exchange Amount, the “**Remaining 2023 Note Amount**”), will be exchanged into a principal amount of 2024 Notes equal to the 2023 Note Exchange Amount multiplied by one and one eighth (1.125) (the “2024 Exchanged Note Amount”), (ii) other than the right to receive 2024 Notes in an amount equal to

the applicable 2024 Exchanged Note Amount (and, if applicable, retain any Remaining 2023 Note Amount), such Exchanging Noteholder hereby waives any rights under such 2023 Notes to receive or purchase any other securities of the Company in connection with the exchange of such 2023 Notes, (iii) upon such exchange at the consummation of the applicable 2024 Closing, the Company will be forever released from any and all of its obligations and liabilities under the 2023 Note exchanged in such 2024 Closing with respect to the 2023 Note Exchange Amount, (iv) the 2023 Note Exchange Amount of such 2023 Notes shall be, effective upon the applicable 2024 Closing Date, terminated, cancelled and deemed satisfied in full without any further action by such Exchanging Noteholder, and (v) each Exchanging Noteholder hereby waives in connection with such exchange any notices required by the terms of such 2023 Notes. As soon as practicable after each exchange of the 2023 Notes pursuant to this Section 1(i)(iv), each Exchanging Noteholder shall surrender the 2023 Note Exchange Amount of such Exchanging Noteholder's 2023 Notes for cancellation at the office of the Company. The Exchanging Noteholder shall be treated for all purposes as the record holder of 2024 Notes in the 2024 Exchanged Note Amount effective immediately on the date of such Closing, regardless of whether such Exchanging Noteholder has surrendered the 2023 Note Exchange Amount of such 2023 Notes for cancellation as of such time. Such Exchanging Noteholder hereby represents and warrants that such Exchanging Noteholder has good and marketable title to such 2023 Notes, and has not transferred, pledged or otherwise disposed of any interest in the 2023 Notes (whether arising by contract, by operation of law or otherwise).

(j) ~~(f)~~ Use of Proceeds. The proceeds of the sale and issuance of the Notes shall be used for general corporate purposes and shall not be used for the repayment of outstanding debt of the Company.

(k) ~~(g)~~ Payments. The Company will make all cash payments due under the Notes in immediately available funds by 1:00 p.m. Pacific Time on the date such payment is due at the address for such purpose specified below each Investor's name on ~~Schedule I or~~ **Schedule II, Schedules IV or Schedules V** hereto, as applicable, or at such other address as an Investor or other registered holder of a Note may from time to time direct in writing, or at the option of the Company, by wire or automated clearing house transfer according to instructions provided by each Investor.

~~(h) Prohibition of Lenders. Notwithstanding any other provision in this Agreement or the Note Documents to the contrary, Emerson Collective Investments, LLC and its affiliates and Subsidiaries (collectively, "Emerson") shall be prohibited from becoming an "Investor" hereunder unless Emerson shall have purchased \$2,342,787.03 in the aggregate in unsecured promissory notes from the Company pursuant to the Existing Note Purchase Agreement.~~

(l) [Reserved].

(m) 2023 Commitment Expiration Date. At the direction of the Lead Investors, after the 2023 Commitment Expiration Date, the Agent shall, subject to Section 7.2 of the Security Agreement, direct the Escrow Agent to disburse available funds in the escrow account to the Investors in accordance with each Investor's then-remaining Class A Commitment or Class B Commitment, as applicable, and the principal amount of any outstanding Class A Notes or Class

B Notes of the Investors, as applicable, shall be automatically reduced by the amount of such distribution from the escrow account received by such Investors.

(n) ~~(i)~~ 2024 Commitment Expiration Date. At the direction of the Lead Investors, after the 2024 Commitment Expiration Date, the Agent shall, subject to Section 7.2 of the Security Agreement, direct the Escrow Agent to disburse available funds in the escrow account to the Investors in accordance with each Investor's then-remaining principal amount of Class One Commitment or Class Two Commitment, as applicable, and the principal amount of any outstanding Class One Notes or Class Two Notes of the Investors, as applicable, shall be automatically reduced by the amount of such distribution from the escrow account received by such Investors, and to terminate the Escrow Agreement in accordance with its terms.

2. Representations and Warranties of the Company. The Company represents and warrants to the Agent and each Investor that:

(a) Due Incorporation, Qualification, etc. The Company (i) is a public benefit corporation duly organized, validly existing and in good standing under the laws of the State of Delaware; (ii) has the power and authority to own, lease and operate its properties and carry on its business as now conducted; and (iii) is duly qualified, licensed to do business and in good standing as a foreign corporation in each jurisdiction where the failure to be so qualified or licensed could reasonably be expected to have a material adverse effect on the Company.

(b) Authority. The execution, delivery and performance by the Company of this Agreement and its obligations under the Notes and the other Note Documents to be executed by the Company and the consummation of the transactions contemplated thereby (i) are within the power of the Company and (ii) have been duly authorized by all necessary actions on the part of the Company.

(c) Enforceability. Each Note Document executed, or to be executed, by the Company has been, or will be, duly executed and delivered by the Company and constitutes, or will constitute, a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(d) Non-Contravention. The execution and delivery by the Company of the Note Documents executed by the Company and the performance and consummation of the transactions contemplated thereby do not and will not (i) violate the Company's Certificate of Incorporation or Bylaws (as amended, the "**Charter Documents**") or any material judgment, order, writ, decree, statute, rule or regulation applicable to the Company; (ii) violate any provision of, or result in the breach or the acceleration of, or entitle any other person to accelerate (whether after the giving of notice or lapse of time or both), any material mortgage, indenture, agreement, instrument or contract to which the Company is a party or by which it is bound; or (iii) result in the creation or imposition of any Lien upon any property, asset or revenue of the Company or the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license, authorization or approval applicable to the Company, its business or operations, or any of its assets or properties.

(e) Subsidiaries. Each of the Company's subsidiaries is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is in good standing under such laws and has the power and authority to own, lease and operate its properties and carry on its business as now conducted. The Company owns all beneficial and legal interest in all of its subsidiaries. None of the Company's subsidiaries owns or leases property or engages in any activity in any jurisdiction that might require its qualification to do business as a foreign corporation in such jurisdiction and in which the failure to qualify as such would have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(f) Approvals. No consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority or other person (including, without limitation, the shareholders of any person) is required in connection with the execution and delivery of the Note Documents executed by the Company and the performance and consummation of the transactions contemplated thereby, other than such as have been obtained and remain in full force and effect and other than such qualifications or filings under applicable "blue sky" state securities laws as may be required in connection with the transactions contemplated by this Agreement.

(g) No Violation or Default. None of the Company or the Company's subsidiaries is in violation of or in default with respect to its Charter Documents or other organizational documents, this Agreement, any Material Indebtedness and any Material Contract of the Company, and the execution, delivery or performance by the Company of the Note Documents or the transactions contemplated thereby do not constitute such violation or default.

(h) Litigation. No actions (including, without limitation, derivative actions), suits, proceedings or investigations are pending or, to the knowledge of the Company, threatened in writing against the Company or the Company's subsidiaries at law or in equity in any court or before any other governmental authority that if adversely determined seeks to enjoin, either directly or indirectly, the execution, delivery or performance by the Company of the Note Documents or the transactions contemplated thereby or seek material amounts of damages.

(i) Title. The Company and the Company's subsidiaries own and have good and marketable title in fee simple absolute to, or a valid leasehold interest in, all their respective real properties and good title to their other respective assets and properties utilized by or necessary to the Company and the Company's subsidiaries in the operation of their business as now conducted.

(j) Intellectual Property. The Company and the Company's subsidiaries own or possess or can obtain on commercially reasonable terms sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, processes and other intellectual property rights necessary for its business as now conducted and as proposed to be conducted, the lack of which could reasonably be expected to have a material adverse effect on the Company.

(k) Financial Statements. The financial statements of the Company that have been delivered to the Investors (i) are in accordance with the books and records of the Company and its subsidiaries and such books and records have been maintained in accordance with good

business practice; (ii) have been prepared in conformity with GAAP except, with respect to the unaudited financial statements, for the absence of footnotes and subject to normal year-end adjustments; and (iii) fairly present the consolidated financial position of the Company and its subsidiaries as of the dates presented therein and the results of operations, changes in financial positions or cash flows, as the case may be, for the periods presented therein. None of the Company or any of the Company's subsidiaries has any contingent obligations, liability for taxes or other outstanding obligations or liabilities which are material individually or in the aggregate, except as disclosed in the most recent financial statements furnished by the Company to Investors prior to the date hereof.

(l) ~~(h)~~ **Equity Securities and Capitalization.** The equity securities ("**Equity Securities**") of the Company have the respective rights, preferences and privileges set forth in the Company's Charter Documents in effect on the date hereof. A true and complete listing of each class of the Equity Securities as of the day of the Closing is attached hereto as **Exhibit C**. All of the outstanding Equity Securities of the Company have been duly authorized and are validly issued, fully paid and nonassessable, are free and clear of all liens, and are owned beneficially by the persons identified on **Exhibit C**. Except for (A) the conversion privileges of the Company's Preferred Stock, and the Notes to be issued under this Agreement, (B) the rights provided in Section 4 of Sixth Amended and Restated Investors' Rights Agreement, dated as of even date herewith, by and among the Company and the parties thereto, and (C) the securities listed on **Exhibit C**, there are no outstanding options, warrants, rights (including conversion or preemptive rights and rights of first refusal or similar rights) or agreements, orally or in writing, to purchase or acquire from the Company any Equity Securities, or any securities convertible into or exchangeable for Equity Securities. On the Initial Class One Closing Date, except as set forth on **Exhibit C**, there are no other Equity Securities of the Company authorized, issued, reserved for issuance or outstanding and no outstanding or authorized options, warrants, convertible or exchangeable securities, subscriptions, rights (excluding any preemptive rights), stock appreciation rights, calls, puts or commitments of any character whatsoever to which the Company is a party or may be bound requiring the issuance, delivery or sale of Equity Securities. The offer and sale of all Equity Securities of the Company issued before the applicable Closing Date complied with or were exempt from registration or qualification under all applicable federal and state securities laws. The Company will take all required corporate action to issue the Equity Securities issuable upon conversion of the Notes prior to their conversion. The Equity Securities issuable upon conversion of the Notes will be duly reserved for issuance upon conversion, and upon issuance in accordance with the terms of the Notes, will be validly issued, fully paid and nonassessable and free clear of all liens. Except as set forth on **Exhibit C**, there is no side letter, agreement or other arrangement between the Company or its subsidiaries, on the one hand, and any of the Company's convertible noteholders, shareholders, potential shareholders, holders or potential holders of voting or other rights of shareholders (including, for the avoidance of doubt, the Investors) or, in each case, their affiliates, on the other hand, relating to the voting, issuance or disposition of any equity or shares in the Company or its subsidiaries, any rights or privileges given to such convertible noteholder, shareholder, potential shareholders, holders or potential holders of voting or other rights of shareholders and, as of the date hereof, no such side letter, agreement or arrangement is contemplated to be entered into.

(m) ~~(i)~~ **Accuracy of Information Furnished.** None of the Note Documents and none of the other certificates, statements or information furnished to Investors by or on behalf of

the Company or the Company's subsidiaries in connection with the Note Documents or the transactions contemplated thereby contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company does not represent or warrant that it will achieve any financial projections provided to the Investors and represents only that such projections were prepared in good faith.

(n) ~~(m)~~—No “Bad Actor” Disqualification. The Company has exercised reasonable care, in accordance with Securities and Exchange Commission rules and guidance, to determine whether any Covered Person (as defined below) is subject to any of the “bad actor” disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act (“**Disqualification Events**”). To the Company's knowledge, no Covered Person is subject to a Disqualification Event, except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3) under the Securities Act. The Company has complied, to the extent applicable, with any disclosure obligations under Rule 506(e) under the Securities Act. “**Covered Persons**” are those persons specified in Rule 506(d)(1) under the Securities Act, including the Company; any predecessor or affiliate of the Company; any director, executive officer, other officer participating in the offering, general partner or managing member of the Company; any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power; any promoter (as defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of the sale of the Notes; and any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of the Notes (a “**Solicitor**”), any general partner or managing member of any Solicitor, and any director, executive officer or other officer participating in the offering of any Solicitor or general partner or managing member of any Solicitor.

3. Representations and Warranties of Investors. Each Investor, for that Investor alone, represents and warrants to the Company and the Agent upon the acquisition of a Note as follows:

(a) Binding Obligation. Such Investor has full legal capacity, power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement and the Note Documents constitute valid and binding obligations of such Investor, enforceable in accordance with their terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(b) Securities Law Compliance. Such Investor has been advised that the Notes and the underlying securities have not been registered under the Securities Act, or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. Such Investor is aware that the Company is under no obligation to effect any such registration with respect to the Notes or the underlying securities or to file for or comply with any exemption from registration. Such Investor has not been formed solely for the purpose of making this investment and is purchasing the Notes to be acquired by such Investor hereunder for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. Such Investor has such knowledge and

experience in financial and business matters that such Investor is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment without impairing such Investor's financial condition and is able to bear the economic risk of such investment for an indefinite period of time. Such Investor is an accredited investor as such term is defined in Rule 501 of Regulation D under the Securities Act and shall submit to the Company such further assurances of such status as may be reasonably requested by the Company. Such Investor has furnished or made available any and all information requested by the Company or otherwise necessary to satisfy any applicable verification requirements as to accredited investor status. Any such information is true, correct, timely and complete. The residency of the Investor (or, in the case of a partnership or corporation, such entity's principal place of business) is correctly set forth beneath such Investor's name on **Schedule I** hereto.

(c) Access to Information. Such Investor acknowledges that the Company has given such Investor access to the corporate records and accounts of the Company and to all information in its possession relating to the Company, has made its officers and representatives available for interview by such Investor, and has furnished such Investor with all documents and other information required for such Investor to make an informed decision with respect to the purchase of the Notes.

(d) Tax Advisors. Such Investor has reviewed with its own tax advisors the U.S. federal, state and local and non-U.S. tax consequences of this investment and the transactions contemplated by this Agreement. With respect to such matters, such Investor relies solely on any such advisors and not on any statements or representations of the Company or any of its agents, written or oral. Such Investor understands that it (and not the Company) shall be responsible for its own tax liability that may arise as a result of this investment and the transactions contemplated by this Agreement.

(e) No "Bad Actor" Disqualification Events. Neither (i) such Investor, (ii) any of its directors, executive officers, other officers that may serve as a director or officer of any company in which it invests, general partners or managing members, nor (iii) any beneficial owner of any of the Company's voting equity securities (in accordance with Rule 506(d) of the Securities Act) held by such Investor is subject to any Disqualification Event (as defined in Section 2(n)), except for Disqualification Events covered by Rule 506(d)(2)(ii) or (iii) or (d)(3) under the Securities Act and disclosed reasonably in advance of the applicable Closing in writing in reasonable detail to the Company.

4. Conditions to Initial Class A Closing. The obligations at the Initial Class A Closing are subject to the fulfillment, on or prior to the Initial Class A Closing Date and until the [2023](#) Commitment Expiration Date, of all of the following conditions, any of which may be waived in whole or in part by the Majority in Interest of Lead Investors (or, after satisfaction of **Section 6(m)(i)**, by the Agent acting at the direction of the Majority in Interest of Lead Investors):

(a) Representations and Warranties of the Company. The representations and warranties made by the Company in **Section 2** hereof shall have been true and correct when made, and shall be true and correct on the Initial Class A Closing Date.

(b) Representations and Warranties of the Investors. The representations and warranties made by the applicable Investors in **Section 3** hereof shall be true and correct when made, and shall be true and correct on the Initial Class A Closing Date.

(c) Governmental Approvals and Filings. Except for any notices required or permitted to be filed after the Initial Class A Closing Date with certain federal and state securities commissions, the Company shall have obtained all governmental approvals required in connection with the lawful sale and issuance of the Notes at the Initial Class A Closing.

(d) Legal Requirements. At the Initial Class A Closing, the sale and issuance by the Company, and the purchase by the Investors, of the Notes shall be legally permitted by all laws and regulations to which the Investors or the Company are subject.

(e) Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated at the Initial Class A Closing and all documents and instruments incident to such transactions shall be reasonably satisfactory in substance and form to the Lead Investors.

(f) Share Exchange Agreement. Each Investor as of the Initial Class A Closing Date shall be party to the Share Exchange Agreement (as defined below).

(g) Note Documents. The following documents shall have been delivered to the Investors:

(i) This Agreement, duly executed by the Company and the Class A Investors;

(ii) A Note in the form of **Exhibit A** in the principal amount set forth opposite the respective Class A Investor's name on **Schedule I(a)** hereto, duly executed by the Company;

(iii) Amendments and/or consents to the Mizzen Inc. Credit Agreement authorizing this Agreement, consenting to the terms and conditions of the Intercreditor Agreement, and duly executed by the lenders thereunder, the Company and, as applicable, the Guarantors;

(iv) An amendment to that certain Note Purchase Agreement, dated as of February 2, 2023 (the "**Existing Note Purchase Agreement**"), by and among the Company and the investors party thereto, in a form satisfactory to the Lead Investors, duly executed by the Company and the investors party thereto;

(v) Amendments and/or consents to (i) that certain Revolving Credit Agreement, dated as of September 30, 2022, by and between Connecticut Green Bank ("CGB") and the Company and (ii) that certain Term Loan Credit Agreement, dated as of October 7, 2022, by and between CGB and the Company, in each case, authorizing this Agreement, consenting to the Collateral, and duly executed by the lenders thereunder, the Company and, as applicable, the Guarantors;

(vi) The Amended and Restated Certificate of Incorporation of the Company, as certified by the State of Delaware;

(vii) The Seventh Amended and Restated Voting Agreement, dated as of even date herewith, duly executed by the Company and the parties thereto;

(viii) The Sixth Amended and Restated Investor Rights Agreement, dated as of June 13, 2023, duly executed by the Company and the parties thereto;

(ix) The Sixth Amended and Restated Right of First Refusal and Co-Sale Agreement, dated as of even date herewith, duly executed by the Company and the parties thereto;

(x) The Share Exchange Agreement (the “**Share Exchange Agreement**”), dated as of even date herewith, duly executed by the Company and the parties thereto;

(xi) A duly executed consent of the Board of Directors of the Company to the transactions contemplated herein and the documents in subsections **(iii) through (ix)** of this **Section 4(f)**;

(xii) A duly executed consent of the Stockholders of the Company to the transactions contemplated herein and the documents in subsections **(iii) through (ix)** of this **Section 4(f)**;

(xiii) An opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation (“**WSGR**”), counsel to the Company, in form and substance satisfactory to the Lead Investors.

(h) Purchase Price. Each Investor shall have delivered to the Company within eleven (11) Business Days of the Initial Class A Closing Date the Purchase Price in respect of the Note being purchased by such Investor referenced in **Section 1(a)** hereof.

5. Conditions to Each Subsequent Closing. Each applicable Investor’s obligations at each applicable Closing after the date hereof, and until the Commitment Expiration Date, are subject to the consent of the Majority in Interest of Lead Investors and the fulfillment, on or prior to such Closing Date, of all of the following conditions, any of which may be waived in whole or in part by of the Majority in Interest of Lead Investors (or, after satisfaction of **Section 6(m)(i)**, by the Agent acting at the direction of the Majority in Interest of Lead Investors):

(a) Representations and Warranties of the Company. The representations and warranties made by the Company in **Section 2** hereof shall have been true and correct when made and shall be true and correct on the applicable Closing Date.

(b) Representations and Warranties of the Investors. The representations and warranties made by the applicable Investors in **Section 3** hereof shall be true and correct when made, and shall be true and correct on the applicable Closing Date.

(c) Governmental Approvals and Filings. Except for any notices required or permitted to be filed after the applicable Closing Date with certain federal and state securities commissions, the Company shall have obtained all governmental approvals required in connection with the lawful sale and issuance of the Notes at the applicable Closing.

(d) Legal Requirements. At the applicable Closing, the sale and issuance by the Company, and the purchase by the Investors, of the Notes shall be legally permitted by all laws and regulations to which the Investors or the Company are subject.

(e) Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated at the applicable Closing and all documents and instruments incident to such transactions shall be reasonably satisfactory in substance and form to the Lead Investors.

(f) Escrow Account. The Agent shall have established an escrow account (the “**Escrow Account**”) with Wilmington Trust, National Association, in its capacity as escrow agent (the “**Escrow Agent**”), which shall be maintained in accordance with that certain Escrow Agreement, by and among the Agent and the Escrow Agent, and upon terms and conditions acceptable to the Lead Investors, including express terms providing that the Agent may not direct funds from the Escrow Account to the Company at any time without the prior written consent of the Majority in Interest of Lead Investors.

(g) Share Exchange Agreement. Each Investor as of each 2023 Closing Date shall be party to the Share Exchange Agreement.

(h) Notes. The applicable Investors shall have received a Class A Note ~~or~~, a Class B Note, a Class One Note or a Class Two Note in the principal amount determined in accordance with **Section 1(b), 1(c)** ~~or~~, **1(d), 1(e), 1(f), 1(g), or 1(h)** hereof, as applicable, duly executed by the Company; and

(i) Pro Rata Percentage. At each Closing of 2023 Notes or 2024 Notes, as applicable, each Investor shall purchase Notes in a pro rata amount equal to such Investor’s applicable Commitments multiplied by the percentage (the “**Percentage**”) represented by the cumulative principal amount funded as of such date by all other Investors (including, for purposes of the Initial Class A Closing, amounts requested to be funded but not yet funded within the eleven (11) Business Day period set forth in **Section 4(g)**) divided by the applicable Commitments of all other Investors immediately preceding such Closing and excluding any Defaulting Investors. For the avoidance of doubt, following each ~~Subsequent~~ Closing, each Investor that is not a Defaulting Investor shall have a pro forma Percentage consistent with the other Investors that have purchased Notes and funded Commitments as of such Closing Date.

(i) Purchase Price. Each Investor shall have delivered to the Escrow Account (or, at the direction of the Majority in Interest of Lead Investors, to the Company) the Purchase Price in respect of the Note being purchased by such Investor referenced in **Section 1(b), 1(c)** ~~or~~, **1(d), 1(e), 1(f), 1(g) or 1(h)** hereof, as applicable.

6. Affirmative Covenants. The Company covenants and agrees that on the Closing Date and thereafter, until payment in full of the Obligations (other than inchoate indemnity obligations) or conversion in full of the Notes:

(a) Audited Financials. The Company shall furnish to the Investors within 120 days (or 180 days, for the fiscal year ended December 31, 2023) after the end of each fiscal year of the Company, its consolidated balance sheet and related statements of operations (including EBITDA calculations consistent with the Mizzen Inc. Credit Agreement and the Mizzen WIP Credit Agreement), stockholders' or members' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all either audited and certified by a certified public accountant satisfactory to the Majority in Interest of Lead Investors or, if not audited, then reviewed, compiled and certified by a Financial Officer as presenting fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

(b) Unaudited Financials. The Company shall furnish to the Investors within 25 days after the end of each month, the Company's and each Guarantor's consolidated balance sheet (including supplemental information on principal balances for each debt) and related statements of operations, stockholders' equity and cash flows (including cash flow from operations), in Excel format, as of the end of and for such month and the latest twelve-month period, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a financial officer of the Company as presenting fairly in all material respects the financial condition and results of operations of the Company and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments.

(c) Annual Operating Budget. The Company shall furnish to the Investors within 30 days after the end of each calendar year, an annual operating budget of each of the Company and Guarantors forecasting its revenues on a quarterly or monthly basis for such year, along with three-year projections.

(d) Weekly Lead Investor Meeting. The Company shall hold a weekly meeting with the Lead Investors at a mutually agreed time and place to review (i) payables, (ii) cash payments, (iii) 13-week cash flow forecasts and (iv) such other financial information as may be relevant to the Company's ongoing financial situation.

(e) Environmental, Social and Governance. The Company shall provide information related to the ~~Borrower's~~Company's environmental, social and governance performance, including, without limitation, completing an annual environmental, social and governance questionnaire, as Magnetar or other Lead Investors may reasonably request from time to time.

(f) Material Indebtedness Reporting Requirements. The Company shall immediately furnish to the Investors (i) all notices, calculations, certificates, reports, information and other deliverables required or requested to be delivered under the Backleverage Credit Agreement, the Mizzen Inc. Credit Agreement or the Mizzen WIP Credit Agreement and (ii) any

amendments, restatements, amendments and restatements, supplements, waivers, consents, modifications or other documentation related to the Backleverage Credit Agreement, the Mizzen Inc. Credit Agreement or the Mizzen WIP Credit Agreement.

(g) Other Reporting Requirements. The Company shall promptly furnish to the Investors any other information reasonably requested by the any Lead Investor, as applicable, at any time.

(h) Control Agreements. Within ten (10) days of the Initial Class A Closing Date (or such longer period as permitted under **Section 6(m)(ii)(3)** hereof) the Company shall maintain a Control Agreement over all deposit accounts and security accounts granting a second priority security interest in favor of the Agent.

(i) Notice of Material Events. The Company shall furnish to the Investors prompt written notice (and in any event within no later than ten (10) days), together with details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto, of the occurrence of any of the following:

(i) the occurrence of any Event of Default;

(ii) the occurrence of any event that would require notice under ~~Section 6.01(b)~~ of the Backleverage Credit Agreement, Section 5.02 of the Mizzen Inc. Credit Agreement or Section 5.02 of the Mizzen WIP Credit Agreement, in each case as in effect on the date hereof; or

(iii) any change in the jurisdiction of formation or incorporation, organizational name, chief executive office or principal place of business, organizational structure or identity, organizational identification number or federal taxpayer identification number.

(j) Accuracy of Information. The Company will ensure that any information, including financial statements or other documents, furnished as to the Investors or the Agent, as applicable, in connection with this Agreement or any other Note Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and the furnishing of such information shall be deemed to be a representation and warranty by the Company on the date thereof as to the matters specified in this **Section 6(j)**.

(k) Further Assurances. Without limiting the foregoing, after satisfaction of **Section 6(m)** hereof, the Company will cause each Guarantor to execute and deliver, or cause to be executed and delivered by third parties, to the Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries, as applicable), which may be required by any law or which the Agent (acting at the direction of the Majority in Interest of Lead Investors) may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Note Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all at the expense of the Company.

(l) Additional Guarantors. After satisfaction of **Section 6(m)** hereof, if the Company creates any new Subsidiary development company (“**New DevCo**”), the Company shall cause such New DevCo to become a Guarantor under this Agreement, the Security Agreement and the Guaranty, and shall cause the Agent to have a second priority security interest in all of the assets of such New DevCo. Additionally, after satisfaction of **Section 6(m)** hereof, if any existing but inactive Subsidiary development company of the Company (“**Existing DevCo**”) shall become active, the Company shall cause such Existing DevCo to become a Guarantor under this Agreement, the Security Agreement and the Guaranty, and shall cause the Agent to have a second priority security interest in all of the assets of such Existing DevCo.

(m) Post-Closing Covenants. Promptly, and in any event within ten (10) Business Days of the Initial Class A Closing Date (or such later date as may be agreed by the Majority in Interest of Lead Investors):

(i) The Majority in Interest of Lead Investors shall have appointed Wilmington Trust, National Association, as collateral agent (in such capacity, together with its successors and assigns, the “**Agent**”) to serve in such role under this Agreement, the Note Documents and the Escrow Agreement, with such costs and expenses to be paid by the Company.

(ii) The following documents shall have been delivered to the Agent and the Investors:

(1) The Security Agreement, in a form satisfactory to the Lead Investors and the Agent, duly executed by the Company, the Guarantors and the Agent;

(2) The Guaranty, in a form satisfactory to the Lead Investors and the Agent, duly executed by the Company, the Guarantors and the Agent;

(3) The Control Agreements, in a form satisfactory to the Lead Investors and the Agent, duly executed by the Company, the Guarantors, as applicable, the Agent and the depository bank party thereto;

(4) The Collateral Assignment of Contracts, Permits and Project Documents, in a form satisfactory to the Lead Investors and the Agent, duly executed by PosiGen LLC;

(5) Amendments and/or consents to the Mizzen WIP Credit Agreement authorizing this Agreement, consenting to the terms and conditions of the Intercreditor Agreement, and duly executed by the lenders thereunder, the Company and, as applicable, the Guarantors;

(6) The Intercreditor Agreement, in a form satisfactory to the Lead Investors and the Agent, duly executed by Mizzen, the Agent, the Company and the Guarantors;

(7) A Lien Subordination Agreement, in a form satisfactory to the Lead Investors, duly executed by the Company, the Agent and Connecticut Green Bank, a body

politic and corporate, constituting a public instrumentality and political subdivision of the State of Connecticut (the “**Lien Subordination Agreement**”);

(8) The Agent Fee Letter, in a form satisfactory to the Agent, duly executed by the Company and the Agent;

(9) Any other documents, consents or agreements reasonably requested by the Agent or the Majority in Interest of Lead Investors; and

(10) An opinion of WSGR, counsel to the Company, in form and substance satisfactory to the Lead Investors.

(iii) The Company will, and will require any Guarantors to, file UCC-3 termination statements for any Liens on file in the jurisdiction of incorporation that are not Permitted Liens.

(iv) The loss payable clauses or provisions in the insurance policy or policies of the Company insuring any of the Collateral shall be endorsed in favor of and made payable to the Agent as a “loss payee” or other formulation reasonably satisfactory to the Majority in Interest of Investors, and such liability policies shall name the Agent as “additional insureds” for the benefit of the Investors. Such policies will also provide that such policies will not be canceled without at least thirty (30) days prior written notice to the Agent (or at least ten (10) days’ for non-payment of premium). To the extent not prohibited by any underlying policy, waiver of subrogation shall apply in favor of the Agent in connection with any general liability insurance policy of any Loan Party.

(v) The Agent shall have received all fees and other amounts due and payable on or prior to the First Amendment Effective Date.

7. Negative Covenants. The Company covenants and agrees that on the Closing Date and thereafter, until payment in full of the Obligations [\(other than inchoate indemnity obligations\)](#) or conversion in full of the Notes:

(a) Indebtedness. The Company will not, nor will it permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, except:

(i) the Obligations incurred pursuant to this Agreement;

(ii) Indebtedness of the Company and its Subsidiaries existing on the Closing Date as set forth on **Schedule 7(a)**;

(iii) Permitted Indebtedness;

(iv) Guarantees in respect of Indebtedness otherwise permitted pursuant to this **Section 7(a)**;

(v) intercompany Indebtedness between the wholly owned Subsidiaries of the Company;

(vi) other Indebtedness (including, for the avoidance of doubt, working capital and inventory lines) with the prior written consent of the Majority in Interest of Investors; and

(vii) Indebtedness in connection with the Existing Note Purchase Agreement up to an aggregate initial principal amount of \$56,241,160.97.

(b) Liens. The Company will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any of its assets or properties (whether now owned or hereafter acquired), except:

(i) Liens securing the Obligations;

(ii) Permitted Liens;

(iii) Liens incurred as of the Closing Date as set forth on **Schedule 7(b)**; and

(iv) other Liens with the prior written consent of the Majority in Interest of Investors.

(c) Investments. The Company will not, nor will it permit any of its Subsidiaries to, make or hold any Investment, except:

(i) Permitted Investments;

(ii) Investments in Subsidiaries existing as of the Closing Date as set forth on **Schedule 7(c)**;

(iii) Guarantees constituting Indebtedness permitted by **Section 7** (other than guarantees in respect of Capital Lease Obligations) and performance guaranties, in each case, incurred in the ordinary course of business; and

(iv) other Investments with the prior written consent of the Majority in Interest of Investors.

(d) [Reserved].

(e) Nature of Business. The Company will not, nor will it permit any of its Subsidiaries, to engage to any material extent in any business other than businesses of the type conducted by the Company and its Subsidiaries on the Closing Date and businesses that are compatible with, complementary to, similar or ancillary to, or a reasonable extension of, the business of the type conducted by the Company and its Subsidiaries on the Closing Date, in each case, without the prior written consent of the Majority in Interest of Investors.

(f) Disposition of Assets. The Company will not, and will not permit any Subsidiary to, Dispose of any material assets or any equity in any Subsidiary of the Company,

except for Permitted Divestments, without the prior written consent of the Majority in Interest of Investors.

(g) Restricted Payments. The Company will not, nor will it permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment; provided, that so long as at the time of and immediately after giving effect to such Restricted Payment no Event of Default shall have occurred and be continuing or would occur as a result thereof, the Company or any Subsidiary may make the following Restricted Payments:

(i) the declaration and payment of dividends or distributions by any Subsidiary to the Company or any Subsidiary (to the extent the Company and its Subsidiaries will receive at least a pro rata portion of such Restricted Payment based on their ownership interests in such Subsidiary);

(ii) cash payments in lieu of fractional shares to honor any conversion request by a lender under a holder of convertible Indebtedness in connection with any such conversion and may make payments on such convertible Indebtedness in accordance with its terms; ~~and~~

(iii) dividends or distributions by any project Subsidiary to its members in accordance with the terms of its limited liability company agreement; and

(iv) ~~(iii)~~ other Restricted Payments with the prior written consent of the Majority in Interest of Investors.

(h) Material Contracts. The Company will not, and will not permit any of its Subsidiaries to amend, waive, discharge, terminate or otherwise modify any Material Contract in any material manner without the prior written consent of the Majority in Interest of Investors.

(i) Affiliate Transactions. The Company will not, and will not permit any of its Subsidiaries to (A) enter into any transaction involving both the Company (or a Subsidiary) and a stockholder or any of the Company's (or a Subsidiary's) employees, officers, directors or members or any affiliate of a member or any of its officers, directors, stockholders or members or (B) enter into any other transaction, or agreement to enter into any transaction, with an affiliate of the Company (each, an "Affiliate Transaction"), unless the Affiliate Transaction is approved in writing by the Majority in Interest of Investors, except for:

(i) transactions expressly permitted by Sections 7(a), (c) and (g); and

(ii) employee agreements or arrangements, compensation arrangements (including retention, bonus or similar arrangements) and reimbursements of expenses of current officers, employees or directors, all to the extent in the ordinary course of business and approved by the Board (or a committee thereof).

(j) Restrictive Agreements. The Company will not, nor will it permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Company or any Subsidiary to create, incur or permit to exist any Lien upon any of its property to secure the

Obligations or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any of its Equity Securities or to make or repay loans or advances to the Company or any Subsidiary or to Guarantee Indebtedness of the Company or any Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement, and (ii) ~~clause (a) of~~ the foregoing shall not apply to (A) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property securing such Indebtedness; (B) restrictions and conditions imposed by any agreement listed on the Schedules to this Agreement; (C) restrictions in merger, asset sale agreements or acquisition agreements approved by the Board (or a committee thereof), provided that such covenants do not prohibit the Company or its Subsidiaries from granting a security interest in such Person's property in favor of the Agent (for the benefit of the Investors) and (D) customary provisions in leases, licenses and other contracts restricting the assignment or sublicense thereof.

(k) Payments on Indebtedness, Loans and Amendments. The Company will not, and will not permit any Subsidiary to:

(i) voluntarily prepay, repurchase or redeem or otherwise voluntarily defease prior to maturity any Indebtedness permitted under this Agreement; provided, however, that the Company or any Subsidiary may prepay, repurchase, redeem or defease any such Indebtedness with the prior written consent of the Majority in Interest of Investors; or

(ii) lend money (other than to the Company and ~~its wholly-owned Subsidiaries~~ Permitted Investments) without the prior written consent of the Majority in Interest of Investors.

(l) Certain Amendments to Organizational Documents. The Company will not, nor will it permit any of its Subsidiaries to, enter into or permit any modification or amendment of, or waiver of any right or obligation of any Person under, its Organizational Documents in a manner that adversely affects the rights of the Investors, either individually or collectively, without the prior written consent of the Majority in Interest of Investors.

(m) [Reserved]

8. The Agent.

(a) Appointment and Authority.

(i) Each Investor hereby irrevocably appoints, designates and authorizes the Agent to take such action on its behalf under the provisions of this Agreement and each other Note Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Note Document, together with such duties and powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, the Investors hereby expressly authorize the Agent to execute any and all documents (including releases and subordinations) with respect to the Collateral and the rights of the Investors with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the other Note Documents and acknowledge and agree that any such action by the Agent shall bind the Investors. Notwithstanding any provision to the contrary contained elsewhere herein or

in any other Note Document, the Agent shall not have any duties or responsibilities, except those expressly set forth herein and therein, nor shall the Agent have or be deemed to have any fiduciary relationship with the Company or any Investor, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Note Document or otherwise exist against the Agent. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Note Document, the Agent shall not have or be deemed to have any fiduciary relationship with the Company or any Investor or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Note Document or otherwise exist against the Agent. Regardless of whether an Event of Default has occurred and is continuing and without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Note Documents with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(ii) Each of the Investors hereby irrevocably appoints and authorizes the Agent to act as the collateral agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or on trust for) such Investor for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by the ~~Borrower~~Company and the Guarantors to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Agent pursuant to Section 8(e) for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Agent), shall be entitled to the benefits of all provisions of this Section 8 and Section 9(k) and (l), as though such co-agents, subagents and attorneys-in-fact were the Agent under the Note Documents) as if set forth in full herein with respect thereto.

(iii) Except as provided in Sections 8(a)(ii), 8(f), and 8(h), the provisions of this Section 8 are solely for the benefit of the Agent and the Investors, and neither the Company nor the Guarantors shall have any rights as a third-party beneficiary of any of such provisions.

(iv) The permissive authorizations, entitlements, powers and rights (including the right to request that the Company or any Guarantor take an action or deliver a document and the exercise of remedies following an Event of Default) granted to the Agent herein shall not be construed as duties. The Agent shall not have any responsibility for interest or income on any funds held by it hereunder and any funds so held shall be held un-invested pending distribution thereof. Whether or not explicitly set forth therein, the rights, powers, protections, immunities and indemnities granted to the Agent herein shall apply to any document entered into by the Agent in connection with its role as Agent under the Note Documents.

