

REFINITIV

# DELTA REPORT

## 10-Q

WKHS - WORKHORSE GROUP INC.

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - SEPTEMBER 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS	1170
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 CHANGES	115
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 DELETIONS	405
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 ADDITIONS	650
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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended **September 30, 2023** **March 31, 2024**

or

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

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

Commission file number: 001-37673

**WORKHORSE GROUP INC.**

(Exact name of registrant as specified in its charter)

**Nevada**

**26-1394771**

(State or other jurisdiction of  
incorporation or organization)

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

**3600 Park 42 Drive, Suite 160E, Sharonville, Ohio 45241**

(Address of principal executive offices, including zip code)

**1 (888) 646-5205**

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	WKHS	The NASDAQ Capital Market

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

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

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

The number of shares of the Registrant's Common Stock, \$0.001 par value per share, outstanding as of **October 31, 2023** **May 9, 2024**, was **260,923,427.375,229,162.**

\_\_\_\_\_

\_\_\_\_\_

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## Forward-Looking Statements

*This The discussions in this Quarterly Report on Form 10-Q (this "Report") contain forward-looking statements reflecting our current expectations that involve risks and uncertainties. These statements are made under the "safe harbor" provisions of the U.S. Private Securities Litigation Reform Act of 1995. When used in this Report, the words "anticipate," "expect," "plan," "believe," "seek," "estimate" and similar expressions are intended to identify forward-looking statements. These are statements that relate to future periods and include, but are not limited to, statements*

about the features, benefits and performance of our products, our ability to introduce new product offerings and increase revenue from existing products, expected expenses including those related to selling and marketing, product development and general and administrative, our beliefs regarding the health and growth of the market for our products, anticipated increase in our customer base, expansion of our products functionalities, expected revenue levels and sources of revenue, expected impact, if any, of legal proceedings, the adequacy of our liquidity and capital resources, the likelihood of us obtaining additional financing in the immediate future and the expected terms of such financing, and expected growth in business. Forward-looking statements are statements that are not historical facts. Such forward-looking statements are subject to risks and uncertainties, which could cause actual results to differ materially from the forward-looking statements contained in this Report. Factors that could cause actual results to differ materially include, but are not limited to: our ability to develop and manufacture our new product portfolio, including the W4 CC, W4CC, W750, W56 and WNext programs; our ability to attract and retain customers for our existing and new products; risks associated with obtaining orders and executing upon such orders; the unavailability, reduction, elimination or adverse application of government subsidies and incentives and regulations; or any failure by the federal government, states or other governmental entities to adopt or enforce regulations such as the California Air Resource Board's Advanced Clean Fleet regulation; supply chain disruptions, including constraints on steel, semiconductors and other material inputs and resulting cost increases impacting our company, Company, our customers, our suppliers or the industry; our ability to capitalize on opportunities to deliver products to meet customer requirements; our limited operations and need to expand and enhance elements of our production process to fulfill product orders; our general inability to raise additional capital to fund our operations and business plan; our ability to obtain financing to meet our immediate liquidity needs and the potential costs, dilution and restrictions imposed by any such financing; our ability to regain compliance with the listing requirements of the Nasdaq Capital Market and otherwise maintain the listing of our securities thereon; thereon and the impact of any steps we take to regain such compliance, such as a reverse split of our common stock, on our operations, stock price and future access to liquidity; our ability to protect our intellectual property; market acceptance for our products; our ability to obtain sufficient liquidity from operations and financing activities to continue as a going concern and, our ability to control our expenses; the effectiveness of our cost control measures and impact such measures could have on our operations, including the effects of furloughing employees; potential competition, including without limitation shifts in technology; volatility in and deterioration of national and international capital markets and economic conditions; global and local business conditions; acts of war (including without limitation the conflicts in Ukraine and Israel) and/or terrorism; the prices being charged by our competitors; our inability to retain key members of our management team; our inability to satisfy our customer warranty claims; the outcome of any regulatory or legal proceedings; proceedings, including with Coulomb Solutions Inc.; our ability to consummate the divestiture of our aero business; our ability to consummate and realize the benefits of a potential sale and leaseback transaction of our Union City Facility; and other risks and uncertainties and other factors discussed from time to time in our filings with the Securities and Exchange Commission ("SEC"), including under the "Risk Factors" section of our annual report filings with the SEC, including our Annual Report on Form 10-K filed with for the SEC and this Report. year ended December 31, 2023. Forward-looking statements speak only as of the date hereof. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based, except as required by law.

All references in this Report that refer to the "Company", "Workhorse Group", "Workhorse", "we," "us" or "our" are to Workhorse Group Inc.

PART I – FINANCIAL INFORMATION  
ITEM 1. FINANCIAL STATEMENTS

Workhorse Group Inc.  
Condensed Consolidated Balance Sheets  
(Unaudited)

		September 30, 2023	December 31, 2022		
		March 31, 2024		March 31, 2024	December 31, 2023
Assets	Assets				
Current assets:	Current assets:				
Current assets:					
Current assets:					
Cash and cash equivalents	Cash and cash equivalents	\$ 38,865,065	\$ 99,276,301		
Accounts receivable, less allowance for credit losses of zero as of September 30, 2023 and December 31, 2022, respectively		7,424,346	2,079,343		
Other receivable		—	15,000,000		
Cash and cash equivalents					
Cash and cash equivalents					
Restricted cash					

Accounts receivable, less allowance for credit losses of \$0.2 million and \$0.2 million as of March 31, 2024 and December 31, 2023, respectively

Inventory, net  
Inventory, net

Inventory, net	Inventory, net	40,783,292	8,850,142
Prepaid expenses and other current assets	Prepaid expenses and other current assets	10,705,904	14,152,481
Total current assets	Total current assets	97,778,607	139,358,267
Property, plant and equipment, net	Property, plant and equipment, net	37,465,094	21,501,095
Investment in Tropos		—	10,000,000

Lease right-of-use assets  
Lease right-of-use assets

Lease right-of-use assets	Lease right-of-use assets	10,878,500	11,706,803
Other assets	Other assets	176,310	176,310
<b>Total Assets</b>	<b>Total Assets</b>	<b>\$146,298,511</b>	<b>\$182,742,475</b>

**Liabilities**  
**Liabilities**  
Current liabilities: Current liabilities:

Current liabilities:  
Current liabilities:  
Accounts payable  
Accounts payable

Accounts payable	Accounts payable	\$ 11,936,156	\$ 10,235,345
Accrued and other current liabilities	Accrued and other current liabilities	5,858,754	46,207,431
Deferred revenue, current	Deferred revenue, current	4,736,831	3,375,000
Warranty liability	Warranty liability	1,777,520	2,207,674
Current portion of lease liabilities	Current portion of lease liabilities	1,561,769	1,285,032
Warrant liability			
Current portion of convertible notes			
Total current liabilities	Total current liabilities	25,871,030	63,310,482
Deferred revenue, long-term		—	2,005,000
Lease liability, long-term		7,658,788	8,840,062
Lease liabilities, long-term			
Lease liabilities, long-term			
Lease liabilities, long-term			
<b>Total Liabilities</b>	<b>Total Liabilities</b>	33,529,818	74,155,544
Commitments and contingencies (Note 13)			
<b>Total Liabilities</b>			
<b>Total Liabilities</b>			
Commitments and contingencies			Commitments and contingencies
<b>Stockholders' Equity:</b>	<b>Stockholders' Equity:</b>		



Series A preferred stock, par value \$0.001 per share, 75,000,000 shares authorized, zero shares issued and outstanding as of September 30, 2023 and December 31, 2022	—	—
Common stock, par value \$0.001 per share, 450,000,000 shares authorized, 255,382,128 shares issued and outstanding as of September 30, 2023 and 250,000,000 shares authorized, 165,605,355 shares issued and outstanding as of December 31, 2022	255,382	165,605

Series A preferred stock, par value \$0.001 per share, 75,000,000 shares authorized, zero shares issued and outstanding as of March 31, 2024 and December 31, 2023		
Series A preferred stock, par value \$0.001 per share, 75,000,000 shares authorized, zero shares issued and outstanding as of March 31, 2024 and December 31, 2023		
Series A preferred stock, par value \$0.001 per share, 75,000,000 shares authorized, zero shares issued and outstanding as of March 31, 2024 and December 31, 2023		

Common stock,  
par value  
\$0.001 per  
share,  
450,000,000  
shares  
authorized,  
330,791,980  
shares issued  
and  
outstanding  
as of March  
31, 2024 and  
285,980,843  
shares issued  
and  
outstanding  
as of  
December 31,  
2023

Additional paid- in capital	Additional paid- in capital	818,824,798	736,070,388
Accumulated deficit	Accumulated deficit	(706,311,487)	(627,649,062)
Total stockholders' equity	Total stockholders' equity	112,768,693	108,586,931

Total stockholders' equity

Total stockholders' equity

<b>Total Liabilities and Stockholders' Equity</b>	<b>Total Liabilities and Stockholders' Equity</b>	<b>\$146,298,511</b>	<b>\$182,742,475</b>
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See accompanying notes to the unaudited Condensed Consolidated Financial Statements.