(b) Agent in its Individual Capacity. The Person serving as the Agent and their respective affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Securities in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Company and the Guarantors and their respective affiliates as though such Person were not the Agent hereunder and without notice to or consent of

the Investors. The Investors acknowledge that, pursuant to such activities, such Persons or their Affiliates may receive information regarding the Company and the Guarantors or their affiliates (including information that may be subject to confidentiality obligations in favor of the Company and the Guarantors or such affiliates) and acknowledge that the Agent shall not be under any obligation to provide such information to them. With respect to its Commitment (if any), the Person serving as Agent and its respective affiliates shall have the same rights and powers under this Agreement as any other Investor and may exercise such rights and powers as though it were not the Agent and the terms “Investor” and “Investors” include such Person in its individual capacity. Any corporation or association into which the Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Agent is a party, will be and become the successor Agent, as applicable, under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

(c) **Liability of Agent.** The Agent shall not (a) be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority in Interest of Investors (or Majority in Interest of Lead Investors, Lead Investors or all of the Investors, in each case, as the Agent shall believe in good faith shall be necessary, under the circumstances as provided hereunder), (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment (and, for purposes of clarification, any action taken (or not taken) by the Agent or any specified Person, such Person’s affiliates and the respective partners, directors, officers, employees, agents, controlling persons, members, representatives and the successors of each of such Person and such Person’s affiliates (collectively, the “**Related Parties**”) at the direction or instruction of the Majority in Interest of Investors (or Majority in Interest of Lead Investors, Lead Investors or all of the Investors, in each case, as the Agent shall believe in good faith shall be necessary, under the circumstances as provided hereunder) shall not constitute gross negligence or willful misconduct on the part of the Agent or its Related Parties) or (iii) or errors in judgment made in good faith by Agent or any of its officers, employees or agents, (b) except as expressly set forth herein and in the other Note Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or the Guarantors or any of their affiliates that is communicated to or obtained by the Person serving as the Agent or any of its affiliates in any capacity, (c) be responsible for or have any duty to ascertain or inquire into the satisfaction of any condition set forth in Section 4, Section 5 or elsewhere herein, other than that the Agent shall confirm receipt of items expressly required to be delivered to the Agent, (d) be responsible for the effectiveness, genuineness, validity, enforceability, collectability or sufficiency of this Agreement or any Note Document or for any certifications, representations, warranties, recitals or statements made herein or therein or made in any written or oral statement or in any financial or other statements, instruments, reports, certificates or any other documents in connection herewith or therewith furnished or made by the Agent to the Investors or by or on behalf of the Company, the Guarantors or any of their respective Subsidiaries to the Agent or any Investor or be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or therein or as to the use of the proceeds of the Notes or of the existence or possible existence of any Event of Default, (e) be responsible for the

existence, value or collectability of the Collateral, any failure to monitor or maintain any part of the Collateral, any loss or diminution in the value of the Collateral, or the creation, perfection or priority of any Lien, or security interest created or purported to be created under the Note Documents, including the Collateral Documents, or for any failure of the Company or any Guarantor to perform its obligations hereunder or thereunder, (f) have any duty or responsibility in respect of (i) any recording, filing, or depositing of this Agreement, any other Note Document or any other agreement or instrument, monitoring or filing any financing statement or continuation statement evidencing a security interest, the maintenance of any such recording, filing or depositing or to any re-recording, re-filing or re-depositing of any thereof, or otherwise monitoring the perfection, continuation of perfection or the sufficiency or validity of any security interest in or related to any Lien or Collateral, (ii) the acquisition or maintenance of any insurance or the payment of taxes with respect to any of the Collateral (iii) the calculation of any prepayment premium, Conversion Ratio or number of Conversion Shares to be issued under any Note or (iv) the payment or discharge of any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Collateral, (g) shall not be subject to any fiduciary or other implied duties, regardless of whether an Event of Default has occurred and is continuing, or (h) be under any obligation to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Note Document, or to inspect the properties, books or records of the Loan Parties or Holdings or any of their respective Subsidiaries. The Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, shall be to deal with it in the same manner as the Agent deals with similar property for its own account. The Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral if such Collateral is accorded treatment substantially equal to that which the Agent accords its own property. If at any time the Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process (including orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of any Collateral), the Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate, and if the Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Agent shall not be liable to any of the parties hereto or to any other Person even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. The Agent shall not be under any obligation to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Note Document, or to inspect the properties, books or records of the Company or the Guarantors or any of their respective Subsidiaries or any affiliate thereof. The Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Note Documents that the Agent is required to exercise as directed in writing by the Majority in Interest of Investors (or Majority in Interest of Lead Investors, Lead Investors or all of the Investors, in each case, as shall be expressly provided for herein or in the other Note Documents); *provided* that, and notwithstanding any provision of any Note Document to the contrary, the Agent shall not be required to take any action that, in its opinion or in the advice of its counsel, may expose the Agent to liability or that is contrary to any Note Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any bankruptcy or other debtor relief law or that may effect

a forfeiture, modification or termination of property of a Defaulting Investor in violation of any bankruptcy or other debtor relief law. The Agent shall be deemed not to have knowledge of any Event of Default unless and until written notice thereof is given to the Agent by the Company or an Investor. No provision of this Agreement or any other Note Document shall require the Agent to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder or thereunder or in the exercise of any of its rights or powers, if it shall have grounds to believe that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it. The rights, privileges, protections, immunities and benefits given to the Agent, including its right to be indemnified, are extended to, and shall be enforceable: (i) by the Agent in each Note Document and any other document related hereto or thereto to which it is a party and (ii) the entity serving as the Agent in each of its capacities hereunder and in each of its capacities under any Note Document whether or not specifically set forth therein and each agent, custodian and other Person employed to act hereunder and under any Note Document or related document, as the case may be. In no event shall any Agent be liable for any failure or delay in the performance of its obligations under this Agreement or any other Note Document because of circumstances beyond its control, including a failure, termination, or suspension of a clearing house, securities depository, settlement system or central payment system in any applicable part of the world or acts of God, flood, war (whether declared or undeclared), civil or military disturbances or hostilities, nuclear or natural catastrophes, political unrest, explosion, earthquake, terrorism, fire, riot, labor disturbances, strikes or work stoppages for any reason, embargo, epidemics or pandemics or other health crises, government action, including any laws, ordinances, regulations or the like (whether domestic, federal, state, county or municipal or foreign) which delay, restrict or prohibit the providing of the services contemplated by this Agreement or the other Note Documents, or the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, or any other causes beyond the Agent's control whether or not of the same class or kind as specified above. For the avoidance of doubt, the Agent shall not be obligated to calculate or confirm the calculations of any financial covenants set forth herein or the other Note Documents or in any of the financial statements of the Company or the Guarantors. The Agent shall not be (i) required to qualify in any jurisdiction in which it is not presently qualified to perform its obligations as the Agent or (ii) required to take any enforcement action against the Company or any Guarantor or any other obligor outside of the United States. The Agent shall not be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Agreement and any other Note Document to which the Agent is a party, whether or not an original or a copy of such agreement has been provided to the Agent. The Agent shall not be responsible for nor have any duty to monitor the performance or any action of the Company, any Guarantor, the Investors, or any of their directors, members, officers, agents, affiliates or employees, nor shall they have any liability in connection with the malfeasance or nonfeasance by such party; the Agents may assume performance by all such Persons of their respective obligations. Each Investor acknowledges and agrees that neither such Investor, nor any of its affiliates, participants or assignees, may rely on the Agent to carry out such Investor's, their affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to any anti-terrorism law, including any programs involving any of the following items relating to or in connection with the Company or its respective Subsidiaries, any of their respective affiliates or agents, the Note Documents or the transactions

hereunder: (i) any identity verification procedures, (ii) any record keeping, (iii) any comparisons with government lists, (iv) any customer notices or (v) any other procedures required under any anti-terrorism law. The Agent shall not (x) have any responsibility or obligation to determine whether as to whether any Investor or participant or prospective Investor or (y) have any liability with respect to or arising out of any assignment or participation of Notes.

(d) **Reliance by the Agent.** The Agent shall be entitled to rely, and shall not incur any liability for relying upon, any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, legal order, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, not only as to due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein. The Agent shall be entitled to rely, and shall not incur any liability for relying upon advice and statements of legal counsel (including counsel to the Company or any Guarantor), independent accountants and other experts selected by the Agent. The Agent shall be entitled to request and receive written instructions from the Majority in Interest of Investors (or Majority in Interest of Lead Investors, Lead Investors or all of the Investors, in each case, as the Agent shall believe in good faith shall be necessary, under the circumstances as provided hereunder) required by this Agreement and shall have no responsibility or liability for any losses or damages of any nature that may arise from any action taken or not taken by the Agent in accordance with the written direction of such Person or Persons. The Agent also may rely upon any statement made to it orally or by telephone and reasonably believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Agent may consult with legal counsel (who may be counsel for the Company), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Agent shall be fully justified in failing or refusing to take any action under any Note Document unless it shall first receive such advice, direction or concurrence of the Majority in Interest of Investors as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Investors against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Note Document in accordance with a request or consent of the Majority in Interest of Investors (or Majority in Interest of Lead Investors, Lead Investors or all of the Investors, in each case, as required hereunder) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Investors. Upon the request by the Agent at any time the Investors will promptly confirm in writing any action taken or to be taken by the Agent.

(e) **Delegation of Duties.** The Agent may execute any of its duties under this Agreement or any other Note Document (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents or of exercising any rights and remedies thereunder) by or through agents, sub-agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective affiliates. The exculpatory provisions of this Section 8 shall apply to any such sub-agent and to the affiliates of the Agent and any such sub-agent and shall apply to their respective activities in connection with

the syndication (if any) of the Notes as well as activities as the Agent. The Agent shall not be responsible for the negligence or misconduct (including gross negligence or willful misconduct) of any agent or sub-agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct (as determined in the final non-appealable judgment of a court of competent jurisdiction).

Notwithstanding anything else to the contrary herein or in any of the Note Documents, in each instance where the action or inaction of the Agent is required or permitted, or discretionary rights or powers conferred upon the Agent may be exercised or refrained from being exercised hereunder or under any of the other Note Documents, or whenever reference is made in this Agreement to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Agent, it is understood that in all cases the Agent shall not be required to take any action in the absence of written direction from the Majority in Interest of Investors (or Majority in Interest of Lead Investors, Lead Investors or all of the Investors, in each case, as the Agent shall believe in good faith shall be necessary, under the circumstances as provided hereunder, and shall have the absolute right, in its sole discretion, to consult with, or seek the affirmative or negative vote from such Persons), and it may do so pursuant to a negative notice or otherwise, and the Agent shall be fully justified in failing or refusing to take any such action under the Note Documents if it has not received such written instruction, advice or concurrence as the Agent deems appropriate from the proper Persons. Upon receipt of such written direction from the proper Persons, the Agent shall take such discretionary actions in accordance with such written instruction, advice or concurrence and, if it so requests, it shall first be indemnified to its reasonable satisfaction by the Investors against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. This provision is intended solely for the benefit of the Agent and its successors and permitted assigns and is not intended to and will not entitle any other party hereto to any defense, claim or counterclaim, or confer any rights or benefits on any other party hereto. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Note Document in accordance with a request or consent of the Majority in Interest of Investors (or Majority in Interest of Lead Investors, Lead Investors or all of the Investors, in each case, as the Agent shall believe in good faith shall be necessary, under the circumstances as provided hereunder)) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Investors. The provisions of this paragraph are in addition to, and not in limitation of, the other exculpatory provisions set forth herein.

(f) **Successor Agent.** The Agent may resign as the Agent without providing any reason therefor, upon 30 days' written notice to the Investors and the Company. If the Agent resigns or is removed by the Company, the Majority in Interest of Investors shall appoint a successor agent, which successor agent shall (a) be selected from among the Investors and (b) be consented to by the Company at all times other than during the existence of an Event of Default (which consent of the ~~Borrower~~Company shall not be unreasonably withheld or delayed); *provided* that in no event shall any such successor Agent be a Defaulting Investor. If no successor agent is appointed prior to the effective date of the resignation or removal of the Agent, the Agent, in the case of a resignation, and the Company, in the case of a removal may appoint, after consulting with the Investors and the Company (in the case of resignation), a successor agent which, shall be

selected from among the Investors (subject to the proviso at the end of the immediately preceding sentence). Upon the acceptance of its appointment as successor agent, the Person acting as such successor agent shall succeed to all the rights, powers and duties of the retiring Agent under the Note Documents and the term “Agent” or “Collateral Agent”, as applicable, shall mean such successor collateral agent, and the retiring Agent’s appointment, obligations, powers and duties as the Agent, respectively, shall be terminated. After the retiring Agent’s resignation or removal in accordance herewith as the Agent, the provisions of this Section 8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Agent in respect of the Note Documents. If no successor agent has accepted appointment as the Agent by the date which is 30 days following the resigning Agent’s notice of resignation or 10 days following the Company’s notice of removal, the resigning Agent’s resignation, or the Company’s removal of either of them, as applicable, shall nevertheless thereupon become effective and the Investors shall perform all of the duties of the Agent hereunder until such time, if any, as the Majority in Interest of Investors appoint a successor agent as provided for above, and the retiring Agent shall be discharged from all of its duties and obligations under the Note Documents. In no event shall the retiring or removed Agent or any of its affiliates or any of their respective officers, directors, employees, agents, advisors or representatives have any liability to the Company, any Investor or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the failure of a successor Agent to be appointed and to accept such appointment. Upon the acceptance of any appointment as the Agent in accordance herewith by a successor and upon the execution and filing or recording of such financing statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Majority in Interest of Investors may request, in order to continue the perfection of the Liens granted or purported to be granted by the Collateral Documents, the new Agent shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges, and duties of the retiring Agent under the Note Documents. After the retiring Agent’s resignation or removal hereunder as the Agent, respectively, the provisions of this Section 8 and Sections 9(k) and (l) shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Agent. The fees payable by the Company to a successor Agent shall be no greater than those payable to its predecessor unless otherwise agreed in writing between the Company and such successor.

(g) Non-Reliance on the Agent and Other Investors. Each Investor acknowledges and represents that it has, independently and without reliance upon the Agent or any other Investor or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Investor also acknowledges that it will, independently and without reliance upon any Agent or any other Investor or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Note Document or any related agreement or any document furnished hereunder or thereunder.

(h) Collateral and Guaranty Matters. Each of the Investors irrevocably authorizes the Agent to release guarantees, Liens and security interests created by the Note Documents and take any other actions contemplated thereby (i) upon payment in full of all Obligations (other than contingent indemnification obligations for which no underlying claim has

been asserted), (ii) that is transferred or to be transferred as part of or in connection with any disposition permitted hereunder (provided that, upon request by the Agent, the Company shall certify in an officer's certificate the Agent and Investors that such disposition is permitted under this Agreement (and each Investor agrees that the Agent may rely conclusively on any such certificate, without further inquiry)), or (iii) as approved in accordance with Section 7.1 of the Security Agreement. Upon request by the Agent at any time, the Investors will confirm in writing the Agent's authority provided for in the previous sentence. Should any Investor obtain possession or control of any assets of the Company or the other Guarantors in which, in accordance with the UCC or any other applicable law a security interest can be perfected by possession or control, such Investor shall notify the Agent thereof, and, promptly following the Agent's request (acting at the direction of the Majority in Interest of Investors) therefor, shall deliver such Collateral to the Agent or otherwise deal with such Collateral in accordance with the Agent's instructions.

Agent shall have no obligation whatsoever to any Investor or to any other Person to assure that the Collateral exists or is owned (whether in fee or by leasehold) by the Person purporting to own it or is cared for, protected, or insured or has been encumbered or that the Liens granted to the Agent pursuant to the Note Documents have been properly or sufficiently or lawfully created, perfected, protected or enforced, or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights granted or available to the Agent in any of the Note Documents.

(i) Appointment of Supplemental Agent.

(i) It is the purpose of this Agreement and the other Note Documents that there shall be no violation of any law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Note Documents, and in particular in case of the enforcement of any of the Note Documents, or in case the Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Note Documents or take any other action which may be desirable or necessary in connection therewith, the Agent ~~are~~is hereby authorized to appoint an additional individual or institution selected by the Agent in its sole discretion as a separate trustee, co-trustee, collateral agent, collateral sub-agent or collateral co-agent (any such additional individual or institution being referred to herein individually as a **"Supplemental Agent"** and collectively as **"Supplemental Agents"**).

(ii) Should any instrument in writing from the Company or any Guarantor be required by any Supplemental Agent so appointed by the Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, such Person shall execute, acknowledge and deliver any and all such instruments promptly upon request by the Agent. In case any Supplemental Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Agent, to the extent permitted by law, shall vest in and be exercised by the Agent until the appointment of a new Supplemental Agent.

(j) [Reserved]

(k) Enforcement. Notwithstanding anything to the contrary contained herein or in any other Note Document, the authority to enforce rights and remedies hereunder and under the other Note Documents against the Company or any Guarantors shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Section 3 of the Notes and the Collateral Documents for the benefit of all the Investors; *provided, however*, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Note Documents, (b) [reserved], or (c) any Investor or the Agent from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to the Company or the Guarantors under any federal, state or foreign bankruptcy, insolvency, receivership or similar law; and *provided, further*, that if at any time there is no Person acting as the Agent hereunder and under the other Note Documents, then (i) the Majority in Interest of Investors shall have the rights otherwise ascribed to the Agent pursuant to Section 3 of the Notes and the Collateral Documents, as applicable and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso, any Investor may, with the consent of the Majority in Interest of Investors, enforce any rights and remedies available to it and as authorized by the Majority in Interest of Investors.

(l) Collateral Agent. Each Investor (and each Person that becomes an Investor hereunder) hereby authorizes and directs the Agent to enter into the Collateral Documents to which the Agent is a party.

9. Miscellaneous.

(a) Waivers and Amendments. Any provision of this Agreement, and the Notes may be amended, waived or modified only upon the written consent of the Company, the Agent (after satisfaction of **Section 6(m)(i)** hereof) and a Majority in Interest of Investors; provided, that no such amendment, waiver or consent shall reduce the principal amount of any Note without the affected Investor's written consent; provided however, that, notwithstanding the foregoing, this Agreement and the Notes may not be amended, modified or terminated and the observance of any term hereunder or thereunder may not be waived with respect to any Investor without the written consent of such Investor unless such amendment, modification, termination or waiver applies to all Investors in the same fashion; provided, further, that the amendment contemplated by **Section 6(m)(i)** to appoint the Agent shall be permitted upon the written consent of the Company, the Agent and a Majority in Interest of Lead Investors. Any amendment or waiver effected in accordance with this paragraph shall be binding upon all of the parties hereto.

(b) Governing Law; Jurisdiction. This Agreement and all actions arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law provisions of the State of Delaware or of any other state. The parties hereby (i) irrevocably submit to the exclusive jurisdiction of any federal or state court sitting in Wilmington, Delaware, (ii) waive any objection to laying of venue in any such action or proceeding in such courts, and (iii) waive any objection that such courts are an inconvenient forum or do not have jurisdiction over any party.

(c) Survival. The representations, warranties, covenants and agreements made herein shall survive the execution and delivery of this Agreement.

(d) Successors and Assigns. Subject to the restrictions on transfer described in **Sections 9(f) and 9(g)** below, the rights and obligations of the Company, the Agent (after satisfaction of **Section 6(m)(i)** hereof) and the Investors shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

(e) Registration, Transfer and Replacement of the Notes. The Notes issuable under this Agreement shall be registered notes. The Company will keep, at its principal executive office, books for the registration and registration of transfer of the Notes. Prior to presentation of any Note for registration of transfer, the Company shall treat the person in whose name such Note is registered as the owner and holder of such Note for all purposes whatsoever, whether or not such Note shall be overdue, and the Company shall not be affected by notice to the contrary. Subject to any restrictions on or conditions to transfer set forth in any Note, the holder of any Note, at its option, may in person or by duly authorized attorney surrender the same for exchange at the Company's chief executive office, and promptly thereafter and at the Company's expense, except as provided below, receive in exchange therefor one or more new Note(s), each in the principal requested by such holder, dated the date to which interest shall have been paid on the Note so surrendered or, if no interest shall have yet been so paid, dated the date of the Note so surrendered and registered in the name of such person or persons as shall have been designated in writing by such holder or its attorney for the same principal amount as the then unpaid principal amount of the Note so surrendered. Upon receipt by the Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note and (a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it; or (b) in the case of mutilation, upon surrender thereof, the Company, at its expense, will execute and deliver in lieu thereof a new Note executed in the same manner as the Note being replaced, in the same principal amount as the unpaid principal amount of such Note and dated the date to which interest shall have been paid on such Note or, if no interest shall have yet been so paid, dated the date of such Note.

(f) Assignment. The rights, interests or obligations hereunder may not be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior written consent of the Agent (after satisfaction of **Section 6(m)(i)** hereof) and a Majority in Interest of Investors. The Agent may assign to one or more assignees all or a portion of its rights and obligations under this Agreement with the prior written consent of the Company and the Majority in Interest of Investors; provided, that no consent of the Company or the Majority in Interest of Investors shall be required for an assignment to an Affiliate of the Agent; provided, further, that if an Event of Default has occurred and is continuing, no consent of the Company shall be required to any other assignee.

(g) Entire Agreement. This Agreement together with the other Note Documents constitute and contain the entire agreement among the Company, the Agent and Investors and supersede any and all prior agreements, negotiations, correspondence, understandings and communications among the parties, whether written or oral, respecting the subject matter hereof.

(h) Notices. All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall in writing and faxed, [emailed](#), mailed or delivered to each party as follows: (i) if to an Investor, at such Investor's address or facsimile number set forth in the Schedule of Investors attached as **Schedule I**, or at such other address as such Investor shall have furnished the Agent in writing, (ii) if to the Agent, at Wilmington Trust,

National Association, 1100 North Market Street, Wilmington, DE 19801, Attn: Andrew Lennon, email: alennon@wilmingtontrust.com, facsimile: 302-636-4145, or at such other address or facsimile number as the Agent shall have furnished to the Company and the Investors in writing or (iii) if to the Company, at 145 James Drive East, Suite 300, St. Rose, LA 70087, or at such other address or facsimile number as the Company shall have furnished to the Agent and the Investors in writing. All such notices and communications will be deemed effectively given the earlier of (i) when received, (ii) when delivered personally, (iii) one business day after being delivered by [email or](#) facsimile (with receipt of appropriate confirmation), (iv) one business day after being deposited with an overnight courier service of recognized standing or (v) four days after being deposited in the U.S. mail, first class with postage prepaid.

(i) Separability of Agreements; Severability of this Agreement. The Company's agreement with each of the Investors is a separate agreement and the sale of the Notes to each of the Investors is a separate sale. Unless otherwise expressly provided herein, the rights of each Investor hereunder are several rights, not rights jointly held with any of the other Investors. Any invalidity, illegality or limitation on the enforceability of the Agreement or any part thereof, by any Investor whether arising by reason of the law of the respective Investor's domicile or otherwise, shall in no way affect or impair the validity, legality or enforceability of this Agreement with respect to other Investors. If any provision of this Agreement shall be judicially determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(j) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Facsimile copies of signed signature pages will be deemed binding originals.

(k) Expenses; Indemnity.

(i) Whether or not the transactions contemplated hereby shall be consummated, or all documents related to the foregoing, the Company agrees to pay promptly (a) all reasonable incurred costs and expenses of (i) preparation of the Note Documents, and (ii) all documents related to the Note Documents and any consents, amendments, waivers or other modifications to the Note Documents; (b) all reasonable incurred fees, expenses and disbursements of all counsel to the Company and the Guarantors furnishing all opinions required hereunder; (c) all reasonable incurred fees, expenses and disbursements of counsel to the Agent and the Investors (including, for the avoidance of doubt, separate local counsel to the Agent and the Investors, in each case, as reasonably necessary in each relevant jurisdiction material to the interests of the Investors taken as a whole (and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction that is material to each group of similarly situated affected Investors)) in connection with the negotiation, preparation, execution, review and administration of the Note Documents, all documents related to the foregoing and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by any Investor, the Company or any Guarantor; (d) all incurred costs and expenses of creating and perfecting Liens in favor of the Agent, for the benefit of the Investors, including filing and recording fees, search fees, title insurance premiums and fees, reasonable expenses and disbursements of counsel to the Agent and of counsel providing any opinions that Agent (at the written direction of the Majority in

Interest of Investors) may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) all reasonable incurred costs and fees, expenses and disbursements of any auditors, accountants, consultants, engineers or appraisers; (f) all reasonable incurred costs and expenses (including the fees, expenses and disbursements of counsel and of any appraisers, consultants, engineers, advisors and agents employed or retained by the Agent, the Investors and/or their respective counsel) in connection with the custody or preservation of any of the Collateral by the Agent; (g) all other reasonable incurred costs and expenses incurred by the Agent and the Investors in connection with the negotiation, preparation and execution of the Note Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (h) all incurred costs and expenses, including attorneys' fees and costs of settlement (including, for the avoidance of doubt, separate local counsel to the Agent and the Investors, in each case, as reasonably necessary in each relevant jurisdiction material to the interests of the Investors taken as a whole (and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction that is material to each group of similarly situated affected Investors)) in enforcing any Obligations of or in collecting any payments due from the Company hereunder or under the other Note Documents (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of any applicable guarantee) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work out" or pursuant to any insolvency or bankruptcy cases or proceedings, except as otherwise provided in connection with such transaction. The agreements in this Section 9(k)(i) shall survive payment in full of the Notes and the resignation or removal of the Agent. All amounts due under this Section 9(k)(i) shall be paid within 30 days of receipt by the Company of an invoice relating thereto setting forth such expenses including, if requested by the Company and to the extent reasonably available, backup documentation supporting such reimbursement request; provided that, with respect to any Closing Date, all amounts due under this Section shall be paid on each Closing Date solely to the extent invoiced to the Company at least one Business Day prior to the Closing Date (or such shorter time as the Company may agree).

(ii) The Company and each Guarantor, on a joint and several basis, agrees to indemnify and hold harmless the Agent and each Investor and each Related Party of any of the foregoing Persons (each such Person, without duplication, being called an "**Indemnatee**") from and against any and all liabilities incurred (including environmental claims, any actual or alleged violations of, or liabilities arising under environmental law of the Company, the Guarantors, or their Subsidiaries, or relating to the presence, generation, manufacture, storage, distribution, use, treatment, release or threatened release of, exposure to, or contamination by, hazardous materials, including at, under, on, or from any property or facility currently or formerly owned, leased or operated by the Company, the Guarantors, or their Subsidiaries, or any property to which the Company, the Guarantors, or their Subsidiaries has transported or disposed or arranged for the transport or disposal of hazardous materials), obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including attorney costs, but subject to the limitations on attorneys costs set forth in Section 9(k)(i)) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnatee in any way arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Note Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated hereby and thereby or the consummation of the transactions contemplated hereby and thereby, (ii) any Commitment or the Notes or the use or proposed use of the proceeds therefrom or (iii) **ANY**

ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY (INCLUDING ANY INVESTIGATION OF, PREPARATION FOR, OR DEFENSE OF ANY PENDING OR THREATENED CLAIM, INVESTIGATION, LITIGATION OR PROCEEDING), WHETHER BROUGHT BY A THIRD PARTY OR BY THE LOAN PARTIES, AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO, IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, (X) OUT OF THE ORDINARY NEGLIGENCE OF THE INDEMNITEE (AND SUCH INDEMNITY SHALL EXTEND TO EACH INDEMNITEE NOTWITHSTANDING THE SOLE OR CONCURRENT NEGLIGENCE OF EVERY KIND OR CHARACTER WHATSOEVER (WHETHER ACTIVE OR PASSIVE, WHETHER AN AFFIRMATIVE ACT OR AN OMISSION, INCLUDING ALL TYPES OF CONDUCT IDENTIFIED IN THE RESTATEMENT (SECOND) OF TORTS) OR ONE OR MORE OF THE OTHER INDEMNITEES) OR (Y) BY REASON OF STRICT LIABILITY IMPOSED WITHOUT FAULT ON ANY ONE OR MORE OF THE INDEMNITEES; *provided that*, notwithstanding the foregoing, such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from the gross negligence or willful misconduct of any Indemnitee or any of its affiliates or their respective directors, officers, employees, partners, agents, advisors or other representatives, as determined by a final non-appealable judgment of a court of competent jurisdiction, or (y) any dispute solely among Indemnitees (other than any claims against an Indemnitee in its capacity or in fulfilling its role as an agent or arranger or any similar role under the Notes) resulting from a claim not involving an act or omission of the Company, the Guarantors or any of their respective affiliates. No Indemnitee nor its affiliates shall be liable for any damages arising from the use by others of any information or other materials obtained through DebtDomain, IntraLinks or other similar information transmission systems in connection with this Agreement, nor, to the extent permissible under applicable law, shall any Indemnitee, the Company or their respective affiliates have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Note Document or arising out of its activities in connection herewith or therewith (whether before or after any Closing Date) (other than, in the case of the Company, in respect of any damages incurred or paid by an Indemnitee to a third party and for any out-of-pocket expenses, in each case, subject to the indemnification provisions of this Section 9(k)(ii)); it being agreed that this sentence shall not limit the indemnification or reimbursement obligations of the Company. In the case of action, suit, litigation, investigation, or proceeding to which the indemnity in this Section 9(k)(ii) applies, such indemnity shall be effective whether or not such action, suit, litigation, investigation, or proceeding is brought by the Company, any Guarantor, their respective directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Note Documents are consummated. All amounts due under this Section 9(k)(ii) shall be paid within 30 days after written demand therefor. The agreements in this Section 9(k)(ii) shall survive the resignation or removal of the Agent, the replacement of any Investor and payment in full of the Notes. For the avoidance of doubt, this Section 9(k)(ii) shall not apply to taxes, except any taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, prepayments, suits, costs, expenses and disbursements arising from any non-tax claims.

(iii) To the extent permitted by applicable law and without prejudice to the Company's or any Guarantor's indemnification obligations pursuant to clause (ii) above, no party hereto and no Guarantor shall assert, and each party hereto and each Guarantor hereby waives, releases and agrees not to sue upon any claim against any other party hereto and any Indemnitee, on any theory of liability, for special, indirect, exemplary, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement, any Note Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Note or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each party hereto and each Guarantor waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(l) Indemnification. Whether or not the transactions contemplated hereby are consummated, the Investors shall indemnify upon demand the Agent (to the extent not reimbursed by or on behalf of the Company or the Guarantors and without limiting such obligation to do so), *pro rata*, and hold harmless the Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements of any kind whatsoever that may at any time (including at any time following the payment of the Notes) be imposed on, incurred by or asserted against it in any way relating to or arising out of the Commitments, this Agreement, any of the other Note Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Agent under or in connection with any of the foregoing, including its own ordinary negligence ("**Indemnified Liabilities**"); *provided* that no Investor shall be liable for the payment to the Agent of any portion of such Indemnified Liabilities resulting from the Agent's own gross negligence or willful misconduct, as determined by the final non-appealable judgment of a court of competent jurisdiction; *provided* that no action taken or not taken in accordance with the directions of the Majority in Interest of Investors (or such other number or percentage of the Investors as shall be required by the Note Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 9(l). In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9(l) applies whether any such investigation, litigation or proceeding is brought by any Investor or any other Person. Without limitation of the foregoing, each Investor shall reimburse the Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including attorney costs) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Note Document, or any document contemplated by or referred to herein, to the extent that the Agent is not reimbursed for such expenses by or on behalf of the Company or the Guarantors and without limiting their obligation to do so. The undertaking in this Section 9(l) shall survive termination of the aggregate Commitments, the payment of all other Obligations and the resignation or removal of the Agent.

(m) Waiver of Conflicts. Each party to this Agreement acknowledges that WSGR, counsel for the Company, may have in the past performed, and may continue to or in the future perform, legal services for certain of the Investors in matters that are similar, but not

substantially related, to the transactions described in this Agreement, including the representation of such Investors in venture capital financings and other matters. Accordingly, each party to this Agreement hereby acknowledges that (a) they have had an opportunity to ask for information relevant to this disclosure, and (b) WSGR represents only the Company with respect to the Agreement and the transactions contemplated hereby. The Company gives its informed consent to WSGR's representation of the Investors in matters not substantially related to this Agreement, and the Investors give their informed consent to WSGR's representation of the Company in connection with this Agreement and the transactions contemplated hereby.

(n) Commitments Made After the Date Hereof. At any time after the date hereof but prior to the date that is 30 days after the date hereof (as such date may be extended by the Majority in Interest of Lead Investors), holders of the Preferred Stock of the Company may make (i) Class A Commitments to the Company in writing in an amount not to exceed the amount set forth opposite such holder's name on **Schedule III** under the column "Maximum Class A Commitment Amount" and (ii) Class B Commitments to the Company in writing in an amount not to exceed the amount set forth opposite such holder's name on **Schedule III** under the column "Maximum Class B Commitment Amount", *provided* that, notwithstanding the foregoing, Emerson may make its Class B Commitments within three (3) Business Days of receipt by the Company of an executed amendment to the Mizzen Inc. Credit Agreement enabling additional unsecured promissory notes to be purchased from the Company pursuant to the Existing Note Purchase Agreement. Upon delivery of a signature page hereto executed by such prospective Investor (the date of such acceptance, the "**Class A Commitment Acceptance Date**"), **Schedules I(a) and I(b)** shall be amended by the Company to reflect such Class A Commitments substantially concurrently with the funding by such Class A Investor of any amounts required pursuant to **Section 1(a) or 1(c)**. Upon delivery of a signature page hereto executed by such prospective Investor (the date of such acceptance, the "**Class B Commitment Acceptance Date**"), **Schedules II(a) and II(b)** shall be amended by the Company to reflect such Class B Commitments substantially concurrently with the funding by such Class B Investor of any amounts required pursuant to **Section 1(b) or 1(d)**. At any time after the date of the Initial Class One Closing but prior to the date that is 30 days after the date of the Class One Closing (as such date may be extended by the Majority in Interest of Lead Investors), holders of the Preferred Stock of the Company may make (i) Class One Commitments to the Company in writing in an amount not to exceed the amount set forth opposite such holder's name on **Schedules IV** under the column "Maximum Class One Commitment Amount" and (ii) Class Two Commitments to the Company in writing in an amount not to exceed the amount set forth opposite such holder's name on **Schedules IV** under the column "Maximum Class Two Commitment Amount". Upon delivery of a signature page hereto executed by such prospective Investor (the date of such acceptance, the "**Class One Commitment Acceptance Date**"), **Schedules IV(a) and IV(b)** shall be amended by the Company to reflect such Class One Commitments substantially concurrently with the funding by such Class One Investor of any amounts required pursuant to **Section 1(e) or 1(g)**. Upon delivery of a signature page hereto executed by such prospective Investor (the date of such acceptance, the "**Class Two Commitment Acceptance Date**"), **Schedules V(a) and V(b)** shall be amended by the Company to reflect such Class Two Commitments substantially concurrently with the funding by such Class Two Investor of any amounts required pursuant to **Section 1(f) or 1(h)**. Promptly thereafter the Company shall deliver such amended Schedules to the Investors.

(o) Defaulting Investor. Notwithstanding any provision of this Agreement to the contrary, if an Investor becomes a Defaulting Investor, the following provisions shall apply for so long as such Investor is a Defaulting Investor:

(i) Suspension of Voting Rights. Such Defaulting Investor shall not have the right to vote on any issue on which voting is required, such Defaulting Investor shall not be included as a Lead Investor, and the portion of the Commitments held by such Defaulting Investor shall not be included in determining whether the Majority in Interest of Investors have taken or may take any action hereunder.

(ii) Turn Over of Payments. All amounts payable hereunder to the Defaulting Investor in respect of the Notes (whether on account of principal, interest, fees or otherwise), shall be paid to the Escrow Account and, subject to any applicable requirements of law, be applied at such time or times as may be determined by the Majority in Interest of Lead Investors as follows: (A) first, to the payment of any amounts owing by the Defaulting Investor to the Non-Defaulting Investors hereunder, including without limitation for any Special Advance under **Subsection 9(m)(iii)**, (B) second, if so determined by the Company, held in such account as cash collateral for future funding obligations of the Defaulting Investor under this Agreement, and (C) third, to the Company or as otherwise directed by a court of competent jurisdiction.

(iii) Special Advances. If an Investor fails to fund its portion of any advance or disbursement of the Commitments, in whole or part, within three (3) Business Days after the date required hereunder, the Company shall so notify the other Investors, and within three (3) Business Days after delivery of such notice, the Non-Defaulting Investors shall have the right, but not the obligation, in their respective, sole and absolute discretion, to fund all or a portion of such deficiency (the amount so funded by any such Non-Defaulting Investors being referred to herein as a “**Special Advance**”) to the Company. In such event, the Defaulting Investor and the Company severally agree to pay to the Non-Defaulting Investors making the Special Advance, forthwith on demand such amount with interest thereon, for each day from and including the date such amount is made available to the Company to at (i) in the case of the Defaulting Investor, the greater of the then effective Federal Funds Effective Rate or (ii) in the case of the Company, the interest rate then applicable to the Notes.

(iv) Replacement of Defaulting Investor.

(1) By Majority in Interest of Investors. A Majority in Interest of the Investors may, upon notice to the Defaulting Investor, require the Defaulting Investor to assign and delegate, without recourse, to a Person designated by a Majority in Interest of the Investors; provided that (i) the Defaulting Investor shall have received payment of an amount equal to the outstanding principal of its Commitment, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Company (in the case of all other amounts); and (ii) the Investors shall have received payment of any amounts owing by such Defaulting Investor to the Investors under this Agreement. The Defaulting Investor shall not be required to make any such assignment and delegation if, prior thereto, such Defaulting Investor shall cease to be a Defaulting Investor.

(2) Indemnification. Each Defaulting Investor shall indemnify each Non-Defaulting Investor and the Company from and against any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatever which may be imposed on, incurred by or asserted against any Non-Defaulting Investor or the Company with respect to the Note Documents in any way relating to or arising out of such Investor's status as a Defaulting Investor. The obligations of the Defaulting Investor under this subparagraph (b) shall survive the payment of the Obligations, the termination of this Agreement and the Defaulting Investor's reversion to a Non-Defaulting Investor under subparagraph (iii) of this **Section 9(m)(iv)(2)**.

(3) Ceasing to be a Defaulting Investor. An Investor shall cease to be a Defaulting Investor only upon (i) the payment of all amounts due and payable by the Defaulting Investor to any other Investor under this Agreement; (ii) the payment of any damages suffered by the Company as a result of such Defaulting Investor's default hereunder; (iii) the confirmation by the applicable Investor to the Lead Investors and the Company in writing that the applicable Investor will comply with all of its respective obligations under this Agreement; and (iv) the circumstances described in clause (d) of the definition of "Defaulting Investor" do not exist. An assignment by an Investor of its rights and obligations under this Agreement shall not in and of itself cause the Investor to cease to be a Defaulting Investor.

(p) **INTERCREDITOR AGREEMENT AND LIEN SUBORDINATION AGREEMENT.**

(i) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIENS AND SECURITY INTERESTS GRANTED TO THE AGENT PURSUANT TO THIS AGREEMENT IN THE COLLATERAL AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE AGENT WITH RESPECT TO ANY SUCH COLLATERAL HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE INTERCREDITOR AGREEMENT AND THE LIEN SUBORDINATION AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENT OR THE LIEN SUBORDINATION AGREEMENT AND THIS AGREEMENT, THE TERMS OF THE INTERCREDITOR AGREEMENT OR THE LIEN SUBORDINATION AGREEMENT, AS APPLICABLE, SHALL GOVERN AND CONTROL.

(ii) Each Investor hereby authorizes the Agent to execute on behalf of all Investors all Note Documents to which it is a party (including, without limitation, the Intercreditor Agreement and the Lien Subordination Agreement). In particular, the Agent is authorized by the Investors to, and shall, enter into the Intercreditor Agreement, the Lien Subordination Agreement, and any other intercreditor, subordination or similar agreement expressly provided for herein (any such other intercreditor, subordination and/or similar agreement an "Additional Agreement"), and the Investors acknowledge that the Intercreditor Agreement, the Lien Subordination Agreement, and any other Additional Agreement is binding upon them. Each Investor hereby (x) agrees that it will be bound by, and will not take any action contrary to, the provisions of the Intercreditor Agreement, the Lien Subordination Agreement, or any other Additional Agreement and (y) authorizes and instructs the Agent to enter into the Intercreditor Agreement, the Lien Subordination Agreement, and/or any other Additional Agreement. The foregoing provisions are intended as an inducement to the Investors to extend credit to the

Company, and the Investors are intended third-party beneficiaries of such provisions and the provisions of the Intercreditor Agreement, the Lien Subordination Agreement, and/or any other Additional Agreement.

(q) The Agent shall be entitled to compensation for its services as have been separately agreed to pursuant to that certain Agent Fee Letter (the “**Agent Fee Letter**”), dated as of the First Amendment Effective Date (as defined in Amendment No. 1 to Note Purchase Agreement among the Company, the Agent and a Majority in Interest of the Lead Investors) and executed by or on behalf of the Company, the provisions of which are hereby incorporated by reference. Such compensation is intended for the Agent's services as contemplated by this Agreement. The terms of this **Section 9(q)** shall survive termination of this Agreement and/or the earlier resignation or removal of the Agent.

(Signature Page Follows)

The parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date and year first written above.

COMPANY:

POSIGEN, ~~INC.~~ PBC

a Delaware public benefit
corporation

By:

Name:

Title:

The parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date and year first written above.