**Workhorse Group Inc.**  
Condensed Consolidated Statements of Operations  
(Unaudited)

Three Months Ended March 31,

	Three Months Ended March 31,
	Three Months Ended March 31,
	2024
	2024
	2024
Sales, net of returns and allowances	
Sales, net of returns and allowances	
Sales, net of returns and allowances	
Cost of sales	
Cost of sales	
Cost of sales	
Gross loss	
Gross loss	
Gross loss	
Operating expenses	
Operating expenses	
Operating expenses	
Selling, general and administrative	
Selling, general and administrative	
Selling, general and administrative	
Research and development	
Research and development	
Research and development	
Total operating expenses	
Total operating expenses	

Total operating expenses

Loss from operations

Loss from operations

Loss from operations

Interest income (expense), net

Interest income (expense), net

Interest income (expense), net

Loss before benefit for income taxes

Loss before benefit for income taxes

Loss before benefit for income taxes

Benefit for income taxes

Benefit for income taxes

Benefit for income taxes

Net loss

Net loss

Net loss

Net loss per share of common stock

Net loss per share of common stock

Net loss per share of common stock

## Basic and Diluted

Weighted average  
shares used in  
computing net loss  
per share of  
common stock

Weighted average  
shares used in  
computing net loss  
per share of  
common stock

Weighted average  
shares used in  
computing net loss  
per share of  
common stock

## Basic and Diluted

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Sales, net of returns and allowances	\$ 3,028,545	\$ 1,548,798	\$ 8,688,423	\$ 1,575,652
Cost of sales	6,557,358	9,515,547	20,312,854	16,459,102
Gross loss	(3,528,813)	(7,966,749)	(11,624,431)	(14,883,450)
Operating expenses				
Selling, general and administrative	11,756,291	34,753,017	40,448,651	59,693,419

Research and development	5,771,588	6,126,951	18,056,182	15,165,946
Total operating expenses	17,527,879	40,879,968	58,504,833	74,859,365
Loss from operations	(21,056,692)	(48,846,717)	(70,129,264)	(89,742,815)
Interest income (expense), net	410,980	27,716	1,466,839	(2,290,993)
Other income (loss)	(10,000,000)	13,413,500	(10,000,000)	13,413,500
Loss before benefit for income taxes	(30,645,712)	(35,405,501)	(78,662,425)	(78,620,308)
Benefit for income taxes	—	—	—	—
Net loss	\$ (30,645,712)	\$ (35,405,501)	\$ (78,662,425)	\$ (78,620,308)
Net loss per share of common stock				
Basic & Diluted	\$ (0.14)	\$ (0.22)	\$ (0.41)	\$ (0.50)
Weighted average shares used in computing net loss per share of common stock				
Basic & Diluted	215,878,517	160,213,944	189,756,837	157,117,380

See accompanying notes to the **unaudited** Condensed Consolidated Financial Statements.

**Workhorse Group Inc.**  
Condensed Consolidated Statements of Stockholders' Equity  
(Unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	
	Number of Shares	Amount			Total Stockholders' Equity	
Balance as of June 30, 2022	160,058,512	\$ 160,059	\$ 717,258,045	\$ (553,589,651)	\$ —	\$ 163,828,453
Stock options and vesting of restricted shares*	389,565	389	(142,433)	—	—	(142,044)
Stock-based compensation	—	—	2,985,275	—	—	2,985,275

Net loss for the three months ended September 30, 2022	—	—	—	(35,405,501)	—	(35,405,501)
Balance as of September 30, 2022	<u>160,448,077</u>	<u>\$ 160,448</u>	<u>\$ 720,100,887</u>	<u>\$ (588,995,152)</u>	<u>\$ —</u>	<u>\$ 131,266,183</u>

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss		Total Stockholders' Equity
	Number	Amount					
	of Shares						
Balance as of December 31, 2023	285,980,843	\$ 285,981	\$ 834,394,441	\$ (751,568,251)	\$ —		\$ 83,112,171
Common stock issued under ATM	9,808,891	9,809	1,232,840	—	—		1,242,649
Common stock issued under 2023 Warrant Exchange	8,500,000	8,500	2,839,000	—	—		2,847,500
Issuance of common stock under ELOC Purchase Agreement	12,000,000	12,000	3,112,000				3,124,000
Common stock issued under 2024 Securities Purchase Agreement	13,279,491	13,279	3,255,168	—	—		3,268,447
Stock options and vesting of restricted shares*	1,222,755	1,223	(164,739)	—	—		(163,516)
Stock-based compensation	—	—	3,148,308	—	—		3,148,308
Net loss for the three months ended March 31, 2024	—	—	—	(29,155,787)	—		(29,155,787)
Balance as of March 31, 2024	<u>330,791,980</u>	<u>\$ 330,792</u>	<u>\$ 847,817,018</u>	<u>\$ (780,724,038)</u>	<u>\$ —</u>		<u>\$ 67,423,772</u>

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss		Total Stockholders' Equity
	Number	Amount					
	of Shares						
Balance as of December 31, 2021	151,915,455	\$ 151,916	\$ 686,318,201	\$ (510,374,844)	\$ (1,402,500)		\$ 174,692,773
Common stock issued in exchange of convertible notes	7,833,666	7,834	25,373,244	—	—		25,381,078
Common stock issued through At-The-Market offering	98,986	99	248,596	—	—		248,695
Stock options and vesting of restricted shares*	599,970	599	(467,131)	—	—		(466,532)
Stock-based compensation	—	—	8,627,977	—	—		8,627,977

Net loss for the nine months ended September 30, 2022	—	—	—	(78,620,308)	—	(78,620,308)
Other comprehensive loss	—	—	—	—	1,402,500	1,402,500
Balance as of September 30, 2022	160,448,077	\$ 160,448	\$ 720,100,887	\$ (588,995,152)	\$ —	\$ 131,266,183

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated	Total Stockholders' Equity
	Number of Shares	Amount			Other	
					Comprehensive Loss	
Balance as of December 31, 2022	165,605,355	\$ 165,605	\$ 736,070,388	\$ (627,649,062)	\$ —	\$ 108,586,931
Issuance of common stock	14,384,776	14,384	18,577,804	—	—	18,592,188
Stock options and vesting of restricted shares*	590,567	591	(384,514)	—	—	(383,923)
Stock-based compensation	—	—	3,024,389	—	—	3,024,389
Net loss for the three months ended March 31, 2023	—	—	—	(24,999,037)	—	(24,999,037)
Balance as of March 31, 2023	180,580,698	\$ 180,580	\$ 757,288,067	\$ (652,648,099)	\$ —	\$ 104,820,548

\*Net of tax payments related to shares withheld for option exercises and vested stock.

See accompanying notes to the unaudited Condensed Consolidated Financial Statements.

**Workhorse Group Inc.**  
Condensed Consolidated Statements of **Stockholders' Equity** **Cash Flows**  
(Unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated	Total Stockholders' Equity
	Number of Shares	Amount			Other	
					Comprehensive Loss	
Balance as of June 30, 2023	205,221,154	\$ 205,221	\$ 782,848,275	\$(675,665,775)	\$ —	\$ 107,387,721
Common stock issued for securities litigation settlement	25,380,711	25,381	19,974,619	—	—	20,000,000
Common stock issued through At-The-Market offering	24,639,221	24,639	12,473,265	—	—	12,497,904
Stock options and vesting of restricted shares*	141,042	141	8,235	—	—	8,376
Stock-based compensation	—	—	3,520,404	—	—	3,520,404



Net loss for the three months ended September 30, 2023	—	—	—	(30,645,712)	—	(30,645,712)
Balance as of September 30, 2023	255,382,128	\$ 255,382	\$ 818,824,798	\$ (706,311,487)	\$ —	\$ 112,768,693

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated	Total Stockholders' Equity
	Number of Shares	Amount			Other Comprehensive Loss	
Balance as of December 31, 2022	165,605,355	\$ 165,605	\$ 736,070,388	\$(627,649,062)	\$ —	\$ 108,586,931
Common stock issued for securities litigation settlement	25,380,711	25,381	19,974,619	—	—	20,000,000
Common stock issued through At-The-Market offering	63,323,352	63,323	52,726,189	—	—	52,789,512
Issuance of common stock	116,347	116	199,884	—	—	200,000
Stock options and vesting of restricted shares*	956,363	957	(468,171)	—	—	(467,214)
Stock-based compensation	—	—	10,321,889	—	—	10,321,889
Net loss for the nine months ended September 30, 2023	—	—	—	(78,662,425)	—	(78,662,425)
Balance as of September 30, 2023	255,382,128	\$ 255,382	\$ 818,824,798	\$(706,311,487)	\$ —	\$ 112,768,693

\*Net of tax payments related to shares withheld for option exercises and vested stock.

See accompanying notes to the unaudited Condensed Consolidated Financial Statements.

**Workhorse Group Inc.**  
Condensed Consolidated Statements of Cash Flows  
(Unaudited)

	Three Months Ended March 31,	Three Months Ended March 31,
	2024	2024 2023
<b>Cash flows from operating activities:</b>		
Net loss		
Net loss		
Net loss		

Adjustments to  
reconcile net  
loss to net  
cash used in  
operating  
activities:

Depreciation and amortization

Depreciation and amortization

Depreciation and amortization

Change in fair  
value of 2024

Notes and  
2024

Warrants

Deferred  
revenue

Stock-based  
compensation

Change in  
inventory and  
prepaid  
purchases  
reserve

	Nine Months Ended September 30,	
	2023	2022
<b>Cash flows from operating activities:</b>		
Net loss	\$(78,662,425)	\$ (78,620,308)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,468,832	1,378,365
Change in fair value and loss on exchange of convertible notes	—	1,769,857
Deferred revenue	(143,169)	—

Stock-based compensation	10,321,889	8,627,977
Impairment of investment in Tropos	10,000,000	—
Change in inventory and prepaid purchases reserve	550,090	5,196,774
Non-cash lease expense	583,348	855,119
Change in fair value and gain on conversion of note and exchange of 2023 Warrants		
Change in fair value and gain on conversion of note and exchange of 2023 Warrants		
Change in fair value and gain on conversion of note and exchange of 2023 Warrants		
Other non-cash items	Other non-cash items	200,000 175,750
Effects of changes in operating assets and liabilities:	Effects of changes in operating assets and liabilities:	
Accounts receivable	Accounts receivable	(5,295,003) (16,398,420)
Inventory		(28,492,532) (6,969,095)
Accounts receivable		
Accounts receivable		
Inventory, net		
Prepaid expenses and other current assets	Prepaid expenses and other current assets	(1,083,886) (10,317,025)
Other assets		— (84,401)
Accounts payable, accrued liabilities and other		

Accounts payable, accrued liabilities and other			
Accounts payable, accrued liabilities and other	Accounts payable, accrued liabilities and other	(5,563,625)	29,650,491
Warranty liability	Warranty liability	(430,154)	(1,244,432)
Net cash used in operating activities	Net cash used in operating activities	(95,546,635)	(65,979,348)
<b>Cash flows from investing activities:</b>	<b>Cash flows from investing activities:</b>		
Capital expenditures	Capital expenditures	(16,527,317)	(9,708,699)
Investment in Tropos		—	(5,000,000)
Capital expenditures			
Capital expenditures			
Net cash used in investing activities			
Net cash used in investing activities			
Net cash used in investing activities	Net cash used in investing activities	(16,527,317)	(14,708,699)
<b>Cash flows from financing activities:</b>	<b>Cash flows from financing activities:</b>		
Net payments on convertible notes			
Net payments on convertible notes			

Net payments on convertible notes			
Proceeds from issuance of common stock	Proceeds from issuance of common stock	52,789,512	248,695
Payments on finance lease	Payments on finance lease	(659,582)	(623,648)
Exercise of options and restricted share award activity	Exercise of options and restricted share award activity	(467,214)	(466,532)
Net cash provided by (used in) financing activities	Net cash provided by (used in) financing activities	51,662,716	(841,485)
Change in cash and cash equivalents	Change in cash and cash equivalents	(60,411,236)	(81,529,532)
Cash and cash equivalents, beginning of the period	Cash and cash equivalents, beginning of the period	99,276,301	201,647,394
Cash and cash equivalents, end of the period	Cash and cash equivalents, end of the period	\$ 38,865,065	\$120,117,862

See accompanying notes to the unaudited Condensed Consolidated Financial Statements.

**Workhorse Group Inc.**  
**Notes to Unaudited Condensed Consolidated Financial Statements**  
**(Unaudited)**

**1. SUMMARY OF BUSINESS AND SIGNIFICANT ACCOUNTING PRINCIPLES**

**Overview**

## We are

Workhorse Group Inc. ("Workhorse", the "Company", "we", "us", or "our") is an American technology company with a vision to pioneer the transition to zero-emission commercial vehicles. Our primary focus is We design, develop, manufacture and sell fully electric ground and air-based electric vehicles.

## Liquidity, Capital Resources, and Going Concern

The accompanying Condensed Consolidated Financial Statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") applicable to provide sustainable a going concern. The going concern basis of presentation assumes that the Company will continue in operation one year after the date these Condensed Consolidated Financial Statements are issued and cost-effective solutions will be able to realize assets and discharge its liabilities and commitments in the normal course of business. The Condensed Consolidated Financial Statements do not include any adjustments to the commercial transportation sector. carrying amounts and classification of assets, liabilities, and reported expenses that may be necessary if the Company were unable to continue as a going concern.

Pursuant to the requirements of the Financial Accounting Standard Board's ("FASB") Accounting Standards Codification ("ASC") Topic 205-40, Presentation of Financial Statements - Going Concern ("ASC 205-40"), management must evaluate whether there are conditions and events, considered in aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for one year after the date these consolidated financial statements are issued. In accordance with ASC 205-40, management's analysis can only include the potential mitigating impact of management's plans that have not been fully implemented as of the issuance date if (a) it is probable that management's plans will be effectively implemented on a timely basis, and (b) it is probable that the plans, when implemented, will alleviate the relevant conditions or events that raise substantial doubt about the Company's ability to continue as a going concern.

We had sales of \$1.3 million, incurred a net loss of \$29.2 million and used \$18.0 million of cash in operating activities during the three months ended March 31, 2024. As of March 31, 2024, the Company had \$6.7 million of cash and cash equivalents, accounts receivable of \$1.8 million, net inventory of \$49.9 million and accounts payable of \$14.2 million. As of March 31, 2024, the Company had working capital of \$24.2 million and an accumulated deficit of \$780.7 million.

As a result of our recurring losses from operations, accumulated deficit, projected capital needs, and delays in bringing our vehicles to market and lower than expected market demand, substantial doubt exists regarding our ability to continue as a going concern within one year after the issuance date of the accompanying condensed consolidated financial statements. Our ability to continue as a going concern is contingent upon successful execution of management's intended plan over the next twelve months to improve the Company's liquidity and working capital, which includes, but is not limited to:

- Generating revenue by increasing sales of our vehicles and other services.
- Reducing expenses and limiting non-contracted capital expenditures.
- Raising capital to fund operations through the issuance of debt or equity securities, including through our 2024 Securities Purchase Agreement (as defined below) and our At-the-Market Sales Agreement ("ATM Agreement"), the sale of assets, or other strategic transactions.

It is essential that we have access to capital as we bring our existing line of vehicles to market, scale up production and sales of such vehicles and continue to develop additional variations of our existing vehicles and our next generation of vehicles. There is no assurance that we will be successful in implementing management's plans to generate liquidity to fund these activities or other aspects of our short and long-term strategy, that our projections of our future capital needs will prove accurate or that any additional funding would be available or sufficient to continue operations in future periods.

To the extent revenues from operations are insufficient to meet our liquidity requirements, our ability to continue as a going concern will be dependent on effectively raising capital through private or public placement of our equity and debt securities, including the continued access to the additional closings of up to \$123.7 million in aggregate principal amount of additional

2024 Notes and, if our share price makes such exercise feasible, the possible receipt of proceeds from the exercise of the corresponding 2024 Warrants pursuant to the 2024 Securities Purchase Agreement, further described below, and the continued use of the ATM Agreement (as further described below), for which there can be no assurance we will be successful in such efforts. We will also rely on other debt financing or other sources of capital funding such as through the sale of assets to obtain sufficient financial resources to fund our operating activities. If we are unable to maintain sufficient financial resources, our business, financial condition and results of operations, as well as our ability to continue to develop, produce and market our vehicle programs and satisfy our obligations as they become due, will be materially and adversely affected. This could affect future vehicle program production and sales. Failure to obtain additional financing will have a material, adverse impact on our business operations. There can be no assurance that we will be able to obtain the financing needed to achieve our goals on acceptable terms or at all. Additionally, any equity or equity linked financings would likely have a dilutive effect on the holdings of our existing stockholders. The Company's current level of cash and cash equivalents are not sufficient to execute our business plan. For the foreseeable future, we will incur significant operating expenses, capital expenditures and working capital funding that will deplete our cash on hand. These conditions raise substantial doubt regarding the Company's ability to continue as a going concern for a period of at least one year from the date of issuance of these Condensed Consolidated Financial Statements.

Our ability to obtain additional financing is extremely limited under current market conditions including the significant amount of capital required, the Nasdaq Listing Requirements, the market price of our stock and potential dilution from the issuance of any additional securities. If we are unable to identify other sources of funding, we may need to further adjust our operations and seek protection by filing a voluntary petition for relief under the Bankruptcy Code. If this were to occur, the value available to our various stakeholders, including our creditors and stockholders, is uncertain and trading prices for our securities may bear little or no relationship to the actual recovery, if any, by holders of our securities in bankruptcy proceedings, if any.

The following subsections provide additional actions by the Company with regards to liquidity and its plans to manage operating capital.

#### *Financings under the Securities Purchase Agreements*

As part of management's plan to raise capital to fund operations, the Company has entered into a financing transaction that makes liquidity available both in the short term and over time. On March 15, 2024, we entered into a securities purchase agreement (the "2024 Securities Purchase Agreement") with an institutional investor (the "Investor") under which we agreed to issue and sell, in one or more registered public offerings by the Company directly to the Investor in multiple tranches over a period beginning on March 15, 2024, senior secured convertible notes (the "2024 Notes") for up to an aggregate principal amount of \$139.0 million that will be convertible into shares of the Company's common stock, par value of \$0.001 per share ("Common Stock") and warrants to purchase shares of common stock (the "2024 Warrants"). On March 15, 2024, the Company issued and sold to the Investor a note (the "Initial 2024 Note") in original principal amount of \$9.0 million and a warrant (the "Initial 2024 Warrant") to purchase up to 32.0 million shares of common stock pursuant to the 2024 Securities Purchase Agreement and a prospectus supplement filed on March 15, 2024. As of the date hereof, the Initial 2024 Note has been fully converted into shares of our common stock and is no longer outstanding, and no shares have been issued pursuant to the Initial 2024 Warrant.

On May 10, 2024, the Company issued and sold to the Investor a second 2024 Note (the "First Additional 2024 Note") in the original principal amount of \$6.3 million and a 2024 Warrant (the "First Additional 2024 Warrant") to purchase up to 36.8 million shares of common stock.

The 2024 Securities Purchase Agreement provides for additional closings of up to \$123.7 million in aggregate principal amount of additional 2024 Notes and corresponding 2024 Warrants. See Note 7, *Debt* and Note 16, *Subsequent Events* for additional discussion related to the 2024 Securities Purchase Agreement. If we are not able to complete the additional closings or find another source of liquidity in the immediate future, we may be unable to continue our operations or may need to substantially reduce them.