INVESTOR:

□

By:

Name:

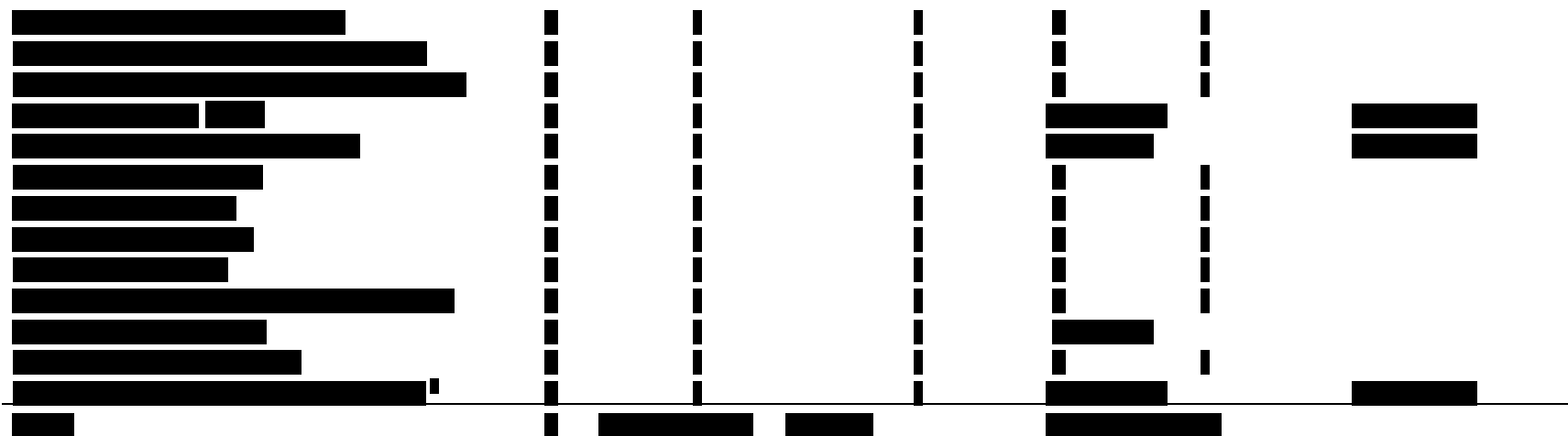
Title:

¹ Closed on full initial commitment amount within eleven (11) Business Days of the Initial Class A Closing Date pursuant to section 1(a)

SCHEDULE I(b)
SCHEDULE OF INVESTORS

[REDACTED]				
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]

■ [REDACTED] initial class A commitment amount of [REDACTED]



3 _____

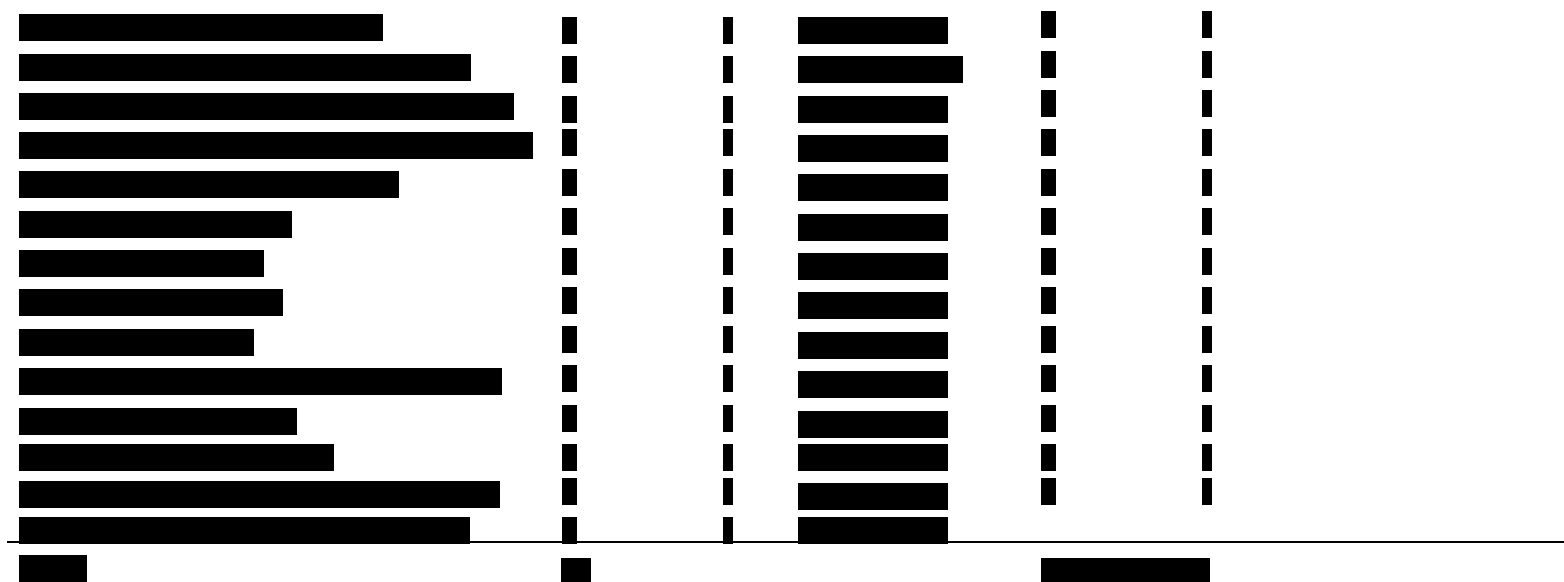
■ _____

SCHEDULE II(a)

SCHEDULE OF INVESTORS

INITIAL CLASS B CLOSING:

Country	Percentage of population aged 65 and over in 2023
United Kingdom	21%
Germany	20%
France	19%
Italy	18%
Spain	17%
Netherlands	16%
Belgium	15%
Austria	14%
Switzerland	13%
Sweden	12%
Finland	11%
Denmark	10%
Norway	9%
Iceland	8%
Luxembourg	7%



SCHEDULE II(b)

SCHEDULE OF INVESTORS

	2019	2020	2021	2022	2023
1. Revenue					
2. Operating expenses					
3. Operating income					
4. Non-operating income					
5. Income before taxes					
6. Taxes					
7. Net income					
8. Other comprehensive income					
9. Comprehensive income					
10. Dividends					
11. Retained earnings					
12. Other equity					
13. Total equity					
14. Debt					
15. Other liabilities					
16. Total liabilities					
17. Assets					
18. Current assets					
19. Non-current assets					
20. Total assets					

SCHEDULE III
CLASS A AND CLASS B
COMMITMENT ELIGIBILITY

<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>

SCHEDULE IV(a)
SCHEDULE OF INVESTORS

[REDACTED]					
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]					
[REDACTED]			[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]					
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]			[REDACTED]		[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SCHEDULE OF INVESTORS

[illegible]

Category	Category	Category	Category	Category
Category 1	Category 1	Category 1	Category 1	Category 1
Category 2	Category 2	Category 2	Category 2	Category 2
Category 3	Category 3	Category 3	Category 3	Category 3
Category 4	Category 4	Category 4	Category 4	Category 4
Category 5	Category 5	Category 5	Category 5	Category 5
Category 6	Category 6	Category 6	Category 6	Category 6
Category 7	Category 7	Category 7	Category 7	Category 7
Category 8	Category 8	Category 8	Category 8	Category 8
Category 9	Category 9	Category 9	Category 9	Category 9
Category 10	Category 10	Category 10	Category 10	Category 10

SCHEDULE OF INVESTORS

[illegible]

SCHEDULE V(b)

SCHEDULE OF INVESTORS

CLASS TWO SUBSEQUENT CLOSINGS:

[illegible]

EXHIBIT A

FORM OF CLASS A NOTE

[\[See Exhibit A to Amendment No. 4\]](#)

EXHIBIT B

FORM OF CLASS B NOTE

[\[See Exhibit B to Amendment No. 4\]](#)

EXHIBIT C
CAPITALIZATION TABLE

[\[See Attached\]](#)

EXHIBIT D

FORM OF CLASS ONE NOTE

EXHIBIT D

CLASS ONE FORM OF NOTE

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THIS NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT. THE COMPANY AGREES TO PROVIDE TO THE HOLDER OF THIS NOTE, UPON WRITTEN REQUEST, THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE AND YIELD TO MATURITY. ANY SUCH WRITTEN REQUEST SHOULD BE MADE PURSUANT TO SECTION 7(c) OF THIS NOTE AND SECTION 9(h) OF THE NOTE PURCHASE AGREEMENT.

POSIGEN, PBC

FORM OF SECURED CONVERTIBLE PROMISSORY NOTE

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[], 2024

FOR VALUE RECEIVED, PosiGen, PBC, a Delaware public benefit corporation (the “Company”) unconditionally promises to pay to the order of [INVESTOR] or its registered assigns (“Investor”), in lawful money of the United States of America the principal sum of [] AND NO/100 ([\$\$\$]) DOLLARS (the “Original Principal Amount”) as such amount may be increased pursuant to the payment of PIK Interest according to **Section 1** hereto or reduced pursuant to any conversion, redemption, or repayment effected in accordance with the terms hereof (the “Outstanding Principal Amount”), together with interest thereon from the date of this Secured Convertible Promissory Note (this “Note”) on the unpaid Outstanding Principal Amount at the rates specified in **Section 1** hereof. The Outstanding Principal Amount, together with any then unpaid and accrued interest and other amounts payable hereunder, to the extent not earlier converted, exchanged or repaid, shall be due and payable in full on the earlier of (i) June 13, 2025 (the “Scheduled Maturity Date”), or (ii) when, upon the occurrence and during the continuance of an Event of Default, such amounts are declared due and payable by Investor or made automatically due and payable, in each case, in accordance with the terms hereof (the “Accelerated Maturity Date”). This Note is one of the “Notes” issued pursuant to the Note Purchase Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Note Purchase Agreement.

The following is a statement of the rights of Investor and the conditions to which this Note is subject, and to which Investor, by the acceptance of this Note, agrees:

1. **Payment Interest.** This Note shall bear interest as follows:

(a) [Reserved]

(b) Interest payable in kind ("**PIK Interest**") shall accrue on the Outstanding Principal Amount of this Note at a rate per annum [REDACTED] shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing on March 31, 2024, by adding such accrued PIK Interest to the Outstanding Principal Amount. By notice to the Investor at least one Business Day prior to the applicable interest payment date, the Company may elect to pay the applicable accrued PIK Interest, in whole or in part, in cash on any such interest payment date. The portion of such required PIK Interest paid in cash shall not, for the avoidance of doubt, be added to the Outstanding Principal Amount. In addition to the foregoing, accrued and unpaid interest shall be added to the Outstanding Principal Amount as PIK Interest in connection with, and on the date of, (i) a conversion of this Note pursuant to **Section 4(a)** or **4(b)** or (ii) a redemption of this Note pursuant to **Section 4(c)** or **4(d)**.

(c) Interest shall be computed on the basis of a 365-day year and the actual number of days elapsed in such period. If any interest payment would be payable on a day that is not a Business Day, such interest payment will be postponed to the immediately succeeding day that is a Business Day.

2. **Events of Default.** The occurrence of any of the following shall constitute an "**Event of Default**" under this Note and the other Note Documents:

(a) **Failure to Pay.** The Company shall fail to pay (i) when due any principal payment on the due date hereunder or (ii) any other payment required under the terms of this Note or any other Note Document on the date due and such payment shall not have been made within five (5) days of the Company's failure to pay; or

(b) **Breaches of Covenants.** The Company shall fail to observe or perform any other covenant, obligation, condition or agreement contained in this Note or the other Note Documents (other than those specified in **Section 2(a)**) and such failure shall continue for ten (10) days after such failure; or

(c) **Representations and Warranties.** Any representation, warranty, certificate, or other statement (financial or otherwise) made or furnished by or on behalf of the Company to Investor in writing in connection with this Note or any of the other Note Documents, or as an inducement to Investor to enter into this Note and the other Note Documents, shall be false, incorrect, incomplete or misleading when made or furnished; or

(d) **Voluntary Bankruptcy or Insolvency Proceedings.** The Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of its or any of its creditors, (iii) be dissolved or liquidated, (iv) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts

under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (v) take any action for the purpose of effecting any of the foregoing;

(e) *Involuntary Bankruptcy or Insolvency Proceedings.* Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company, or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or any of its subsidiaries, if any, or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within 45 days of commencement;

(f) *Change of Control.* A Change of Control shall occur; or

(g) *Material Indebtedness.* The Company or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness when and as the same shall become due and payable and such failure shall continue beyond any applicable grace period or any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity.

3. **Rights of Investor upon Default.** Upon the occurrence of any Event of Default (other than an Event of Default described in **Sections 2(d)** or **2(e)**) and at any time thereafter during the continuance of such Event of Default, Investor may, by written notice to the Company, declare all outstanding Obligations payable by the Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Note Documents to the contrary notwithstanding. Upon the occurrence of any Event of Default described in **Sections 2(d)** and **2(e)**, immediately and without notice, all outstanding Obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Note Documents to the contrary notwithstanding. Upon the occurrence of an Event of Default, the PIK Interest due under this Note shall be increased to 18%. In addition to the foregoing remedies, upon the occurrence and during the continuance of any Event of Default, Investor may exercise any other right, power or remedy granted to it by the Note Documents or otherwise permitted to it by law, either by suit in equity or by action at law, or both.

4. **Conversion and Redemption.**

(a) *Voluntary Conversion upon Post-Closing Equity Financing.* Until and including the time at which the Company successfully completes a Qualified Equity Raise, if a Post-Closing Equity Financing occurs on or prior to the Scheduled Maturity Date, then the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK

Interest pursuant to the last sentence of Section 1(b) hereof) shall be, at the time such Post-Closing Equity Financing (including any Qualified Equity Raise), convertible in full or in part at the option of the Investor into fully paid and nonassessable shares issued in the Post-Closing Equity Financing, or shares ranked junior to such shares with the same rights and privileges (including with respect to economic and governance terms) as those issued in the Post-Closing Equity Financing, if required by the terms of such Post-Closing Equity Financing (the “**Conversion Shares**”) in a number equal to the quotient obtained by dividing (A) the product of 130%, of such portion of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof) as such Investor elects to convert by (B) the price per share of the Equity Securities issued in the Post-Closing Equity Financing (such quotient being the “**Conversion Ratio**”); provided, that (x) if such shares will be *pari passu* with such Equity Securities issued in the Post-Closing Equity Financing, upon the affirmative election of Majority in Interest of Lead Investors or (y) if such shares will be ranked junior to such Equity Securities issued in the Post-Closing Equity Financing, upon the affirmative election of three Lead Investors (which shall include Magnetar), the voluntary conversion rights in this **Section 4(a)** shall be deemed mandatory and the Investor shall be deemed to have elected to convert in full such Investor’s Note into Conversion Shares pursuant to the terms of the Note.

(b) *Voluntary Conversion upon Maturity.* If no Qualified Equity Raise occurs on or prior to the Maturity Date, then the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof) shall be convertible at the option of Investor into fully paid and nonassessable shares of the Company’s Series 1 Preferred Stock at a price per share equal [REDACTED] appropriate adjustment from time to time for any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event).

(c) *Redemption upon Maturity.* On the earlier of the Scheduled Maturity Date or a liquidation, winding up or dissolution of the Company, whether voluntary or involuntary, the Company shall redeem this Note in an amount equal to 140% of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof), provided such Investor has not exercised in full its conversion right in accordance with Sections 4(a) or 4(b).

(d) *Mandatory Redemption upon a Sale Liquidation Event.* The Company shall notify the holders of then outstanding Notes of the closing of a Sale Liquidation Event (as defined below) at least fifteen (15) days prior to the expected closing of such Sale Liquidation Event. Upon the closing of such Sale Liquidation Event, each Investor shall receive in respect, and full satisfaction, of such Investor’s Note an amount equal to 200% of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof).

(e) *Conversion Procedure.*

(1) *Conversion Pursuant to Section 4(a) and 4(b).* Before Investor shall be entitled to convert this Note into shares of the Company’s Equity Securities in accordance with **Section 4(a)** and **4(b)**, it shall surrender this Note (or a notice to the effect that the original Note has been lost, stolen or destroyed and an agreement acceptable to the Company

whereby the holder agrees to indemnify the Company from any loss incurred by it in connection with this Note) and give written notice to the Company at its principal corporate office of its election to convert the same pursuant to **Section 4(a)** and **Section 4(b)** and shall state therein the amount of the unpaid principal amount of this Note to be converted. Upon such conversion of this Note, Investor hereby agrees to execute and deliver to the Company all transaction documents entered into by other purchasers of the relevant securities (as may be amended), including any purchase agreement, investor rights agreement and other ancillary agreements, as applicable, with customary representations and warranties and transfer restrictions (including, without limitation, a 180-day lock-up agreement in connection with an initial public offering), provided that, if Investor is already a party to such agreement(s), Investor shall not, by virtue of this **Section 4** be required to sign up to such agreement(s) unless separately approved by the parties required to amend such agreements (which may, for the avoidance of doubt, include the Investor). The Company shall, as soon as practicable thereafter, issue and deliver to such Investor a certificate or certificates for the number of shares to which Investor shall be entitled upon such conversion (or notice of issuance if the shares are uncertificated), including a check payable to Investor for any cash amounts payable as described in **Section 4(e)(2)**. Any conversion of this Note pursuant to **Section 4(a)** and **4(b)** shall be deemed to have been made upon the satisfaction of all of the conditions set forth in this **Section 4(e)(i)**, and on and after such date the Persons entitled to receive the shares issuable upon such conversion shall be treated for all purposes as the record holder of such shares.

(2) Fractional Shares; Effect of Conversion. No fractional shares shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Investor upon the conversion of this Note, the Company shall pay to Investor an amount equal to the product obtained by multiplying the applicable price per share of the Conversion Shares issued in the Post-Closing Equity Financing or Qualified Equity Raise, as applicable, by the fraction of a share not issued pursuant to the previous sentence. Upon conversion of this Note in full and the payment of the amounts specified in this paragraph, Company shall be forever released from all its obligations and liabilities under this Note and this Note shall be deemed of no further force or effect, whether or not the original of this Note has been delivered to the Company for cancellation.

(f) *Notices of Record Date.* In the event of:

(1) Any taking by Company of a record of the holders of any class of securities of Company for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right; or

(2) Any capital reorganization of Company, any reclassification or recapitalization of the capital stock of Company or any transfer of all or substantially all of the assets of Company to any other Person or any consolidation or merger involving Company; or

(3) Any voluntary or involuntary dissolution, liquidation or winding-up of Company,

Company will mail to Investor at least ten (10) days prior to the earliest date specified therein, a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and the amount and character of such dividend, distribution or right; or (B) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding-up is expected to become effective and the record date for determining stockholders entitled to vote thereon.

5. **[Reserved]**

6. **Definitions.** As used in this Note, the following capitalized terms have the following meanings:

“**Activate**” means Activate Capital Partners II, LP and ACP II Executive, LP.

“**Agent Fee Letter**” means the Agent Fee Letter, dated as of July 17, 2023 executed by or on behalf of the Company in favor of Agent.

“**Amendment No. 4**” shall mean that certain Amendment No. 4 to Note Purchase Agreement, dated as of February 14, 2024, which amends the Note Purchase Agreement, dated as of June 13, 2023 (as amended, modified or supplemented), by and among the Company and the Investors (as defined in the Note Purchase Agreement) party thereto.

“**Backleverage Credit Agreement**” means that certain Credit Agreement, dated as of April 21, 2023, by and among the PosiGen Backleverage, LLC, a Delaware limited liability company, BID Administrator LLC, as administrative and collateral agent, and the lenders from time to time party thereto.

“**Builders**” means Builders PSGN LLC, Builders Fund II LP and Dolphin Builders LP.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

“**Capital Lease Obligations**” means the portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

“**Change of Control**” means:

- (i) a Sale Liquidation Event;
- (ii) any other liquidation, winding up or dissolution of the Company, whether voluntary or involuntary; or
- (iii) the occurrence of a “Change of Control” or similar term as defined in the definitive documentation for any Material Indebtedness.

“**Collateral**” shall mean all property and assets now owned or hereafter acquired, upon which a Lien is created or purported to be created by any Collateral Documents.

“Collateral Assignment of Contracts, Permits and Project Documents” means that certain Collateral Assignment of Contracts, Permits and Project Documents (as amended, modified or supplemented), made by the Guarantors party thereto, in form and substance satisfactory to the Agent and the Lead Investors.

“Collateral Documents” shall mean the Security Agreement, the Guaranty, the Control Agreements and the Collateral Assignment of Contracts, Permits and Project Documents, and any and all other agreements, instruments, consents or certificates now or hereafter executed and delivered by the Company or any other Person in connection with, or as security for the payment or performance of the Obligations or the Note Purchase Agreement, as such agreements may be amended, restated, supplemented or otherwise modified from time to time.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

“Control Agreement” means an agreement which establishes in Agent “control” (as used in Articles 8 and 9 of the UCC) of Collateral which is to be subject thereto and which is otherwise in form and substance satisfactory to the Agent and the Lead Investors.

“Defaulting Investor” means any Investor that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to fund any portion of its Commitment, unless such Investor notifies the Majority in Interest of Lead Investors in writing that such failure is the result of such Investor’s good faith determination that a condition precedent to funding (specifically identified and including the particular Event of Default, if any) has not been satisfied; (b) has notified the Company in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under the Note Purchase Agreement (unless such writing or public statement indicates that such position is based on such Investor’s good faith determination that a condition precedent to funding (specifically identified and including the particular Event of Default, if any, cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within three (3) Business Days after request by the Majority in Interest of Lead Investors or any other Investor, acting in good faith, to provide a certification in writing from an authorized officer of such Investor that it will comply with its obligations to fund under the Note Purchase Agreement, provided that such Investor shall cease to be a Defaulting Investor pursuant to this clause (c), upon the Majority in Interest of Lead Investors’, or such other Investor’s receipt of such certification in form and substance satisfactory to it; or (d) has become the subject of an action under the United States Bankruptcy Code or similar insolvency laws.

“Disposition” or **“Dispose”** means the sale, transfer, license, lease, exchange or other disposition (including any Sale and Leaseback Transaction and the sale or issuance of any Equity Securities by a Subsidiary of the Company) of any property by any Person, including any Disposition, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Stock” means any Equity Securities which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable for any consideration other than other Equity Securities (which would not constitute Disqualified Stock), pursuant to a sinking fund obligation or otherwise, or requires regular dividend payments in cash, or is redeemable for any consideration other than other Equity Securities (which would not constitute Disqualified Stock) at the sole option of the holder thereof, in whole or in part, in each case, on or prior to the date that is one hundred eighty one (181) days after the Scheduled Maturity Date.

“Escrow Agreement” means that certain Escrow Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Wilmington Trust, National Association, in its capacity as Escrow Agent.

“Equity Securities” shall mean the Company’s preferred stock or any securities conferring the right to purchase the Company’s preferred stock or securities convertible into, or exchangeable for (with or without additional consideration), the Company’s preferred stock, including convertible promissory notes and excluding any security granted, issued and/or sold by the Company to any director, officer, employee or consultant of the Company in such capacity for the primary purpose of soliciting or retaining their services.

“Event of Default” has the meaning given in **Section 2** hereof.

“Existing Notes” shall mean the notes issued pursuant to that certain Note Purchase Agreement, dated as of February 2, 2023, by and among the Company and the investors party thereto (as amended from time to time).

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time.

“Guarantee” of or by any Person (in this definition, the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guarantors” means, as of the Closing Date, PosiGen, LLC, a Louisiana limited liability company, PosiGen Developer, LLC, a Delaware limited liability company, and PosiGen Operations, LLC, a Delaware limited liability company.

“**Guaranty**” means that certain Guaranty Agreement (as amended, modified or supplemented), by and among the Company, the Guarantors and the Agent, in form and substance satisfactory to the Agent and the Lead Investors.

“**Hedging Obligations**” means obligations under (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement. Notwithstanding the foregoing, no convertible note or other equity-linked instrument shall be a hedging obligation.

“**Indebtedness**” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding those incurred in the ordinary course of business which are not greater than sixty (60) days past the due date or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed by such Person, but limited to the lesser of (i) the amount of such Indebtedness and (ii) the fair market value of the property securing such Indebtedness, (f) all Guarantees by such Person of Indebtedness of others to the extent of the lesser of the amount of such Indebtedness and the maximum stated amount of such Guarantee, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit, letters of guaranty or similar instruments, (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (j) all Hedging Obligations, (k) attributable Indebtedness in respect of Sale and Leaseback Transactions and (l) any Disqualified Stock. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. For the avoidance of doubt, for the purpose of this definition, any lease that would be treated as an operating lease under GAAP in effect prior to January 1, 2019 shall not constitute Indebtedness hereunder.

“Intercreditor Agreement” means that certain Intercreditor Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Mizzen, in form and substance satisfactory to the Agent and the Lead Investors.

“Investment” means, with respect to a Person, all direct or indirect investments by such Person in other Persons (including, without limitation, Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions, purchases or other acquisitions for consideration of Indebtedness, Equity Securities or other securities, the acquisition of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of a Person or any other transaction that would be classified as investments on a balance sheet prepared in accordance with GAAP. For purposes of covenant compliance, the amount of any Investment shall be the amount actually made (measured at the time made) by the Company and its Subsidiaries, without adjustment for subsequent increases or decreases in the value of such Investment and regardless of whether such Investment is made with cash, the issuance of any Equity Securities or the incurrence of any Indebtedness convertible into Equity Securities, any other consideration or any combination thereof.

“Investor” shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the registered holder of this Note.

“Investors” shall mean the investors that have been issued Notes.

“Irradiant” means IROP Loan Aggregator, LP.

[REDACTED]

“Lien” means any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of such property, whether such obligation or claim is fixed or contingent, and including but not limited to a lien or security interest arising from a mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, pledge, security agreement, conditional sale, charge or trust receipt or a lease, consignment or bailment for security purposes.

“Lien Subordination Agreement” means that certain Lien Subordination Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Connecticut Green Bank.

“Magnetar” shall mean MTP Energy Opportunities Fund III LLC or MTP Opportunities Fund IV LLC.

“Majority in Interest of Investors” shall mean Investors (in any case, including Magnetar, Irradiant and Activate) holding more than 50% of the aggregate Outstanding Principal Amount of the Notes; provided, that when a Defaulting Investor shall exist, Outstanding Principal Amount of the Notes as used herein shall mean the percentage of the Outstanding Principal Amount disregarding any Defaulting Investor’s Commitments.

“Majority in Interest of Lead Investors” shall mean Lead Investors (in any case, including Magnetar, Irradiant and Activate) holding more than 50% of the aggregate Outstanding Principal Amount of the Notes held by Lead Investors; provided, that when a Defaulting Investor shall exist, Outstanding Principal Amount of the Notes as used herein shall mean the percentage of the Outstanding Principal Amount disregarding any Defaulting Investor’s Commitments.

“Management Incentive Plan” means any management incentive plan approved by the Company’s Board of Directors and stockholders.

“Material Contract” means, individually or collectively as the context requires, any agreement or contract entered into by the Company or any Subsidiary which is entered into outside the ordinary course.

“Material Indebtedness” means Indebtedness (other than the Notes) of the Company or any of its Subsidiaries in an aggregate principal amount exceeding \$1,000,000, including, for the avoidance of doubt, Indebtedness incurred pursuant to the Backleverage Credit Agreement, the Mizzen Inc. Credit Agreement and the Mizzen WIP Credit Agreement.

“Mizzen” means Mizzen Capital, LP, a Delaware limited partnership.

“Mizzen Inc. Credit Agreement” means that certain Credit Agreement, dated as of April 29, 2022, by and among the Company, Mizzen, in its capacity as lead arranger, administrative and collateral agent and lender, and Stonehenge Community Impact Fund LP, a Delaware limited partnership, in its capacity as lender, as amended by that First Amendment to Credit Agreement, dated as of June 24, 2022, as further amended by that certain Second Amendment to Credit Agreement, dated as of July 14, 2022, as further amended by that certain Third Amendment to Credit Agreement, dated September 13, 2022, as further amended by that certain Fourth Amendment to Credit Agreement dated as of September 30, 2022, as further amended by that certain Omnibus Modification Agreement, dated as of June 13, 2023, as further amended by that certain Fifth Amendment to Credit Agreement dated as of July 21, 2023, and as further amended by that certain Sixth Amendment to Credit Agreement, dated on or around February 14, 2024.

“Mizzen WIP Credit Agreement” means that certain Credit Agreement, dated as of March 30, 2021, by and among PosiGen, LLC, a Louisiana limited liability company, Mizzen, in its capacity as lead arranger, administrative and collateral agent and lender, Stonehenge Community Impact Fund LP, a Delaware limited partnership, in its capacity as lender, Reinvestment Fund, Inc., a Pennsylvania not-for-profit corporation, in its capacity as lender, the Company, as guarantor, and the other guarantors party thereto, as amended by that certain Omnibus Modification Agreement, dated as of June 15, 2023 and as further amended by that certain Amendment to Credit Agreement, dated on or around February 14, 2024.

“Non-Defaulting Investor” shall mean any Investor, as determined by the Agent (acting at the direction of a Majority in Interest of Investors), that is not a Defaulting Investor.

“Notes” shall mean the secured convertible promissory notes issued pursuant to the Note Purchase Agreement.

“**Note Documents**” shall mean the Note Purchase Agreement, the Notes, the Agent Fee Letter, the Guaranty, the Security Agreement, the Control Agreements, the Collateral Assignment of Contracts, Permits and Project Documents, the Intercreditor Agreement, the Lien Subordination Agreement, and the Escrow Agreement, and each other document and agreement evidencing or securing the Indebtedness, as the same may from time to time be amended, supplemented, restated or otherwise modified.

“**Note Purchase Agreement**” shall mean the Note Purchase Agreement, dated as of June 13, 2023 (as amended, modified or supplemented), by and among the Company and the Investors (as defined in the Note Purchase Agreement) party thereto.

“**Obligations**” shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Company to Investor of every kind and description, now existing or hereafter arising under or pursuant to the terms of this Note and the other Note Documents, including, all interest, fees, charges, expenses, attorneys’ fees and costs and accountants’ fees and costs chargeable to and payable by the Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 *et seq.*), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

“**Organizational Documents**” means (a) with respect to any corporation, its certificate or articles of incorporation, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership or formation, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, (d) with respect to any limited liability company, its certificate of formation or articles of organization, as amended, and its limited liability company agreement or operating agreement, as amended, and (e) any voting agreements, investors’ rights agreements, right of first refusal and co-sale agreements, and similar governance or organizational documents, in each case, as amended.

“**Permitted Divestments**” means a Disposition of any asset that is a:

- (i) disposition of obsolete, unmerchantable or otherwise unsalable inventory, including the return of damaged or defective equipment to the supplier or vendor thereof;
- (ii) sale of inventory in the ordinary course of business consistent with past practice;
- (iii) termination of a lease of real or personal property in the ordinary course of business;
- (iv) disposition of any project (a) in the ordinary course of business and consistent with past practice in one or a series of related transactions, provided that the disposition of any group of projects pursuant to this clause (a) in one or a series of related transactions or the aggregate value of all

dispositions of projects in any 12 month period, in each case, does not exceed \$2,000,000, (b) pursuant to a bona fide sale of such project to a customer or (c) pursuant to a bona fide sale or transfer to one of the Company's or its Subsidiaries' financing vehicle and/or tax equity partnership, solely to the extent such financing vehicle and/or tax equity partnership is existing as of the date hereof;

- (v) a consignment or bailment; and
- (vi) disposition of any immaterial asset.

“Permitted Indebtedness” means any of the following:

- (i) Indebtedness with respect to cash management services, commercial credit cards, and other banking products and services;
- (ii) guarantees entered into in the ordinary course of business consistent with past practice in support of obligations of any subsidiary;
- (iii) delayed drawing of funds from debt facilities previously approved by the Company's Board of Directors, not exceeding the total pre-approved amount of the facility;
- (iv) customary indemnification obligations granted in the ordinary course of business consistent with past practice;
- (v) trade payables for the purchase of goods and services in the ordinary course of business consistent with past practice;
- (vi) expense reimbursement obligations in the ordinary course of business consistent with past practice and consistent with the expense reimbursement policy of the Company, in each case, as of the Closing Date or any future policy approved in advance by the Majority in Interest of Investors;
- (vii) Capital Lease Obligations or purchase money obligations with respect to equipment and vehicles;
- (viii) any Indebtedness pursuant to insurance contracts; and
- (ix) any amendments to the forms or terms of any existing Indebtedness of any subsidiary of the Company (other than PosiGen Developer, LLC) that would not have an adverse economic effect on the Company.

“Permitted Investments” means any Investments in:

- (i) wholly-owned Subsidiaries formed after the Closing Date;

- (ii) tax equity, cash equity, and other partnerships and joint ventures formed after the Closing Date, provided that such partnership or joint venture was approved by the Majority in Interest of Investors;
- (iii) deposit and securities accounts of the company, any wholly owned subsidiary, or any partnership or joint venture in existence on the Closing Date or approved by the Majority in Interest of Investors; and
- (iv) Investments consisting of loans to employees, officers, or directors relating to the purchase of equity securities of the Company or its Subsidiaries pursuant to the Management Incentive Plan or other agreements approved by Company's Board of Directors, provided that the aggregate principal amount of all such loans made in cash and outstanding may not exceed \$4,000,000 at any time.

"Permitted Liens" means any of the following:

- (i) Liens supporting any Permitted Indebtedness;
- (ii) Liens for taxes not yet due and delinquent or contested in good faith by appropriate proceedings and, in each case, for which sufficient reserves have been established in accordance with GAAP;
- (iii) statutory or common law Liens (including landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like liens) incurred in the ordinary course of business for amounts that are not yet due and payable or are being contested in good faith by appropriate proceedings and for which sufficient reserves have been established in accordance with GAAP;
- (iv) Liens incurred or deposits made to secure the performance of government tenders, bids, contracts, leases, statutory obligations and other similar obligations in the ordinary course of business consistent with past practice;
- (v) easements, rights-of-way, restrictions, covenants or other agreements of record, and other similar charges or encumbrances on real property; and
- (vi) customary rights of setoff and Liens securing fees and similar amounts upon deposits or securities accounts in favor of depository institutions or securities intermediaries.

"Person" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

"Post-Closing Equity Financing" shall mean a transaction or series of transactions pursuant to which the Company issues and sells shares of its Equity Securities (excluding all proceeds from the incurrence of indebtedness that is converted into such Equity Securities).

including, for the avoidance of doubt, the Qualified Equity Raise (provided, that following such Qualified Equity Raise, any further transaction or series of transactions pursuant to which the Company issues or sells shares of its Equity Securities shall no longer be deemed a “Post-Closing Equity Financing”).

“Preferred Stock” shall mean the Series E-1 Preferred Stock, the Series E-2 Preferred Stock, the Series D-1 Preferred Stock, the Series D-3A Preferred Stock and the Series D-3B Preferred Stock.

“Qualified Equity Raise” shall mean a transaction or series of transactions pursuant to which the Company issues and sells shares of its Equity Securities (excluding all proceeds from the incurrence of indebtedness that is converted into such Equity Securities) with net cash proceeds of such issuance in an amount not less than \$50,000,000 in the aggregate (excluding amounts funded pursuant to the conversion of the Notes and the Existing Notes).

“Recapitalization” shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification, or other similar event.

“Restricted Payment” means:

- (i) any dividend or other distribution or other payment (whether in cash, securities or other property) with respect to any Equity Securities in the Company or any Subsidiary, to any Person (in each case, solely in such Person’s capacity as holder of such Equity Securities or, in the case of any payment, to the direct or indirect holders of the Company’s or any of its Subsidiaries’ Equity Securities), including any dividend or distribution payable or payment made in connection with any Recapitalization or any merger, amalgamation or consolidation;
- (ii) any purchase, redemption, defeasance or other acquisition or retirement for value of any Equity Securities of the Company (including in connection with any Recapitalization or any merger, amalgamation or consolidation); and
- (iii) any principal payment on, or redemption, purchase, repurchase, defeasance or other acquisition or retirement for value, in each case, prior to any scheduled repayment, sinking fund payment or scheduled maturity, of any Indebtedness secured by Liens junior in priority to the Liens securing the Obligations hereunder or unsecured Indebtedness, of the Company or any Subsidiary, except (1) regularly scheduled interest and principal payments and (2) a payment of interest or principal at the stated maturity date thereof.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Sale and Leaseback Transaction” means any sale or other transfer of any property by any Person with the intent to lease such property as lessee.

“Sale Liquidation Event” means:

- (i) the acquisition of the Company by another entity by means of any transaction or series of related transactions to which the Company is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction retain, immediately after such transaction or series of transactions, as a result of shares in the Company held by such holders prior to such transaction, a majority of the total voting power represented by the outstanding voting securities of the Company;
- (ii) a Disposition of all or substantially all of the assets of the Company taken as a whole by means of any transaction or series of related transactions, except where such Disposition is to a wholly-owned subsidiary of the Company or otherwise in the ordinary course of business of the Company in connection with project financing transactions customary in the Company's industry that are approved by the Majority in Interest of Investors;
- (iii) an exclusive, irrevocable license of all or substantially all of the intellectual property of the Company to a third party taken as a whole by means of any transaction or series of related transactions, except where such exclusive, irrevocable license is to a wholly-owned subsidiary of the Company;

“Security Agreement” means that certain Security Agreement (as amended, modified or supplemented), by and among the Company, the Guarantors and the Agent, in form and substance satisfactory to the Agent and the Lead Investors.

“Subsidiary” means, with respect to any Person (the “parent”) at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which Equity Securities representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless the context otherwise clearly requires, references herein to a “Subsidiary” refer to a Subsidiary of the Company.

7. Miscellaneous.

(a) Successors and Assigns; Transfer of this Note or Securities Issuable on Conversion Hereof; No Transfers to Bad Actors; Notice of Bad Actor Status.

(i) Subject to the restrictions on transfer described in this Section 7(a), the rights and obligations of the Company and Investor shall be binding upon and inure to the benefit of the successors, assigns, heirs, administrators and transferees of the parties.

(ii) With respect to any offer, sale or other disposition of this Note or securities into which such Note may be converted, Investor will give written notice to the Company

prior thereto, describing briefly the manner thereof, together with a written opinion of Investor's counsel, or other evidence if reasonably satisfactory to the Company, to the effect that such offer, sale or other distribution may be effected without registration or qualification (under any federal or state law then in effect). Upon receiving such written notice and reasonably satisfactory opinion, if so requested, or other evidence, the Company, as promptly as practicable, shall notify Investor that Investor may sell or otherwise dispose of this Note or such securities, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this **Section 7(a)** that the opinion of counsel for Investor, or other evidence, is not reasonably satisfactory to the Company, the Company shall so notify Investor promptly after such determination has been made. Each Note thus transferred and each certificate, instrument or book entry representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Securities Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the Securities Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions. Subject to the foregoing, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company as provided in the Note Purchase Agreement. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal and interest hereon and for all other purposes whatsoever, whether or not this Note shall be overdue and the Company shall not be affected by notice to the contrary.

(iii) Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior written consent of a Majority in Interest of Investors.

(iv) Investor agrees not to sell, assign, transfer, pledge or otherwise dispose of any securities of the Company, or any beneficial interest therein, to any person (other than the Company) unless and until the proposed transferee confirms to the reasonable satisfaction of the Company that neither the proposed transferee nor any of its directors, executive officers, other officers that may serve as a director or officer of any company in which it invests, general partners or managing members nor any person that would be deemed a beneficial owner of those securities (in accordance with Rule 506(d) of the Securities Act) is subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act, except as set forth in Rule 506(d)(2)(ii) or (iii) or (d)(3) under the Securities Act and disclosed, reasonably in advance of the transfer, in writing in reasonable detail to the Company. Investor will promptly notify the Company in writing if Investor or, to Investor's knowledge, any person specified in Rule 506(d)(1) under the Securities Act becomes subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act.

(b) *Waiver and Amendment.* Any provision of this Note may be amended, waived or modified upon the written consent of the Company, the Agent and a Majority in Interest of Investors; provided, however, that no such amendment, waiver or consent shall, without Investor's written consent, (i) reduce the principal amount of, or interest rate on, this Note, (ii) extend the Scheduled Maturity Date by more than 180 days, (iii) directly or indirectly modify the definitions of the Conversion Ratio, Equity Securities, or Outstanding Common Shares, or (iv) directly or

indirectly modify the redemption calculations or Investors' redemption rights pursuant to **Sections 4(c)** and **4(d)**. Investor acknowledges that by the operation of this paragraph, the Majority in Interest of Investors will have the right and power to diminish or eliminate all rights of such Investor under this Note, except as otherwise provided in this **Section 7(b)**; provided, further, if any amendment, waiver or other modification to this Note operates in an adverse manner that treats any Investor different from other Investors, solely to the extent such amendment, waiver or modification relates to this Note as held by such Investor so adversely treated, the consent of such Investor so adversely treated shall be required for such amendment, waiver or modification.

(c) *Notices.* All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and faxed, mailed or delivered to each party at the respective addresses of the parties as set forth in the Note Purchase Agreement, or at such other address or facsimile number as the Company shall have furnished to Investor in writing. All such notices and communications will be deemed effectively given the earlier of (i) when received, (ii) when delivered personally, (iii) one Business Day after being delivered by facsimile (with receipt of appropriate confirmation), (iv) one Business Day after being deposited with an overnight courier service of recognized standing or (v) four days after being deposited in the U.S. mail, first class with postage prepaid.

(d) *Seniority of Notes.* The Investor hereby acknowledges and agrees that the payment of all or any portion of the Outstanding Principal Amount of this 2024 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof) shall be applied (i) *first*, pro rata in favor of the 2024 Notes and Unsubordinated 2023 Notes (as defined below) and any other obligations that secure all or any portion of the 2024 Notes and the Unsubordinated 2023 Notes, which shall be senior in right of payment and in all other respects to the 2023 Notes (other than the Unsubordinated 2023 Notes) and any other Notes issued pursuant to the Note Purchase Agreement (other than the 2024 Notes and the Unsubordinated 2023 Notes) or obligations that secure all or any portion of the 2023 Notes (other than the Unsubordinated 2023 Notes) or any other Notes (other than the 2024 Notes and the Unsubordinated 2023 Notes) and (ii) *second*, pro rata in favor of the 2023 Notes (other than the Unsubordinated 2023 Notes) and any other Notes (other than the 2024 Notes and Unsubordinated 2023 Notes) and any other obligations that secure all or any portion of the 2023 Notes (other than the Unsubordinated 2023 Notes) or any other Notes (other than the 2024 Notes and Unsubordinated 2023 Notes); *provided*, that the payment of all or any portion of the Outstanding Principal Amount of this 2024 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of Section 1(b) hereof) hereon shall be *pari passu* in right of payment and in all other respects to the other 2024 Notes; *provided, further*, the payment of all or any portion of the Outstanding Principal Amount of this 2024 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of Section 1(b) hereof) hereon shall be *pari passu* in right of payment and in all other respects to the other 2024 Notes and any 2023 Notes (the “*Unsubordinated 2023 Notes*”) held by Investors who have not signed

Amendment No. 4 or otherwise consented thereto (such consent, on a form as reasonably agreed to by the Majority in Interest of Lead Investors); *provided, further*, that upon the Investor holding such Unsubordinated 2023 Notes signing Amendment No. 4 or otherwise consenting thereto, such Unsubordinated 2023 Notes shall cease to be “Unsubordinated 2023 Notes”. In the event Investor receives payments in excess of its pro rata share of the Company’s payments to the Investors of all of the Notes, then Investor shall hold in trust all such excess payments for the benefit of the holders of the other Notes and shall pay such amounts held in trust to such other holders upon demand by such holders.