Prior to entering the 2024 Securities Purchase Agreement described above, the Company satisfied in full the \$20.0 million principal amount of green senior convertible notes (the "2026 Notes") due October 1, 2026, using \$10.0 million of restricted cash, and redeemed the warrant in connection therewith for the payment of cash and exchange of our Common Stock. For further discussion of the 2026 Notes, see the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023

#### *Sale Leaseback*

Another strategic opportunity identified by management to raise capital to fund operations was to enter into a sale leaseback for our Union City, Indiana manufacturing facility. As previously reported, on January 31, 2024, a subsidiary of the Company entered into a purchase and sale agreement (the "Purchase and Sale Agreement") with William Repny LLC (the "Union City Purchaser") for the sale of the Company's Union City, Indiana manufacturing facility for a purchase price, before fees and expenses, of approximately \$34.5 million, in connection with which the Company would lease the property back from the Union City Purchaser. Although the Purchase and Sale Agreement has not been terminated, the Company does not believe the transaction will be consummated at the current purchase price. Accordingly, the Company is currently discussing alternative sale and leaseback transactions with other potential purchasers, as well as possible changes to the terms of the Purchase and Sale Agreement with the Union City Purchaser or other strategic alternatives. The Company expects that if a sale and leaseback transaction for the Union City facility is consummated,



whether with the Union City Purchaser or another party, the purchase price in such transaction will be materially lower than the price provided in the Purchase and Sale Agreement.

### *Cost-saving Measures*

As previously disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023 as filed with the SEC on March 12, 2024 (the "Form 10-K") a vital component of management's intended plan to improve our liquidity and working capital requirements is reducing our operating costs to, among other things, reduce demands on our available liquidity. During the first quarter of 2024, we initiated a reduction in force (the "RIF") pursuant to which we terminated approximately 20% of our total workforce, excluding direct labor, and our executive officers agreed to defer approximately 20% of their cash compensation into the second quarter of 2024. In April 2024, the Company furloughed 73 employees at its Union City manufacturing facility without pay. The Company has not incurred, and does not expect to incur, material costs in connection with the RIF and furloughs. The Company is also currently working with certain of its vendors to extend or restructure the payment terms of certain of its accounts payable. The Company currently intends to reinstate all furloughed employees when the Company's financial and operational position permits. However, there can be no assurance that such furloughed employees will be available and willing to return to work.

### *Aero Drone Design and Manufacturing Operations*

Management's plan also included a decision to cease the production operations of our drone design and manufacture all-electric delivery trucks manufacturing business and drone systems, including transition exclusively to operating as a Drones as a Service business, as previously disclosed in the technology Form 10-K. In addition, the Company is currently working with a third party to complete the divestiture of its remaining Aero business. The Company does not expect to realize cash proceeds upon consummation of the sale but expects the transition to a Drones as a Service business and the subsequent divestiture to reduce the operating costs associated with the business. In addition, the Company expects that optimizes the way these vehicles operate. We are focused on our core competency final divestiture agreements will include limited earn-out provisions under which the Company would receive a portion of bringing our electric delivery vehicle programs the proceeds if Aero realizes revenues from certain contingent sources. The Company expects to market. consummate this transaction during the second fiscal quarter of 2024.

### ***Basis of Presentation and Consolidation***

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in conformity with U.S. generally accepted accounting principles ("GAAP") and applicable rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting and include the accounts and operations of the Company and those of our wholly-owned subsidiaries. Accordingly, they do not include all of the information and footnotes required by GAAP for annual audited financial statements. All intercompany balances and transactions have been eliminated upon consolidation.

In the opinion of our management, the unaudited Condensed Consolidated Financial Statements have been prepared on a basis consistent with the audited consolidated financial statements and include all adjustments necessary for the fair presentation of Workhorse's financial condition, results of operations and cash flows for the interim periods presented. Such adjustments are of a normal, recurring nature. The results of operations and cash flows for the interim

periods presented may not necessarily be indicative of full-year results. Reference should be made to the financial statements contained in our Annual Report on Form 10-K for the year ended December 31, 2022.

### *Liquidity and Going Concern*

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with GAAP applicable to a going concern. The going concern basis of presentation assumes that the Company will continue in operation one year after the date these unaudited Condensed Consolidated Financial Statements are issued and will be able to realize assets and discharge its liabilities and commitments in the normal course of business.

Pursuant to the requirements of the Financial Accounting Standard Board's ("FASB") Accounting Standards Codification ("ASC") Topic 205-40, Presentation of Financial Statements - Going Concern ("ASC 205-40"), management must evaluate whether there are conditions and events, considered in aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for one year after the date these unaudited Condensed Consolidated Financial Statements are issued. In accordance with ASC 205-40, management's analysis can only include the potential mitigating impact of management's plans that have not been fully implemented as of the issuance date if (a) it is probable that management's plans will be effectively implemented on a timely basis, and (b) it is probable that the plans, when implemented, will alleviate the relevant conditions or events that raise substantial doubt about the Company's ability to continue as a going concern.

We had sales of \$8.7 million, incurred a net loss of \$78.7 million and used \$95.5 million of cash in operating activities during the nine months ended September 30, 2023. As of September 30, 2023, the Company had total working capital of \$71.9 million, including \$38.9 million of cash and cash equivalents, and an accumulated deficit of \$706.3 million.

As a result of our recurring losses from operations, accumulated deficit, projected capital needs, and delays in bringing our vehicles to market and, accordingly, lower than expected revenues from vehicle sales, substantial doubt exists regarding our ability to continue as a going concern within one year after the issuance date of the accompanying unaudited Condensed Consolidated Financial Statements. Our ability to continue as a going concern is contingent upon successful execution of management's intended plan over the next twelve months to improve the Company's liquidity and working capital, which includes, but is not limited to:

- Generating revenue by increasing sales of our vehicles, delivery and other services.
- Reducing expenses and limiting non-contracted capital expenditures.
- Raising capital to fund operations through the issuance of debt or equity securities, including through our at-the market offering program ("ATM Program"), the sale of assets, or other strategic transactions.

It is essential that we have access to capital as we bring our existing line of vehicles to market, scale up production and sales of such vehicles and continue to develop our next generation of vehicles. There is no assurance that we will be successful in implementing management's plans to generate liquidity to fund these activities or other aspects of our short and long-term strategy, that our projections of our future capital needs will prove accurate or that any additional funding would be available or sufficient to continue operations in future periods. The unaudited Condensed Consolidated Financial Statements do not include any adjustments that may result from the outcome of this uncertainty.

### Reclassifications

Certain prior period balances have been reclassified to conform to the current year presentation in the unaudited Condensed Consolidated Financial Statements and the accompanying notes. These reclassifications have no effect on previously reported results of operations or stockholders' equity. 10-K.

### ***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, costs and expenses and related disclosures in the accompanying notes.

## **2. INVENTORY, NET**

Inventory, net consisted of the following:

	September 30, 2023	December 31, 2022
Raw materials	\$ 24,032,324	\$ 42,500,878
Work in process	1,516,984	25,210,131
Finished goods <sup>(1)</sup>	17,745,316	301,645
	43,294,624	68,012,654
Less: inventory reserves	(2,511,332)	(59,162,512)
Inventory, net	\$ 40,783,292	\$ 8,850,142

<sup>(1)</sup> Finished goods inventory includes new vehicles available for sale.

	March 31, 2024	December 31, 2023
Raw materials	\$ 34,067,558	\$ 32,682,324
Work in process	3,249,984	2,892,329
Finished goods	22,603,148	18,309,829
	59,920,690	53,884,482
Less: inventory reserves	(10,068,312)	(8,476,290)
Inventory, net	\$ 49,852,378	\$ 45,408,192

We reserve inventory for any excess or obsolete inventories or when we believe the net realizable value of inventories is less than the carrying value.

As of September 30, 2023, March 31, 2024 and December 31, 2022, December 31, 2023, the Company recorded we carried inventory reserves of \$2.5 million, \$10.1 million and \$59.2 million, \$8.5 million, respectively. The period over period decrease/increase in inventory reserves was primarily driven by our efforts attributable to sell and dispose of C-Series excess inventory due to slower than anticipated vehicle program inventory, which was fully reserved as the program was discontinued at the end of 2022. The sale and disposal activity did not have a material impact on the Company's results of operations during the nine months ended September 30, 2023, sales.

3. CONTRACT MANUFACTURING SERVICES AND INVESTMENT IN TROPOS

We have a minority ownership investment in Tropos Technologies, Inc. ("Tropos"). The investment was obtained/acquired during the third quarter of 2022 in exchange for a cash payment of \$5.0 million and a \$5.0 million contribution of non-cash consideration representing a deposit from Tropos for future assembly services under an Assembly Services Agreement. The \$5.0 million non-cash consideration was recorded as deferred revenue and is recognized as revenue over time as assembly service performance obligations are satisfied.

We record/recorded our investment at cost less impairment, if applicable. In accordance with FASB ASC Topic 321, Investments - Equity Securities, we assess/assessed our investment for impairment at each reporting period to determine if the fair value has declined below its cost basis and if the impairment is other-than-temporary. As

During the third quarter of September 30, 2023, 2023, we determined that our investment in Tropos is/was impaired based on the economic conditions and uncertainties that have significantly affected Tropos' performance and financial position. The impairment is considered to be other-than-temporary as the decline in fair value of the investment is not expected to recover in the foreseeable future.

The impairment charge recognized for our investment is \$10.0 million, which represents the difference between the original cost of the investment and its fair value as of the impairment assessment date. The impairment loss was recognized in Other Income (Loss) (loss) income in the unaudited Condensed Consolidated Statements consolidated statements of Operations/operations for the three and nine months/year ended September 30, 2023, December 31, 2023.

The impairment of our investment as of September 30, 2023 did not release the Company from its obligation to perform assembly services under the agreement. Assembly Services Agreement and, accordingly, the Company continues to perform assembly services and carry the balance of deferred revenue on its Condensed Consolidated Balance Sheets. As of March 31, 2024 and December 31, 2023, deferred revenue related to the Assembly Services Agreement was \$4.7 million and \$4.7 million, respectively.

4. PREPAID EXPENSES AND OTHER CURRENT ASSETS

Prepaid expenses and other current assets consisted of the following:

	September	December
	30, 2023	31, 2022

March 31, 2024		March 31, 2024	December 31, 2023
Prepaid purchases <sup>(1)</sup>	Prepaid purchases <sup>(1)</sup>	\$26,252,384	\$34,611,649
Less: prepaid purchases reserve <sup>(2)</sup>	Less: prepaid purchases reserve <sup>(2)</sup>	(17,419,622)	(22,163,338)
Prepaid purchases, net	Prepaid purchases, net	8,832,762	12,448,311
Prepaid insurance	Prepaid insurance	1,260,313	1,198,769
Other	Other	612,829	505,401
Other	Other		
Prepaid expenses and other current assets	Prepaid expenses and other current assets	\$10,705,904	\$14,152,481

(1) The Company's Our prepaid purchases consist primarily of deposits made to our suppliers for non-recurring production parts and engineering costs, capital expenditures, costs. As of March 31, 2024 and production parts, December 31, 2023, net prepaid purchases primarily consisted of deposits for direct materials associated with our W4 CC and W750 vehicles. The decrease in prepaid purchases as of March 31, 2024 as compared to December 31, 2022 December 31, 2023 is primarily due to receiving inventory on supplier orders related to receipts of direct materials associated with our W4 CC and W750 and W56 vehicle programs, with limited new supplier orders requiring prepayment. Additionally, we wrote-off prepaid purchases related to the C-Series vehicle program, which were fully reserved as the program was discontinued in 2022. vehicles.

(2) We record reserves on prepaid purchases that are significantly aged for balances that represent deposits for certain production parts related to the Company's C-Series vehicle program, and for balances specifically identified as having a carrying value in excess of net realizable value. The reserve represents our best estimate of deposits on orders that we do not expect to recover. The decrease in the reserve was a result of the write-off of prepaid purchases related to the C-Series vehicle program, which was fully reserved as the program was discontinued in 2022.

## 5. REVENUE

### Revenue Recognition

The following table provides a summary of sales activity for the periods indicated:

		Three Months Ended September 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022
		Three Months Ended March 31,		Three Months Ended March 31,	
		2024		2024	2023
Sales, net of returns and allowances	Sales, net of returns and allowances	\$2,570,250	\$1,336,792	\$7,292,417	\$1,336,792
Other sales	Other sales	458,295	212,006	1,396,006	238,860
Total sales, net of returns and allowances	Total sales, net of returns and allowances	\$3,028,545	\$1,548,798	\$8,688,423	\$1,575,652

Sales for the three months ended September 30, 2023 included the reversal of a \$2.4 million sales allowance related to W4 CC vehicle sales. Sales for the nine months ended September 30, 2023 and 2022 March 31, 2024 consisted primarily of W4 CC vehicle sales. Other sales for the three and nine months ended September 30, 2023 March 31, 2024 consisted of delivery non-warranty after-sales vehicle services, service parts and accessories and revenue generated from operating our Stables by Workhorse route, Drones as a Service, and other services.

service revenue.

Deferred revenue is equivalent to the total service fee allocated to the assembly service performance obligations under the Tropos Assembly Services Agreement that are unsatisfied as of the balance sheet date. Deferred revenue was \$4.7 million and \$5.4 \$4.7 million as of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

Revenue recognized from the deferred revenue balance was \$0.1 million and \$0.2 \$0.0 million for the three and nine months ended September 30, 2023, respectively, March 31, 2024 and zero \$0.1 million for the three and nine months ended September 30, 2022 March 31, 2023. See Note 3, *Contract Manufacturing Services and Investment in Tropos*, for further discussion of deferred revenue.

## 6. ACCRUED AND OTHER CURRENT LIABILITIES

Accrued and other current liabilities consisted of the following:

	September 30, 2023	December 31, 2022
Legal reserve (Note 13)	\$ —	\$35,000,000

	March 31, 2024	March 31, 2024	December 31, 2023
Compensation and related costs	Compensation and related costs	2,852,605	4,967,187
Other	Other	3,006,149	6,240,244
Total accrued and other current liabilities	Total accrued and other current liabilities	\$5,858,754	\$46,207,431

### Warranties

Warranty liability activity consisted of the following for the periods indicated:

		Three Months Ended September 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022
	Three Months Ended March 31,	Three Months Ended March 31,			
	2024	2024	2023	2024	2023
Warranty liability, beginning of period	Warranty liability, beginning of period	\$1,922,580	\$3,322,212	\$2,207,674	\$4,583,916
Warranty costs incurred	Warranty costs incurred	(289,404)	(387,584)	(884,717)	(1,086,542)
Provision for warranty		144,344	404,856	454,563	(157,890)
Provision for warranty <sup>(1)</sup>					

Warranty liability, end of period	Warranty liability, end of period	\$1,777,520	\$3,339,484	\$1,777,520	\$3,339,484
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(1) We record a warranty liability for the products sold by us, which includes our best estimate of the projected costs to repair or replace items under warranties and recalls if identified. The negative provision in the current period is driven by the expiration of the warranty liability related to non-current truck models.

## 7. DEBT

A reconciliation of the fair value of the convertible notes is as follows:

	March 31,	
	2024	2023
Fair value of convertible notes, beginning of period	\$ 20,180,100	\$ —
Fair value of convertible notes issued during period	11,372,749	—
Repayments of convertible notes	(20,180,100)	—
Change in fair value of convertible notes <sup>(1)</sup>	(229,143)	—
Fair value of convertible notes exchanged for common stock	(3,269,555)	—
Fair value of convertible notes, end of period	\$ 7,874,051	\$ —

(1) The Company recognizes changes in fair value of convertible notes for common stock in Interest expense in the Condensed Consolidated Statements of Operations.

### Senior Secured Convertible Notes

#### 2024 Securities Purchase Agreement

On March 15, 2024, we entered into the 2024 Securities Purchase Agreement with the Investor under which the Company agreed to issue and sell, in one or more registered public offerings by the Company directly to the Investor in multiple tranches over a period beginning on March 15, 2024, (i) 2024 Notes for up to an aggregate principal amount of \$139.0 million that will be convertible into shares of the Company's common stock, par value of \$0.001 per share (the "Common Stock") and (ii) 2024 Warrants to purchase shares of Common Stock. As previously disclosed, on March 15, 2024, the Company issued and sold to

the Investor (i) the Initial 2024 Note in original principal amount of \$9.0 million and (ii) the Initial 2024 Warrant to purchase up to 32.0 million shares of Common Stock pursuant to the 2024 Securities Purchase Agreement and a prospectus supplement filed on March 15, 2024. The Initial 2024 Note was issued pursuant to the Company's Indenture



between the Company and U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), dated December 27, 2023 (the “Base Indenture”), and a Second Supplemental Indenture between the Company and the Trustee.

Pursuant to the 2024 Securities Purchase Agreement, on May 10, 2024, the Company issued and sold to the Investor a (i) the First Additional 2024 Note in the original principal amount of \$6.3 million and (ii) the First Additional 2024 Warrant to purchase up to 36.8 million shares of Common Stock. The First Additional 2024 Note was issued pursuant to the Base Indenture and a Third Supplemental Indenture between the Company and the Trustee.

Upon our filing of one or more additional prospectus supplements, and our satisfaction of certain other conditions, the 2024 Securities Purchase Agreement contemplates additional closings of up to \$123.7 million in aggregate principal amount of additional 2024 Notes and corresponding 2024 Warrants.

No 2024 Note may be converted and no 2024 Warrant may be exercised to the extent that such conversion or exercise would cause the then holder of such 2024 Note or 2024 Warrant to become the beneficial owner of more than 4.99%, or, at the option of such holder, 9.99% of the Company's then outstanding Common Stock, after giving effect to such conversion or exercise (the “Beneficial Ownership Cap”).

Issuances of Common Stock under the 2024 Notes and the 2024 Warrants were also subject to the Exchange Cap (as defined in the 2024 Notes and the 2024 Warrants) until approved by the Company's stockholders. On May 14, 2024, the Company's stockholders approved issuances of Common Stock under the 2024 Notes and the 2024 Warrants in excess of the Exchange Cap.

### 2024 Notes

The 2024 Notes are to be issued with original issue discount of 12.5%, resulting in \$7.9 million of proceeds to the Company before fees and expenses with respect to the Initial 2024 Notes and \$5.5 million of proceeds to the Company before fees and expenses with respect to the First Additional 2024 Note and are or will be senior, secured obligations of the Company, ranking senior to all other unsecured indebtedness, subject to certain limitations and are unconditionally guaranteed by each of the Company's subsidiaries, pursuant to the terms of a certain security agreement and subsidiary guarantee.

Each 2024 Note bears interest at a rate of 9.0% per annum, payable in arrears on the first trading day of each calendar quarter, at the Company's option, either in cash or in-kind by compounding and becoming additional principal. Upon the occurrence and during the continuance of an event of default, the interest rate will increase to 18.0% per annum. Unless earlier converted or redeemed, each 2024 Note will mature on the one-year anniversary of the date hereof, subject to extension at the option of the holders in certain circumstances as provided therein.