- (e) *Payment.* Unless converted into the Company’s equity securities pursuant to the terms hereof, payment shall be made in lawful tender of the United States.
- (f) *Usury.* In the event any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note, and the Company hereby waives any claims thereto to the fullest extent under applicable law.
- (g) *Waivers.* The Company hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.
- (h) *Governing Law.* This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law provisions of the State of Delaware, or of any other state.
- (i) *Waiver of Jury Trial; Judicial Reference.* By acceptance of this Note, Investor hereby agrees and the Company hereby agrees to waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of this Note or any of the Note Documents.
- (j) *Counterparts.* This Note may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Note.
- (k) *Attorneys’ Fees.* The Company shall be liable for, and hereby agrees to pay, all reasonable attorneys’ fees incurred in connection with this Note and the Note Purchase Agreement, to protect the Agent’s and Investor’s rights under this Note, to enforce this Note, to collect amounts due under this Note, and to take any other action relating to this Note, as set forth in the Note Purchase Agreement.
- (l) *Tax Withholding.* Notwithstanding any other provision to the contrary, the Company shall be entitled to deduct and withhold from any amounts payable or otherwise deliverable with respect to this Note such amounts as may be required to

be deducted or withheld therefrom under any provision of applicable law, and to be provided any necessary tax forms and information, including Internal Revenue Service Form W-9 or appropriate version of IRS Form W-8, as applicable, from each beneficial owner of the Note. To the extent such amounts are so deducted or withheld and paid over to the appropriate taxing authority, such amounts shall be treated for all purposes as having been paid to the person to whom such amounts otherwise would have been paid.

(Signature Page Follows)

This Note may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties have executed this Note as of the date first written above.

POSIGEN, PBC

a Delaware public benefit corporation

Peter Shaper
Chief Executive Officer and President

EXHIBIT E

FORM OF CLASS TWO NOTE

EXHIBIT E

CLASS TWO FORM OF NOTE

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THIS NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT. THE COMPANY AGREES TO PROVIDE TO THE HOLDER OF THIS NOTE, UPON WRITTEN REQUEST, THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE AND YIELD TO MATURITY. ANY SUCH WRITTEN REQUEST SHOULD BE MADE PURSUANT TO SECTION 7(c) OF THIS NOTE AND SECTION 9(h) OF THE NOTE PURCHASE AGREEMENT.

POSIGEN, PBC

FORM OF SECURED CONVERTIBLE PROMISSORY NOTE

[\$\$\$]

[], 2024

FOR VALUE RECEIVED, PosiGen, PBC, a Delaware public benefit corporation (the “Company”) unconditionally promises to pay to the order of [INVESTOR] or its registered assigns (“Investor”), in lawful money of the United States of America the principal sum of [] AND NO/100 ([\$\$\$]) DOLLARS (the “Original Principal Amount”) as such amount may be increased pursuant to the payment of PIK Interest according to **Section 1** hereto or reduced pursuant to any conversion, redemption, or repayment effected in accordance with the terms hereof (the “Outstanding Principal Amount”), together with interest thereon from the date of this Secured Convertible Promissory Note (this “Note”) on the unpaid Outstanding Principal Amount at the rates specified in **Section 1** hereof. The Outstanding Principal Amount, together with any then unpaid and accrued interest and other amounts payable hereunder, to the extent not earlier converted, exchanged or repaid, shall be due and payable in full on the earlier of (i) June 13, 2025 (the “Scheduled Maturity Date”), or (ii) when, upon the occurrence and during the continuance of an Event of Default, such amounts are declared due and payable by Investor or made automatically due and payable, in each case, in accordance with the terms hereof (the “Accelerated Maturity Date”). This Note is one of the “Notes” issued pursuant to the Note Purchase Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Note Purchase Agreement.

The following is a statement of the rights of Investor and the conditions to which this Note is subject, and to which Investor, by the acceptance of this Note, agrees:

1. **Payment Interest.** This Note shall bear interest as follows:

(a) [Reserved]

(b) Interest payable in kind ("**PIK Interest**") shall accrue on the Outstanding Principal Amount of this Note at a rate per [REDACTED] shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing on March 31, 2024, by adding such accrued PIK Interest to the Outstanding Principal Amount. By notice to the Investor at least one Business Day prior to the applicable interest payment date, the Company may elect to pay the applicable accrued PIK Interest, in whole or in part, in cash on any such interest payment date. The portion of such required PIK Interest paid in cash shall not, for the avoidance of doubt, be added to the Outstanding Principal Amount. In addition to the foregoing, accrued and unpaid interest shall be added to the Outstanding Principal Amount as PIK Interest in connection with, and on the date of, (i) a conversion of this Note pursuant to **Section 4(a)** or **4(b)** or (ii) a redemption of this Note pursuant to **Section 4(c)** or **4(d)**.

(c) Interest shall be computed on the basis of a 365-day year and the actual number of days elapsed in such period. If any interest payment would be payable on a day that is not a Business Day, such interest payment will be postponed to the immediately succeeding day that is a Business Day.

2. **Events of Default.** The occurrence of any of the following shall constitute an "**Event of Default**" under this Note and the other Note Documents:

(a) **Failure to Pay.** The Company shall fail to pay (i) when due any principal payment on the due date hereunder or (ii) any other payment required under the terms of this Note or any other Note Document on the date due and such payment shall not have been made within five (5) days of the Company's failure to pay; or

(b) **Breaches of Covenants.** The Company shall fail to observe or perform any other covenant, obligation, condition or agreement contained in this Note or the other Note Documents (other than those specified in **Section 2(a)**) and such failure shall continue for ten (10) days after such failure; or

(c) **Representations and Warranties.** Any representation, warranty, certificate, or other statement (financial or otherwise) made or furnished by or on behalf of the Company to Investor in writing in connection with this Note or any of the other Note Documents, or as an inducement to Investor to enter into this Note and the other Note Documents, shall be false, incorrect, incomplete or misleading when made or furnished; or

(d) **Voluntary Bankruptcy or Insolvency Proceedings.** The Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of its or any of its creditors, (iii) be dissolved or liquidated, (iv) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts

under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (v) take any action for the purpose of effecting any of the foregoing;

(e) *Involuntary Bankruptcy or Insolvency Proceedings.* Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company, or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or any of its subsidiaries, if any, or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within 45 days of commencement;

(f) *Change of Control.* A Change of Control shall occur; or

(g) *Material Indebtedness.* The Company or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness when and as the same shall become due and payable and such failure shall continue beyond any applicable grace period or any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity.

3. **Rights of Investor upon Default.** Upon the occurrence of any Event of Default (other than an Event of Default described in **Sections 2(d)** or **2(e)**) and at any time thereafter during the continuance of such Event of Default, Investor may, by written notice to the Company, declare all outstanding Obligations payable by the Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Note Documents to the contrary notwithstanding. Upon the occurrence of any Event of Default described in **Sections 2(d)** and **2(e)**, immediately and without notice, all outstanding Obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Note Documents to the contrary notwithstanding. Upon the occurrence of an Event of Default, the PIK Interest due under this Note shall be increased to 18%. In addition to the foregoing remedies, upon the occurrence and during the continuance of any Event of Default, Investor may exercise any other right, power or remedy granted to it by the Note Documents or otherwise permitted to it by law, either by suit in equity or by action at law, or both.

4. **Conversion and Redemption.**

(a) *Voluntary Conversion upon Post-Closing Equity Financing.* Until and including the time at which the Company successfully completes a Qualified Equity Raise, if a Post-Closing Equity Financing occurs on or prior to the Scheduled Maturity Date, then the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK

Interest pursuant to the last sentence of Section 1(b) hereof) shall be, at the time such Post-Closing Equity Financing (including any Qualified Equity Raise), convertible in full or in part at the option of the Investor into fully paid and nonassessable shares issued in the Post-Closing Equity Financing, or shares ranked junior to such shares with the same rights and privileges (including with respect to economic and governance terms) as those issued in the Post-Closing Equity Financing, if required by the terms of such Post-Closing Equity Financing (the “**Conversion Shares**”) in a number equal to the quotient obtained by dividing [REDACTED]

[REDACTED] (x) if such shares will be *pari passu* with such Equity Securities issued in the Post-Closing Equity Financing, upon the affirmative election of Majority in Interest of Lead Investors or (y) if such shares will be ranked junior to such Equity Securities issued in the Post-Closing Equity Financing, upon the affirmative election of three Lead Investors (which shall include Magnetar), the voluntary conversion rights in this **Section 4(a)** shall be deemed mandatory and the Investor shall be deemed to have elected to convert in full such Investor’s Note into Conversion Shares pursuant to the terms of the Note.

(b) *Voluntary Conversion upon Maturity.* If no Qualified Equity Raise occurs on or prior to the Maturity Date, then the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof) shall be convertible at the option of Investor into fully [REDACTED] (subject to appropriate adjustment from time to time for any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event).

(c) *Redemption upon Maturity.* On the earlier of the Scheduled Maturity Date or a liquidation, winding up or dissolution of the Company, whether voluntary or involuntary, the Company shall redeem this Note in an amount equal to 130% of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof), provided such Investor has not exercised in full its conversion right in accordance with Sections 4(a) or 4(b).

(d) *Mandatory Redemption upon a Sale Liquidation Event.* The Company shall notify the holders of then outstanding Notes of the closing of a Sale Liquidation Event (as defined below) at least fifteen (15) days prior to the expected closing of such Sale Liquidation Event. Upon the closing of such Sale Liquidation Event, each Investor shall receive in respect, and full satisfaction, of such Investor’s Note an amount equal to 175% of the Outstanding Principal Amount of this Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof).

(e) *Conversion Procedure.*

(1) Conversion Pursuant to Section 4(a) and 4(b). Before Investor shall be entitled to convert this Note into shares of the Company’s Equity Securities in accordance with **Section 4(a)** and **4(b)**, it shall surrender this Note (or a notice to the effect that the original Note has been lost, stolen or destroyed and an agreement acceptable to the Company

whereby the holder agrees to indemnify the Company from any loss incurred by it in connection with this Note) and give written notice to the Company at its principal corporate office of its election to convert the same pursuant to **Section 4(a)** and **Section 4(b)** and shall state therein the amount of the unpaid principal amount of this Note to be converted. Upon such conversion of this Note, Investor hereby agrees to execute and deliver to the Company all transaction documents entered into by other purchasers of the relevant securities (as may be amended), including any purchase agreement, investor rights agreement and other ancillary agreements, as applicable, with customary representations and warranties and transfer restrictions (including, without limitation, a 180-day lock-up agreement in connection with an initial public offering), provided that, if Investor is already a party to such agreement(s), Investor shall not, by virtue of this **Section 4** be required to sign up to such agreement(s) unless separately approved by the parties required to amend such agreements (which may, for the avoidance of doubt, include the Investor). The Company shall, as soon as practicable thereafter, issue and deliver to such Investor a certificate or certificates for the number of shares to which Investor shall be entitled upon such conversion (or notice of issuance if the shares are uncertificated), including a check payable to Investor for any cash amounts payable as described in **Section 4(e)(2)**. Any conversion of this Note pursuant to **Section 4(a)** and **4(b)** shall be deemed to have been made upon the satisfaction of all of the conditions set forth in this **Section 4(e)(i)**, and on and after such date the Persons entitled to receive the shares issuable upon such conversion shall be treated for all purposes as the record holder of such shares.

(2) Fractional Shares; Effect of Conversion. No fractional shares shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Investor upon the conversion of this Note, the Company shall pay to Investor an amount equal to the product obtained by multiplying the applicable price per share of the Conversion Shares issued in the Post-Closing Equity Financing or Qualified Equity Raise, as applicable, by the fraction of a share not issued pursuant to the previous sentence. Upon conversion of this Note in full and the payment of the amounts specified in this paragraph, Company shall be forever released from all its obligations and liabilities under this Note and this Note shall be deemed of no further force or effect, whether or not the original of this Note has been delivered to the Company for cancellation.

(f) *Notices of Record Date.* In the event of:

(1) Any taking by Company of a record of the holders of any class of securities of Company for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right; or

(2) Any capital reorganization of Company, any reclassification or recapitalization of the capital stock of Company or any transfer of all or substantially all of the assets of Company to any other Person or any consolidation or merger involving Company; or

(3) Any voluntary or involuntary dissolution, liquidation or winding-up of Company,

Company will mail to Investor at least ten (10) days prior to the earliest date specified therein, a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and the amount and character of such dividend, distribution or right; or (B) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding-up is expected to become effective and the record date for determining stockholders entitled to vote thereon.

5. **[Reserved]**.

6. **Definitions.** As used in this Note, the following capitalized terms have the following meanings:

“**Activate**” means Activate Capital Partners II, LP and ACP II Executive, LP.

“**Agent Fee Letter**” means the Agent Fee Letter, dated as of July 17, 2023 executed by or on behalf of the Company in favor of Agent.

“**Amendment No. 4**” shall mean that certain Amendment No. 4 to Note Purchase Agreement, dated as of February 14, 2024, which amends the Note Purchase Agreement, dated as of June 13, 2023 (as amended, modified or supplemented), by and among the Company and the Investors (as defined in the Note Purchase Agreement) party thereto.

“**Backleverage Credit Agreement**” means that certain Credit Agreement, dated as of April 21, 2023, by and among the PosiGen Backleverage, LLC, a Delaware limited liability company, BID Administrator LLC, as administrative and collateral agent, and the lenders from time to time party thereto.

“**Builders**” means Builders PSGN LLC, Builders Fund II LP and Dolphin Builders LP.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

“**Capital Lease Obligations**” means the portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

“**Change of Control**” means:

- (i) a Sale Liquidation Event;
- (ii) any other liquidation, winding up or dissolution of the Company, whether voluntary or involuntary; or
- (iii) the occurrence of a “Change of Control” or similar term as defined in the definitive documentation for any Material Indebtedness.

“**Collateral**” shall mean all property and assets now owned or hereafter acquired, upon which a Lien is created or purported to be created by any Collateral Documents.

“Collateral Assignment of Contracts, Permits and Project Documents” means that certain Collateral Assignment of Contracts, Permits and Project Documents (as amended, modified or supplemented), made by the Guarantors party thereto, in form and substance satisfactory to the Agent and the Lead Investors.

“Collateral Documents” shall mean the Security Agreement, the Guaranty, the Control Agreements and the Collateral Assignment of Contracts, Permits and Project Documents, and any and all other agreements, instruments, consents or certificates now or hereafter executed and delivered by the Company or any other Person in connection with, or as security for the payment or performance of the Obligations or the Note Purchase Agreement, as such agreements may be amended, restated, supplemented or otherwise modified from time to time.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

“Control Agreement” means an agreement which establishes in Agent “control” (as used in Articles 8 and 9 of the UCC) of Collateral which is to be subject thereto and which is otherwise in form and substance satisfactory to the Agent and the Lead Investors.

“Defaulting Investor” means any Investor that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to fund any portion of its Commitment, unless such Investor notifies the Majority in Interest of Lead Investors in writing that such failure is the result of such Investor’s good faith determination that a condition precedent to funding (specifically identified and including the particular Event of Default, if any) has not been satisfied; (b) has notified the Company in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under the Note Purchase Agreement (unless such writing or public statement indicates that such position is based on such Investor’s good faith determination that a condition precedent to funding (specifically identified and including the particular Event of Default, if any, cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within three (3) Business Days after request by the Majority in Interest of Lead Investors or any other Investor, acting in good faith, to provide a certification in writing from an authorized officer of such Investor that it will comply with its obligations to fund under the Note Purchase Agreement, provided that such Investor shall cease to be a Defaulting Investor pursuant to this clause (c), upon the Majority in Interest of Lead Investors’, or such other Investor’s receipt of such certification in form and substance satisfactory to it; or (d) has become the subject of an action under the United States Bankruptcy Code or similar insolvency laws.

“Disposition” or **“Dispose”** means the sale, transfer, license, lease, exchange or other disposition (including any Sale and Leaseback Transaction and the sale or issuance of any Equity Securities by a Subsidiary of the Company) of any property by any Person, including any Disposition, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Stock” means any Equity Securities which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable for any consideration other than other Equity Securities (which would not constitute Disqualified Stock), pursuant to a sinking fund obligation or otherwise, or requires regular dividend payments in cash, or is redeemable for any consideration other than other Equity Securities (which would not constitute Disqualified Stock) at the sole option of the holder thereof, in whole or in part, in each case, on or prior to the date that is one hundred eighty one (181) days after the Scheduled Maturity Date.

“Escrow Agreement” means that certain Escrow Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Wilmington Trust, National Association, in its capacity as Escrow Agent.

“Equity Securities” shall mean the Company’s preferred stock or any securities conferring the right to purchase the Company’s preferred stock or securities convertible into, or exchangeable for (with or without additional consideration), the Company’s preferred stock, including convertible promissory notes and excluding any security granted, issued and/or sold by the Company to any director, officer, employee or consultant of the Company in such capacity for the primary purpose of soliciting or retaining their services.

“Event of Default” has the meaning given in **Section 2** hereof.

“Existing Notes” shall mean the notes issued pursuant to that certain Note Purchase Agreement, dated as of February 2, 2023, by and among the Company and the investors party thereto (as amended from time to time).

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time.

“Guarantee” of or by any Person (in this definition, the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guarantors” means, as of the Closing Date, PosiGen, LLC, a Louisiana limited liability company, PosiGen Developer, LLC, a Delaware limited liability company, and PosiGen Operations, LLC, a Delaware limited liability company.

“**Guaranty**” means that certain Guaranty Agreement (as amended, modified or supplemented), by and among the Company, the Guarantors and the Agent, in form and substance satisfactory to the Agent and the Lead Investors.

“**Hedging Obligations**” means obligations under (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement. Notwithstanding the foregoing, no convertible note or other equity-linked instrument shall be a hedging obligation.

“**Indebtedness**” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding those incurred in the ordinary course of business which are not greater than sixty (60) days past the due date or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed by such Person, but limited to the lesser of (i) the amount of such Indebtedness and (ii) the fair market value of the property securing such Indebtedness, (f) all Guarantees by such Person of Indebtedness of others to the extent of the lesser of the amount of such Indebtedness and the maximum stated amount of such Guarantee, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit, letters of guaranty or similar instruments, (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (j) all Hedging Obligations, (k) attributable Indebtedness in respect of Sale and Leaseback Transactions and (l) any Disqualified Stock. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. For the avoidance of doubt, for the purpose of this definition, any lease that would be treated as an operating lease under GAAP in effect prior to January 1, 2019 shall not constitute Indebtedness hereunder.

“Intercreditor Agreement” means that certain Intercreditor Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Mizzen, in form and substance satisfactory to the Agent and the Lead Investors.

“Investment” means, with respect to a Person, all direct or indirect investments by such Person in other Persons (including, without limitation, Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions, purchases or other acquisitions for consideration of Indebtedness, Equity Securities or other securities, the acquisition of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of a Person or any other transaction that would be classified as investments on a balance sheet prepared in accordance with GAAP. For purposes of covenant compliance, the amount of any Investment shall be the amount actually made (measured at the time made) by the Company and its Subsidiaries, without adjustment for subsequent increases or decreases in the value of such Investment and regardless of whether such Investment is made with cash, the issuance of any Equity Securities or the incurrence of any Indebtedness convertible into Equity Securities, any other consideration or any combination thereof.

“Investor” shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the registered holder of this Note.

“Investors” shall mean the investors that have been issued Notes.

“Irradiant” means IROP Loan Aggregator, LP.

“Lead Investors” means Magnetar, Irradiant, Activate, 2040 Fund, and Builders entities; provided, that when a Defaulting Investor shall exist, Lead Investors as used herein shall not include any Defaulting Investor.

“Lien” means any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of such property, whether such obligation or claim is fixed or contingent, and including but not limited to a lien or security interest arising from a mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, pledge, security agreement, conditional sale, charge or trust receipt or a lease, consignment or bailment for security purposes.

“Lien Subordination Agreement” means that certain Lien Subordination Agreement (as amended, modified or supplemented), by and among the Company, the Agent and Connecticut Green Bank.

“Magnetar” shall mean MTP Energy Opportunities Fund III LLC or MTP Opportunities Fund IV LLC.

“Majority in Interest of Investors” shall mean Investors (in any case, including Magnetar, Irradiant and Activate) holding more than 50% of the aggregate Outstanding Principal Amount of the Notes; provided, that when a Defaulting Investor shall exist, Outstanding Principal Amount of the Notes as used herein shall mean the percentage of the Outstanding Principal Amount disregarding any Defaulting Investor’s Commitments.

“Majority in Interest of Lead Investors” shall mean Lead Investors (in any case, including Magnetar, Irradiant and Activate) holding more than 50% of the aggregate Outstanding Principal Amount of the Notes held by Lead Investors; provided, that when a Defaulting Investor shall exist, Outstanding Principal Amount of the Notes as used herein shall mean the percentage of the Outstanding Principal Amount disregarding any Defaulting Investor’s Commitments.

“Management Incentive Plan” means any management incentive plan approved by the Company’s Board of Directors and stockholders.

“Material Contract” means, individually or collectively as the context requires, any agreement or contract entered into by the Company or any Subsidiary which is entered into outside the ordinary course.

“Material Indebtedness” means Indebtedness (other than the Notes) of the Company or any of its Subsidiaries in an aggregate principal amount exceeding \$1,000,000, including, for the avoidance of doubt, Indebtedness incurred pursuant to the Backleverage Credit Agreement, the Mizzen Inc. Credit Agreement and the Mizzen WIP Credit Agreement.

“Mizzen” means Mizzen Capital, LP, a Delaware limited partnership.

“Mizzen Inc. Credit Agreement” means that certain Credit Agreement, dated as of April 29, 2022, by and among the Company, Mizzen, in its capacity as lead arranger, administrative and collateral agent and lender, and Stonehenge Community Impact Fund LP, a Delaware limited partnership, in its capacity as lender, as amended by that First Amendment to Credit Agreement, dated as of June 24, 2022, as further amended by that certain Second Amendment to Credit Agreement, dated as of July 14, 2022, as further amended by that certain Third Amendment to Credit Agreement, dated September 13, 2022, as further amended by that certain Fourth Amendment to Credit Agreement dated as of September 30, 2022, as further amended by that certain Omnibus Modification Agreement, dated as of June 13, 2023, as further amended by that certain Fifth Amendment to Credit Agreement dated as of July 21, 2023, and as further amended by that certain Sixth Amendment to Credit Agreement, dated on or around February 14, 2024.

“Mizzen WIP Credit Agreement” means that certain Credit Agreement, dated as of March 30, 2021, by and among PosiGen, LLC, a Louisiana limited liability company, Mizzen, in its capacity as lead arranger, administrative and collateral agent and lender, Stonehenge Community Impact Fund LP, a Delaware limited partnership, in its capacity as lender, Reinvestment Fund, Inc., a Pennsylvania not-for-profit corporation, in its capacity as lender, the Company, as guarantor, and the other guarantors party thereto, as amended by that certain Omnibus Modification Agreement, dated as of June 15, 2023 and as further amended by that certain Amendment to Credit Agreement, dated on or around February 14, 2024.

“Non-Defaulting Investor” shall mean any Investor, as determined by the Agent (acting at the direction of a Majority in Interest of Investors), that is not a Defaulting Investor.

“Notes” shall mean the secured convertible promissory notes issued pursuant to the Note Purchase Agreement.

“**Note Documents**” shall mean the Note Purchase Agreement, the Notes, the Agent Fee Letter, the Guaranty, the Security Agreement, the Control Agreements, the Collateral Assignment of Contracts, Permits and Project Documents, the Intercreditor Agreement, the Lien Subordination Agreement, and the Escrow Agreement, and each other document and agreement evidencing or securing the Indebtedness, as the same may from time to time be amended, supplemented, restated or otherwise modified.

“**Note Purchase Agreement**” shall mean the Note Purchase Agreement, dated as of June 13, 2023 (as amended, modified or supplemented), by and among the Company and the Investors (as defined in the Note Purchase Agreement) party thereto.

“**Obligations**” shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Company to Investor of every kind and description, now existing or hereafter arising under or pursuant to the terms of this Note and the other Note Documents, including, all interest, fees, charges, expenses, attorneys’ fees and costs and accountants’ fees and costs chargeable to and payable by the Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 *et seq.*), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

“**Organizational Documents**” means (a) with respect to any corporation, its certificate or articles of incorporation, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership or formation, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, (d) with respect to any limited liability company, its certificate of formation or articles of organization, as amended, and its limited liability company agreement or operating agreement, as amended, and (e) any voting agreements, investors’ rights agreements, right of first refusal and co-sale agreements, and similar governance or organizational documents, in each case, as amended.

“**Permitted Divestments**” means a Disposition of any asset that is a:

- (i) disposition of obsolete, unmerchantable or otherwise unsalable inventory, including the return of damaged or defective equipment to the supplier or vendor thereof;
- (ii) sale of inventory in the ordinary course of business consistent with past practice;
- (iii) termination of a lease of real or personal property in the ordinary course of business;
- (iv) disposition of any project (a) in the ordinary course of business and consistent with past practice in one or a series of related transactions, provided that the disposition of any group of projects pursuant to this clause (a) in one or a series of related transactions or the aggregate value of all

dispositions of projects in any 12 month period, in each case, does not exceed \$2,000,000, (b) pursuant to a bona fide sale of such project to a customer or (c) pursuant to a bona fide sale or transfer to one of the Company's or its Subsidiaries' financing vehicle and/or tax equity partnership, solely to the extent such financing vehicle and/or tax equity partnership is existing as of the date hereof;

- (v) a consignment or bailment; and
- (vi) disposition of any immaterial asset.

“Permitted Indebtedness” means any of the following:

- (i) Indebtedness with respect to cash management services, commercial credit cards, and other banking products and services;
- (ii) guarantees entered into in the ordinary course of business consistent with past practice in support of obligations of any subsidiary;
- (iii) delayed drawing of funds from debt facilities previously approved by the Company's Board of Directors, not exceeding the total pre-approved amount of the facility;
- (iv) customary indemnification obligations granted in the ordinary course of business consistent with past practice;
- (v) trade payables for the purchase of goods and services in the ordinary course of business consistent with past practice;
- (vi) expense reimbursement obligations in the ordinary course of business consistent with past practice and consistent with the expense reimbursement policy of the Company, in each case, as of the Closing Date or any future policy approved in advance by the Majority in Interest of Investors;
- (vii) Capital Lease Obligations or purchase money obligations with respect to equipment and vehicles;
- (viii) any Indebtedness pursuant to insurance contracts; and
- (ix) any amendments to the forms or terms of any existing Indebtedness of any subsidiary of the Company (other than PosiGen Developer, LLC) that would not have an adverse economic effect on the Company.

“Permitted Investments” means any Investments in:

- (i) wholly-owned Subsidiaries formed after the Closing Date;

- (ii) tax equity, cash equity, and other partnerships and joint ventures formed after the Closing Date, provided that such partnership or joint venture was approved by the Majority in Interest of Investors;
- (iii) deposit and securities accounts of the company, any wholly owned subsidiary, or any partnership or joint venture in existence on the Closing Date or approved by the Majority in Interest of Investors; and
- (iv) Investments consisting of loans to employees, officers, or directors relating to the purchase of equity securities of the Company or its Subsidiaries pursuant to the Management Incentive Plan or other agreements approved by Company's Board of Directors, provided that the aggregate principal amount of all such loans made in cash and outstanding may not exceed \$4,000,000 at any time.

"Permitted Liens" means any of the following:

- (i) Liens supporting any Permitted Indebtedness;
- (ii) Liens for taxes not yet due and delinquent or contested in good faith by appropriate proceedings and, in each case, for which sufficient reserves have been established in accordance with GAAP;
- (iii) statutory or common law Liens (including landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like liens) incurred in the ordinary course of business for amounts that are not yet due and payable or are being contested in good faith by appropriate proceedings and for which sufficient reserves have been established in accordance with GAAP;
- (iv) Liens incurred or deposits made to secure the performance of government tenders, bids, contracts, leases, statutory obligations and other similar obligations in the ordinary course of business consistent with past practice;
- (v) easements, rights-of-way, restrictions, covenants or other agreements of record, and other similar charges or encumbrances on real property; and
- (vi) customary rights of setoff and Liens securing fees and similar amounts upon deposits or securities accounts in favor of depository institutions or securities intermediaries.

"Person" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

"Post-Closing Equity Financing" shall mean a transaction or series of transactions pursuant to which the Company issues and sells shares of its Equity Securities (excluding all proceeds from the incurrence of indebtedness that is converted into such Equity Securities).

including, for the avoidance of doubt, the Qualified Equity Raise (provided, that following such Qualified Equity Raise, any further transaction or series of transactions pursuant to which the Company issues or sells shares of its Equity Securities shall no longer be deemed a “Post-Closing Equity Financing”).

“Preferred Stock” shall mean the Series E-1 Preferred Stock, the Series E-2 Preferred Stock, the Series D-1 Preferred Stock, the Series D-3A Preferred Stock and the Series D-3B Preferred Stock.

“Qualified Equity Raise” shall mean a transaction or series of transactions pursuant to which the Company issues and sells shares of its Equity Securities (excluding all proceeds from the incurrence of indebtedness that is converted into such Equity Securities) with net cash proceeds of such issuance in an amount not less than \$50,000,000 in the aggregate (excluding amounts funded pursuant to the conversion of the Notes and the Existing Notes).

“Recapitalization” shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification, or other similar event.

“Restricted Payment” means:

- (i) any dividend or other distribution or other payment (whether in cash, securities or other property) with respect to any Equity Securities in the Company or any Subsidiary, to any Person (in each case, solely in such Person’s capacity as holder of such Equity Securities or, in the case of any payment, to the direct or indirect holders of the Company’s or any of its Subsidiaries’ Equity Securities), including any dividend or distribution payable or payment made in connection with any Recapitalization or any merger, amalgamation or consolidation;
- (ii) any purchase, redemption, defeasance or other acquisition or retirement for value of any Equity Securities of the Company (including in connection with any Recapitalization or any merger, amalgamation or consolidation); and
- (iii) any principal payment on, or redemption, purchase, repurchase, defeasance or other acquisition or retirement for value, in each case, prior to any scheduled repayment, sinking fund payment or scheduled maturity, of any Indebtedness secured by Liens junior in priority to the Liens securing the Obligations hereunder or unsecured Indebtedness, of the Company or any Subsidiary, except (1) regularly scheduled interest and principal payments and (2) a payment of interest or principal at the stated maturity date thereof.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Sale and Leaseback Transaction” means any sale or other transfer of any property by any Person with the intent to lease such property as lessee.

“Sale Liquidation Event” means:

- (i) the acquisition of the Company by another entity by means of any transaction or series of related transactions to which the Company is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction retain, immediately after such transaction or series of transactions, as a result of shares in the Company held by such holders prior to such transaction, a majority of the total voting power represented by the outstanding voting securities of the Company;
- (ii) a Disposition of all or substantially all of the assets of the Company taken as a whole by means of any transaction or series of related transactions, except where such Disposition is to a wholly-owned subsidiary of the Company or otherwise in the ordinary course of business of the Company in connection with project financing transactions customary in the Company's industry that are approved by the Majority in Interest of Investors;
- (iii) an exclusive, irrevocable license of all or substantially all of the intellectual property of the Company to a third party taken as a whole by means of any transaction or series of related transactions, except where such exclusive, irrevocable license is to a wholly-owned subsidiary of the Company;

“Security Agreement” means that certain Security Agreement (as amended, modified or supplemented), by and among the Company, the Guarantors and the Agent, in form and substance satisfactory to the Agent and the Lead Investors.

“Subsidiary” means, with respect to any Person (the “parent”) at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which Equity Securities representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless the context otherwise clearly requires, references herein to a “Subsidiary” refer to a Subsidiary of the Company.

7. Miscellaneous.

(a) Successors and Assigns; Transfer of this Note or Securities Issuable on Conversion Hereof; No Transfers to Bad Actors; Notice of Bad Actor Status.

(i) Subject to the restrictions on transfer described in this Section 7(a), the rights and obligations of the Company and Investor shall be binding upon and inure to the benefit of the successors, assigns, heirs, administrators and transferees of the parties.

(ii) With respect to any offer, sale or other disposition of this Note or securities into which such Note may be converted, Investor will give written notice to the Company

prior thereto, describing briefly the manner thereof, together with a written opinion of Investor's counsel, or other evidence if reasonably satisfactory to the Company, to the effect that such offer, sale or other distribution may be effected without registration or qualification (under any federal or state law then in effect). Upon receiving such written notice and reasonably satisfactory opinion, if so requested, or other evidence, the Company, as promptly as practicable, shall notify Investor that Investor may sell or otherwise dispose of this Note or such securities, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this **Section 7(a)** that the opinion of counsel for Investor, or other evidence, is not reasonably satisfactory to the Company, the Company shall so notify Investor promptly after such determination has been made. Each Note thus transferred and each certificate, instrument or book entry representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Securities Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the Securities Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions. Subject to the foregoing, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company as provided in the Note Purchase Agreement. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal and interest hereon and for all other purposes whatsoever, whether or not this Note shall be overdue and the Company shall not be affected by notice to the contrary.

(iii) Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior written consent of a Majority in Interest of Investors.

(iv) Investor agrees not to sell, assign, transfer, pledge or otherwise dispose of any securities of the Company, or any beneficial interest therein, to any person (other than the Company) unless and until the proposed transferee confirms to the reasonable satisfaction of the Company that neither the proposed transferee nor any of its directors, executive officers, other officers that may serve as a director or officer of any company in which it invests, general partners or managing members nor any person that would be deemed a beneficial owner of those securities (in accordance with Rule 506(d) of the Securities Act) is subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act, except as set forth in Rule 506(d)(2)(ii) or (iii) or (d)(3) under the Securities Act and disclosed, reasonably in advance of the transfer, in writing in reasonable detail to the Company. Investor will promptly notify the Company in writing if Investor or, to Investor's knowledge, any person specified in Rule 506(d)(1) under the Securities Act becomes subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act.

(b) *Waiver and Amendment.* Any provision of this Note may be amended, waived or modified upon the written consent of the Company, the Agent and a Majority in Interest of Investors; provided, however, that no such amendment, waiver or consent shall, without Investor's written consent, (i) reduce the principal amount of, or interest rate on, this Note, (ii) extend the Scheduled Maturity Date by more than 180 days, (iii) directly or indirectly modify the definitions of the Conversion Ratio, Equity Securities, or Outstanding Common Shares, or (iv) directly or

indirectly modify the redemption calculations or Investors' redemption rights pursuant to **Sections 4(c)** and **4(d)**. Investor acknowledges that by the operation of this paragraph, the Majority in Interest of Investors will have the right and power to diminish or eliminate all rights of such Investor under this Note, except as otherwise provided in this **Section 7(b)**; provided, further, if any amendment, waiver or other modification to this Note operates in an adverse manner that treats any Investor different from other Investors, solely to the extent such amendment, waiver or modification relates to this Note as held by such Investor so adversely treated, the consent of such Investor so adversely treated shall be required for such amendment, waiver or modification.

(c) *Notices.* All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and faxed, mailed or delivered to each party at the respective addresses of the parties as set forth in the Note Purchase Agreement, or at such other address or facsimile number as the Company shall have furnished to Investor in writing. All such notices and communications will be deemed effectively given the earlier of (i) when received, (ii) when delivered personally, (iii) one Business Day after being delivered by facsimile (with receipt of appropriate confirmation), (iv) one Business Day after being deposited with an overnight courier service of recognized standing or (v) four days after being deposited in the U.S. mail, first class with postage prepaid.

(d) *Seniority of Notes.* The Investor hereby acknowledges and agrees that the payment of all or any portion of the Outstanding Principal Amount of this 2024 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of **Section 1(b)** hereof) shall be applied (i) *first*, pro rata in favor of the 2024 Notes and Unsubordinated 2023 Notes (as defined below) and any other obligations that secure all or any portion of the 2024 Notes and the Unsubordinated 2023 Notes, which shall be senior in right of payment and in all other respects to the 2023 Notes (other than the Unsubordinated 2023 Notes) and any other Notes issued pursuant to the Note Purchase Agreement (other than the 2024 Notes and the Unsubordinated 2023 Notes) or obligations that secure all or any portion of the 2023 Notes (other than the Unsubordinated 2023 Notes) or any other Notes (other than the 2024 Notes and the Unsubordinated 2023 Notes) and (ii) *second*, pro rata in favor of the 2023 Notes (other than the Unsubordinated 2023 Notes) and any other Notes (other than the 2024 Notes and Unsubordinated 2023 Notes) and any other obligations that secure all or any portion of the 2023 Notes (other than the Unsubordinated 2023 Notes) or any other Notes (other than the 2024 Notes and Unsubordinated 2023 Notes); *provided*, that the payment of all or any portion of the Outstanding Principal Amount of this 2024 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of Section 1(b) hereof) hereon shall be *pari passu* in right of payment and in all other respects to the other 2024 Notes; *provided, further*, the payment of all or any portion of the Outstanding Principal Amount of this 2024 Note (such Outstanding Principal Amount to include PIK Interest pursuant to the last sentence of Section 1(b) hereof) hereon shall be *pari passu* in right of payment and in all other respects to the other 2024 Notes and any 2023 Notes (the “*Unsubordinated 2023 Notes*”) held by Investors who have not signed

Amendment No. 4 or otherwise consented thereto (such consent, on a form as reasonably agreed to by the Majority in Interest of Lead Investors); *provided, further*, that upon the Investor holding such Unsubordinated 2023 Notes signing Amendment No. 4 or otherwise consenting thereto, such Unsubordinated 2023 Notes shall cease to be “Unsubordinated 2023 Notes”. In the event Investor receives payments in excess of its pro rata share of the Company’s payments to the Investors of all of the Notes, then Investor shall hold in trust all such excess payments for the benefit of the holders of the other Notes and shall pay such amounts held in trust to such other holders upon demand by such holders.

- (e) *Payment.* Unless converted into the Company’s equity securities pursuant to the terms hereof, payment shall be made in lawful tender of the United States.
- (f) *Usury.* In the event any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note, and the Company hereby waives any claims thereto to the fullest extent under applicable law.
- (g) *Waivers.* The Company hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.
- (h) *Governing Law.* This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law provisions of the State of Delaware, or of any other state.
- (i) *Waiver of Jury Trial; Judicial Reference.* By acceptance of this Note, Investor hereby agrees and the Company hereby agrees to waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of this Note or any of the Note Documents.
- (j) *Counterparts.* This Note may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Note.
- (k) *Attorneys’ Fees.* The Company shall be liable for, and hereby agrees to pay, all reasonable attorneys’ fees incurred in connection with this Note and the Note Purchase Agreement, to protect the Agent’s and Investor’s rights under this Note, to enforce this Note, to collect amounts due under this Note, and to take any other action relating to this Note, as set forth in the Note Purchase Agreement.
- (l) *Tax Withholding.* Notwithstanding any other provision to the contrary, the Company shall be entitled to deduct and withhold from any amounts payable or otherwise deliverable with respect to this Note such amounts as may be required to

be deducted or withheld therefrom under any provision of applicable law, and to be provided any necessary tax forms and information, including Internal Revenue Service Form W-9 or appropriate version of IRS Form W-8, as applicable, from each beneficial owner of the Note. To the extent such amounts are so deducted or withheld and paid over to the appropriate taxing authority, such amounts shall be treated for all purposes as having been paid to the person to whom such amounts otherwise would have been paid.

(Signature Page Follows)

This Note may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties have executed this Note as of the date first written above.

POSIGEN, PBC

a Delaware public benefit corporation

Peter Shaper

Chief Executive Officer and President

75 Charter Oak Avenue, Hartford, Connecticut 06106
T: 860.563.0015
www.ctgreenbank.com

PosiGen

Green Bank Term Loan Facility Modification Request

~~January 23~~ March 15, 2024



Document Contents: This document contains background information and due diligence on modification of existing credit facilities for PosiGen, PBC (“PosiGen”) collateralized by residential solar PV facilities located within and outside of Connecticut and by the future performance-based incentive (“PBI”) payments PosiGen will earn from various residential solar PV projects in Connecticut. The information herein is provided to the Connecticut Green Bank Board of Directors for the purposes of reviewing and approving recommendations made by the staff of the Connecticut Green Bank.

In some cases, this package may contain, among other things, trade secrets and commercial or financial information given to the Connecticut Green Bank in confidence and should be excluded under C.G.S. §1-210(b) and §16-245n(D) from any public disclosure under the Connecticut Freedom of Information Act. If such information is included in this package, it will be noted as confidential.

Investment Modification Memo

To: Connecticut Green Bank Board of Directors
CC: Bryan Garcia, President and CEO; Jane Murphy, Executive Vice President Finance and Administration; Brian Farnen, General Counsel and CLO; Eric Shrago, Vice President of Operations; Sergio Carrillo, Managing Director of Incentive Programs
From: Bert Hunter, EVP and CIO
Date: ~~January 23~~ March 15, 2024
Re: PosiGen Back Leverage Modification

Summary/Need for Clarification

In January, staff presented and the Connecticut Green Bank ("Green Bank") Board of Directors (the "Board") approved a modification of certain financing facilities for PosiGen. Subsequent to that approval, our General Counsel, CIO and external counsel (Wiggin and Dana) conferred about the increase in credit authority granted by the Board in the context of the existing documentation as well as the changes to this documentation proposed by PosiGen and the First Lien Credit lender, Brookfield (explained more below). The conclusion of these discussions was a recommendation by Wiggin and Dana that we present to the Board clarifications to more clearly align the credit approval by the Board with the existing documentation and amendments to that documentation, including two amendments already entered into by the Green Bank. In order to present these clarifications, staff is resubmitting to the Board the memorandum on these matters from January with tracked changes to align the Board's approval with the documentation structure for the Second Lien Credit Facility (a) that has been amended with PosiGen to grant two draws (term loans) in line with the Board's January approval and (b) to bring into effect the complete "upsize" approved in January (which requires completion of the Brookfield "upsize" by way of amendment to the First and Second Lien credit facilities).

Background

PosiGen, PBC¹ (together with its subsidiaries, "PosiGen") currently has a first lien asset-backed facility (the "FLCF") with Brookfield Asset Management ("Brookfield") with a total commitment of \$250 million. In turn, the Connecticut Green Bank ("Green Bank") – in order to continue to support PosiGen as our strategic partner for low to moderate income ("LMI") solar, battery storage, and energy efficiency – provides a "2nd Lien" facility subordinated to Brookfield (the "second lien credit facility", or "SLCF") with a total commitment of [REDACTED]

[REDACTED] Term Loans outstanding (as each such term is defined in the Second Lien Credit Agreement), inclusive of [REDACTED] of participatory capital provided by a variety of mission aligned investors toward the Term Loans (i.e., net exposure to Green Bank being \$9.25 million). PosiGen's portfolio of solar leases, both in Connecticut and nationally, serve as the collateral for these two facilities, and the Green Bank Board of Directors (the "Board") has previously approved the SLCF in conjunction with the FLCF.

In addition to the SLCF, the Green Bank has a first lien commitment to PosiGen (the Connecticut PBI Term Loans) associated with the now-closed Residential Solar Investment Program ("RSIP"), lending against the Performance Based Incentives ("PBI") that PosiGen systems earn as they generate clean energy and deliver

¹ Public Benefit Corporation

Solar Home Renewable Energy Credits (“SHRECs”) to the Green Bank. That is now a static pool of projects, with [REDACTED] in principal outstanding. (Note: from a risk perspective, this exposure is effectively defeased as the Green Bank pays the PBI to itself (as a sweep of this cash that otherwise would be payable to PosiGen.)) Further, in April 2022, the Green Bank Board approved an [REDACTED] (the “ESS facility”) to support the rollout of battery storage systems under the Energy Storage Solutions (ESS) program for LMI families in the state. This [REDACTED] ESS facility consists of a (i) [REDACTED] revolver for purchasing the batteries and associated equipment from Generac (their strategic partner for the ESS program), and (ii) a \$6 million term loan facility that will be funded by payments from Eversource and UI as well as customer lease payments. At present under the ESS facility, only the \$ [REDACTED] revolver is fully drawn with no advances under the term facility. Finally, and as noted above, in December 2022, the Board approved a \$6 million position in a [REDACTED] tax equity bridge loan facility to PosiGen under the Capital Solutions program associated with a variety of tax credit adders created under the Inflation Reduction Act at the Federal level. Specifically, the loan is tied to PosiGen’s delivery of solar (including battery storage) to LMI communities in eligible census tracts (e.g., low-income communities, energy communities), as well as their use of domestically produced content in the systems they deploy (including in energy communities and for low-income families). Overall, the Green Bank’s direct exposure to PosiGen (that is, total funded capital) as of March 2024 (including two additional advances made pursuant to approval granted in January 2024) is approximately [REDACTED] net of the defeased PBI loans), summarized as follows:

Facility (millions)	Security Position	Current Facilities/ Exposure (1)	Current Balances
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total Exposure (2)		[REDACTED]	[REDACTED]

(1) Excluding participants

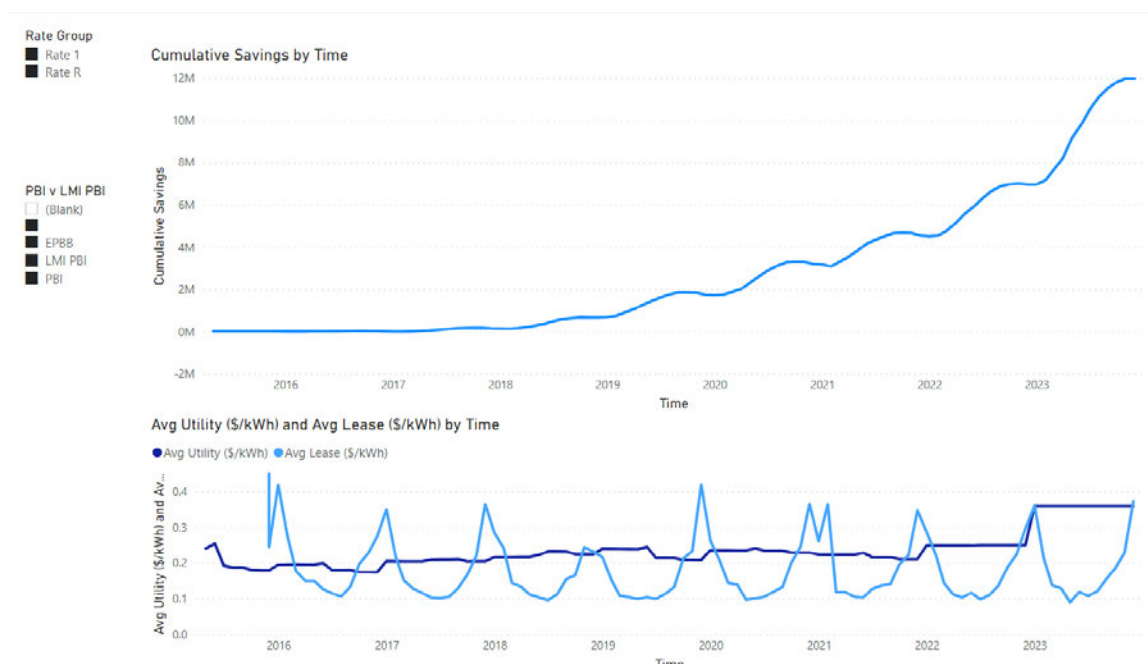
(2) Excluding PBI (defeased with PBIs)

PosiGen is current on all obligations to the Green Bank, including making good and consistent progress in amortizing the PBI loan in line with the underlying documentation, and is continuing to both expand its presence in Connecticut (including beyond Bridgeport and Hartford, to recently opening a new office in Danbury) and deliver on its commitments to serving LMI customers across the state.

Connecticut Impact and Growth

During the PosiGen/Green Bank “Solar for All” campaign during the RSIP, considerable economic, environmental and customer savings impact was achieved which continues today under the residential renewable energy solutions (RRES) program administered by the EDCs. Under the RSIP installed systems, we track system performance which reduces energy burden for the 4,500+ systems we supported through RSIP and “Solar for All”. We can see when electric rates went up in 2023 because of inflationary pressures caused by War in the Ukraine and over-reliance of Connecticut on natural gas power plants, that the savings

increased nearly two-fold. Solar became a hedge protecting low-income families against rising energy prices. They saved \$5MM in 2023 – or about \$1,100 vs. \$2.5MM in 2022 – or about \$560 – shown here:



We push these accomplishments to the public via social media – captured at the following link:

<https://www.youtube.com/watch?v=TnOWjdczjFE>



Due to PosiGen's growth in Connecticut and other states, the company is preparing to upsize its facility with Brookfield and lower its cost of funding for work-in-progress systems through the same loan (thus changing the collateral makeup of the FLCF), as well as advancing rapidly towards a new term loan facility with the U.S. Department of Energy's Loan Programs Office ("LPO") under the Title 17 State Energy Financing Institutions ("SEFI") program. This transaction between PosiGen, LPO, and Green Bank (as a SEFI), would be the first-of-its-kind in the country demonstrating how federal resources, in partnership with SEFI's, can expand investment in and deployment of solar, storage, and energy efficiency in vulnerable communities across the country.

This memo provides an overview of the key changes in the Brookfield facility, a status update with respect to PosiGen's work with the Green Bank on the LPO SEFI front, and a request for additional pro rata funding of the Green Bank's position in the SLCF.

Brookfield Facility Upsizing and Expansion of Collateral Base

For reference purposes, attached as **Exhibit A** are the full terms of the existing FLCF with Brookfield (adjusted subject to final documentation, of course, as closed in April 2023). PosiGen currently has an installed base of approximately 25,000 lease customers, of whom nearly 25% are in Connecticut. (This translates into approximately 6,000+ Connecticut customers with [REDACTED] in nominal cash flow or more than [REDACTED] on a present value basis, discounted at 6% which far exceeds the Green Bank's investment in the overall facility.) The company projects 2024 growth to add roughly 50% to its deployed base, as it continues to grow through both its organically originated business as well as through mission-aligned channel partners who are now taking advantage of PosiGen's financing and support to serve previously excluded customers. Due to that rapid growth, PosiGen and Brookfield have negotiated two significant adjustments to their facility, with the goal of closing in February-March 2024 subject to Green Bank approval:

- 1) Upsize the overall FLCF by between [REDACTED], to accommodate PosiGen's accelerating growth and continue to provide a "warehouse" solution prior to anticipated takeout via the LPO; and
- 2) Included in that upsize, expand the uses of funds and associated collateral base to allow PosiGen to lower its cost of capital for work-in-progress ("WIP") systems, which currently sits in the mid-teens due to interest rate increases over the past 18+ months.

At the moment, the company pays a very high rate on the funds it accesses to bring sold systems through the project life cycle (i.e., across predevelopment to installation and completion/activation). The planned solution would bring that cost down by effectively melding a WIP and installed collateral base together in a single loan. Because this approach would change the nature of the collateral supporting the FLCF, the Green Bank needs to provide consent, but since the overall effect would be in the range of a 500+ bps decrease in PosiGen's WIP cost of capital, Green Bank staff sees this adjustment as credit accretive to the company's overall story. Importantly, collateral rights would continue to be respected – meaning that the FLCF and SLCF will fund against and be secured by a pool of cash-flowing and completed/activated projects shared between Brookfield as senior lender under the FLCF and Green Bank as subordinated lender (with participants) under the SLCF. For the WIP funding, Brookfield would look to the WIP security and possibly any residual benefit from the FLCF/SLCF after Brookfield and Green Bank advances against the cash-flowing and completed/activated projects have been repaid. This approach is similar to other loans to PosiGen (such as the battery loans and the tax equity bridge loans) which benefit from their own discrete pools of secured assets.

With respect to the Green Bank's own commitment to the SLCF, staff recommends the Board consider our exposure in light of (a) the consistent payment performance of the borrower to date, (b) ongoing good cash flow coverage of debt service obligations, (c) satisfactory credit performance of the underlying cash-flowing leases against 25,000 residential projects, and (d) the near-term projected takeout of the facility through the LPO. Accordingly, as will be substantiated in this memorandum, staff believes providing our pro rata match to Brookfield up to their first [REDACTED] is the appropriate increase at this point in time. For the Green Bank, that would mean a total SLCF Term Loan cap (i.e., loans that are associated with solar PV leases and NOT associated with the non-PBI Term Loans, or the non-tax equity bridge loans or the and non-battery facility loans commitments) of [REDACTED] (offset by [REDACTED] in funded participations as noted earlier, for a net of [REDACTED] in Green Bank funding). This represents a projected increase in commitment of [REDACTED] but, given PosiGen's ongoing amortization of the PBI facility and expected repayment of the tax credit bridge loan by end-of-year, and without the DOE – LPO – SEFI transaction, should result in only a modest increase in net exposure by this same date in 2025.

PosiGen Asset Backed Facility (FLCF & SLCF)
For Completed / Activated Leases

	Approved(**)	Proposed(***)	Proposed(#)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

* Excluding PBI, Tax Equity Bridge and Battery Loan Facility

** Represents the Forbright First Lien Limits before upside #1 by Brookfield

*** Note: First Lien Amount was upsized by Brookfield before upside is \$250,000,000 and Green Bank advances under Second Lien Term Loan were made in February and March pursuant to upside #1 in this column

This column represents upside #2 by Brookfield

Below is a summary of security / repayment sources by facility (representing Green Bank exposure):

	Approved	Proposed	Repayment Source
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

*ESS Term Facility to be reduced to [REDACTED] for each dollar of repayment under the tax equity bridge or the ESS Working Capital Facility. Staff with separate and subsequent Board approval may raise this \$3mm limit depending upon ESS program performance and other PosiGen credit outstanding.

LPO Update

As the Board is aware, from the presentation in March 2022,² the DOE announced new opportunities for projects funded by “State Energy Financing Institutions” or “SEFIs,” thereby waiving the innovative technology requirement in Title 17 for projects receiving financial support or credit enhancements from a SEFI. Since staff last updated the Board on this matter, PosiGen has made significant progress in advancing an application with LPO for a [REDACTED] loan facility [REDACTED] SEFI participation, contemplated to be led by the Green Bank with expected participation by the Green Bank pari passu with LPO and with a Green Bank contribution max of [REDACTED] recognizing the benefit of shifting from Green

² <https://www.youtube.com/watch?v=TPb7AHRWFhg&t=6300s>

Bank's subordinated position under the much smaller Brookfield facility to being senior with LPO under the substantially larger LPO SEFI facility), with closing anticipated in late Q2 / early Q3 2024. An outline of major terms is attached hereto as **Exhibit B**.

With respect to the LPO process, key achievements and next steps are as follows:

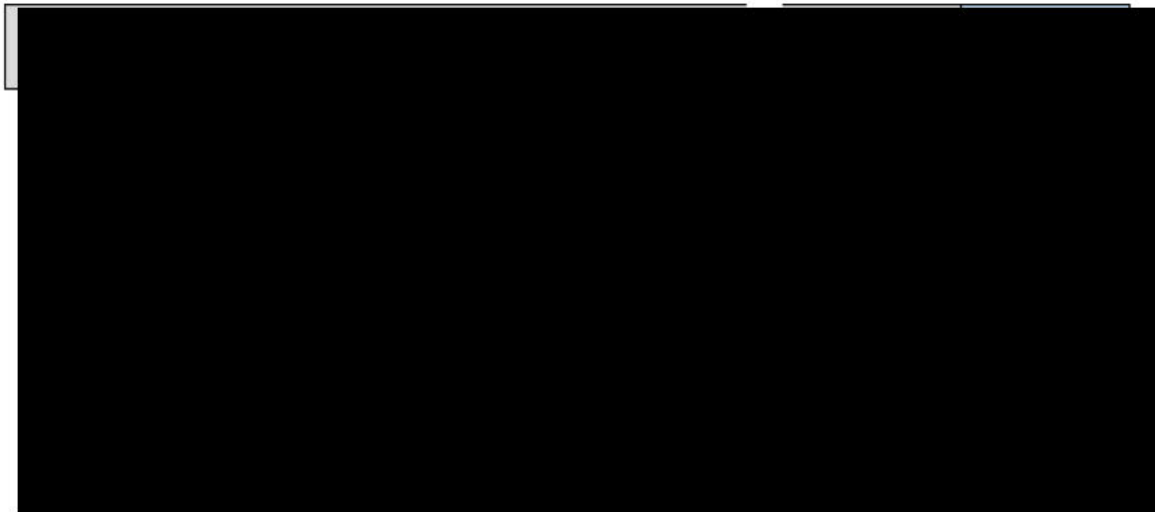
- Part 1 application submitted (April 2023)
- Part 2 application submitted (August 2023)
- LPO invitation to due diligence (October 2023)
- Contracting with LPO's third-party advisors (January 2024)
- Due diligence (Q1 2024)
- Interagency process / conditional commitment (early Q2 2024)
- Financial close (late Q2 / early Q3 2024)

Green Bank staff have been in contact with LPO leadership as PosiGen has navigated the process to date, including providing feedback on terms and structure. The facility as contemplated would be a significant win for the company and the LMI households whom they serve, as well as a strong demonstration of Green Bank leadership in unlocking innovative low cost DOE LPO capital to advance the "equity and access" agenda of clean energy for all, with national implications.

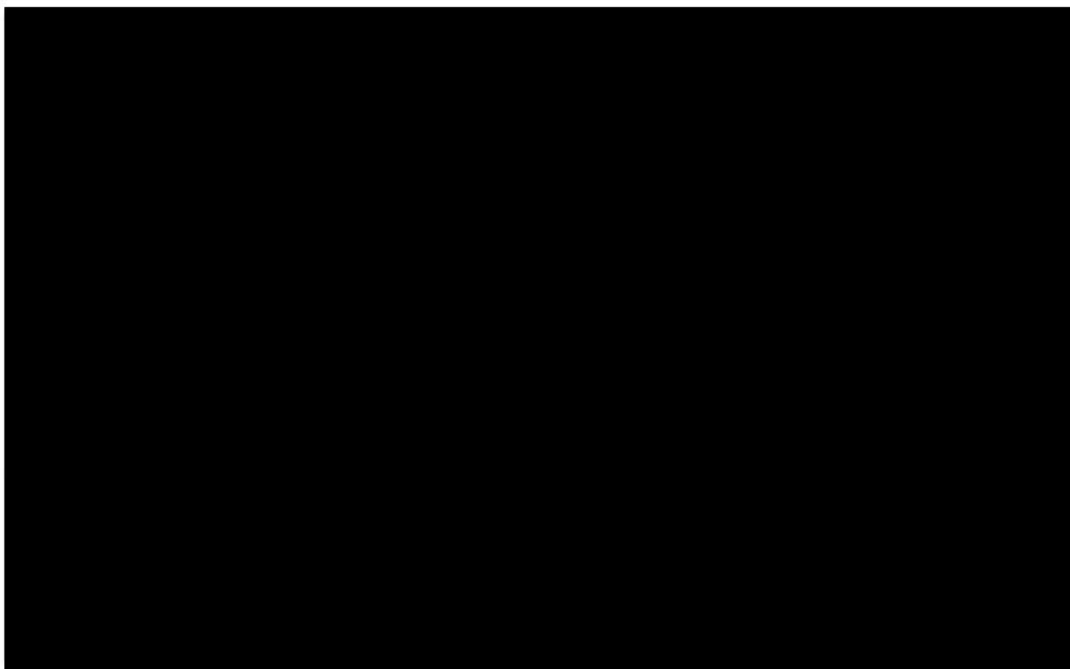
Risk Assessment

With the approval being sought today by staff, Green Bank's overall facility exposure would increase from [REDACTED] PBI funding facility where Green Bank sweeps PBI funds to itself). At the same time, Green Bank's exposure is well diversified and structured. PosiGen's portfolio performance remained strong throughout 2023, and the company's lease offer aligns well with customers' benefits of electric bill savings, which are only increasing with higher rates from Eversource & UI. PosiGen's capital raising activities are strong as well. In addition to this upsizing through Brookfield, which represents a [REDACTED] capital raise of first lien capital (in addition to the increment of second lien capital requested herein) PosiGen's investor base injected another \$30+ million of corporate capital into the company as of mid-2023. This is in addition to tax equity capital, as the company closed on an aggregate of [REDACTED] in commitments from both M&T Bank and the Dell Family Office in 2023, with new tax equity partners expected to be coming online over the course of early 2024. Portfolio statistics reflect continued high rates of collection as well as adequate debt service coverage. For completeness, we attach in Exhibit C the financials for the PosiGen Development Company.

PosiGen's Collection Figures in 2023:



PosiGen's DSCR:



TE

Recommendation

In partnership with the Green Bank, PosiGen has continued to make Connecticut a leader in the equitable deployment of clean energy. The company's model (based on underwriting to customer savings rather than FICO or income thresholds) is increasingly gaining acceptance in the market, but public-private investment partnerships continue to be critical to supporting growth and achieving scale. As such, Green Bank staff recommends approval of Brookfield's upsize and expanded collateral base, as well as the proposed \$8 million increase in Green Bank commitment to the SLCF, all in anticipation of a successful closing of the LPO facility later this year. At the same time, Green Bank will manage exposure by placing an overall "hard cap" of [REDACTED] with limitations on the ESS battery facility linked to reduced exposure under the tax equity bridge facility described in this memo.

Resolutions (REVISED AND RESTATED)

WHEREAS, the Connecticut Green Bank (“Green Bank”) has an existing partnership with PosiGen, PBC (together with its affiliates and subsidiaries, “PosiGen”) to support PosiGen in delivering a solar lease (including battery storage) and energy efficiency financing offering to LMI households in Connecticut;

WHEREAS, the Green Bank Board of Directors (the “Board”) previously authorized approval for Green Bank’s participation in a back leverage credit facility (the “BL Facility”) collateralized by all of PosiGen’s solar PV system and energy efficiency leases in the United States as part of PosiGen’s strategic growth plan, as well as a facility to finance performance based incentives earned by PosiGen on its solar PV portfolio in Connecticut;

WHEREAS, PosiGen is now in the process of upsizing its BL Facility with Brookfield Asset Management (“Brookfield”), as explained in the memorandum to the Board dated January 23, 2024 (the “Board Memo”);

WHEREAS, PosiGen’s repayment performance on its existing obligations remains consistent and satisfactory;

NOW, therefore be it:

RESOLVED, that the Board authorizes the Green Bank to amend its existing 2nd lien facility as part of the BL Facility to allow for an upsized Green Bank position together with the first lien lender, Brookfield (itself upsizing its position and expanding its collateral base), as set forth in the Board Memo;

RESOLVED, that the Board authorizes the Green Bank to advance up to [REDACTED] in in Term Loans under the 2nd lien financing associated with the New BL Facility, excluding the Connecticut PBI Term Loans and excluding the Capital Solutions Tax Equity Bridge facility, and inclusive of third-party participation, as set forth in the Board Memo; and

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and negotiate and deliver all other documents and instruments as they shall deem necessary and desirable to effect the above-mentioned legal instruments.

Submitted by: Bert Hunter, EVP and CIO

Exhibit A

Terms of the Existing Brookfield FLCF

Non-Binding Term Sheet

The terms set out in this term sheet are indicative only and do not constitute an offer to arrange, or a commitment to provide financing. The provision of the proposed Term Loan Facility is subject to, amongst other things, satisfactory due diligence, formal investment committee approvals, legal, tax and accounting review, and satisfactory documentation. The terms of this indicative term sheet are confidential and should not be disclosed to any third party including Forbright without Brookfield's prior written consent.

Category	Sub-category	Value
Category 1	Sub-category 1.1	Value 1.1.1
	Sub-category 1.2	Value 1.2.1
	Sub-category 1.3	Value 1.3.1
	Sub-category 1.4	Value 1.4.1
	Sub-category 1.5	Value 1.5.1
Category 2	Sub-category 2.1	Value 2.1.1
	Sub-category 2.2	Value 2.2.1
	Sub-category 2.3	Value 2.3.1
	Sub-category 2.4	Value 2.4.1
Category 3	Sub-category 3.1	Value 3.1.1
	Sub-category 3.2	Value 3.2.1
	Sub-category 3.3	Value 3.3.1
Category 4	Sub-category 4.1	Value 4.1.1
	Sub-category 4.2	Value 4.2.1
	Sub-category 4.3	Value 4.3.1
	Sub-category 4.4	Value 4.4.1
	Sub-category 4.5	Value 4.5.1
Category 5	Sub-category 5.1	Value 5.1.1
	Sub-category 5.2	Value 5.2.1
	Sub-category 5.3	Value 5.3.1
	Sub-category 5.4	Value 5.4.1
Category 6	Sub-category 6.1	Value 6.1.1
	Sub-category 6.2	Value 6.2.1
	Sub-category 6.3	Value 6.3.1
	Sub-category 6.4	Value 6.4.1
	Sub-category 6.5	Value 6.5.1
	Sub-category 6.6	Value 6.6.1
Category 7	Sub-category 7.1	Value 7.1.1
	Sub-category 7.2	Value 7.2.1
Category 8	Sub-category 8.1	Value 8.1.1
	Sub-category 8.2	Value 8.2.1
Category 9	Sub-category 9.1	Value 9.1.1
	Sub-category 9.2	Value 9.2.1
	Sub-category 9.3	Value 9.3.1
	Sub-category 9.4	Value 9.4.1
	Sub-category 9.5	Value 9.5.1
	Sub-category 9.6	Value 9.6.1
	Sub-category 9.7	Value 9.7.1

	<p>Market Value of all Eligible Systems, as determined at least once per year by a third party appraiser; Borrowing Base to be updated at the end of every month and when a draw occurs. [Net cash flow] is calculated post payment of all portfolio and servicing fees, inclusive of any fees paid to third parties that are required for the portfolio and servicing but excluding contracted O&M fees due to Sponsor or its subsidiaries that Sponsor covers as a corporate expense.</p> <p>Eligible Systems are all installed systems that are not 120+ days delinquent on their monthly lease payment and meet the Eligibility Criteria²</p>
Excess Concentration Amount³:	<p>The amount by which the Borrowing Base must be reduced by such that the financed portfolio of Eligible Systems shall meet the following criteria, tested monthly:</p> <ul style="list-style-type: none"> • At any point in time, no greater than five percent (5%) of Eligible Systems shall currently be subject to a “permitted modification” entered into during the normal course of business. • At any point in time, no greater than five percent (5%) of Eligible Systems shall currently be between 90-120 days delinquent. • At any point in time, no greater than ten percent (10%) of Eligible Systems shall be on a lease term greater than twenty (20) years but less than or equal to twenty five (25) years.
Fees:	<ul style="list-style-type: none"> • [REDACTED] • [REDACTED] • [REDACTED] • [REDACTED]
Interest Rate:	<p>[REDACTED] in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day).</p>
Amortization	None
Cash Sweep	[REDACTED]
[REDACTED]	[REDACTED] and Mandatory Prepayments
Mandatory Prepayments	<p>Including, but not limited to: (i) change of control, (ii) 100% of the net proceeds received from asset sales or debt financing, and (iii) if the aggregate principal amount outstanding exceeds the most-recently calculated Borrowing Base multiplied by the Advance Rate, such excess amount. Prepayment Protection shall apply to Mandatory Prepayments</p>
Debt Service Reserve Account	[REDACTED]s of Interest and Commitment Fees
Collateral:	<ul style="list-style-type: none"> • First lien pledge of all-assets of Borrower • Pledge of the membership interests in Borrower • Pledge of the membership interests owned by Borrower in each tax equity manager; and • To the extent permitted by the tax equity, pledge of the applicable manager’s membership interests in the applicable project company. • Other credit support: guaranty’s and indemnities from existing deal
Restricted Payments	<p>No distributions subject to permitted baskets for tax distributions and, in the absence of an Event of Default, scheduled payment of accrued interest and principal under the 2nd and 3rd lien debt [(with total amount capped</p>

	based on terms consistent with existing facilities)], corporate facilities. No prepayments permitted for junior lien debt. Cash flow may be reinvested into new system growth. 4
Financial Covenants	<p>Including but not limited to:</p> <ul style="list-style-type: none"> • [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED]
Equity Cures	Three (3) Quarterly Equity Cures, no more than two (2) consecutive
Eligibility Criteria 5	<p>To conform with Sponsor’s current underwriting and eligibility criteria. Expected to include, but not be limited to, a project which is owned by a project company or, if there is no tax equity investor, a manager, which meets the following conditions:</p> <p>(i) Borrower or its affiliate has received a completion letter from the installer and such letter has been accepted by Borrower or its relevant subsidiary;</p> <p>(ii) During the Availability, such project is in the “Placed in Service” stage of PosiGen project pipeline as evidenced by receipt of the completion letter, and thereafter, such Project has been issued a PTO letter within 180 days of the receipt of the completion letter;</p> <p>(iii) Such project is operated and maintained by the manager and/or an affiliate of Sponsor (or a replacement reasonably acceptable to the administrative agent, on terms reasonably acceptable to the administrative agent);</p> <p>(iv) Such project is located on property or rooftop(s) owned or controlled by the applicable customer that is the counterparty to the customer agreement;</p> <p>(v) Such project is not the subject of any continuing customer prepayment event, default, foreclosure, acceleration, litigation, bankruptcy, write off or impairment scenario in accordance with U.S. generally accepted accounting principles (GAAP);</p> <p>(vi) Such project equipment installed is manufactured by an approved manufacturer and such project is in an approved state;</p> <p>(vii) The customer agreement with respect to such project is an eligible customer agreement and can demonstrate positive annual savings on the applicable customer’s utility bill;</p> <p>(viii) The eligible project representations and warranties shall be true and correct with respect to such project;</p> <p>(ix) The secured parties have a valid and enforceable security interest in the [net cash flow] to be distributed to the managers pursuant to the LLCA; and</p>

	<p>Such project is owned by a project company, and such project company has entered into a direct agreement under the LeaseDimensions servicing agreement and an addendum to the back-up servicing agreement in respect of the LLCA and management agreements</p> <p>(xi) Such project is located in the United States of America, installed on a residential property or residential building and payable in U.S. dollars by a U.S. citizen or legal resident;</p> <p>(xii) Such lease contract shall not exceed twenty-five (25) years in length and shall be payable in equal, monthly installments during the lease term. The total amount payable under the lease contract over the</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>(xiii) Such lease contract shall not have been modified from its original terms, other than pursuant to a “permitted modification” entered into during the normal course</p> <p>(xiv) Such system financed by the lease shall not be in an inoperable state unless subject to PosiGen collections activity in the normal course of business or otherwise subject to a temporary permitted modification;</p> <p>(xv) The receivable and all related documents shall have been duly authorized, shall be in full force and effect, and shall represent a legal, or valid and binding and absolute and unconditional payment obligation;</p> <p>(xvi) Other standard and customary criteria to be determined during diligence.</p>
Right of First Refusal (“ROFR”)	ROFR on all future financings <i>(to be further defined by Posigen)</i>
Tax Equity	<p>Required buyout of all tax equity facilities at earliest option. Sponsor shall be required to contribute equity to the Borrower for any tax equity buyouts.</p> <p>18 months prior to any buyout establish reserve account and fund 1/18th of buyout price monthly; funded via equity contributions from the Sponsor or otherwise with project revenues in excess of other payments in disbursement waterfall.</p>
Second and Third Lien Debt	<p>Standstill for both 2nd and 3rd lien debt required while Brookfield debt remains outstanding (regardless of whether Brookfield is pursuing remedies). Sizing consistent on a Borrowing Base and Advance Rate basis with existing deals. Other changes subject to Brookfield Lender consent.</p> <p>Intercreditor: (i) to prohibit junior lien holders or equity proposing DIP facilities without the express consent of Brookfield, (ii) to enable sale of collateral free of guarantee obligations (consistent with customary terms), and (iii) specify that any permitted second and third lien agent permitted</p>

	cash sweeps limited to special collateral accounts on which they have a first lien (amount subject to diligence)
Key Diligence Considerations	<p>Customary confirmatory due diligence, including but not limited to:</p> <ul style="list-style-type: none"> • Diligence regarding tariff and forced labor issues affecting panel procurement • O&M costs • SG&A / Corporate Liquidity / Liquidity for TE Buyouts • Contract renewals • Customer credit • Review of PosiGen's underwriting policies • Performance and technical review of existing operating portfolio • Legal & compliance (OFAC, KYC / AML) • ESG
Event of Default	Typical and customary substantially similar to existing facility (<i>subject to confirmatory diligence</i>)
Documentation:	Subject to the foregoing, the definitive facility documents anticipated to be in form and substance substantially similar to Borrower's existing back-leverage facility with Forbright Bank.

Exhibit B
Terms of the Proposed LPO Facility

PosiGEN LPO FACILITY

CONCEPTUAL FRAMEWORK

\$1,000,000,000 U.S. DEPARTMENT OF ENERGY LOAN PROGRAMS OFFICE GUARANTY

DECEMBER 2023

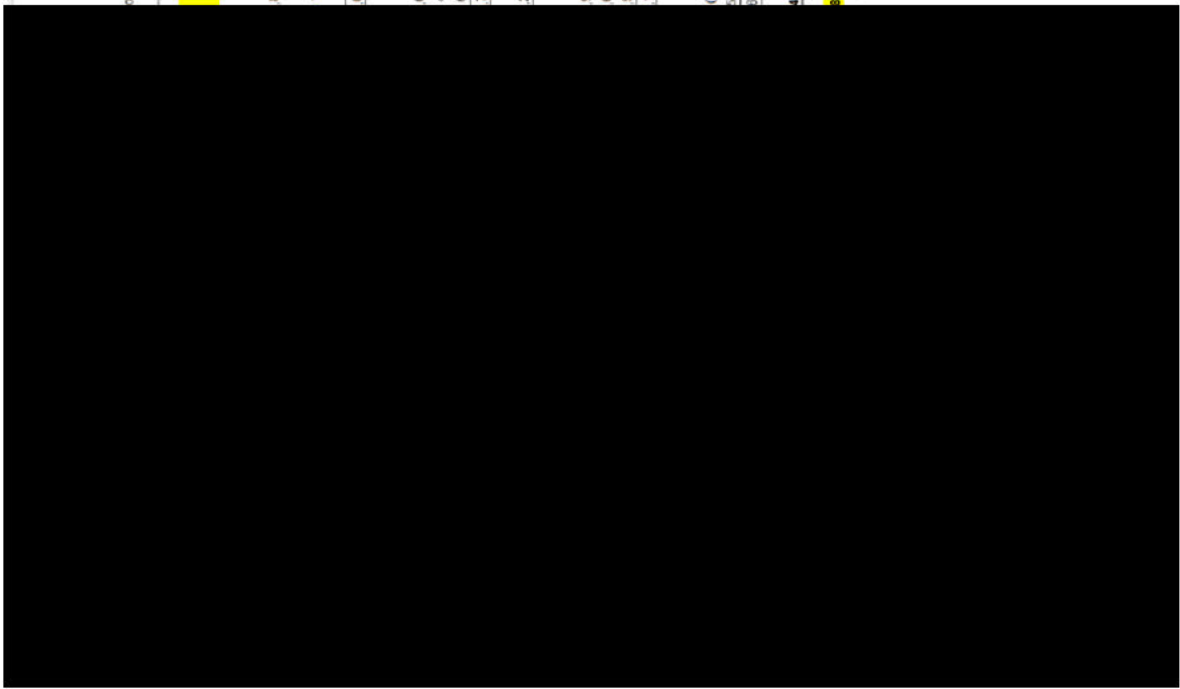
Borrower:	[PosiGen Rampart, LLC], as owner of 100% of the managing members' interests in the Portfolio		
Indemnity Guarantor:	PosiGen, PBC ("PosiGen")		
Portfolio:	<p>1) A current pool of [REDACTED] solar photovoltaic and home efficiency leases, either now in development or already Placed in Service but to be made available for further solar and/or storage upgrades, electrification investment, and/or incorporation into virtual power plant aggregations over time and as appropriate; and</p> <p>2) Similar residential systems to be Placed in Service by the Borrower and the Borrower's affiliates that will, from time to time, be incorporated into the Portfolio</p> <p>Providing access to "Solar for All," regardless of customer credit score or income, is understood to be a key feature of the portfolio and a shared goal of the Parties</p>		
Sponsor:	PosiGen		
Lenders:	Federal Financing Bank ("FFB"), as supported by a 100% loan guaranty from the U.S. Department of Energy's Loan Programs Office ("LPO"), and the Connecticut Green Bank ("CGB"), with the Lenders <i>pari passu</i> in seniority		
Administrative Agent:	[LPO on behalf of the FFB]		
Facility:	The principal terms of the Term Loan are outlined below:		
	Commitment:	[REDACTED]	
		[REDACTED]	
		[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
		[REDACTED] Flows, (ii) Uncontracted Residual Cash Flows as reasonably estimated by Borrower and agreed by Lender, and (iii) both contracted and uncontracted SREC Cash Flows associated with systems that have been Placed in Service, discounted at the Term Loan Interest Rate (as defined below), for all Eligible Systems	
		Eligible Systems are all systems that have been Placed in Service and are not 180+ days delinquent on their payment obligations and meet the Underwriting & Eligibility Criteria	
	Closing:	[March 2024]	
	Use of Closing Proceeds:	Proceeds of the loan advanced at Closing will be applied to (i) repay existing warehouse / aggregation facilities, (ii) pay transaction fees and expenses in connection with the	

	Transaction ³ , and (iii) purchase Eligible Systems from affiliates of the Borrower via the Draw mechanics described more fully below
Use of Draws:	Draws made after Closing will be used to further repay ongoing warehouse / aggregation facilities and incorporate Eligible Systems into the Portfolio by joining various project company affiliates (each, a “Project Company”) of the Sponsor to the Borrower
Tenor:	██████████
Availability Period:	██████████
Facility (or other upgfront) Fees:	None, in consideration for the Solar for All nature of the Portfolio
Interest Rate (Drawn Funds):	██. The Parties anticipate that any other Credit-Based Interest Rate Spread will be paid by LPO
Prepayment Penalties:	None
Draws:	Each Draw must be a minimum size of ██████████ will occur periodically in accordance with the following mechanics. PosiGen’s project development company (PosiGen Developer, LLC) will originate and develop Eligible Systems to be sold into a Project Company, which will in general be jointly owned by a PosiGen affiliate and a tax equity investor, although may also be wholly owned by a PosiGen affiliate. Once all Eligible Systems in each Project Company have been Placed in Service, the Borrower will draw upon the Term Loan to acquire the Project Company in total
Amortization:	Sculpted, fully amortizing over tenor of the loan
Collateral:	First priority perfected liens on (i) all of the tangible and intangible assets of the Borrower, (ii) the equity interests in the Borrower and (iii) all tangible and intangible assets of Project Companies not subject to a tax equity arrangement
Put Option Payments/ Inverter Replacement Payments	As necessary from time to time, Sponsor shall be required to contribute amounts to the Borrower to pay for any inverter replacements, costs to redeploy defaulted solar leases, normal O&M costs, or any tax equity put options
Underwriting & Eligibility Criteria:	<p>To conform with Sponsor’s current underwriting and eligibility criteria, specifically excluding thresholds related to traditional customer credit scores or income. Expected to include, but not be limited to, a project which is owned by a Project Company or, if there is no tax equity investor, a wholly-owned affiliate of PosiGen, which meets the following conditions:</p> <ul style="list-style-type: none"> (i) Such project is Placed in Service; (ii) Such project is operated and maintained by the manager and/or an affiliate of Sponsor (or a replacement reasonably acceptable to the Administrative Agent, on terms reasonably acceptable to the Administrative Agent); (iii) Such project is located on property or rooftop(s) owned or controlled by the applicable customer that is the counterparty to the customer agreement; (iv) Such project equipment installed is manufactured by an approved manufacturer; (v) The customer agreement with respect to such project is an eligible customer agreement; (vi) The eligible project representations and warranties shall be true and correct with respect to such project; (vii) The secured parties have a valid and enforceable security interest in the contracted cash flows to be distributed to the managers pursuant to an applicable LLCA; and (viii) Such project is owned by a Project Company, and such Project Company has entered into a direct agreement under an applicable servicing agreement and an addendum to the back-up servicing agreement in respect of the LLCA and management agreements; (ix) Such project is located in the United States of America, installed on a residential property or residential building (or otherwise represents a redeployed system on a commercial property) and payable in U.S. dollars by a U.S. citizen or legal resident; (x) Such project shall not be in an inoperable state unless subject to PosiGen collections activity in the normal course of business or otherwise subject to a temporary permitted modification; (xi) The receivable and all related documents shall have been duly authorized, shall be in full force and effect, and shall represent a legal, or valid and binding and absolute and unconditional payment obligation; and (xii) Other standard and customary criteria to be determined during diligence.