All amounts due under any 2024 Note are convertible at any time, in whole or in part, at the option of the holders into shares of Common Stock at a conversion price equal to the lower of \$0.1367 for the First Additional 2024 Note (the “Reference Price”) or (b) the greater of (x) \$0.0420 for the First Additional 2024 Note (the “Floor Price”) and (y) 87.5% of the volume weighted average price of the Common Stock during the ten trading days ending and including the

trading day immediately preceding the delivery or deemed delivery of the applicable conversion notice, as elected by the converting holder. The Reference Price and Floor Price are subject to customary adjustments upon any stock split, stock dividend, stock combination, recapitalization or similar event. The Reference Price is also subject to full-ratchet adjustment in connection with a subsequent offering at a per share price less than the Reference Price then in effect. Subject to the rules and regulations of Nasdaq, we have the right, at any time, with the written consent of the Investor, to lower the reference price to any amount and for any period of time deemed appropriate by our board of directors. Upon the satisfaction of certain conditions, we may prepay any 2024 Note upon 15 business days' written notice by paying an amount equal to the greater of (i) the face value of the 2024 Notes at premium of 25% (or 75% premium, during the occurrence and continuance of an event of default, or in the event certain redemption conditions are not satisfied) and (ii) the equity value of the shares of common stock underlying the 2024 Notes. The equity value of our common stock underlying the 2024 Notes is calculated using the two greatest volume weighted average prices of our common stock during the period immediately preceding the date of such redemption and ending on the date we make the required payment.

The 2024 Notes contain customary affirmative and negative covenants, including certain limitations on debt, liens, restricted payments, asset transfers, changes in the business and transactions with affiliates. It also requires the Company to maintain minimum liquidity on the last day of each fiscal quarter in the amount of either (i) \$1.5 million if the sale leaseback transaction of Company's manufacturing facility in Union City, Indiana (the "Sale Leaseback") has not been consummated and (ii) \$4.0 if the Sale Leaseback has been consummated, subject to certain conditions. The 2024 Notes also contain customary events of default.

Under certain circumstances, including a change of control, the holder may cause us to redeem all or a portion of the then-outstanding amount of principal and interest on any 2024 Note in cash at the greater of (i) the face value of the amount of 2024 Note to be redeemed at a 25% premium (or at a 75% premium, if certain redemption conditions are not satisfied or during the occurrence and continuance of an event of default), (ii) the equity value of our Common Stock underlying such amount of 2024 Note to be redeemed and (iii) the equity value of the change of control consideration payable to the holder of our Common Stock underlying such 2024 Note.

In addition, during an event of default, the holder may require us to redeem in cash all, or any portion, of any outstanding 2024 Note at the greater of (i) the face value of our Common Stock underlying such 2024 Note at a 75% premium and (ii) the equity value of our Common Stock underlying such 2024 Note. In addition, during a bankruptcy event of default, we shall immediately redeem in cash all amounts due under the 2024 Notes at a 75% premium unless the holder of such 2024 Note waives such right to receive payment. Further, upon the sale of certain assets, the holder may cause a redemption at a premium, including upon consummation of the Sale Leaseback if the redemption conditions are not satisfied. The 2024 Notes also provide for purchase and participation rights in the event of a dividend or other purchase right being granted to the holders of Common Stock.

As of March 31, 2024, the contractual principal balance of the 2024 Notes was \$6.2 million and the fair value was \$7.9 million. During the period ended March 31, 2024, the Investor converted \$2.8 million of principal into Common Stock and we recorded a \$0.2 million fair value adjustment in Interest expense in the statements of operations related to the Initial 2024 Note. No fair value adjustments related to the 2024 Notes attributable to changes in credit risk were recorded during the quarter ended March 31, 2024. Going forward, any future fair value adjustments attributable to changes in credit risk will be recorded in Other comprehensive loss.

The estimated fair value of the Initial 2024 Note upon issuance on March 15, 2024 was \$11.4 million. The fair value was computed using a Monte Carlo Simulation Model which incorporates significant inputs that are not observable in the market, and thus represents a Level 3 fair value measurement. The unobservable inputs utilized for measuring the fair value of the Initial 2024 Note reflect our assumptions about the assumptions that market participants would use in valuing the Initial 2024 Note as of the issuance date and subsequent reporting period.

We determined the fair value by using the following key inputs to the Monte Carlo Simulation Model:

Issuance Date	March 15, 2024
Maturity Date	March 15, 2025
Principal Balance as of the Valuation Date	\$ 9,000,000
Risk-Free Rate (Annual)	5.3 %
Corporate Bond Yield	15.78 %
Volatility (Annual)	85.00 %

As of March 31, 2024, the Company was in compliance with the debt terms and associated covenant under the 2024 Notes. Subsequent to March 31, 2024, the Investor has converted the initial principal balance of the Initial 2024 Note in full.

### Warrants Exercisable

On March 15, 2024, as part of the 2024 Securities Purchase Agreement, the Company issued the Initial 2024 Warrant to purchase 32.0 million shares of common stock at an exercise price of \$0.3500 per share. The Initial 2024 Warrant may be exercised by the holder immediately upon issuance and prior to March 15, 2034. No fractional shares will be issued upon exercise of the Initial 2024 Warrant. As of March 31, 2024, no shares have been issued pursuant to the Initial 2024 Warrant.

The fair value of the components of the 2024 Securities Purchase Agreement was allocated between the Initial 2024 Note and the Initial 2024 Warrant. As of March 15, 2024 (the initial recognition) and March 31, 2024, the fair value of the Initial 2024 Warrant was \$4.7 million and \$3.9 million, respectively. During the period ended March 31, 2024, we recorded a \$0.8 million fair value adjustment in Interest expense in the Condensed Consolidated Statements of Operations related to the Initial 2024 Note. The fair value of the Initial 2024 Warrant was measured using the Black Scholes model approach. Significant inputs to the model at March 15, 2024 and March 31, 2024 are as follows:

Valuation Assumptions	Initial Recognition on	
	March 31, 2024	March 15, 2024
Stock Price	\$ 0.24	\$ 0.27
Strike Price	\$ 0.3500	\$ 0.3500
Volatility (annual)	45.0%	45.0%

Risk-Free Rate	4.1%	4.2%
Estimated time to expiration (years)	10	10
Dividend Yield	0.0%	0.0%

### Green Senior Convertible Notes Due 2026

On December 12, 2023, the Company entered into a securities purchase agreement (the “2023 Securities Purchase Agreement”) under which the Company issued, pursuant the Base Indenture and a First Supplemental Indenture between the Company and the Trustee, \$20.0 million principal amount of green senior convertible notes (the “2026 Notes”) due October 1, 2026. The 2026 Notes were a senior secured obligation of the Company and ranked senior to all unsecured debt of the Company. The 2026 Notes were guaranteed by all the Company’s current subsidiaries and were secured by substantially all the assets of the Company and its subsidiaries. The 2026 Notes were issued with an original issue discount of 12.5%.

The Company paid fees in connection with the issuance of the 2026 Notes of \$0.6 million, resulting in net proceeds of \$16.9 million. We have elected to account for the 2026 Notes using the fair value option under GAAP. All direct costs related to the issuance of our convertible notes were recognized in Interest expense in the consolidated statements of operations for the year ended December 31, 2023.

During the first quarter of 2024, the Company repaid the 2026 Notes in full.

As of March 31, 2024 the contractual principal balance of the 2026 Notes was zero. During the three months ended March 31, 2024, we recorded no fair value adjustment in Other comprehensive loss related to the 2026 Notes. No fair value adjustments related to the 2026 Notes attributable to changes in credit risk were recorded during the three months ended March 31, 2024.

### Warrants Under the 2023 Securities Purchase Agreement

On December 12, 2023, as part of the 2023 Securities Purchase Agreement, the Company issued warrants (the “2023 Warrants”) to purchase 25.6 million shares of common stock at an exercise price of \$0.4492 per share.

The fair value of the components of the 2023 Securities Purchase Agreement was allocated between the 2026 Notes and the 2023 Warrants. As of December 31, 2023, the fair value of the 2023 Warrants was \$5.6 million. During the three months ended March 31, 2024, in connection with a First Amendment to Green Seniro Secured Convertible Note Due 2026, the Company entered into an agreement to exchange the 2023 Warrants for a total of 8.5 million shares of common stock for a total value of \$2.9 million, whereupon the 2023 Warrant was cancelled. The Company recorded a gain of \$2.7 million in connection with this exchange in interest income in the Condensed Consolidated Statements of Operations related to the 2023 Warrants.

## 8. LEASES

We have entered into various operating and finance lease agreements for offices, manufacturing and warehouse facilities. We determine if an arrangement is a lease, or contains a lease provision, at inception and record the leases in our financial statements upon lease commencement, which is the date when the underlying asset is made available for our use by the lessor.

We have elected not to disclose record in the unaudited Condensed Consolidated Balance Sheets leases with a lease term of 12 months or less at lease inception that do not contain a purchase option or renewal term provision we are reasonably certain to exercise. All other lease right-of-use assets and lease liabilities are recognized based on the present value of lease payments over the lease term at commencement date. Because most of our leases do not provide an implicit rate of return, we used our incremental borrowing rate based on the information available at lease commencement date in determining the present value of lease payments.

Our leases may include options to extend the lease term for up to 5 years. Some of our leases also include options to terminate the lease prior to the end of the agreed upon lease term. For purposes the purpose of calculating lease liabilities, lease terms include options to extend or terminate the lease when it is reasonably certain we will exercise such options.