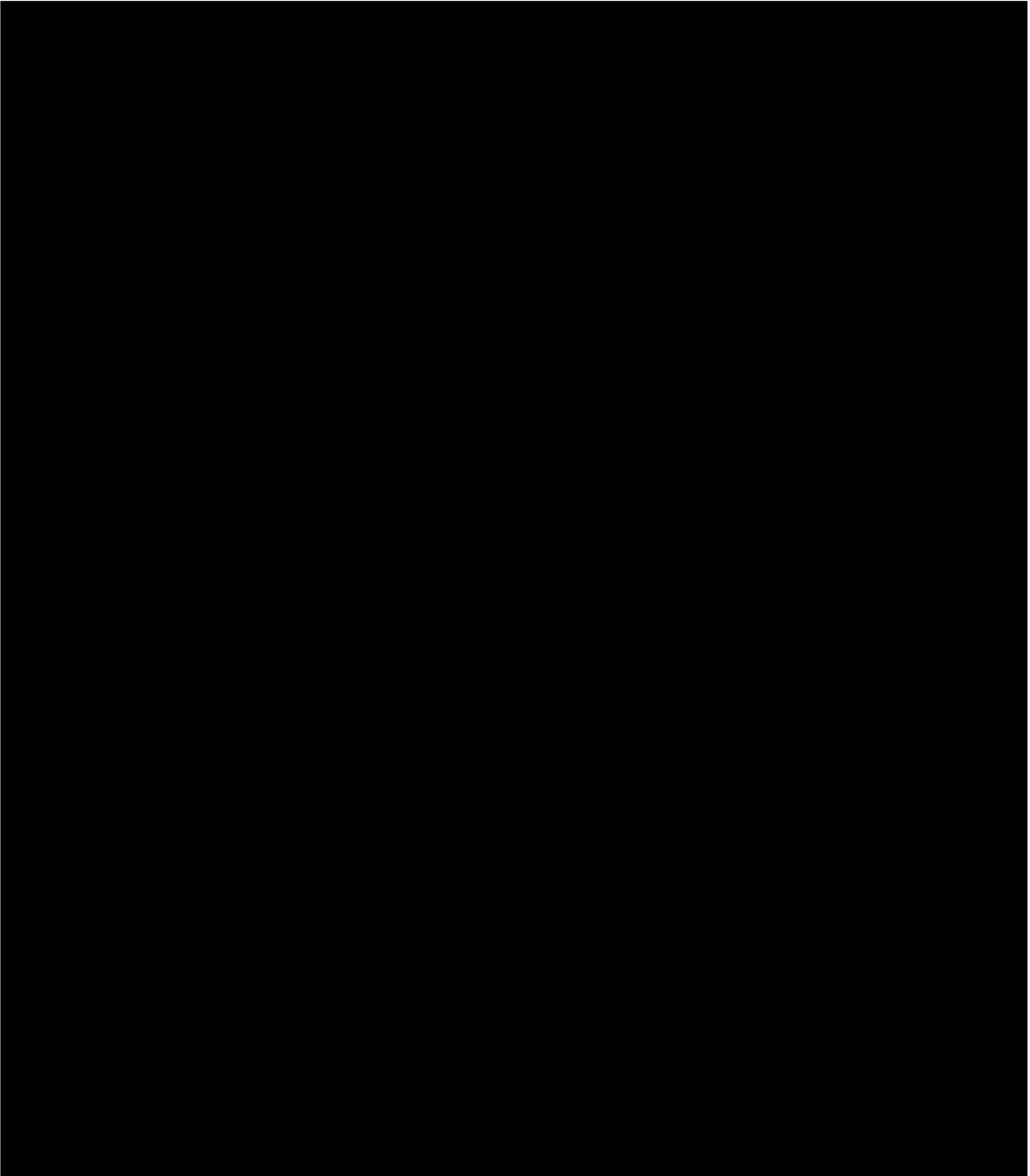
³ Including legal and due diligence expenses of Agent and Lender(s)

Financial & Collateral Covenants:	
Mandatory Prepayments:	Including, but not limited to: (i) Change of Control of the Borrower, except as approved by Lender in its sole discretion (ii) 100% of the net proceeds received from asset sales, and (iii) if the aggregate principal amount outstanding exceeds the most-recently calculated Borrowing Base multiplied by the Advance Rate, such excess amount
Change of Control:	Sponsor owning less than 100% of Borrower; permissible with Lender consent
Conditions Precedent to Closing:	Usual and customary, including, but not limited to, the condition that all transaction fees, costs, and due diligence expenses shall have been paid
Final Due Diligence:	Customary, including but not limited to: (i) diligence of existing systems to be incorporated into the Portfolio, (ii) review of PosiGen underwriting policies, (iii) approval of [investment committee], and (iv) legal & compliance diligence
Representations and Warranties:	Usual and customary
Affirmative Covenants:	Usual and customary
Negative Covenants:	Usual and customary
Events of Default:	Usual and Customary
Equity Cures:	Right to cure any Borrowing Base true-up, Financial & Collateral Covenants, or other customary curable Events of Default upon occurrence during the term of the loan
Syndication:	Lender(s) reserves the right to syndicate / allocate the loan to potential participants at their sole discretion.
Reporting Requirements:	Usual and customary, including, but not limited to: quarterly unaudited financials, quarterly borrowing base / servicer / collateral report and operating reports, annual budget and annual audited financials in accordance with U.S. GAAP. Financials shall be provided both for Borrower and Sponsor. The PosiGen management team shall use reasonable efforts to be available for management meetings at PosiGen's headquarters in St. Rose, Louisiana or remotely via videoconference as requested
System Removal and Redeployment Cost:	Subject to underlying Project Company obligations, PosiGen will cover all costs associated with removing terminated systems of the Borrower, as well as all costs associated with the installation of a redeployed system
Default Interest Rate:	
Governing Law:	State of New York
Lender Counsel:	TBD, with Lender legal expenses projected to not exceed [\$_____]

Exhibit C
P&L of PosiGen Development Co & Balance Sheet of PosiGen Inc



PosiGen Inc. Balance Sheet







Memo

To: Connecticut Green Bank ("Green Bank") Board of Directors (the "Board")

From: Bert Hunter, EVP & Chief Investment Officer

CC: Bryan Garcia, President and CEO; Brian Farnen, General Counsel and CLO; Jane Murphy, EVP of Admin and Finance

Date: March 8, 2024

Re: Modification of Capital Commitment for the LIME Program with Capital for Change Bank

Background & Summary of Request for Approval

At the October 25, 2019 meeting of the Connecticut Green Bank ("Green Bank") Board of Directors ("Board"), the Board approved a capital commitment to the LIME Program¹ with Capital for Change ("C4C"), the largest "full-service" CDFI in Connecticut. (See attached memorandum to the Board dated October 21, 2019 which explains in detail the LIME program and the capital commitment extended at that time).

While the LIME program is still successfully underwriting energy efficiency loans for qualifying multifamily properties, the availability period under the facility expires at the end of March 2024. During the meeting of the Board held March 17, 2023, the Board extended the availability period to March 31, 2024.

Given the success of the facility, C4C has requested – and Green Bank staff supports – an extension of the availability period to March 31, 2025 with identical terms and conditions. Accordingly, given the stable and sound financial position of C4C (summary financial statements attached to this memorandum as **Appendix A**), C4C's consistent debt servicing record with respect to this facility, and the programmatic alignment between C4C and Green Bank on the merits of the program, staff recommends an extension of the existing availability period to March 31, 2025. C4C will reimburse the Green Bank for any out of pocket legal expenses associated with this extension (which are expected to be minimal).

¹ Originally, the LIME stood for "Low Income Multifamily Efficiency" but has recently been rebranded as "Loans Improving Multifamily Efficiency".

Resolutions

WHEREAS, the Connecticut Green Bank (“Green Bank”) has an existing Master Facility to fund the Low Income Multifamily Efficiency (“LIME”) loan Program with Capital for Change (“C4C”), approved at the October 25, 2019 meeting of the Green Bank Board of Directors (the “Board”),

WHEREAS, C4C has been successful in deploying LIME Program loans using the Master Facility;

WHEREAS, in order to continue the successful deployment of capital into the LIME Program C4C has requested an extension of the availability period until March 31, 2025, approximately one year from the expiration of the availability period under the existing terms and conditions;

WHEREAS, Green Bank staff recommends the Board approve such extension of the availability period;

NOW, therefore be it:

RESOLVED, that the Board approves the extension of the availability period under the Master Facility until a date not to exceed March 31, 2025;

RESOLVED, that the President of the Green Bank; and any other duly authorized officer of the Green Bank, is authorized to execute and deliver, any contract or other legal instrument necessary to effect the extension of the availability period under the Master Facility for the LIME program on such terms and conditions as are materially consistent with the memorandum submitted to the Board on March 8, 2024; and

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents as they shall deem necessary and desirable to effect the above-mentioned legal instrument.

Capital for Change

Summary Financial Statements

CAPITAL FOR CHANGE, INC. AND AFFILIATES

Combined Statements of Financial Position
March 31, 2023 and 2022

Assets	2023	2022
Current Assets:		
Cash	\$ 2,721,951	\$ 3,001,296
Accounts receivable, net	1,730,029	1,541,191
Interest receivable	454,870	462,592
Current portion of loans receivable	8,126,831	17,291,952
Other current assets	86,671	94,863
Total current assets	<u>13,120,352</u>	<u>22,391,894</u>
Other Assets:		
Restricted cash	14,273,182	13,332,088
Investments	1,294,294	1,151,275
Loans receivable, net	76,652,926	60,588,929
Total other assets	<u>92,220,402</u>	<u>75,072,292</u>
Property and Equipment		
Land	241,686	241,686
Building and improvements	3,368,023	3,297,153
Furniture and equipment	1,525,228	1,449,340
	5,134,937	4,988,179
Less - accumulated depreciation	1,657,866	1,453,602
Net property and equipment	<u>3,477,071</u>	<u>3,534,577</u>
Total assets	<u>\$ 108,817,825</u>	<u>\$ 100,998,763</u>
Liabilities and Net Assets		
Current Liabilities:		
Current portion of notes payable	\$ 3,893,076	\$ 5,232,741
Current portion of equity equivalent notes payable	1,300,000	-
Accounts payable and accrued expenses	549,830	763,223
Accrued interest payable	90,305	90,467
Total current liabilities	<u>5,833,211</u>	<u>6,086,431</u>
Long-Term Liabilities:		
Conditional advances	5,007,167	5,082,920
Loan escrows liability	2,960,276	3,303,972
Funds held for others	994,703	962,566
Deferred interest and other revenue	1,721,491	1,997,353
Notes payable, net	52,638,353	43,816,518
Equity equivalent notes payable	4,850,000	6,100,000
Total long-term liabilities	<u>68,171,990</u>	<u>61,263,329</u>
Total liabilities	<u>74,005,201</u>	<u>67,349,760</u>
Net Assets:		
Without donor restrictions:		
Operating	11,181,032	10,814,185
Equity in property and equipment	2,068,652	2,075,437
Board designated	1,030,804	1,077,563
Total without donor restrictions	<u>14,280,488</u>	<u>13,967,185</u>
With donor restrictions	20,532,136	19,681,818
Total net assets	<u>34,812,624</u>	<u>33,649,003</u>
Total liabilities and net assets	<u>\$ 108,817,825</u>	<u>\$ 100,998,763</u>

CAPITAL FOR CHANGE, INC. AND AFFILIATES

Combined Statements of Activities Without Donor Restrictions
For the Years Ended March 31, 2023 and 2022

	<u>2023</u>	<u>2022</u>
Revenues:		
Earned revenue:		
Financial revenue:		
Interest on loans	\$ 4,013,333	\$ 3,924,269
Investment return, net	(45,000)	(27,177)
Less - net loan loss provision	(1,072,650)	(1,068,188)
Less - interest expense	<u>(2,265,657)</u>	<u>(1,750,576)</u>
Net financial revenue	630,026	1,078,328
Loan servicing fees	1,487,484	1,417,508
Loan origination and other fees	<u>1,129,579</u>	<u>1,005,996</u>
Total earned revenue	<u>3,247,089</u>	<u>3,501,832</u>
Public support:		
Government grants and contracts	925,897	4,637,566
Other grants and contributions	38,911	133,995
Net assets released from purpose restrictions	<u>2,083,435</u>	<u>534,826</u>
Total public support	<u>3,048,243</u>	<u>5,306,387</u>
Total revenues	<u>6,295,332</u>	<u>8,808,219</u>
Expenses:		
Program	5,131,425	5,059,197
General and administrative	627,262	895,602
Fundraising	<u>223,342</u>	<u>251,722</u>
Total expenses	<u>5,982,029</u>	<u>6,206,521</u>
Changes in net assets without donor restrictions	<u>\$ 313,303</u>	<u>\$ 2,601,698</u>

CAPITAL FOR CHANGE, INC. AND AFFILIATES

Combined Statements of Changes in Net Assets
For the Years Ended March 31, 2023 and 2022

	Without Donor Restrictions	With Donor Restrictions	Total
Net Assets, March 31, 2021	<u>\$ 11,365,487</u>	<u>\$ 18,548,873</u>	<u>\$ 29,914,360</u>
Changes in net assets without donor restrictions	<u>2,601,698</u>	<u>-</u>	<u>2,601,698</u>
Changes in net assets with donor restrictions:			
Grants and contributions	-	1,667,771	1,667,771
Net assets released from restrictions	<u>-</u>	<u>(534,826)</u>	<u>(534,826)</u>
Total changes in net assets with donor restrictions	<u>-</u>	<u>1,132,945</u>	<u>1,132,945</u>
Changes in net assets	<u>2,601,698</u>	<u>1,132,945</u>	<u>3,734,643</u>
Net Assets, March 31, 2022	<u>13,967,185</u>	<u>19,681,818</u>	<u>33,649,003</u>
Changes in net assets without donor restrictions	<u>313,303</u>	<u>-</u>	<u>313,303</u>
Changes in net assets with donor restrictions:			
Grants and contributions	-	2,933,753	2,933,753
Net assets released from restrictions	<u>-</u>	<u>(2,083,435)</u>	<u>(2,083,435)</u>
Total changes in net assets with donor restrictions	<u>-</u>	<u>850,318</u>	<u>850,318</u>
Changes in net assets	<u>313,303</u>	<u>850,318</u>	<u>1,163,621</u>
Net Assets, March 31, 2023	<u>\$ 14,280,488</u>	<u>\$ 20,532,136</u>	<u>\$ 34,812,624</u>

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Memo

To: Connecticut Green Bank (“Green Bank”) Board of Directors (the “Board”)
From: Bert Hunter, EVP & Chief Investment Officer
CC: Bryan Garcia, President and CEO; Brian Farnen, General Counsel and CLO; Jane Murphy, VP of Admin and Finance
Date: October 21st, 2019
Re: Modification of Capital Commitment for the LIME Program with Capital for Change

Background & Summary of Request for Approval

Capital for Change is the largest “full-service” CDFI in Connecticut, the result of a 2016 merger of three long-running CDFIs – the Community Capital Fund, the Greater New Haven Community Loan Fund, and the Connecticut Housing Investment Fund (or CHIF). This merger created an entity with long-standing relationships in several of Connecticut’s urban areas – particularly Bridgeport and New Haven – and with a large portfolio of operating loans. Prior to the merger, C4C (then, still the Connecticut Housing Investment Fund) began issuing LIME loans² as the result of a 2013 oil-fired boiler replacement project for an affordable housing development. The general purpose of the LIME Program is to finance renewable energy and energy efficiency measures installed on multifamily affordable housing through C4C’s partnership with Green Bank. The project was extremely successful, yielding \$75,000 in first year energy savings after a \$250,000 loan, and planting the seed for C4C to launch the LIME program.

Green Bank partnered with C4C soon after the launch of the LIME program. In April 2014, in coordination with seed capital funding from the Opportunity Finance Network, the Green Bank Board approved \$1,000,000 in additional loan funding and \$300,000 in loan loss reserve credit enhancement for LIME loans. In June 2016, the Board reauthorized the Program under amended

² Originally, the LIME stood for “Low Income Multifamily Efficiency” but has recently been rebranded as “Loans Improving Multifamily Efficiency”.

guidelines and authorized the Green Bank's provision of \$1,000,000 in capital financing³ and \$625,000 of repurposed ARRA-SEP funds for a loan loss reserve to support an initial capital pool of \$3,000,000⁴. In February 2017, the Green Bank Board approved a further deployment of an additional \$2.5M from Green Bank balance sheet capital to C4C to finance additional properties in the LIME pipeline. Approximately \$3.3 million of the \$3.5M Green Bank facility is outstanding. All of C4C's funded LIME loans are fully performing.

Due to C4C's growth relative to legacy financing facilities across multiple financing products and programs, C4C and the Green Bank have worked together to structure new financing facilities better equipped to scale alongside C4C's projected origination pipeline. In the current quarter alone, Green Bank worked with Amalgamated Bank to arrange term sheets for a \$27 million credit facility for its CEEFCo subsidiary (to which Green Bank has already advanced a \$1.5 million bridge loan for C4C and in which Green Bank will participate in a subordinated role) for C4C's single-family residential energy loan financing programs, which includes the Smart-E Loan. This loan is expected to close in November.

Similarly, the C4C LIME pipeline has been outgrowing its funding sources, resulting in a liquidity constraint as C4C seeks to execute on its pipeline. C4C is seeking to raise additional capital from Bank of America and the Opportunity Finance Network for the LIME Program and Green Bank staff received FY 2020 budget approval from the Board for an additional investment of \$2M at the same 3% original interest rate on the existing \$3.5 million facility for the LIME portfolio. In addition, due to the success of the LIME Program and adequate Green Bank resources, staff is proposing an additional \$1 million above the \$2 million budget for the LIME Program (sourced from budgeted \$7.5 MM of new product development funds), but this incremental \$1 million would be at a rate of 5% in line with our benchmark. Altogether, upon approval, Green Bank's capital commitment to the LIME Program with C4C will rise from \$3.5 million to \$6.5 million. Furthermore, given the unexpended loan resources available to Inclusive Prosperity Capital ("IPC"), Green Bank and IPC proposed to C4C a "Master LIME Funding Facility" (the "Master Facility") which would be structured as a loan facility secured by each loan advanced to a LIME Program borrower. Altogether, with IPC's \$1.2 million proposed participation in the Master Facility, C4C would have available to it \$4.2 million in additional capital funds for LIME. Moreover, OFN and Bank of America are making progress on committing to additional facilities for the LIME Program given its success.

Based on communications between Green Bank and IPC, IPC will (in advance of the Master Facility) document, close, and advance an initial capital deployment (equal to its \$1.2 million participation in the "Master Facility") that would then be rolled up (together with any collateral IPC would have with its initial capital deployment) into the larger Green Bank Master Facility on a pari passu basis.

³ This allocation was budgeted from the \$5,000,000 multifamily sector allocation approved by the Board of Directors for Fiscal Year 2014. This \$1,000,000 would remain on Green Bank's books but be available to C4C as C4C approved and closed on loans with qualified borrowers, in accordance with approved underwriting standards under the LIME Loan program.

⁴ Additional funding sources included: \$1,000,000 intercompany loan from the CT Energy Efficiency Finance Company ("CEEFCo") at 1.00%; \$1,000,000 from the Opportunity Finance Network ("OFN") at 3.00%.

LIME Program Success to Date

The Program has been successful in its target market – financing mid-cycle improvements for properties serving low and moderate income households. To date, the Program has closed 29 loans and deployed \$10.1 million in capital toward project costs of \$13.5 million (less \$1.2 million in utility incentives) improving nearly 2,000 housing units.

LIME Program Highlights

Program Start Date:	December 5, 2013	Utility Incentive Leverage Ratio (Loans):	9:1
Number of Loans Closed:	29	Utility Incentive Leverage Ratio (Total):	12:1
Smallest Loan Amount:	\$25,000	Total Units Improved:	1,973
Largest Loan Amount:	\$2,600,000	Average Project Cost per Unit:	\$6,833
Average Loan Amount:	\$348,042	Average Utility Incentive per Unit:	\$586
Total Originations:	\$10,093,223	Total Projected NOI Increase:	\$1,245,941
Total Cost of Funded Projects:	\$13,481,528		
Total Utility Incentives:	\$1,155,197		

Eligible Upgrades

- Heating and cooling systems
- Hot water systems
- Building envelope
- Lighting
- Appliances
- Water efficiency
- Alternative energy systems (solar PV, fuel cells, etc.)
- Conversion from oil or electric to gas
- Qualified health and safety measures

Program Hallmarks

- Loan terms dictated by savings projections
- Incorporation of utility and O/M savings
- Conservative, verifiable projections
 - Heavy reliance on utility rebate contracts
 - Independent third-party audit/review process
- Big cushion for shortfalls in performance
 - 1.30X minimum DSCR for EE savings
 - 1.10X minimum for solar PV
- Term length based on useful life of measures to be installed
- Mandatory utility cost monitoring/verification, with lender portal to data
- 25% allowance for health/safety measures
- Most loans require no equity contribution from borrower
- Included costs:
 - Lender legal fees
 - Origination fee @ 2.00%
 - M/V contract - \$5.80 per unit per year
 - Third-party audit/review fees
 - Take-out of existing pre-development financing
- Security: 1% second mortgages; 73% guarantees; 25% income assignments; 1% UCC-1 (unsecured)

Transaction Summary & Requested Approval

The Facility would be advanced in one or more draws, with an initial draw expected to occur concurrently with the close of the transaction. As the Facility would be held on C4C's balance sheet and collateralized by project-level loans, closing will be conditioned upon satisfactory due diligence of 1) the financial strength and obligations of the parent entity, Capital for Change, Inc., 2) the ability of Green Bank to adequately structure the Master Facility and take security against underlying loans in the manner proposed herein and, for the avoidance of doubt, in a manner that facilitates repayment from the secured collateral even during a C4C default and/or bankruptcy event, and 3) the performance of both LIME loans used as collateral (i.e. repayment performance) and the underlying renewable energy/energy efficiency projects themselves (i.e. technical performance).

The Facility would be fully amortizing across the repayment term, aligning the repayment term with the blended cash flow profile of the underlying LIME loans. The repayment term of the Facility would have a 3 year availability period and would be repayable via the underlying LIME loan collateral pool, up to 20 years from the final draw during the availability period.

Note that while C4C's maximum term for the LIME loan program is 20 years following the availability period, Green Bank would provide C4C with the ability to replace a delinquent loan with another eligible LIME loan, and, depending on the age of the replacement loan, would restrict the overall term of the Facility to the 20 years from the final draw during the 3 year availability period.

Capital would be advanced at the lesser of 90% of total outstanding principal of the collateral pool or such lesser amount to conform the principal amount that would result in a debt service coverage ratio from the cash flows from the collaterally assigned LIME loans of 1.25x.

The Green Bank loans in the Master Facility would carry an interest rate of:

Green Bank A Loan \$5,500,000: 3%

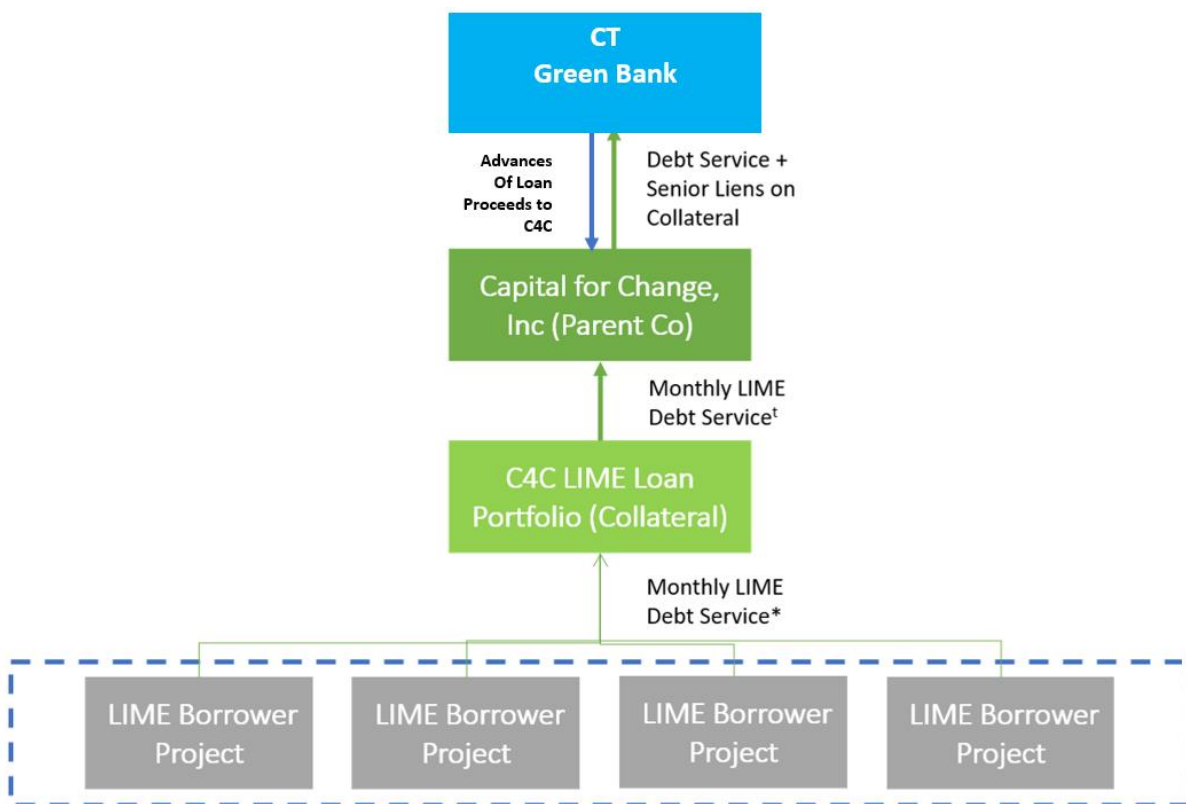
Green Bank B Loan \$1,000,000: 5%

Term Sheet agreed between C4C, IPC and Green Bank is attached (see Exhibit A).

Capital Flow Diagrams

The following diagram illustrates the flow of capital and responsibilities of and between Green Bank, C4C, and the underlying collateral. The LIME loan contracts will be collaterally assigned to Green Bank at transaction close. Other than collateral assignment of the LIME loan documents, project borrowers will be unaffected.

The structure illustrates the Facility for which Green Bank is requesting approval: a direct balance sheet loan of \$6.5 million (an increase from the existing \$3.0 million facility) from Green Bank to C4C.



Green Bank Risk Exposure and Mitigants

The C4C LIME loan Facility faces off-taker risk and C4C balance sheet risk.

The off-taker risk manifests simply as the possibility that C4C's LIME loan borrowers default under their respective loans. This risk is inherent in any project financing, however, and, as such, is mitigated in a number of ways. First, C4C has underwritten its LIME Loans in a manner co-

developed with Green Bank and consistent with Green Bank's approach to underwriting renewable energy and energy efficiency projects. Metrics include customer leverage ratio, liquidity analysis, and energy savings coverage ratio. Additionally, Green Bank would structure the proposed facility with a mandatory prepayment or loan replacement in the event of delinquency.

As Green Bank would be investing directly onto C4C's balance sheet, Green Bank is mindful of both the sponsor risks associated with the facility and the structuring risks associated with adequately collateralizing and protecting a corporate credit facility relative to other potential creditors. Green Bank's cashflows would be protected relative to other creditors and in the event of a C4C bankruptcy by:

- 1) perfected, first priority liens on all of the loans used as collateral under the facility,
- 2) collateral assignment all applicable asset cash flows and contracts, and
- 3) collateral assignment of any step-in rights and guarantees associated with equipment.

C4C Financial Condition

C4C is in good financial health. Represented below is the parent-level company which is the entity to which the Green Bank loan would be made. Unrestricted cash decreased from 2017 to 2018 due to advances to CEEFCo (where Smart-E and other utility loan program advances are made) and about \$1 million in building and equipment acquisition related to new office space. Restricted cash declined and liabilities increased tracing to loan growth. The proposed \$6.5 million loan would represent approximately 12.6% of loans C4C at the parent level would have available from third parties.⁵

Capital for Change, Inc. and Affiliated Organizations Consolidated Statement of Financial Position March 31, 2019

<u>Assets</u>	<u>3/31/2017</u>	<u>3/31/2018</u>	<u>3/31/2019</u>
Current assets			
Cash	\$4,566,382	\$1,244,026	\$1,235,106
Restricted cash	11,151,667	7,536,837	6,545,928
Accounts receivable, net	822,759	2,389,403	1,235,135
Interest receivable	182,363	222,195	390,234
Prepaid expenses	85,914	176,340	122,259
Property and equipment, net	333,885	1,305,207	2,286,575
Investments	296,713	334,029	352,485
Loans receivable	53,780,427	69,611,610	81,091,556
Loan loss reserves	(3,779,033)	(3,489,093)	(5,570,180)
Loans receivable - agency assets	2,642,704	6,834,387	18,326,441
Other assets	426,280	27,446	27,447
Total assets	\$70,510,061	\$86,192,387	\$106,042,986
<u>Liabilities and Net Assets</u>			
Accounts payable and accrued expenses	\$777,589	\$556,355	\$402,994
Accounts payable construction			295,788
Accrued interest payable	52,585	83,590	68,660
Escrows	3,501,949	4,206,817	3,726,115
Refundable advances	4,268,843	4,432,343	4,475,343
Deferred revenue		1,244,161	1,718,373
Notes payable	24,704,495	33,929,027	42,975,606
Notes payable - EQ2	4,700,000	4,950,000	5,625,000
Agency liabilities	3,127,046	7,903,213	18,827,120
Total liabilities	\$41,132,507	\$57,305,506	\$78,114,999
Net assets			
Without donor restrictions	7,940,355	9,245,686	9,511,768
With donor restrictions	21,437,199	19,641,195	18,416,219
Total net assets	29,377,554	28,886,881	27,927,987
Total liabilities and net assets	\$70,510,061	\$86,192,387	\$106,042,986

⁵ 12.6% = \$6.5m / (\$48.6m + \$3.0m) ... Green Bank's existing \$3.5m facility is included in the \$41.1m amount. Total outstanding loans to C4C at 3/31/19: \$41.1M; total undrawn availability: \$11.9M

Capital for Change, Inc. and Affiliated Organizations
Consolidated Statement of Activities and Changes in Net Assets
Year Ended March 31, 2019

	FYE 3/31/17	FYE 3/31/18	FYE 3/31/19
Revenue and support			
Loan interest activity	\$2,067,361	\$2,751,900	\$3,548,160
Loan servicing revenue	1,037,739	1,412,180	1,550,782
Loan fees	156,809	144,818	430,936
Grants and contributions	3,848,994	1,042,663	1,605,045
Other income	263,600	333,719	1,116,603
Total revenue and support	\$7,374,503	\$5,685,280	\$8,251,526
Expenses			
Program (incl G&A & Fundraising)	\$5,290,790	\$6,175,953	\$9,210,420
Changes in net assets	2,083,713	(490,673)	(958,894)
Net assets, beginning	27,293,841	29,377,554	28,886,881
Net assets, end	\$29,377,554	\$28,886,881	\$27,927,987

Stable Financial Performance Trends

Year Ended	3/31/2017	3/31/2018	3/31/2019
Operating Revenue	\$ 3,419,224	\$ 4,467,189	\$ 5,906,534
Expense Ratio (Exp/Tot Assets)	8.7%	7.9%	9.6%
Net Interest Margin	2.59%	2.92%	2.77%

- For three years, increasing Operating Revenue (Total Revenue net of Grants and Contributions)
- Expense ratio under 10%
- Net interest margin consistently stable

Year Ended	3/31/2017	3/31/2018	3/31/2019
Credit Losses	\$ 144,519	\$ 788,518	\$ 365,515
Average Outstanding Loans	\$ 52,757,796	\$ 61,696,019	\$ 75,176,391
Loss Rate	0.27%	1.28%	0.49%

- For three years, credit losses and loss rates remaining low as average loan balances increase
- Low Leverage ratio relative to other CDFIs of similar size
- All metrics are consolidated Capital for Change, Inc.

Request

Green Bank staff requests:

Deployment of up to \$6.5M from Green Bank balance sheet capital to C4C on a secured basis to finance LIME Program loan growth. This represents an increase of \$3.0 million in addition to existing authority of \$3.5 million. Given the success of the LIME Program, consistent LIME Loan performance, and solid health of Green Bank's program partner – Capital for Change, the largest CDFI in the state, approval is recommended.

Green Bank Financial Statements

How is the project investment accounted for on the balance sheet and profit and loss statements?

Upon advancing loans to C4C, Green Bank would have a reduction in cash and cash equivalents on the asset side of the Green Bank's balance sheet and a concomitant increase in short-term loans.

Resolutions

WHEREAS, the Connecticut Green Bank (“Green Bank”) has an existing Low Income Multifamily Efficiency (“LIME”) loan Program with Capital for Change (“C4C”);

WHEREAS, C4C has been successful in deploying more than \$10 million in LIME Program loans, for 29 projects representing 1,973 housing units improved by the program;

WHEREAS, in order to continue the successful deployment of capital into the LIME Program C4C needs additional funding which it is sourcing from Green Bank and other capital sources;

WHEREAS, Green Bank staff recommends an increase in the LIME funding facility (the “LIME Loan Facility”) to \$6.5 million from the existing \$3.0 million substantially conforming to the terms and conditions explained in staff’s memorandum to the Green Bank Board of Directors (the “Board”) dated October 21, 2019, and inclusive of the term sheet for the proposed facility attached to said memorandum as Exhibit A;

NOW, therefore be it:

RESOLVED, that the Board approves the LIME Loan Facility to C4C in an amount of up to \$6.5 million in capital from the Green Bank balance sheet in support of the LIME Program;

RESOLVED, that the President of the Green Bank; and any other duly authorized officer of the Green Bank, is authorized to execute and deliver, any contract or other legal instrument necessary to effect the LIME Loan Facility on such terms and conditions as are materially consistent with the memorandum submitted to the Board on October 21, 2019; and

RESOLVED, that the proper Green Bank officers are authorized and empowered to do all other acts and execute and deliver all other documents as they shall deem necessary and desirable to effect the above-mentioned legal instrument.

Submitted by: Bryan Garcia, President and CEO and Bert Hunter, EVP and CIO

Preliminary Summary of Non-Binding Terms and Conditions

Capital for Change LIME Loan Master Credit Facility

October [], 2019

This Preliminary Summary of Non-Binding Terms and Conditions ("Term Sheet") is intended for discussion purposes only and does not constitute a legally binding obligation of any party, nor does it represent or constitute any commitment to underwrite, arrange, place, or provide any financing, or to otherwise extend credit, make loans, make investments, or enter into negotiations of any kind with respect to any of the information herein.

This Term Sheet does not include descriptions of all of the terms, conditions, and other provisions that would be contained in any definitive documentation derived from the information herein, which is subject to governance approvals, satisfactory completion of due diligence, financial modeling, review of documentation, and other such terms and conditions as CONNECTICUT GREEN BANK ("CGB") may determine in its sole discretion. In the event of any discrepancy between this Term Sheet and any such mutually executed and legally binding definitive documentation that is contemplated herein by the parties, the definitive documentation will govern.

No agreement, oral or otherwise, that may be understood or implied by any party during negotiations shall be binding unless such agreement is explicit in writing in mutually executed and legally binding definitive documentation. Additionally, changes may be made to the preliminary terms and conditions summarized herein based on negotiation, advice of advisors and/or legal counsel, due diligence, internal approval requirements, or any other consideration deemed necessary, prudent, or desirable.

This Term Sheet is delivered on the understanding that it is confidential, and any of the terms of substance hereunder shall not be disclosed, directly or indirectly, to any other person except to your directors, officers, employees, agents, and advisors who are directly involved in the consideration of this matter unless prior written consent has been given by CGB. The transaction contemplated by this Term Sheet is subject to all necessary CGB approvals, including, but not limited to, its Board of Directors or relevant committees thereof.

Lender	CONNECTICUT GREEN BANK ("CGB"), or a wholly owned subsidiary thereof and jointly participating lenders including, but not necessarily limited to, Inclusive Prosperity Capital, Inc. ("IPC"). an independent third party partner of CGB.
Borrower and Ultimate Parent	Capital for Change, Inc.
Facility Type	Multiple draw credit facility, with a senior secured promissory note drawn during the Availability Period that fully amortizes according to the blended repayment profile of the underlying loans
Facility Amount	<p>Up to \$7,700,000 comprised of:</p> <p>CGB A Loan \$5,500,000 CBG B Loan \$1,000,000 IPC Loan \$1,200,000</p> <p>Note: (1) CGB's existing \$1.0m LIME funding and \$2.5m LIME funding to be combined into the CGB A Loan (2) IPC's existing \$1.2m LIME funding to be combined into the IPC Loan under this Facility</p>
Closing Date	The date upon which definitive documentation is mutually executed and legally binding by and between Lender and Borrower, expected to occur on or before November 30, 2019
Facility Use of Proceeds	To support the continued capitalization of LIME loans in Connecticut as originated by Borrower
Lender Collateral / Security	<p>At all times the Lender will be secured by:</p> <p>(A) Perfected first-priority security interests in existing Eligible LIME Loans as identified/originated by Borrower and approved by Lender's Underwriting Guidelines (the facility shall be senior to all debt and equity interests in said Eligible LIME Loans); (B) (B)Collateral Assignment of all Eligible LIME Loan cash flows and contracts;</p>

	<p>(C) Collateral assignment of UCC-1 filings on equipment financed by Eligible LIME Loans</p> <p>As for (A) and (B), Lender will be satisfied with security in a subset of existing LIME Loans so as to remain within the Advance Rate constraints explained below.</p>
Facility Availability Period	Three (3) years
Advance Rate	<p>For the IPC Portion: the minimum of (A.) 70% of total loan value ("LTV"), defined as the total principal outstanding at the time of Advance and (B.) a senior secured promissory note amount that would result in a minimum annual Debt Service Coverage Ratio ("DSCR") of 1.25x given the Repayment Profile and cash flows from the assigned LIME loans, and subject to acceptable borrowing request memos, loan documentation, and loan/portfolio borrowing financial models, the forms of which shall be attached to the definitive documentation.</p> <p>For the CGB Portion: the minimum of (A.) 90% of total loan value ("LTV"), defined as the total principal outstanding at the time of Advance and (B.) a senior secured promissory note amount that would result in a minimum annual Debt Service Coverage Ratio ("DSCR") of 1.25x given the Repayment Profile and cash flows from the assigned LIME loans, and subject to acceptable borrowing request memos, loan documentation, and loan/portfolio borrowing financial models, the forms of which shall be attached to the definitive documentation.</p>
Eligible LIME Loans	<p>The LIME Loans set forth in a schedule attached to the definitive documentation and in compliance with Underwriting Guidelines.</p> <p>Eligible LIME Loans will be owned by the Borrower and will have customer contracts with fixed payment terms and which are secured by second mortgages, collateral assignments of income, or guarantees for the full loan amount. Contracts and all other income and guarantees associated with and/or collaterally assigned to C4C as part of</p>

	<p>the Eligible LIME Loans will be assigned to Lender prior to advance of funds.</p> <p>Eligible LIME Loans will also have been used to finance projects with insurance and warranty coverage in amounts and coverages acceptable to Lender in its sole discretion and with Borrower named as additional insured / loss payee, as appropriate</p>
Advance Milestone	The Advance will be made upon Lender receiving, for each Eligible LIME Loan, a Borrowing Packet consisting of 1) underwriting package developed by Borrower, inclusive of any relevant loan approval memorandums, pro forma models, and customer contracts and information, 2) proof the project is in repayment and is current, as deemed adequate by Lender, 3) a production report showing the renewable energy and/or energy efficiency measures are performing as expected, within reason, and 4) all technology performance related documents including any warranties, insurance, and O&M agreements.
Repayment Term	In accordance with the remaining life of the underlying collateral, not to exceed 20 years.
Repayment Profile	Monthly payments of principal and interest in a sculpted payment structure and in amounts sufficient to fully amortize the promissory note over the Repayment Term.
Interest Rate:	<p>CGB A Loan Fixed at 3.00% P.A. for the Repayment Term.</p> <p>CBG B Loan Fixed at 5.0% P.A. for the Repayment Term.</p> <p>IPC Loan Fixed at 5.50% P.A. for the Repayment Term.</p>
Calculation of Interest and Fees	All calculations of interest and fees shall be made on the basis of actual number of days elapsed in a 360-day year.
Closing Fee:	<p>CGB A Loan None</p> <p>CBG B Loan None</p> <p>IPC Loan 2.0% of the IPC Loan Amount.</p>
Good Faith Deposit	\$10,000 to be deposited with Lender upon acceptance and execution of this Term Sheet

	<p>and to be used toward any third-party expenses associated with the facility.</p> <p>The Good Faith Deposit, net of any third-party expenses incurred by Lender, will either be returned to Borrower at the Closing Date, applied towards any fees associated with the facility (at the Borrower's election), or returned to the Borrower if Lender withdraws from the contemplated facility before the Closing Date.</p> <p>If the Borrower withdraws from the contemplated facility before the Closing Date, the Good Faith Deposit shall be deemed to have been paid to and fully earned by Lender.</p>
Lender Third Party Fees	<p>Borrower shall reimburse Lender for all incurred out-of-pocket and third-party fees and expenses associated with the facility ("Reimbursable Expenses"), inclusive of closing and, and including (but not limited to) legal fees, filing fees, and searches. In the event Borrower withdraws from the contemplated facility before the Closing Date, Borrower will still be responsible for Reimbursable Expenses.</p>
Mandatory Prepayment	<ul style="list-style-type: none"> • Sale or disposition of any Eligible LIME Loan by any means, including customer refinancing of LIME Loan or sale of underlying property so long as no other Eligible LIME Loan has taken its place in the portfolio within the earlier of a) 60 days from such sale or disposition or b) the end of the Availability Period, provided further that 100% of the proceeds from any such sale or disposition of any Eligible LIME Loan shall remain in cash deposits or other highly liquid short term investments and not used for any other purpose whatsoever pending redeployment in such other Eligible LIME Loan. • If an Eligible LIME Loan is delayed in making payments owed to Borrower under any relevant customer contract for 60 days past the relevant payment date, any Facility Amount associated with that project must be repaid so long as no other

	<p>Eligible LIME Loan has taken its place in the portfolio</p> <ul style="list-style-type: none"> • Usual and customary, including change in ownership of the Borrower and other Borrower capital events.
Deposit Account	<p>Borrower shall establish a primary operating account for Eligible LIME Loan cash flows with adequate account control provisions/ agreements, acceptable to Lender in its sole discretion. Any fees incurred by Borrower's in establishing the account and reasonably expected to be incurred for maintaining the account will be deducted from the Closing Fee.</p>
Priority of Payments / Waterfall	<p>Subject to the Borrower and any requirements imposed by Lender to include payment priority provisions in the Borrower's Operating Agreement, funds in the Deposit Account shall be applied in the following order:</p> <ul style="list-style-type: none"> i. Accrued but unpaid fees to the Lender; ii. Undrawn Commitment Fees; iii. Accrued but unpaid interest to the Lender; iv. Principal payments to the Lender; v. Deposits into the DSRA to the extent needed to replenish previously drawn funds.
Servicer/Servicing	<p>Borrower will have in place customer payment servicing processes acceptable to Lender in its sole discretion.</p>
Default Provisions	<p>Usual and customary, including</p> <ul style="list-style-type: none"> • Repayment default • Failure to pay/cure Mandatory pre-payment • Bankruptcy • Ineligible Disbursement
Default Interest Rate	<p>The Interest Rate plus 300 bps, and in all cases subject to compliance with applicable laws and regulations.</p>
Conditions Precedent to Closing	<ul style="list-style-type: none"> • Definitive documentation

	<ul style="list-style-type: none"> • Collateral and Security Documentation • Fees and Expenses • No Borrower EOD
Conditions Precedent to Draw	<ul style="list-style-type: none"> • Delivery of a Draw Request • Borrower Certification of an Eligible LIME Loan • Borrower Certification of No Defaults • Form of Draw Request Certificate to be attached to definitive documentation
Financial Covenants	<ul style="list-style-type: none"> • No liens or any other security interests in Eligible LIME loans senior to the CGB credit facility • Maintain required collateral, resulting in mandatory prepayment upon sale or disposition without replacement of Eligible Projects
Financial Statements	2 years financials (third party certified public accountant prepared financials or tax returns) for Borrower
Legal Requirements	Usual and customary
Monitoring Requirements	<ul style="list-style-type: none"> • DSCR reporting • Aging reporting • LMI allocation reporting • Customer Invoices • Expense Documentation • Renewable Energy / Energy Efficiency performance Reporting
Other Covenants, Representations, and Warranties	Usual and customary
Indemnities	Borrower will indemnify and hold harmless the Lender and its affiliates, partners, directors, officers, employees, agents, and advisors from and against all incurred losses, claims, damages, liabilities, and expenses arising from this Term Sheet, the facility anticipated herein, any definitive documentation that arises from this Term Sheet, and any actual or perceived impact to the Ultimate Parent's, and affiliated entities' and investors, business operations.
Eligible Project Underwriting Guidelines	Consistent with Capital for Change Lending Policy as of October 2018
Assignment	Lender may assign all or a portion of the Facility Amount, under the terms and

	conditions set forth herein and as finalized in the definitive documentation, to one or more assignees.
Governing Law	Connecticut.
Expiration	This Term Sheet shall expire if not duly executed by November 1, 2019.

ACCEPTED AND AGREED:

CAPITAL FOR CHANGE, INC.

Date:

By: _____

Name:

Title:

CONNECTICUT GREEN BANK

Date:

By: _____

Name:

Title:

INCLUSIVE PROSPERITY CAPITAL, INC.

Date:

By: _____

Name:

Title:



Memo

TO: Board of Directors of the Connecticut Green Bank

From: James Desantos (Legislative Liaison)

Cc: Bryan Garcia (President & CEO), Brian Farnen (General Counsel & Chief Legal Officer)

Date: March 12, 2024

Re: Legislative Process - 2024 Legislative Session – Public Hearing Update

Overview:

The Connecticut General Assembly 2024 Legislative Session opened on February 7th and concludes at midnight on May 8th. Currently, the legislative committees are conducting public hearings on all proposed legislation. As of March 12th, the Connecticut Green Bank has testified live before the Energy & Technology Committee on two (2) pieces of legislation and will be submitting written testimony on five (5) pieces of legislation by March 20th.

Public Hearings:

2/27/24 – Energy & Technology Committee (E&T)

HB 5052: AN ACT SUPPORTING SOLAR ENERGY IN SCHOOLS

HB 5232: AN ACT CONCERNING SOLAR PROJECTS THROUGHOUT THE STATE

Live Testimony (Attached) Testimony given by – Bryan Garcia, Brian Farnen, Mackey Dykes)

Energy & Technology Public Hearing – February 27, 2024

<https://www.youtube.com/watch?v=T6drNDBoFGY&t=25243s>

TIME STAMP: **2:17:44** CT Green Bank: Bryan Garcia, Brian Farnen, Mackey Dykes

2/28/24 – Environment Committee (ENV)

SB 11: AN ACT COORDINATING CONNECTICUT RESILIENCY PLANNING AND BROADENING MUNICIPAL OPTIONS FOR CLIMATE RESILIENCE

Governor's Bill. Written Testimony. (Attached)

3/8/24 – Environment Committee (ENV)

HB 5004: AN ACT CONCERNING THE IMPLEMENTATION OF CERTAIN CLIMATE CHANGE MEASURES

"Green Monster Bill". Written Testimony. (Attached)

3/13/24 – Transportation Committee (TRA)

HB 5485: AN ACT CONCERNING TRANSPORTATION INFRASTRUCTURE FOR ELECTRIC VEHICLES.

Testimony – under development currently.

3/13/24 – Government, Administration & Elections Committee (GAE)

SB 389: AN ACT CONCERNING THE STATE CONTRACTING STANDARDS BOARD AND STATE PROCUREMENT

Testimony – under development currently.

3/13/24 – Government, Administration & Elections Committee (GAE)

SB 391: AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE STATE CONTRACTING STANDARDS BOARD

Testimony – under development currently.

Legislative Testimony of the Connecticut Green Bank

Energy & Technology Committee

February 27, 2024

HB 5232

AN ACT CONCERNING SOLAR PROJECTS THROUGHOUT THE STATE

As the nation's first green bank, the Connecticut Green Bank ("Green Bank") leverages the limited public resources it receives to attract multiples of private investment to scale up clean energy and environmental infrastructure deployment. Since its inception pursuant to PA 11-80, the Green Bank has mobilized \$2.43 billion of investment into Connecticut's green economy at a 7 to 1 leverage ratio of private to public funds, supported the creation of 27,113 direct, indirect and induced jobs, reduction in energy burden on over 69,300 families and businesses, deployment of over 571.8 MW of clean renewable energy, avoidance of 11 million tons of CO2 emissions over the life of the projects, and generation of \$129.6 million in individual income, corporate, and sales tax revenues to the State of Connecticut.

Based on the Green Bank's reading of HB 5232, elements of this legislation would have a negative impact on not only the mission and purpose of the Green Bank but for the deployment of solar in Connecticut:

Section 8: Lines 374 to 379

"No amount in the fund shall be used to offer, advertise, market or provide any financing or development services concerning any commercial project if companies in the private sector currently provide such services for such a project, unless such project is developed pursuant to the commercial sustainable energy program under section 16a-40g, as amended by this act."

The mission of the Green Bank is to confront climate change by increasing and accelerating investment into Connecticut's green economy to create more resilient, healthier, and equitable communities. We achieve that mission through a number of initiatives, including leveraging limited public resources to scale-up and mobilize private capital investment in the green economy of Connecticut and by providing more accessible, low-cost, long-term financing. This investment strengthens Connecticut's communities, especially its vulnerable communities, by making the benefits of the green economy inclusive and accessible to all individuals, families, and businesses.

Section 8, as it is broadly written, would effectively eliminate the Green Bank's ability to provide assistance and finance solar within residential, municipal and commercial/small businesses markets.

Section 8 would prohibit the Green Bank from stepping into the market when the industry is not developed, private capital is overpriced, or private capital isn't serving the needs of the market. There are numerous examples of the private sector offering similar services that the Green Bank provides - but not in a cost-efficient manner to the end-use customer. Or, in some cases for numerous reasons the similar services did not meet all the end user's needs and project deployment was stalled. For some commercial, industrial, nonprofit, and municipal off-takers, the Green Bank provides solutions and a viable alternative to an ever-shifting and changing landscape of private market participants. Additionally, the proposed language would not allow the Green Bank to co-finance projects with the private sector. Leveraging and attracting private capital through small amounts of public dollars is a central tenet of the Green Bank's mission, and per Connecticut General Statute 16-245n(d)(1)(B), has made clean energy more accessible and affordable to all municipal, small business, and larger commercial projects.

If not for the Green Bank's involvement, then in some instances clean energy deployment would not have occurred or at higher costs to end-use customers in the state:

1. The Green Bank Solar Lease/Power Purchase Agreement ("PPA"), which has been deployed within municipalities and for non-profits throughout the state, provides low-cost renewable energy with no capital outlay, no operation or maintenance obligations, and immediate realized savings.

For the members of the Energy & Technology Committee, this product has financed solar projects for municipalities and for nonprofits that you currently represent:

- ***Bethany*** – Town Hall and Volunteer Fire Hall
- ***Bloomfield*** – Carmen Arace Middle School and Duncaster Retirement Community
- ***Coventry*** – Board of Education Buildings, Police Headquarters, Radio Tower, and Town Hall
- ***Danbury*** - CSCU Western Grasso, Henry Abbott Technical High School, Immaculate High School, and Samuel's Court
- ***Ellington*** - Center Elementary School and Snipsic Village
- ***Farmington*** – CSCU Tunxis and Miss Porter's School
- ***Harwinton*** – Consolidated Elementary School
- ***Lebanon*** – Elementary School and Middle School
- ***New Britain*** – CSCU Central, Daughters of Mary of the Immaculate Conception, and Klingberg Family Center
- ***Orange*** - Schools

- **Wilton** – Lourdes Health Care, Middlebrook School, and Miller-Driscoll School
- **Woodbridge** – Beecher School, Congregation B’Nai Jacob, and Jewish Community Center

And, with the passage of the Inflation Reduction Act (“IRA”), and its inclusion of direct payment within the investment tax credit, state, municipal, and nonprofit end-use customers can receive the value of the tax credit, including adders.

2. The Solar Marketplace Assistance Program

Connecticut General Statute 16-245n states that the Green Bank should help municipalities deploy clean energy through financing based on its statutory authority to “...stimulate demand for clean energy and deployment of clean energy sources that serve end use customers in the state...” (i.e., 16-245n(c)); and “...shall (i) develop separate programs to finance and otherwise support clean energy investment in residential, municipal, small business and larger commercial projects...” (i.e., CGS 16-245n(d)(1)(B)). Financing is a tool that enables projects to get deployed and deliver meaningful benefits to end-use customers of Connecticut.

Bipartisan supported public policy specifically allows the Green Bank to support projects, including municipal projects. Since its inception, the Green Bank has been a trusted partner to municipalities in pursuit of their sustainability initiatives through our various programs. We have seen first-hand the challenges some towns face to get through the many project steps required to put together a financeable project. Many Connecticut municipalities, primarily smaller towns, encounter barriers in this process, for varying reasons, and do not take advantage of the savings and clean energy opportunities offered by solar. *See Attachment 1 (Branford, CT Testimony) (Manchester, CT Testimony)*

The Green Bank’s Solar Marketplace Assistance Program (“Solar MAP”) is our primary program offering that provides turnkey project development, comprehensive education and support, and financing to end-use customers in Connecticut, including municipalities. Solar MAP provides no-obligation consultation to municipalities to educate them on the various ways to adopt clean energy. Towns that choose to move forward receive comprehensive services that reduce barriers and bring more projects to the market to grow our state’s clean energy economy. Importantly, Solar MAP conducts a competitive solicitation for engineering, procurement, and construction (“EPC”) services for every participating municipal project, providing key opportunities for collaboration with the private sector. Consistent with public policy and the Green Bank model, the Program is leveraging public-private partnerships to serve underserved municipalities with comprehensive, cost-effective support to catalyze solar deployment.

The Board of Directors of the Green Bank had a robust conversation regarding concerns raised by some commercial solar PV contractors regarding the Green Bank’s role supporting municipalities in accessing solar – *see Attachment 2 (Memo of July 15, 2022)*. Following the presentation and debate, the Board of Directors directed the staff of the Green Bank to continue supporting Solar MAP, include the program within its Comprehensive Plan,¹ and clearly

¹ Comprehensive Plan of the Connecticut Green Bank for FY23-FY24 (p. 31-32 “Municipal Assistance Programs)

communicate the intentions of the program.² The Green Bank also publicly reports every municipal project that has received support through Solar MAP.³

The Green Bank does not want to compete with the private sector and focuses on underserved and maturing markets where private capital may be available but not at an attractive rate to encourage the adoption of clean energy sources. In fact, the Green Bank has stepped away from numerous markets when the private sector is functioning efficiently and offering a cost-effective clean energy option to ratepayers. For one example, the Green Bank stepped into the residential solar PPA and lease market about a decade ago because many smaller Connecticut solar developers were unable to offer such a product. The Green Bank assisted Connecticut based solar developers by enabling them to offer a lease or PPA product so they could compete with national third-party solar providers. As the Green Bank demonstrated a solution in the marketplace, other private financiers entered this space to assist smaller solar developers and the Green Bank then focused its efforts on the underserved low-income side of the market.

Alternatively, there have been limited scenarios like state and municipal solar financing where the Green Bank has made a conscious choice to stay in limited markets to save Connecticut taxpayers money and offer a trusted partner.

Section 10: Lines 433-445

“The Department of Energy and Environmental Protection, in consultation with the Department of Administrative Services, shall study the feasibility of adapting the Lead by Example program established pursuant to section 16a-37x of the general statutes, to establish a standardized contract process for the installation of solar photovoltaic systems by state agencies and municipalities and to make resources available to assist municipalities that want to deploy solar photovoltaic systems at publicly owned sites in such municipalities.”

Section 10 would empower DEEP and DAS to conduct a study on a process that the Green Bank has already implemented and has been managing for years. This would be a duplication of effort and a waste of taxpayer dollars. There is currently a standardized process in place to deploy solar at state agencies. This program has been successful, with 8 MWs nearing the end of construction at the Department of Correction facilities and another 13.6MW under contract with numerous other agencies, including the Department of Transportation, the Department of Energy & Environmental Protection, and the Connecticut Technical Education and Career System. Together, these projects will save the State of Connecticut \$45.5 million over the life of the projects, while providing prevailing wages to the contractors doing the work. The Solar MAP program offers these services to municipalities as well, so they too can save taxpayer dollars from energy expenditures.

² <https://www.ctgreenbank.com/community-solutions/solar-solutions-for-communities/solar-map/>

³ <https://www.ctgreenbank.com/community-solutions/solar-solutions-for-communities/solar-map/towns-and-cities/>

Section 11: Lines 446 – 447

“Sec. 11. Section 16-245aa of the general statutes is repealed. (Effective October 1, 2024)”

Connecticut General Statute 16-245aa(d) requires the Connecticut Green Bank (“Green Bank”) to report on the effectiveness of programs related to the Renewable Energy and Efficient Energy Finance Account (REEEFA), which is a separate, non-lapsing account within the Clean Energy Fund overseen by the Green Bank, interpreted as being established for the deposit of general obligation bond proceeds. Statutory authorization for this account to be state bond-funded was established in 2007 at C.G.S. Section 16-245bb; this authorization was eliminated in 2016.

Although no account activity has taken place, the related reporting requirement for REEEFA has remained in statute at Section 16-245aa. For this reason, the Green Bank files annually to satisfy our auditing requirements, but the need for the filing is no longer relevant or necessary.

The Green Bank supports Connecticut’s continued bipartisan efforts to reduce greenhouse gas emissions while building the green economy of the state. If you want to access information on how the Green Bank is benefitting your community, please visit –

<https://www.ctgreenbank.com/strategy-impact/maya-tool/>

For further details, see the attached fact sheets entitled “The Green Bank Model” and “Societal Impact Report”. Questions on this document may be submitted to James Desantos, Legislative Liaison and Associate Director of Regulatory Policy, at James.Desantos@ctgreenbank.com or at (860) 299-3911.



Legislative Testimony of the Town of Branford, CT

Clean Energy Ad Hoc Committee

Energy & Technology Committee

February 27, 2024

HB 5232

AN ACT CONCERNING SOLAR PROJECTS THROUGHOUT THE STATE

Chair Needleman, Chair Steinberg, Ranking Member Fazio, Ranking Member Buckbee and honorable members of the Energy & Technology Committee. My name is Shirley McCarthy and I am the Chair of the Town of Branford, Clean Energy Ad Hoc Committee.

I am submitting testimony today in strong opposition to Section 8 of HB 5232

The town of Branford participated in the Green Bank's Solar Marketplace Assistance Program (Solar MAP) to identify solar opportunities as part of Branford's Energy Plan and in alignment with the mission of the Clean Energy Ad Hoc Committee.

Branford benefitted from the comprehensive support offered through the program and ultimately led to the execution of two Power Purchase Agreement projects that would not have occurred otherwise.

The Town of Branford, has been approached by many private solar developers over the years, some that are currently still in business and some that are not. The Green Bank's background and leadership in green energy gave the Town of Branford, the confidence to sign a 20-year solar agreement with a partner that we were certain would exist well into the future to provide any support or guidance if needed. If not for the Green Bank, providing this level of confidence and comfort to our leadership, I am certain that these projects would not have come to fruition.

It was very helpful to have a turnkey program to help get started, provide ongoing support, identify the best opportunities, avoid the need for expertise and time required from municipal staff, and manage participation from external stakeholders.

The Solar MAP program offers needed resources that the state should not only support, but should encourage, in order to meet the state's clean energy goals.

On behalf of the Town of Branford Clean Energy Ad Hoc Committee, I strongly encourage the Committee to remove Section 8 of HB5232 as it will only deter the deployment of solar development in this state - an unintended result which is counterintuitive to the very intent of this legislation.

Respectfully,

Shirley McCarthy, M.D., PhD

Chair, Branford Clean Energy Ad Hoc Committee, Town of Branford, CT

Shirley.Mccarthy@yale.edu



THE TOWN OF MANCHESTER

Legislative Testimony of the Town of Manchester, CT

Energy & Technology Committee

February 27, 2024

HB 5232

AN ACT CONCERNING SOLAR PROJECTS THROUGHOUT THE STATE

Chair Needleman, Chair Steinberg, Ranking Member Fazio, Ranking Member Buckbee and honorable members of the Energy & Technology Committee. I am Steve Stephanou, the Town Manager for the Town of Manchester, CT.

I am submitting testimony today in opposition to Section 8 of HB 5232

The Town of Manchester participated in the Green Bank's Solar Marketplace Assistance Program (Solar MAP) to identify solar opportunities across the Town's portfolio of municipally owned properties that could maximize energy savings that could benefit our town and school budgets and ultimately our tax-paying residents. Solar MAP identified seven (7) project opportunities for which Power Purchase Agreements were executed that will deliver \$2.1 million in energy savings over the term.

The Town of Manchester strives for sustainability through active climate change mitigation, emphasizing equity, and fostering resilience. The town's Sustainability Commission brought the Solar MAP to the attention of the Board of Directors who supported participation into the Program to address barriers the town had experienced with projects in the past and achieve our sustainability goals for the future.

The town's previous experience with solar adoption revealed the many steps and challenges to doing projects that have hindered the town from moving forward. Solar MAP offered the town comprehensive support to understand the options for going solar, engage with the myriad of internal stakeholders, and to take action confidently and efficiently. The program provided the town with an "off-the-shelf" process, attractive financing, and administered a competitive solicitation to connect us to qualified, local contractors. These steps previously commanded a huge amount of internal resources from staff who are not highly knowledgeable of solar PV. The Green Bank's impressive history working in solar and their governance structure made them a trusted, reliable, and knowledgeable partner for the town.

Without the simplified process of Solar MAP, it would have been much more challenging for Manchester to implement these successful projects and become a leading sustainability town in our state. The resources offered through this Program should be available to other municipalities in need and valued by the state legislature.

On behalf of the Town of Manchester, I strongly encourage the Committee to reconsider Section 8 of HB5232, as it will remove a valuable resource to Connecticut's municipalities pursuing their sustainability goals.

Respectfully,

Steve Stephanou – Town Manager, Town of Manchester, CT – 41 Center Street – Manchester, CT 06040
sstephanou@manchesterct.gov - (860) 647-3123



Memo

To: Connecticut Green Bank Board of Directors

From: Bryan Garcia, President and CEO; Mackey Dykes, VP of Financing Programs; Emily Basham, Senior Manager

Date: July 15, 2022

Re: Green Bank Solar Marketplace Assistance Program (Solar MAP)

Program History and Overview

Pursuant to public policy¹, the Connecticut Green Bank (Green Bank) has supported municipalities in their sustainability initiatives through various programs and partnerships since its inception. Through programs like “Lead by Example”, Solarize, and Solar for All, Green Bank has created longstanding relationships with municipalities and taken a leading role in sparking clean energy deployment initiatives in the state. The Green Bank Power Purchase Agreement (PPA) has financed over 60 solar projects on municipal sites that has helped Green Bank develop a deep understanding of the barriers to deploying clean energy for our towns. Because financing comes toward the end of the program development process, we have seen first-hand the challenges some towns face to get through the many project steps required to put together a financeable project. Many Connecticut municipalities, primarily smaller towns, have not shown an ability to get through this process, for varying reasons, and take advantage of the savings and clean energy opportunities offered by solar.

The Solar Marketplace Assistance Program (Program) was created to strengthen Connecticut’s communities, better direct Green Bank resources, and support underserved municipal and state agency partners access clean energy and energy savings. The Program provides municipal assistance (Solar MAP) and state agency assistance (Solar SAP).

Solar MAP provides turnkey support from start to finish to make it easier for towns to identify projects that will provide savings, to access necessary incentives and financing, and to add much-needed capacity to manage project implementation and construction. With no-cost technical assistance, towns receive a comprehensive analysis of their solar feasibility and consultation in determining their best path forward obligation-free. The program administers a competitive solicitation to bid the projects out to the market and select a construction partner. Towns that are ready to move forward are bundled into a single portfolio and included in that year’s solicitation. Aggregating all projects into a portfolio achieves economies of scale to drive down project costs and deliver better savings a town wouldn’t experience if they acted alone.

¹ CGS 16-245n “...stimulate demand for clean energy and deployment of clean energy sources that serve end use customers in the state...” (i.e., 16-245n(c)); and “...shall (i) develop separate programs to finance and otherwise support clean energy investment in residential, municipal, small business and larger commercial projects...” CGS 16-245n(d)(1)(B).

The program's goal is to provide streamlined, comprehensive services to help reduce barriers for towns and aims to bring more projects to the market to grow our state's clean energy economy. The new projects brought to the market are primarily in the undersubscribed small category of the Zero-Emission Renewable Energy Credit (ZREC) utility incentive program, which has been under-subscribed for all the years of Solar MAP's existence. Many municipalities haven't shown an ability to participate in the first 8 years of the ZREC program. In 2019, Green Bank created Solar MAP to support municipalities to take advantage of the ZREC program's resources and opportunities offered by solar – see Table 1. The program comprises a minimal share of these incentives while opening up opportunities to market for installation work.

Table 1. Solar MAP Municipal Participation - Rounds 1 and 2

Municipality	# Projects	Population²	Current Status	Small ZREC	Medium ZREC	Large ZREC
Branford	2	28,220	Construction	2		
Manchester	7	59,693	Construction	4	2	1
Mansfield	1	25,883	Construction	1		
Portland	1	9,371	Construction	1		
Round 1	11					
Avon	2	18,918	Contract Executed		2	
Darien	4	21,527	Contract pending	4		
Farmington	1	26,673	Contract pending	1		
Groton	2	38,445	Contract pending	1	1	
Kent	1	3,014	Contract Executed		1	
Redding	3	8,742	Contract pending	2	1	
Sharon	1	2,675	Contract pending		1	
Washington	1	3,644	Contract pending	1		
Windsor Locks	5	12,592	Contract pending	2	2	1
Round 2	20			19	10	2
Thompson	1	9,185	Site Feasibility			
Bristol	1	60,786	Site Feasibility			
Round 3	2					

Within Solar MAP, over 60% of projects are within the small ZREC program.

Stakeholder Feedback - Municipalities

Interviews with participating municipalities provided insightful feedback on the barriers that exist for municipalities and the efficacy of Solar MAP. Interviews were conducted with representatives from 6 municipalities with varying degrees of participation in the program ranging from towns who only completed the first phase of initial site feasibility to towns with projects constructed. Interviewees also represent towns from all three rounds of the program – see Table 2.

² <https://portal.ct.gov/DPH/Health-Information-Systems--Reporting/Population/Annual-Town-and-County-Population-for-Connecticut>

Table 2. Breakdown of Municipal Feedback on Solar MAP

Municipality	Solar MAP Round	Interviewee Type	Political Party of Mayor / Selectman	Program Status
Manchester	1	Town Managers Office, Facilities Dept	Mayor (D)	Project Construction
Branford	1	Selectman, Finance, Taskforce member	First Selectman (R)	Project Construction
Woodbridge	1	Administrative Officer	First Selectman (D)	Projects Terminated
Avon	2	Town Manager's Office, BOE Business Office	Town Manager (U)	Executed Contract
Southbury	2	Sustainability volunteer	First Selectman (R)	Feasibility
Bristol	3	Public Works	Mayor (D)	Feasibility

Town Barriers to Solar Projects:

- Town has very small staff with no capacity to take on project feasibility or procurement work.
- Town installed solar on two schools 4 years ago with an installation company that is no longer in business, leaving the town with limited recourse and support to address issues that arise. The process required a lot of time and involvement from town staff that is not sustainable.
- Town is familiar with developing RFPs to bid out project opportunities. The town finds it challenging to understand and evaluate RFP proposals and also finds it challenging to understand best overall value when using RFP services. The Solar MAP program helped in managing the RFP process and leveraging Green Bank's expertise to deliver project savings.
- Getting buy-in from various town Boards can be very challenging even when projects are proposed internally. Having a partner like the Green Bank helps the projects avoid unnecessary scrutiny and be reviewed for their technical and economic benefits.
- Working with private companies requires a trust-building phase that can take a lot of time or not get built at all.

Addressing Barriers with Solar MAP:

- It was very helpful to have a turnkey program to help get started, provide ongoing support, identify the best opportunities, reduce/avoid need for expertise and time required from staff, and manage participation from external entities/stakeholders.
- The all-in-one feature of the program and Green Bank's role as a third-party guide and system owner make it much easier to do a solar project. Using other pathways required too many people internally and externally to implement.
- The comprehensive support offered in the program allowed the town to confidently identify and use existing facilities for green energy and savings. These efforts would command a huge amount of internal resources from staff that are not knowledgeable of solar PV.
- Solar MAP provides a longer timeline for local government to participate and an understanding of town operations and relationships between town authorizing entities.
- The comprehensive feasibility work on all town properties provided valuable information about the solar status for each building without the obligation or cost to move forward.

Role of the Green Bank:

- Green Bank's background and leadership in green energy gave the town confidence to sign a 20-year solar agreement with an entity that will have support and exist in the future.

- Green Bank is highly respected and has similar structure and authority as towns and an obligation to be accountable to the public.
- The town values the unbiased look at properties for solar opportunities.
- As an agency of government, Green Bank understands the priorities of town governments. It's important that Green Bank isn't going anywhere and their financial commitments to the project are backed by the state.

Enabling projects that wouldn't happen otherwise:

- The town does not think the projects would have moved forward without Solar MAP. The Board would not have been open to proposals from another entity.
- We would not have explored solar on our town buildings or gotten as far as we did without Solar MAP primarily because of staff constraints.
- We feel more prepared from participating in MAP, but we need an independent party with no vested interest to partner with to get necessary stakeholders to be receptive to considering a project.

Stakeholder Feedback - Contractors

The Green Bank is partnering with three solar contractors to install the municipal portfolio and three contractors to install the state agency portfolio. These contractors were selected through competitive RFP's. Solar MAP is working to bring more projects to the market and giving Connecticut installers project opportunities they wouldn't have otherwise. While many of the Green Bank's contractor partners see the value of the program's mission, we have received feedback from a subset of contractors that are concerned with the scope of the program and role of the Green Bank – so much so, that they raised the issue with the leadership of the Energy & Technology Committee of the Connecticut General Assembly.

The Green Bank has met with individuals representing these companies and understand their perspective to be centered around the following items:

- Absence of clarity on the program's mission and target audience
- Green Bank's role developing opportunities for municipalities can be competing with private companies
- Lack of transparency with the Program's participation in utility incentives and RFP results
- Disagreement over participating towns that have a history working with private companies
- Concern with the potential for the Program to expand its scope or into other sectors

Green Bank values its relationship with the state's solar contractor industry and their participation in all of the organization's programs. Green Bank agrees it is important to define the goals of the Program and limit the target audience to where there are gaps. Program feedback is being seriously considered and prompted the program team to solicit feedback from all stakeholders to understand the gaps that exist in the market and re-evaluate the role of the Program, as well as to make improvements. The Green Bank continues to meet with contractors to address concerns and find resolution.

Program Changes in Response to Feedback

Weighing the feedback from contractors and municipalities, the Green Bank is working to integrate the following changes to the Program to better serve the market and meet the organization's mission:

- **Transparency:** While the Green Bank has provided program information upon request, the Program will prepare and make available online information about participating towns, financing costs, construction costs, and bidder activity. This information will be posted at <https://www.ctgreenbank.com/solarmap-townsandcities/>. It should be noted that some information will not be provided until such time as contracts have been executed between the appropriate parties.
- **Develop a clearer mission and target audience:** To continue to address barriers outlined by municipal partners and maintain an appropriate role in the market, the Program will have a clear mission and target audience. The Program aims to support municipalities that are underserved by the market, typically towns that are smaller in population and/or town staff. The target audience for the program are underserved towns and those without recent history of doing solar projects. Any program outreach conducted will be limited to the target audience. If a town approaches us with a reasonable request for assistance, we will consider working with them.

The Green Bank focuses program development and support in areas that accelerate the deployment of clean energy and foster the growth of the state's green economy. We look forward to continuing to serve municipal partners and refining the Solar MAP mission to find and support gaps in the market.

Resolutions

WHEREAS, the state legislature provides statutory guidance to the Green Bank to support municipalities in clean energy deployment pursuant to CGS 16-245n;

WHEREAS, Green Bank's Solar MAP was modelled after and developed based on Lead By Example, which supports solar on state facilities, and other programs to provide municipal assistance to address market barriers and to take advantage of the savings offered by solar;

WHEREAS, Green Bank received concerns from a subgroup of contractors regarding the absence of clarity on the program's mission and target audience, the Green Bank's role developing opportunities for municipalities, and request for more transparency in the status of the program;

WHEREAS, Green Bank was compelled to assess Solar MAP by seeking feedback from municipalities that have engaged in the program as well as contractors who we seek to continue to provide opportunities;

NOW, therefore be it:

RESOLVED, that the Board recognizes the importance of balancing the deployment of clean energy, supporting municipalities and not competing with the private sector; and

RESOLVED, that the Board recognizing that Solar MAP is creating more opportunities for the market and assistance to towns who seek assistance; and

RESOLVED, that the Board support for continuing Solar MAP and other municipal assistance programs to lower their energy costs and confront climate change; and

RESOLVED, that the Board approves of the program and the inclusion of Solar MAP in the Comprehensive Plan; and

RESOLVED, the Board directs staff to develop marketing materials that clearly communicate the intentions of the program.

The Green Bank Model

A Planet Protected by the Love of Humanity

1 Attract Private Investment by Leveraging Public Funding



2 Apply Innovative Financial Tools to Deploy Investment Towards Our Programs

Generate **credit support** by providing local community banks with loan loss reserves, which allow them to offer affordable financing.

Initiate **co-investment** through public-private partnerships.

Support **performance-based incentives** to increase private investment and capital deployment.

Convert assets into **green bonds** to be bought and sold in the financial markets.

Creating more resilient, healthier, and equitable communities

Our programs are designed for:



Homes



Contractors



Buildings



Communities

3 Deliver Social and Environmental Benefits to Connecticut's Families and Businesses



Economic Development

- Creating thousands of jobs
- Generating millions in tax revenue



Energy

- Reducing energy burden by deploying clean energy
- Increasing energy security by deploying clean energy



Environmental Protection

- Reducing greenhouse gas emissions
- Improving the health of our residents by reducing air pollution



Equity

- No less than 40% of investment and benefits must reach vulnerable communities

Societal Impact Report

FY12
FY23

Since the Connecticut Green Bank's inception through the bipartisan legislation in July 2011, we have mobilized more than **\$2.43 billion of investment** into the State's green economy. To do this, we used **\$362.7 million** in Green Bank dollars to attract \$2.06 billion in private investment, a leverage ratio of **\$6.70 for every \$1**. The impact of our deployment of renewable energy and energy efficiency to families, businesses, and our communities is shown in terms of economic development, environmental protection, equity, and energy (data from FY 2012 through FY 2023).

ECONOMIC DEVELOPMENT

JOBS The Green Bank has supported the creation of more than **27,113** direct, indirect, and induced job-years.



TAX REVENUES

The Green Bank's activities have helped generate an estimated **\$129.6 million** in state tax revenues.



\$49.7 million
individual income tax

\$50.5 million
corporate taxes

\$27.8 million
sales taxes

\$1.5 million
property taxes

ENERGY

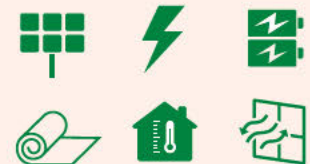
ENERGY BURDEN

The Green Bank has reduced the energy costs on families, businesses, and our communities.



DEPLOYMENT

The Green Bank has accelerated the growth of renewable energy to more than **571.8 MW** and lifetime savings of over **68.6 million MMBTUs** through energy efficiency projects.



ENVIRONMENTAL PROTECTION

POLLUTION The Green Bank has helped reduce air emissions that cause climate change and worsen public health, including **6.3 million pounds** of SOx and **7.9 million pounds** of NOx lifetime.



11.0 MILLION
tons of CO₂ :
EQUALS

165 MILLION
tree seedlings
grown for 10 years

OR

2.2 MILLION
passenger vehicles
driven for one year

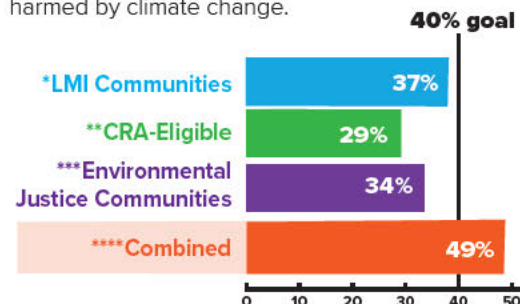
PUBLIC HEALTH The Green Bank has improved the lives of families, helping them avoid sick days, hospital visits, and even death.

\$207.2 – \$468.5 million of lifetime public health value created



EQUITY

INVESTING in vulnerable communities, The Green Bank has set **goals** to reach **40% investment** in communities that may be disproportionately harmed by climate change.



*LMI Communities – census tracts where households are at or below 100% Area Median Income.

**Community Reinvestment Act (CRA) Eligible – households at or below 80% of Area Median Income and all projects in programs designed to assist LMI customers.

***Environmental Justice Community means a municipality that has been designated as distressed by Connecticut Department of Economic and Community Development (DECD) or a census block group for which 30% or more of the population have an income below 200% of the federal poverty level.

****Combined Vulnerable Communities include LMI, CRA and EJC.



Learn more by visiting ctgreenbank.com/strategy-impact/societal-impact/

Winner of the 2017 Harvard Kennedy School Ash Center Award for Innovation in American Government, the Connecticut Green Bank is the nation's first green bank.

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Sources: Connecticut Green Bank Comprehensive Annual Financial Reports



Legislative Testimony of the Connecticut Green Bank

Environment Committee

February 28, 2024

SB 11

AN ACT COORDINATING CONNECTICUT RESILIENCY PLANNING AND BROADENING MUNICIPAL OPTIONS FOR CLIMATE RESILIENCE

As the nation's first green bank, the Connecticut Green Bank ("Green Bank") leverages the limited public resources it receives to attract multiples of private investment to scale up clean energy and environmental infrastructure deployment. Since its inception pursuant to PA 11-80, the Green Bank has mobilized \$2.43 billion of investment into Connecticut's green economy at a 7 to 1 leverage ratio of private to public funds, supported the creation of 27,113 direct, indirect and induced jobs, reduction in energy burden on over 69,300 families and businesses, deployment of over 571.8 MW of clean renewable energy, avoidance of 11 million tons of CO2 emissions over the life of the projects, and generation of \$129.6 million in individual income, corporate, and sales tax revenues to the State of Connecticut.

Pursuant to PA 21-115, The Green Bank's scope was expanded to include "environmental infrastructure", which includes: structures, facilities, systems, services and improvement projects related to (A) water, (B) waste and recycling, (C) climate adaption and resiliency, (D) agriculture, (E) land conservation, (F) parks and recreation, and (G) environmental markets, including, but not limited to carbon offsets and ecosystem services.

The Connecticut Green Bank strongly supports SB 11 and urges its passage.

The Connecticut Green Bank ("Green Bank") has developed a plan to engage stakeholders in order to understand the various components of "environmental infrastructure." With a mission to "confront climate change by increasing and accelerating investment into Connecticut's green economy in order to create more resilient, healthier, and equitable communities," within each

component of “environmental infrastructure,”¹ the cross-cutting issues of reducing greenhouse gasses (“GHG”), increasing climate adaptation and resilience,² and enabling investment in vulnerable communities³ is being explored.⁴

In recognition of the Green Bank’s track record of mobilizing investment in and the deployment of clean energy, Governor Ned Lamont, with the support of the Governor’s Council on Climate Change, signed into law Public Act 21-115 on July 6, 2021. This act expanded the Green Bank mandate to include environmental infrastructure – a recognition that financing as a tool for the public sector can be successfully leveraged to catalyze and increase private investment in and deployment of clean energy and environmental infrastructure in Connecticut.

In the furtherance of its mission, inclusive of environmental infrastructure, the Green Bank is in the process of rolling out financing programs for “climate adaptation and resiliency” and “water” measures with two of its flagship financing programs – Smart-E Loan⁵ and Commercial Property Assessed Clean Energy (“C-PACE”). The Smart-E Loan is currently in the process of rolling out eligible measures that homeowners can finance through local lenders for “climate adaptation and resilience” and “water” measures. C-PACE, per the passage of Public Act 22-6, the Green Bank is now in a public comment process with respect to expanding eligible measures for commercial, industrial, nonprofit, and multifamily property owners to increase the resilience of their properties..

Sections 1-10:

Creates a purely optional infrastructure financing tool for municipalities, very similar to the current framework in statute, associated with Tax Incremental Financing or “TIF” districts. The language also introduces a key definition that ought to be highlighted:

- “Increased Savings” – means the valuation amount by which the current cost of any existing insurance premium, or other premium, surcharge or other fee identified within the resiliency improvement district, resulting in a monetary savings to a resident of, or a business located in such district.