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2023	2022	2023	2022
Short-term lease expense	\$ 74,058	\$ 179,704	\$ 200,733	\$ 603,712
Operating lease expense	614,060	521,566	1,754,557	1,284,533
Total lease expense	\$ 688,118	\$ 701,270	\$ 1,955,290	\$ 1,888,245

Lease expense for operating leases is recognized on a straight-line basis over the lease term as either cost of sales or operating expenses depending on the nature of the leased asset.

	Three Months Ended March 31,	
	2024	2023
Short-term lease expense	\$ 79,077	\$ 58,307
Operating lease expense	557,604	572,340
Total lease expense	\$ 636,681	\$ 630,647

Lease right-of-use assets consisted of the following:

	September 30, 2023	December 31, 2022
March 31, 2024	March 31, 2024	December 31, 2023

Operating leases	Operating leases	\$ 5,207,130	\$ 5,884,865
Finance leases	Finance leases	5,671,370	5,821,938
Total lease right-of-use assets	Total lease right-of-use assets	<u>\$10,878,500</u>	<u>\$11,706,803</u>

Lease liabilities consisted of the following:

		September 30, 2023	December 31, 2022		
	March 31, 2024			March 31, 2024	December 31, 2023
Operating leases	Operating leases	\$6,516,981	\$6,977,896		
Finance leases	Finance leases	2,703,576	3,147,198		
Total lease liabilities	Total lease liabilities	9,220,557	10,125,094		
Less: current portion	Less: current portion	(1,561,769)	(1,285,032)		
Long-term portion	Long-term portion	<u>\$7,658,788</u>	<u>\$8,840,062</u>		

## 8.9.FAIR VALUE MEASUREMENTS

We estimate the fair value of the 2024 Notes, 2024 Warrants, 2026 Notes and 2023 Warrants using commonly accepted valuation methodologies upon issuance and at each reporting date. Considerable judgment was required in interpreting market data to develop the estimates of fair value. Accordingly, the Company's estimates are not necessarily indicative of the amounts that the Company, or holders of the instruments, could realize in a current market exchange. Significant assumptions used in the fair value model included estimates of the redemption dates, credit spreads and the market price and volatility of the Company's common stock. The use of different assumptions and/or estimation methodologies could have a material effect on the estimated fair values. The following table presents the estimated fair values:

	March 31, 2024				December 31, 2023			
	Fair Value	Level 1	Level 2	Level 3	Fair Value	Level 1	Level 2	Level 3
Warrant liability	\$ 3,937,540	\$ —	\$ —	\$ 3,937,540	\$ 5,605,325	\$ —	\$ —	\$ 5,605,325
Convertible notes	\$ 7,874,051	\$ —	\$ —	\$ 7,874,051	\$ 20,180,100	\$ —	\$ —	\$ 20,180,100

## 10. STOCK-BASED COMPENSATION

We maintain, as approved by the board of directors and the stockholders, the 2017 Incentive Stock Plan, the 2019 Incentive Stock Plan, and the 2023 Long-Term Incentive Plan (collectively, the “Plans”) providing for the issuance of stock-based awards to employees, officers, directors or consultants of the Company. Non-qualified stock options may only be granted with an exercise price equal to the market value of our common stock on the grant date. Awards Shares reserved for stock awards under the plans total 17.5 million. Total shares remaining available for stock incentive grants under the Plans may be either vested or unvested totaled approximately 3.1 million as of March 31, 2024. We have granted new stock options, or unvested restricted stock. The Plans have authorized 17.5 million shares for issuance of stock-based awards. As of September 30, 2023 there were approximately 2.9 million shares available for issuance of future stock awards (“RSAs”), restricted stock units (“RSUs”), and performance share units (“PSUs”) under the Plans.

### Stock-based compensation expense

The following table summarizes stock-based compensation expense for the periods indicated:

		Three Months Ended September 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022
Three Months Ended March 31,					
2024					
		Three Months Ended March 31,			
		2024			
Stock options	Stock options	\$ 244,887	\$ 245,867	\$ 727,996	\$ 732,830
Restricted stock awards	Restricted stock awards	2,385,351	2,047,989	6,952,423	5,954,098
Restricted stock units					
Performance-based restricted stock awards	Performance-based restricted stock awards	890,166	691,419	2,641,470	1,941,049

Total stock-based compensation expense	Total stock-based compensation expense	\$3,520,404	\$2,985,275	\$10,321,889	\$8,627,977
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### Stock options

A summary of stock option activity for the **nine** **three** months ended **September 30, 2023** **March 31, 2024** is as follows:

	Number of Options	Weighted Average Exercise Price per Option	Weighted Average Remaining Contractual Life (Years)
Balance, December 31, 2022	423,626	\$ 7.6	6.7
Exercised	(50,200)	1.1	
Forfeited	(80,997)	1.7	
Balance, September 30, 2023	292,429	\$ 10.3	8.3
Number of options exercisable at September 30, 2023	204,213	\$ 10.3	8.3

	Number of Options	Weighted Average Exercise Price per Option	Weighted Average Remaining Contractual Life (Years)
Balance, December 31, 2023	292,429	\$ 10.27	6.7
Exercised	—	—	—
Balance, March 31, 2024	292,429	\$ 10.27	6.7
Number of options exercisable at March 31, 2024	247,023	\$ 10.27	5.4

As of **September 30, 2023** **March 31, 2024**, unrecognized compensation expense was **\$0.9 million** **\$0.4 million** for unvested options which is expected to be recognized over the next **0.9** **0.4** years.

### Restricted stock awards



A summary of restricted stock award activity for the **nine** **three** months ended **September 30, 2023** **March 31, 2024** is as follows:

		Weighted Average Grant Date Fair Value per Share
	Number of Unvested Shares	
Balance, December 31, 2022	3,525,331	\$ 4.9

	Number of Unvested Shares	Number of Unvested Shares	Weighted Average Grant Date Fair Value per Share
Balance, December 31, 2023			
Granted	Granted	3,962,731	1.5
Vested	Vested	(1,516,409)	4.5
Forfeited	Forfeited	(311,998)	2.7
Balance, September 30, 2023		5,659,655	\$ 2.7
Balance, March 31, 2024			

As of **September 30, 2023** **March 31, 2024**, unrecognized compensation expense was **\$11.7 million** **\$6.8 million** for unvested restricted stock awards which is expected to be recognized over the next **1.6** **1.2** years.

*Performance share Restricted stock units (“PSUs”)*

A summary of restricted stock unit activity for the three months ended March 31, 2024 is as follows:

	Weighted Average Grant Date Fair Value per Share
	Number of Unvested Shares
Balance, December 31, 2023	— \$ —

Granted	15,182,183	0.32
Vested	—	—
Forfeited	—	—
Balance, March 31, 2024	<u>15,182,183</u>	<u>\$ 0.32</u>

As of September 30, 2023 March 31, 2024, unrecognized compensation expense was \$3.3 million for unvested restricted stock units which is expected to be recognized over the next 2.58 years.

#### Performance share units

As of March 31, 2024, the number of unvested PSUs was 3.1 3.0 million. The vesting of the PSUs is conditioned upon achievement of certain performance objectives over a performance periods period ending December 31, 2024, 2025 and 2025 2026 as defined in each award agreement. Fifty For the PSUs issued in 2022 and 2023 with a performance period ending December 31, 2024 and 2025, fifty percent of the PSUs vest based upon the Company's total shareholder return as compared to a group of peer companies ("TSR PSUs"), and fifty percent of the PSUs vest based upon our performance on certain measures including a cumulative adjusted EBITDA target ("EBITDA PSUs"). For the PSUs issued in 2024 with a performance period ending December 31, 2026, one hundred percent of the PSUs vest based upon our performance on a cumulative revenue target ("Revenue PSUs"). Depending on the actual achievement of on the performance objectives, the grantee may earn between 0% and 200% of the target PSUs.

A summary of the activity for PSU awards with total shareholder return performance objectives for the nine three months ended September 30, 2023 March 31, 2024 is as follows:

		Weighted Average Grant Number of Date Fair Unvested Value per Shares Share		
Balance, December 31, 2022		738,751	\$	11.8
	Number of Unvested Shares		Number of Unvested Shares	Weighted Average Grant Date Fair Value per Share
Balance, December 31, 2023				
Granted	Granted	986,144		1.9
Forfeited	Forfeited	(22,278)		1.9

Balance, September 30, 2023	1,702,617	\$	6.2
Balance, March 31, 2024			

The grant date fair value of \$1.88 per TSR PSU for the awards issued in 2023 was estimated using a Monte-Carlo simulation model using a volatility assumption of 109% and risk-free interest rate of 3.77%. The grant date fair value of \$11.79 per TSR PSU for the awards issued in 2022 was estimated using a Monte-Carlo simulation model using a volatility assumption of 117% and risk-free interest rate of 0.69%.

As of September 30, 2023 March 31, 2024, unrecognized compensation expense was \$5.0 \$3.1 million, for unvested TSR PSUs, which is expected to be recognized over the next 1.5 1.08 years.