¹ Per Public Act 21-115, “Environmental infrastructure” means structures, facilities, systems, services and improvement projects related to (A) water, (B) waste and recycling, (C) climate adaptation and resiliency, (D) agriculture, (E) land conservation, (F) parks and recreation, and (G) environmental markets, including, but not limited to, carbon offsets and ecosystem services.






² Per Public Act 20-05, “Resilience” means the ability to prepare for and adapt to changing conditions and withstand and recover rapidly from deliberate attacks, accidents or naturally occurring threats or incidents, including, but not limited to, threats or incidents associated with the impacts of climate change.

³ Per Public Act 20-05, “Vulnerable communities” means populations that may be disproportionately impacted by the effects of climate change, including, but not limited to, low and moderate income communities, environmental justice communities pursuant to section 22a-20a, communities eligible for community reinvestment pursuant to section 36a-30 and the Community Reinvestment Act of 1977, 12 USC 2901 et seq., as amended from time to time, populations with increased risk and limited means to adapt to the effects of climate change, or as further defined by the Department of Energy and Environmental Protection in consultation with community representatives.

⁴ <https://www.ctgreenbank.com/strategy-impact/planning/>

⁵ A Smart-E Loan is financing offered by Green Bank and select local lenders and contractors. It offers long-term, low-interest financing to help upgrade a home’s energy performance with no money down.

- As provided by the Insurance Department to the Green Bank, a study⁷ commissioned by the National Institute of Buildings Sciences (“NIBS”) demonstrates numerous measures that communities, local governments, landowners, developers, and tenants can take to reduce the impact of natural disasters, including adopting up-to-date building codes, investing in building retrofits, and seeking federal assistance to reduce property loss – see Table 1.

National Institute of BUILDING SCIENCES™		ADOPT CODE	ABOVE CODE	BUILDING RETROFIT	LIFELINE RETROFIT	FEDERAL GRANTS
Overall Benefit-Cost Ratio		11:1	4:1	4:1	4:1	6:1
Cost (\$ billion)		\$1/year	\$4/year	\$520	\$0.6	\$27
Benefit (\$ billion)		\$13/year	\$16/year	\$2200	\$2.5	\$160
 Riverine Flood		6:1	5:1	6:1	8:1	7:1
 Hurricane Surge		not applicable	7:1	not applicable	not applicable	not applicable
 Wind		10:1	5:1	6:1	7:1	5:1
 Earthquake		12:1	4:1	13:1	3:1	3:1
 Wildland-Urban Interface Fire		not applicable	4:1	2:1	not applicable	3:1

Priority considerations should be given to projects that are nature based and address the needs of vulnerable communities, as noted in Section 10.

Sections 11 & 12: Seeks to amend the local Plan of Conservation and Development (POCD) statutes to require a climate change vulnerability assessment to specify land use strategies that reduce or avoid risks. We fully support this amendment. The end result will enable the implementation of strategies that reduce climate risk exposure while increasing efficiency in the coordination with other local and regional plans.

Section 14: Clarifies how municipal evacuation and hazard mitigation plans should consider sea level rise and requires that the analysis be available in Geographic Information Systems (GIS). This clarification will make the state safer by better equipping municipalities to prepare for and manage climate risks. This language also ensures that the state is acting on timely and accurate information concerning sea level rise scenarios. We fully support this amendment.

Section 17: Would require municipalities to geolocate their culverts and bridges and share data with relevant state agencies when utilizing \$500,000 in federal American Rescue Plan Act (“ARPA”) funding proposed in the Governor’s budget. This complete dataset will increase municipal and stormwater management capabilities and enable opportunities to improve water infrastructure, transportation, and fish passage. We fully support this amendment.

⁷ <https://www.nibs.org/projects/natural-hazard-mitigation-saves-2019-report>

Section 18: Would amend the regional POCD statute to incorporate changes from local POCDs, as amended by integrating long-range transportation, hazard mitigation, evacuation, and land use planning and it would require the creation of geospatial information for critical infrastructure. We fully support this amendment, which will encourage resilient and energy-efficient patterns of development and unlock opportunities for clean energy and environmental infrastructure improvements, inclusive of natural climate solutions, flood risk reduction, land conservation, restoration, and stewardship, increased air and water quality, and opportunities for public health and urban recreation improvements in more walkable and bikeable cities and a more fishable and swimmable Long Island Sound.

Sections 19, 20, & 21: Would update provisions of the state building code to require that commercial and residential buildings and building elements be designed to provide optimum greenhouse gas emission reductions, and climate change resiliency over the useful life of the building and to incorporate the current International Energy Conservation Code.

These provisions will help to increase resilience in Connecticut's built environment, reducing risk for commercial and residential building owners, tenants, and the municipalities where they reside. We fully support these proposed updates.

Suggested Language Modifications:

- 1: Investment needs to be prioritized within “vulnerable communities” and should be included within Section 24 as well.
- 2: Consider increasing grant amounts that go to or receive benefits by environmental justice communities or vulnerable communities in Lines 1604-1614

The Green Bank supports Connecticut’s continued bipartisan efforts to reduce greenhouse gas emissions while building the green economy of the state. Questions on this document may be submitted to James Desantos, Legislative Liaison and Associate Director of Regulatory Policy, at James.Desantos@ctgreenbank.com or at (860) 299-3911.

The Green Bank Model

A Planet Protected by the Love of Humanity

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2 Apply Innovative Financial Tools to Deploy Investment Towards Our Programs

Generate **credit support** by providing local community banks with loan loss reserves, which allow them to offer affordable financing.

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Creating more resilient, healthier, and equitable communities

Our programs are designed for:



Homes



Contractors



Buildings



Communities

3 Deliver Social and Environmental Benefits to Connecticut's Families and Businesses



Economic Development

- Creating thousands of jobs
- Generating millions in tax revenue



Energy

- Reducing energy burden by deploying clean energy
- Increasing energy security by deploying clean energy



Environmental Protection

- Reducing greenhouse gas emissions
- Improving the health of our residents by reducing air pollution



Equity

- No less than 40% of investment and benefits must reach vulnerable communities

Societal Impact Report

FY12
FY23

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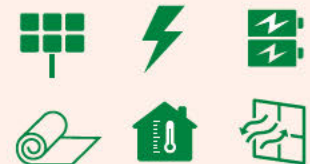
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11.0 MILLION
tons of CO₂ :
EQUALS

165 MILLION
tree seedlings
grown for 10 years

OR

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passenger vehicles
driven for one year

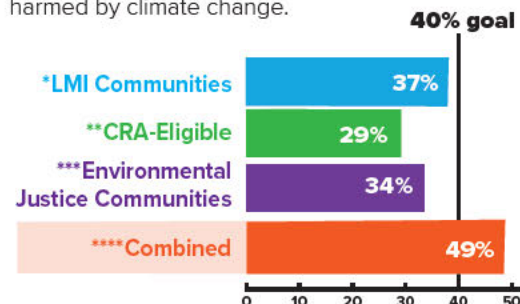
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*LMI Communities – census tracts where households are at or below 100% Area Median Income.

**Community Reinvestment Act (CRA) Eligible – households at or below 80% of Area Median Income and all projects in programs designed to assist LMI customers.

***Environmental Justice Community means a municipality that has been designated as distressed by Connecticut Department of Economic and Community Development (DECD) or a census block group for which 30% or more of the population have an income below 200% of the federal poverty level.

****Combined Vulnerable Communities include LMI, CRA and EJC.



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Sources: Connecticut Green Bank Comprehensive Annual Financial Reports



Legislative Testimony of the Connecticut Green Bank
ENVIRONMENT COMMITTEE
March 8, 2024

HB 5004
AN ACT CONCERNING THE IMPLEMENTATION OF CERTAIN CLIMATE CHANGE MEASURES

As the nation's first green bank, the Connecticut Green Bank ("Green Bank") leverages the limited public resources it receives to attract multiples of private investment to scale up clean energy and environmental infrastructure deployment. Since its inception pursuant to Public Act 11-80, the Green Bank has mobilized \$2.43 billion of investment into Connecticut's green economy at a 7 to 1 leverage ratio of private to public funds, supported the creation of 27,113 direct, indirect and induced jobs, reduction in energy burden on over 69,300 families and businesses, deployment of over 571.8 MW of clean renewable energy, avoidance of 11 million tons of CO2 emissions over the life of the projects, and generation of \$129.6 million in individual income, corporate, and sales tax revenues to the State of Connecticut.

Pursuant to Public Act 21-115, the Green Bank's scope was expanded to include "environmental infrastructure", which includes: structures, facilities, systems, services and improvement projects related to (A) water, (B) waste and recycling, (C) climate adaption and resiliency, (D) agriculture, (E) land conservation, (F) parks and recreation, and (G) environmental markets, including, but not limited to carbon offsets and ecosystem services.

The Green Bank supports HB 5004, and would like to comment on a few sections specifically:

Section 3:

The Green Bank **supports** section 3, which proposes the amendment of Section 22a-200 of the Connecticut General Statutes to include carbon sequestration and net zero emissions. By defining carbon sequestration, inclusive of nature-based solutions - such as soils, forests, wetlands or working or natural lands, as well as through technological solutions that have the primary purpose of removing greenhouse gases from the atmosphere, Connecticut will be better positioned to procure carbon reductions alongside other public policy goals for open space, agricultural and forestland preservation and public health.

Section 11:

The Green Bank **supports** Section 11, which proposes the formalization of the Connecticut Clean Economy Council (“Council”). The establishment of such a council is not only a strategic measure but a necessary one to align with federal funding opportunities and to maximize potential incentives. Federal funding mechanisms, such as the Investment Tax Credit Apprenticeship adder, will require robust clean energy workforce development and engagement programs. The Council will be an important tool to develop and support programs that enable us to maximize federal funding deployed through the Infrastructure Investments and Jobs Act (“IIJA”), Inflation Reduction Act (“IRA”), and other resources into the Connecticut green economy.

The Green Bank believes that the Council should embody a diverse array of perspectives and expertise to truly encapsulate the multifaceted nature of clean energy initiatives and workforce development. Thus, the Green Bank proposes the inclusion of higher education representatives from premier institutions within the state, namely the University of Connecticut and Yale University, along with advocates from the community college network. These institutions are not only incubators for future clean energy professionals but also serve pivotal roles in research, innovation, and the development of sustainable technologies.

The inclusion of these educational bodies will ensure that the Council benefits from cutting-edge research, educational best practices and will provide a direct link to emerging talent in the clean energy sector. It will also facilitate a seamless integration of academic advancements into practical, actionable strategies that support workforce development and engagement in line with federal funding requirements.

Section 14:

The Green Bank **supports** Section 14 with some proposed modifications and considerations. Through Docket No. 17-12-03RE03, PURA has established an Energy Storage Solutions (“ESS”) program co-administered by the Electric Distribution Companies (“EDC”) and the Green Bank to deploy 580 MW of residential (i.e., 290 MW) and non-residential (i.e., 290 MW) by the end of 2030. ESS provides upfront and ongoing performance-based incentives to encourage end-use customers to install battery storage systems to increase their resilience against grid outages, while reducing electricity rates for all ratepayers through peak demand reduction.

The Green Bank would like to highlight a couple of potential issues that will need to be addressed in order to achieve the new target as proposed in this legislation.

(1) Commercial and industrial battery storage projects in Connecticut are experiencing very long interconnection times. To achieve 1,000MW of battery storage deployment, the utilities would need to accelerate the interconnection times for all projects in the interconnection queue.

(2) Based on the ESS statistics over the first two years of the program, we have observed an attachment rate for residential systems of between 1% and 2%, whereas in other states with similar targets (e.g. California, Hawaii, and Puerto Rico) attachments rates are significantly greater, 50% to 100%, meaning that all new residential rooftop solar systems are paired with batteries. This level of deployment will produce significant benefits to ratepayers and to the grid as a whole.

(3) Lastly, a clarification is needed with respect to the timing of the new deployment targets – currently, the ESS target is to deploy 580MW of behind-the-meter battery storage by 2030, but it's not clear if the new target should be achieved by 2030 or later.

Section 17:

The Green Bank supports Section 17, and upon passage, looks forward to working together with our colleagues at DEEP and PURA to develop and implement a plan for the rapid deployment of heat pumps.

For years, the Green Bank has worked with contractors and a network of community lenders to implement and expand the Smart-E Loan program for residential buildings, underwriting more than \$127.6 million in loans for nearly 8,412 projects. Smart-E provides homeowners with low-interest fixed monthly payment financing for dozens of qualifying investments for energy efficiency (e.g., insulation and air source heat pumps), renewable energy (e.g., solar PV and ground source heat pumps), Energy STAR appliances and more.

While Smart-E Loans are quick, easy and affordable for homeowners, in order to achieve the goal of not less than 310,000 heat pumps for residential heating systems, Connecticut must explore other successful models to reach homeowners that may not qualify for loan financing or who may be averse to taking on additional debt burdens on top of mortgage debt, auto loans, student loans and credit card balances. It should be noted that per Public Act 11-80, there is a weatherization target of 80% of households by 2030. In looking at this target, alongside the proposed goal of 310,000 heat pumps, that the size of the investment required to achieve the policy goals is substantial (e.g., \$6 billion)¹.

Also, to reach these goals means we must deploy heat pumps to renters as well as to homeowners (renters are ineligible for Smart-E Loans), and to ensure that our vulnerable communities² have access to the benefits these technologies provide. States from Massachusetts to California are implementing new investment methodologies which Connecticut needs to explore and adopt if appropriate for our circumstances. The Green Bank looks forward to working with DEEP and PURA to better understand these innovative approaches and to determine which methods are most suitable for Connecticut to achieve these deployment goals.

Section 22:

With the passage of Public Act 21-115, the Green Bank's mission expanded beyond "clean energy" to include "environmental infrastructure"³. In its efforts to better understand the opportunities for increasing private investment in Connecticut's infrastructure, the Green Bank has completed a number of primers, including:

¹ 80% of 1.4 million household unites weatherized at \$2,500 each is nearly \$3 billion. Assuming an installed cost of heat pump of \$10,000 each, this would require an investment of over \$3 billion.

² Per Public Act 20-05, "vulnerable communities" means populations that may be disproportionately impacted by the effects of climate change, including, but not limited to, low and moderate income communities, environmental justice communities pursuant to section 22a-20a, communities eligible for community reinvestment pursuant to section 36a-30 and the Community Reinvestment Act of 1977, 12 USC 2901 et seq., as amended from time to time, populations with increased risk and limited means to adapt to the effects of climate change, or as further defined by DEEP in consultation with community representatives.

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- Agriculture⁴
- Land Conservation⁵
- Parks and Recreation⁶
- Water⁷

In addition to these primers, the Green Bank, working in collaboration with Quantified Ventures, produced an Environmental Markets Guide⁸ to help stakeholders understand markets for carbon offsets and ecosystem services.

The Green Bank **supports** nature-based solutions and recommends that conservation finance, which entails the financing of nature-based solutions, be included and explored within the proposed plan and program. Maryland's Conservation Finance Act presents a replicable, scalable, and adaptable policy model to encourage private investment in nature-based solutions in Connecticut to increase and accelerate solutions to climate change, including providing greater access to its benefits, especially for vulnerable communities. Consideration within the plan should also be given to capacity building of local stakeholders (e.g., a Connecticut offering of the Conservation Finance Network "Boot Camp"),⁹ and expanding open space under CGS 23-8 to a 30% by 2030 target (or other appropriate and achievable target), including increasing accessibility to such spaces families residing in vulnerable communities for recreation, public health (e.g., Park Rx), and other ecosystem services benefits.

Public and philanthropic funds are a critical piece of advancing nature-based solutions in the state to support climate mitigation and adaptation, but the significance of the challenge requires leveraging private capital to animate environmental markets and finance nature-based solutions at scale. By including conservation finance in the plan and program design, the state and its many stakeholders will be far better positioned to capitalize and implement against the most pressing needs for climate mitigation and adaptation.

The Green Bank supports Connecticut's continued bipartisan efforts to reduce greenhouse gas emissions while building the green economy of the state. If you want to access information on how the Green Bank is benefitting your community, please visit –

<https://www.ctgreenbank.com/strategy-impact/maya-tool/>

For further details, see the attached fact sheets entitled "The Green Bank Model" and "Societal Impact Report". Questions on this document may be submitted to James Desantos, Legislative Liaison and Associate Director of Regulatory Policy, at James.Desantos@ctgreenbank.com or at (860) 299-3911.

⁴ https://www.ctgreenbank.com/wp-content/uploads/2023/01/Environmental-Infrastructure_Agriculture_Oct-16-2022a.pdf

⁵ https://www.ctgreenbank.com/wp-content/uploads/2023/01/Environmental-Infrastructure_Land-Conservation_Oct-16-2022.pdf

⁶ https://www.ctgreenbank.com/wp-content/uploads/2023/01/Environmental-Infrastructure_Parks-and-Recreation_Oct-16-2022.pdf

⁷ https://www.ctgreenbank.com/wp-content/uploads/2023/04/Environmental-Infrastructure_Water_Primer_062323.pdf

⁸ https://www.ctgreenbank.com/wp-content/uploads/2023/04/Environmental-Infrastructure_Environmental-Markets-Guide_062323.pdf

⁹ <https://www.conservationfinancenetwork.org/conservation-finance-boot-camp>

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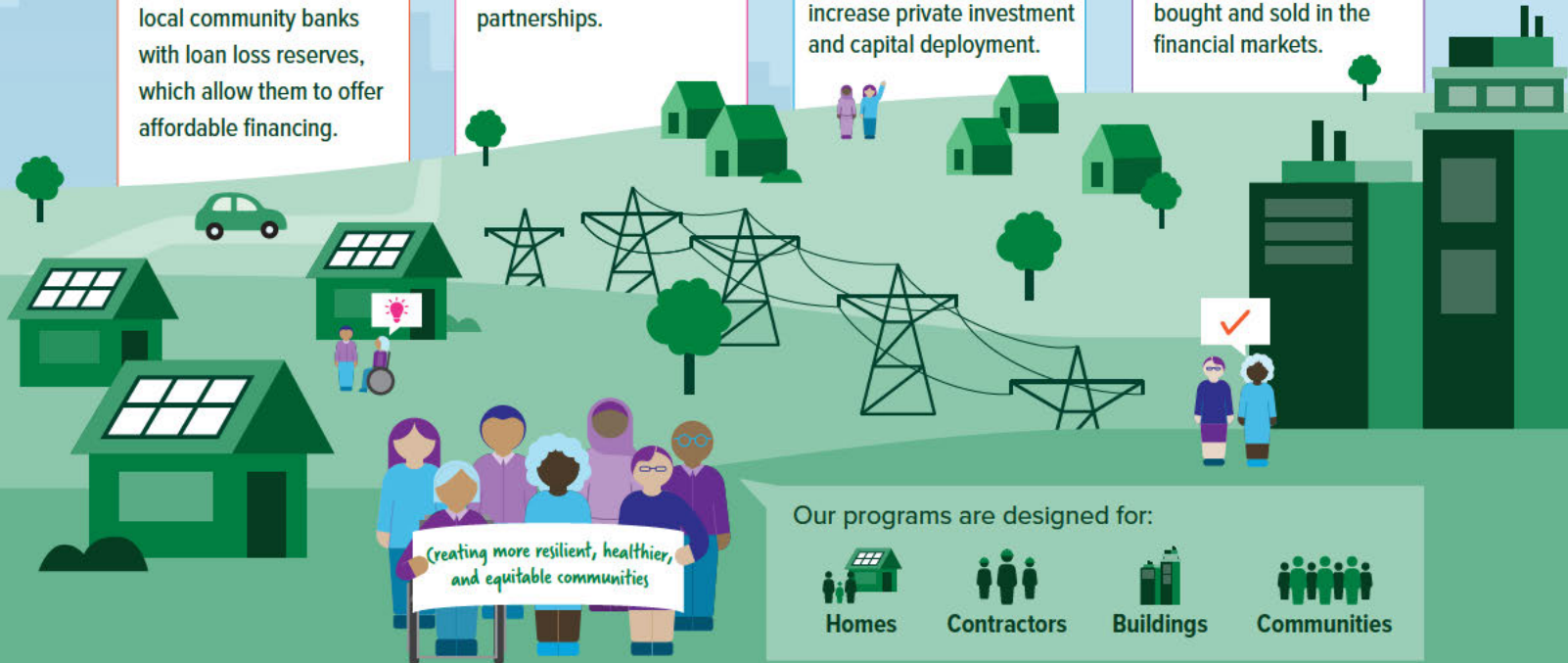
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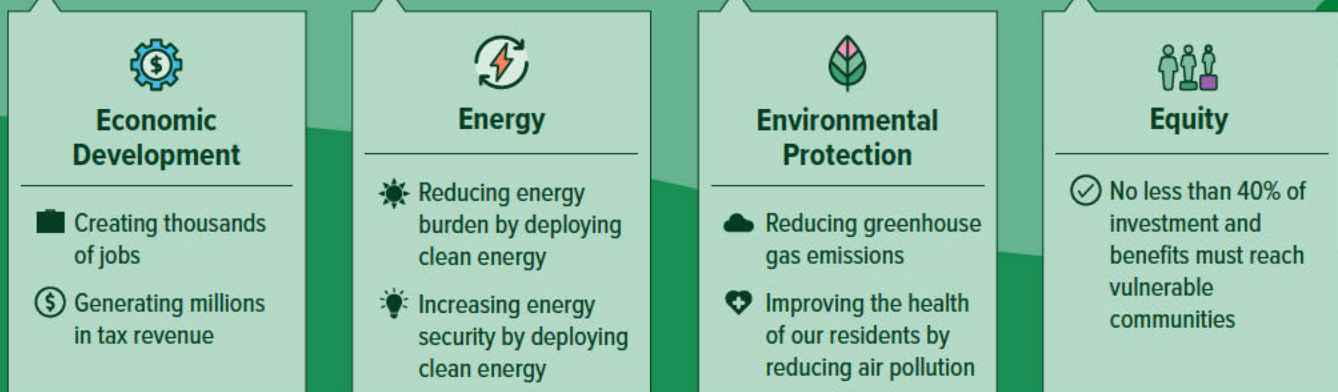
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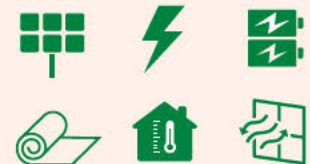
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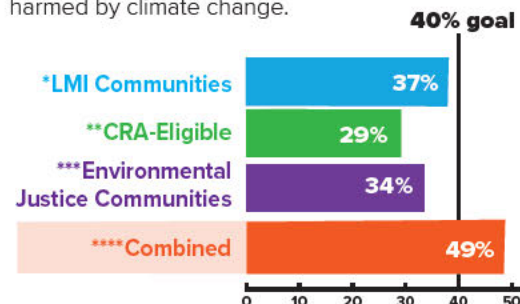
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Sources: Connecticut Green Bank Comprehensive Annual Financial Reports

Memo

To: Board of Directors of the Connecticut Green Bank

From: Mariana Trief (Associate Director, Investments), James Desantos (Legislative Liaison)

Cc: Bryan Garcia (President and CEO), Brian Farnen (General Counsel & Chief Legal Officer), Bert Hunter (EVP & Chief Investment Officer)

Date: March 11, 2024

Re: Legislative Process – Hydropower Taskforce Update

Overview

House Bill No. 5628 Special Act No. 23-8 established a Task Force to Study the State's Hydropower Assets. The taskforce was mandated to study existing hydropower assets in the state and review the benefits of such assets and submit a report on its findings and recommendations. A member of the Green Bank staff, Mariana Trief, was nominated by House Majority Leader, Jason Rojas (D), to participate in the task force. The policy considerations resulting from the task force are summarized below and complete proposed language is provided in the Appendix. Please note, members of the task force, such as the Department of Energy and Environmental Protection (DEEP) and several state-wide/national environmental non-profits must go through their internal approval processes as well, this may result in the final language being amended in the future.

Policy Considerations

The taskforce's proposed policy considerations seek to promote clean energy that is domestic, aging and not intermittent, while ensuring healthy rivers, environmental mitigation and community benefit. The proposed recommendations:

- Support hydropower that meets state and federal requirements, including applicable site-specific standards for water quality and fish passage;
- Limit hydropower to existing dams; and,
- Do not incentivize hydropower projects located in dams identified as candidates for removal.

Below is a summary of the proposed considerations with language provided in an Appendix.

1. **DEEP solicitation of hydro power:** taskforce is proposing legislatively mandated procurement of in state hydropower resources to be administered by DEEP 20 MW in aggregate. Facilities shall meet environmental guidelines at the time of submission or submit a proposal to comply with those requirements.
2. **Standard Service Tariff for Hydropower:** modeled after a similar policy in Rhode Island, the proposed program allows existing hydropower assets that comply with environmental requirements to enter into 30-year contracts with the utility and will be compensated at a standard rate.
3. **Changes to the Class I definition:** As currently written, the Class I definition does not allow existing hydropower assets that began operation before July 1, 2003 to qualify as Class I assets. The proposed changes to the Class I definition under CT CGS Sec 16-1 (a)(20)(X) would allow for existing run of the river hydropower assets that comply with the following to qualify as Class I resources:
 - 1) has a generating capacity of no more than 10 MW;
 - 2) is interconnected to the electric distribution company or municipality;
 - 3) provides positive impacts on the state's economic development;
 - 4) is consistent with the policy goals outlined in the Comprehensive Energy Strategy adopted pursuant to section 16a-3d;
 - 5) is not based on a new dam or a dam identified by the Commissioner of Energy and Environmental Protection as a candidate for removal, and
 - 6) meets applicable state and federal requirements, including applicable state dam safety requirements and applicable site-specific standards for water quality and fish passage.

4. **Changes to the Non Residential Renewable Energy Solutions (NRES) Program** to accommodate the realities of hydro: i) extend to a 40-year Tariff term (instead of 20 years) based on the typical Federal Energy Regulatory Commission (FERC) license term and the inherent longevity of hydropower equipment and civil works; and ii) allow for projects to be sized based on hydro potential at the site instead of historical load at the meter, similar to the legislation that was approved last year to allow for rooftop solar to be maximized based on roof size.

Conclusions

The policy considerations enable and encourage existing and new hydropower projects to respect natural river flows, fish migration and water quality. They provide steady and predictable cash flows for existing hydropower facilities. For those facilities that need to undergo improvements to improve efficiency, FERC relicensing or comply with environmental requirements, the steady cash flows allow the projects to seek financing from entities like the Green Bank to finance those improvements. Green Bank plans to support the proposed policy considerations resulting from the hydropower taskforce as outlined in this memo. Although it is not expected, if DEEP or any of the other taskforce member has major consternations, then Green Bank will revisit its support, report back to the Green Bank Chair and would likely remain silent on such point if a consensus cannot be obtained.

Appendix: Proposed Language to the Policy Considerations

1. DEEP solicitation of hydro power

Draft language to consider a legislatively mandated procurement of in state hydropower resources. The proposed language would be a new section 16a-3q. Note that language is based off existing Sec. 16a-3h of the statutes which calls for a solicitation re: run-of-the-river hydropower, landfill methane gas, biomass, fuel cell, offshore wind, anaerobic digestion or energy storage systems.

Sec. [NEW]. Pilot solicitation instantaneous run-of-the-river hydropower.

On or after [date], the Commissioner of Energy and Environmental Protection, in consultation with the procurement manager identified in subsection (l) of section [16-2](#), the Office of Consumer Counsel and the Attorney General, shall solicit proposals, in one solicitation or multiple solicitations, from providers of instantaneous run-of-the-river hydropower that is interconnected with an electric distribution company or municipal utility. On an exception basis, hydropower facilities will be considered where modification of natural flow(s) provides an ecological benefit. In making any selection of such proposals to award long term contracts, the commissioner shall consider factors, including, but not limited to (1) whether the proposal is in the interest of ratepayers, including, but not limited to, the delivered price of the proposed resources in terms of energy, capacity and/or environmental attributes, (2) the emissions profile of a relevant facility, (3) any investments made or expected to be made by a relevant facility to improve the emissions profile, environmental performance such as but not limited to water quality or fish passage of such facility, (4) any positive impacts on the state's economic development, (6) whether the proposal is consistent with the policy goals outlined in the Comprehensive Energy Strategy adopted pursuant to section [16a-3d](#), (7) whether the proposal promotes electric distribution system reliability and other electric distribution system benefits, including, but not limited to, microgrids, or function as a load reducing resource as defined by ISO NE 8) the positive reuse of sites with limited development opportunities, including, but not limited to, brownfields or landfills, as identified by the commissioner in any solicitation issued pursuant to this section, (8) the proposal shall not be based on a new dam or a dam identified by the Commissioner of Energy and Environmental Protection as a candidate for removal, and (9) the proposal shall, at the time of submission or within a reasonable timeframe as a condition for selection, meet applicable state and federal requirements, including state dam safety requirements and applicable site-specific standards for water quality and fish passage. The commissioner shall select proposals from such resources for up to 20 MW in aggregate and the solicitation shall be issued promptly but, in any case, no later than December 31, 2025. If applicable, certificates issued by the New England Power Pool Generation Information System for any Class I renewable energy sources procured under this section may be: (A) Sold in the New England Power Pool Generation Information System renewable energy credit market to be used by any electric supplier or electric distribution company to meet the requirements of section [16-245a](#), provided the revenues from such sale are credited to all customers of the contracting electric distribution company; or (B) retained by the electric distribution company to meet the requirements of section [16-245a](#). In considering whether to sell or retain such certificates, the company shall select the option that is in the best interest of such company's ratepayers. Any such agreement shall be subject to review and approval by the Public Utilities Regulatory Authority, which review shall be completed not later than sixty days after the date on which such agreement is filed with the authority. The net costs of any such agreement, including costs incurred by the electric distribution companies under the agreement and reasonable costs incurred by the electric distribution companies in connection with the agreement, shall be recovered through a fully reconciling component of electric rates for all customers of electric distribution companies. All reasonable costs incurred by the Department of Energy and Environmental Protection associated with the commissioner's solicitation and review of proposals pursuant to this section shall be recoverable through the nonbypassable federally mandated congestion charges, as defined in section [16-1](#).

2. Standard Service Tariff for Hydropower

The proposed consideration is modeled after Rhode Island's program which allows hydropower assets to be compensated at the Last Resort Service Tariff: https://www.rienergy.com/media/ri-energy/pdfs/billing-and-payments/tariffs/6b._qf_tariff_ripuc_2256_09-01-22.pdf

Eligibility & Authority:

The electric distribution company, interconnecting utility, or municipal utility (IU) shall enter into a purchase agreement for the electrical output from an instantaneous run of the river hydropower facility which meets the eligibility criteria provided below:

- a) Is not based on a new dam or a dam identified by the Commissioner of the Department of Energy and Environmental Protection as a candidate for removal, and meets applicable state and federal requirements, including state dam safety requirements, site-specific standards for water quality and

fish passage, ~~and~~ has submitted such plans to the regulator to be implemented upon receipt of the tariff;

- b) Is or will be interconnected with an IU;
- c) Provides positive impacts to the state's economic development;
- d) Is consistent with the policy goals outlined in the Comprehensive Energy Strategy adopted pursuant to section 16a-3d.

Any eligible facility that desires to sell electricity under this tariff must provide the IU with sufficient prior written notice. At the time of notification, the qualifying facility shall provide the IU with the following information:

- a. The name and address of the applicant and location of the qualifying facility.
- b. A brief description of the qualifying facility, including a statement indicating whether such facility is a small power production facility or a cogeneration facility.
- c. The primary energy source used or to be used by the qualifying facility.
- d. The power production capacity and average annual kWh of the qualifying facility and the maximum net energy to be delivered to the IU's facilities at any clock hour.
- e. The owners of the qualifying facility including the percentage of ownership by any electric utility or by any public utility holding company, or by any entity owned by either.
- f. The expected commencement date.
- g. The anticipated method of delivering power to the IU.
- h. A copy of the qualifying facility's state or Federal Energy Regulatory Commission certification.
- i. Other documentation to prove the facility complies with eligibility requirements.

Structure:

Following the notification outlined above, the qualifying facility and the IU shall execute a standard purchase power agreement for no more than 30 years, setting forth the terms of the sale, which shall be executed no later than thirty (30) days prior to the commencement date.

Products:

Energy - the IU will pay rates described below for each kilowatt-hour generated in excess of the facility requirements and delivered to the IU's bulk power or distribution system.

Capacity and/or Reserves - the IU shall make payments to a qualifying facility for capacity and/or reserves-related products if the sale is recognized by NEPOOL or ISO-NE as a capacity and/or reserves-related product sale. The IU shall pay rates equal to the payments received for the sale of any capacity and/or reserves-related products associated with such qualifying facility output to ISO power exchange.

Rate:

For the purposes of this analysis, we have assumed that most CT hydro assets have an installed capacity of at least 200kW and would be compensated for energy deliveries pursuant to the analogous CT tariff Rates 56 and 58 (Intermediate and Large Non-Manufacturing Rates). Capacity payments, where applicable, would be compensated at rates equal to the IU's sale price in the ISO-NE system (pass through).

Other Requirements:

- 1. The qualifying facility shall furnish and install the necessary meter socket and wiring in accordance with the IU's Standards for Connecting Distributed Generation.
- 2. The qualifying facility shall install equipment approved by the IU which prevents the flow of electricity into the IU's system when the IU's supply is out of service, unless the qualifying facility's generation equipment can be controlled by the IU's supply.
- 3. The qualifying facility's equipment must be compatible with the character of service supplied by the IU at the qualifying facility's location.
- 4. The qualifying facility shall be required to install metering pursuant to the requirements contained in the IU's Standards for Connecting Distributed Generation.
- 5. The qualifying facility shall enter into, or have an interconnection agreement and follow all other procedures outlined in the IU's Standards for Connecting Distributed Generation, as amended and superseded from time to time.
- 6. The qualifying facility shall reimburse the IU for any equipment and the estimated total cost of construction (excluding costs which are required for system improvements or for sales to the qualifying facility, such as the cost of a standard metering installation, in accordance with the IU's Terms and Conditions) which are necessary to meter purchases under this rate and to interconnect the qualifying facility to the IU's distribution or transmission system in accordance with the IU's Standards for Connecting Distributed Generation. The IU will install, own, and maintain the equipment.

7. The qualifying facility shall save and hold harmless the IU from all claims for damage to the qualifying facility's equipment or injury to any person arising out of the qualifying facility's use of generating equipment in parallel with the IU's system; provided that nothing in this paragraph shall relieve the IU from liability for damage or injury caused by its own fault or neglect.

3. Changes to the Class I definition

Consider the following new addition to CT Class I hydropower definition at CT CGS Sec 16-1 (a)(20)(X):

Section 16-1. Subsection (a)(20) of the general statutes is repealed and the following is substituted in lieu thereof (Effective from passage):

"Class I renewable energy source" means (A) electricity derived from (i) solar power, (ii) wind power, (iii) a fuel cell, (iv) geothermal, (v) landfill methane gas, anaerobic digestion or other biogas derived from biological sources, (vi) thermal electric direct energy conversion from a certified Class I renewable energy source, (vii) ocean thermal power, (viii) wave or tidal power, (ix) low emission advanced renewable energy conversion technologies, including, but not limited to, zero emission low grade heat power generation systems based on organic oil free rankine, kalina or other similar nonsteam cycles that use waste heat from an industrial or commercial process that does not generate electricity, (x) (I) **an instantaneous** run-of-the-river hydropower facility that began operation after July 1, 2003, has a generating capacity of not more than ~~[sixty]~~ **thirty** megawatts, is not based on a new dam or a dam identified by the Commissioner of Energy and Environmental Protection as a candidate for removal, and meets applicable state and federal requirements, including applicable state dam safety requirements and applicable site-specific standards for water quality and fish passage, ~~[or]~~ (II) **an instantaneous** run-of-the-river hydropower facility that received a new license after January 1, 2018 ~~the effective date of this section~~ under the Federal Energy Regulatory Commission rules pursuant to 18 CFR 16, as amended from time to time, is not based on a new dam or a dam identified by the Commissioner of Energy and Environmental Protection as a candidate for removal, and meets applicable state and federal requirements, including applicable state dam safety requirements and applicable site-specific standards for water quality and fish passage, **or (III) an instantaneous run-of-the-river hydropower facility that: 1) has a generating capacity of no more than 10-MW, 2) is interconnected to the electric distribution company or municipality, 3) provides positive impacts on the state's economic development, 4) is consistent with the policy goals outlined in the Comprehensive Energy Strategy adopted pursuant to section 16a-3d, 5) is not based on a new dam or a dam identified by the Commissioner of Energy and Environmental Protection as a candidate for removal, and 6) meets applicable state and federal requirements, including applicable state or federal dam safety requirements and applicable site-specific standards for water quality and fish passage,** (xi) a biomass facility that uses sustainable biomass fuel and has an average emission rate of equal to or less than .075 pounds of nitrogen oxides per million BTU of heat input for the previous calendar quarter, except that energy derived from a biomass facility with a capacity of less than five hundred kilowatts that began construction before July 1, 2003, may be considered a Class I renewable energy source, or (xii) a nuclear power generating facility constructed on or after October 1, 2023, or (B) any electrical generation, including distributed generation, generated from a Class I renewable energy source, provided, on and after January 1, 2014, any megawatt hours of electricity from a renewable energy source described under this subparagraph that are claimed or counted by a load-serving entity, province or state toward compliance with renewable portfolio standards or renewable energy policy goals in another province or state, other than the state of Connecticut, shall not be eligible for compliance with the renewable portfolio standards established pursuant to section 16-245a;

4. Changes to the Non Residential Renewable Energy Solutions (NRES) Program

Allow for the accommodations outlined below under the Non Residential Renewable Energy Solutions (NRES) Program for hydropower.

I. Background:

System Sizing Requirements and Eligibility Criteria for NRES program (excerpts from section 3 of the program manual):

3.2.1. The total generation⁷ of Customer Projects that are not Rooftop Projects cannot exceed the highest consecutive 12 months of kWh load of the Customer, net of any existing generation, over the five years prior to the date of Bid submission plus eligible adjustments to load for electrification or removal of onsite generation. The highest consecutive 12 months of kWh load shall be measured by the Customer’s individual electric meter or a set of electric meters at a Project Site, when such meters are already combined for billing purposes at the time of Bid submission, as determined by the EDC providing service to the Customer. Limits size of project based on the historical load behind the meter]

3.3.1 Eligible Zero Emission and Low Emission Projects shall be less than or equal to five (5) MW (AC) in size and qualify as a Class I renewable energy source under Conn. Gen. Stat. Section 16-1(a)(20), as amended by Section 1 of Public Act 22- 14. **[new hydro qualifies under the Class I definition. Per the Class I definition – project must not be based on a new dam or a dam identified by the Commissioner of Energy and Environmental Protection as a candidate for removal, and meets applicable state and federal requirements, including applicable state dam safety requirements and applicable site-specific standards for water quality and fish passage]**

3.3.7. Projects must receive Approval to Energize after the solicitation to which the Customer is responding. For facilities constructed prior to the solicitation to which the Customer is responding, which have been uprated with new production equipment (e.g., new solar panels, turbines) installed after the solicitation to which the Customer is responding, the new incremental production equipment may be eligible to the extent that it meets all of the eligibility criteria and is separately metered and compensated pursuant to the rules set forth in this Program Manual. **[per the NRES program rules only project that energize after a bid is presented to the NRES program are eligible. It allows for incremental production if there is new production equipment]**

Under the NRES Program:

- Projects less than or equal to 200kW are awarded tariff agreements on a first-come, first-served basis at a fixed price as determined by PURA.
- Projects greater than 200kW up to and including 5,000kW are awarded tariff agreements through a competitive solicitation process. Bidding will take place in an online bid portal during the RFP window.
- Two incentive options:
 - *Buy All:* export all power that system produces to the electric grid without first supplying power to onsite meter.
 - Receive compensation from utility for both energy and RECs at a set rate for 20 year term
 - *Netting:* Similar to net metering, power supply from system will be used for the building and only excess power will be exported to the grid. Power produced by system, but not consumed within the month, is "netted" at the same rate customer would pay Eversource for electricity
 - Receive compensation for RECs at a set rate for 20 years
- Below are 2024 published price caps

2024 Price Caps and Tariff Rates

	Buy-All Price Cap (\$/MWh)
Small Zero Emission Tariff Rate	\$199.82
Medium Zero Emission Price Cap	\$188.90
Large Zero Emission Price Cap	\$145.97
Low Emission Price Cap	\$159.00

II. Issues for Hydropower projects:

- 20 year term does not match the typical FERC license term and inherent longevity of hydro equipment
- Does not allow hydro flow to be maximized due to the historical load requirements

III. Proposal:

- Extend to a 40 year Tariff term (instead of 20 years) based on the typical FERC license term and the inherent longevity of hydropower equipment and civil works.
- Allow for projects to be sized based on hydro potential at the site instead of historical load at the meter, similar to the legislation that was approved last year to allow for rooftop solar to be maximized based on roof size.