A summary of the PSU awards with cumulative adjusted EBITDA targets for the nine three months ended September 30, 2023 March 31, 2024 is as follows:

	Number of Unvested Shares
Balance, December 31, 2022 December 31, 2023	432,546 1,365,473
Granted	986,144 —
Forfeited	(22,278) (27,352)
Balance, September 30, 2023 March 31, 2024	1,396,412 1,338,121

The fair value of performance share units PSUs is calculated based on the stock price on the date of grant. The stock-based compensation expense recognized each period is dependent upon our estimate of the number of shares that will ultimately vest based on the achievement of EBITDA-based performance conditions. Future stock-based compensation expense for unvested EBITDA PSUs will be based on the fair value of the awards as of the grant date. During the quarter ended March 31, 2024, we recorded an expense of \$0.1 million related to unvested 2022 issued EBITDA PSUs. This expense reflects the fair value of the EBITDA PSUs that is expected to vest based on the achievement of the established performance targets. The future stock-based compensation expense for the 2023 issued unvested revenue PSUs will be based on the fair value of the awards as of the grant date which has not yet occurred, as the cumulative adjusted EBITDA target condition is not yet defined.

As of March 31, 2024, there were no PSU awards with cumulative revenue targets outstanding. The stock-based compensation expense recognized each period is dependent upon our estimate of the number of shares that will ultimately vest based on the achievement of revenue-based performance conditions. Future stock-based compensation expense for unvested revenue PSUs will be based on the fair value of the awards as of the grant date, which has not yet occurred, as the cumulative adjusted revenue target condition is not yet defined.

## 9.11. STOCKHOLDERS' EQUITY

## Securities Litigation Settlement

On September 1, 2023, we issued 25.4 million shares of common stock with an aggregate value of \$20.0 million in connection with the settlement of the Securities Litigation as described below in Note 13, *Commitments and Contingencies*. The number of shares was based on the market price per share of our common stock on August 31, 2023. This transaction was recorded as a noncash operating activity.

As a result of the settlement, we no longer have any obligation related to the securities litigation and, as such, the \$15.0 million insurance receivable previously recorded in Other Receivable and \$35.0 million legal reserve previously recorded in Accrued and Other Current Liabilities were zero as of September 30, 2023.

## At-The-Market Sales Agreement

On March 10, 2022, we entered into established an at-the-market equity program (the "ATM Program"). Under the ATM Program, under which we may offer and sell shares of our common stock having an aggregate sales price of up to \$175.0 million.

During the three and nine months ended September 30, 2023 March 31, 2024, we issued 24.69.8 million and 63.3 million shares respectively, under the ATM Program for net proceeds of \$12.5\$2.7 million and \$52.8 million, respectively. During the three and nine months ended September 30, 2022, we issued 0.1 million and 0.1 million shares, respectively, under the ATM Program for net proceeds of \$0.2 million and \$0.2 million, respectively. The remaining aggregate sales available under the ATM Program was \$108.0is \$95.6 million as of September 30, 2023 March 31, 2024. Certain of our other existing financing arrangements place certain conditions and restrictions on the use of our ATM Program.

## Equity Line of Credit

On December 12, 2023, the Company entered into an equity line of credit purchase agreement (the "ELOC Purchase Agreement") with Lincoln Park Capital Fund, LLC (the "Purchaser") which provides that, upon the terms and subject to the conditions and limitations set forth therein, the Company may sell to the Purchaser up to \$50.0 million of shares of common stock over the 24-month term of the ELOC Purchase Agreement.

In connection with the ELOC Purchase Agreement, the Company paid a non-cash commitment fee to the Purchaser in the amount of 3,775,105 shares of common stock of the Company (valued at \$1.5 million). The Company reflected the commitment fee as an expense in Interest expense in the consolidated statements of operations based on the fair value on the issuance date. Under applicable rules of the NASDAQ Capital Market, the Company cannot issue or sell more than 19.99% of the shares of common stock outstanding immediately prior to the execution of the ELOC Purchase Agreement to the Purchaser under the ELOC Purchase Agreement without stockholder approval. During the three months ended March 31, 2024, the Company sold 12.0 million shares of common stock at prices ranging between \$0.2210 and \$0.3430 pursuant to the ELOC

Purchase Agreement and received proceeds of \$3.1 million. The Company's other financing arrangements substantially limit our ability to use the ELOC Purchase Agreement in the future.

The Company evaluated the contract that includes the right to require the Purchaser to purchase shares of common stock in the future (“purchased put right”) considering the guidance in ASC 815-40, “Derivatives and Hedging - Contracts on an Entity’s Own Equity” (“ASC 815-40”) and concluded that it is an equity-linked contract that does not qualify for equity classification, and therefore requires fair value accounting as a derivative asset. The Company has analyzed the terms of the freestanding purchased put right and has concluded that it had insignificant value as of March 31, 2024.

## **Preferred Stock**

Workhorse has authorized 75.0 million shares of Series A Preferred Stock, par value \$0.001 per share. Our certificate of incorporation provides that shares of preferred stock may be issued from time to time in one or more series. Our Board of Directors is authorized to fix the voting rights, if any, designations, powers, preferences, qualification, limitations and restrictions thereof, applicable to the shares of preferred stock. As of March 31, 2024, there were no shares of Series A Preferred Stock issued and outstanding.

## **Common Stock**

We have one class of common stock, par value \$0.001 per share. Each share of our common stock is entitled to one vote on all matters submitted to stockholders. As of March 31, 2024, as approved by our stockholders, our authorized shares of common stock for issuance is 450.0 million with a par value \$0.001 per share.

## **Warrants**

In connection with the issuance of debt and common stock, we issued equity-classified warrants to purchase shares of our common stock. As of March 31, 2024 and 2023, there were approximately 1.0 million warrants outstanding. As of March 31, 2024, in connection with the Initial 2024 Warrant, there are 32.0 million warrants outstanding.

## **10. 12. INCOME TAXES**

As of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, the Company's our deferred tax liability was zero. Cumulative deferred tax assets are fully reserved as there is not sufficient evidence to conclude it is more likely than not the deferred tax assets are realizable. No current liability for federal or state income taxes has been included in these unaudited Condensed Consolidated Financial Statements due to the loss for the periods.

## **11. 13. LOSS PER SHARE**

Basic loss per share of common stock is calculated by dividing net loss by the weighted-average shares outstanding for the period. Potentially dilutive shares, which are based on the weighted-average shares of common stock underlying outstanding stock-based awards and warrants using the treasury stock method, and convertible notes using the if-converted method, are included when calculating the diluted net loss per share of common stock when their effect is dilutive.

The following table presents the potentially dilutive shares that were excluded from the computation of diluted net loss per share of common stock, because their effect was anti-dilutive:

		Three Months Ended September 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022
		Three Months Ended March 31,		Three Months Ended March 31,	
		2024		2024	2023
Stock-based awards and warrants	Stock-based awards and warrants	10,094,146	3,364,289	10,094,146	10,129,870
Convertible notes <sup>(1)</sup>		—	—	—	7,833,666
Convertible notes					

<sup>(1)</sup> Represents shares issued in exchange of convertible notes in April 2022.

## 12.14. RECENT ACCOUNTING PRONOUNCEMENTS

### *Accounting Standards and Pronouncements Recently Adopted*

There are no accounting standards or pronouncements recently adopted impacting the Company.

### *Accounting Standards and Pronouncements Not Yet Adopted*

There are no accounting standards or pronouncements not yet adopted impacting the Company.

## 13.15. COMMITMENTS AND CONTINGENCIES

### **General Matters**

The Company is party to various negotiations and legal proceedings arising in the normal course of business. The Company provides reserves for these matters when a loss is probable and reasonably estimable. The Company does not disclose a range of potential loss because the likelihood of such a loss is remote. In the opinion of management, the ultimate disposition of these matters will not have a material adverse effect on the Company's financial position, results of operations, cash flows or liquidity.

### **Federal Motor Vehicle Safety Standards** **Legal Proceedings**

#### **CSI Litigation**

On April 19, 2024, Coulomb Solutions Inc. ("FMVSS" CSI) Certification, a supplier to the Company of certain of the batteries used in its trucks, filed a complaint against the Company in United States District Court for the Eastern District of Michigan concerning late payment for certain products sold by CSI to the Company in the amount of approximately \$4 million. The Company is currently in negotiations with CSI to resolve this matter.

## 16. SUBSEQUENT EVENTS

The Company has evaluated subsequent events for potential recognition and Other Regulatory Matters disclosures through the date the accompanying condensed consolidated financial statements were filed.

### 2024 Securities Purchase Agreement

Pursuant to the 2024 Securities Purchase Agreement, on May 10, 2024, the Company issued and sold to the Investor a (i) the First Additional 2024 Note and (ii) the First Additional 2024 Warrant. Refer to the Company's Current Report on Form 8-K filed on March 15, 2024 for additional information related to the 2024 Securities Purchase Agreement, the 2024 Notes, and the 2024 Warrants. The First Additional 2024 Note was issued pursuant to the Base Indenture and a Third Supplemental Indenture between the Company and the Trustee.

For information regarding As of the date hereof, the Initial 2024 Note, as described in Note 7, Debt, has been fully converted into shares of our common stock and is no longer outstanding, and no shares have been issued pursuant to the Initial 2024 Warrant. Upon our filing of one or more additional prospectus supplements, and our satisfaction of certain regulatory matters, see other conditions, the 2024 Securities Purchase Agreement contemplates additional closings of up to \$123.7 million in aggregate principal amount of additional 2024 Notes and corresponding 2024 Warrants.

### Cost-saving Measures

As described under Note 17, "Commitments 1, Summary - Cost Saving Measures, on April 22, 2024, the Company furloughed 73 employees at its Union City manufacturing facility without pay. The Company has not incurred, and Contingencies – Federal Motor Vehicle Safety Standards ("FMVSS") Certification does not expect to incur, material costs in connection with the furloughs. The Company is also currently working with certain of its vendors to extend or restructure the payment terms of certain of its accounts payable. The furloughs and Other Regulatory Matters" included in Item 8, "Financial Statements and Supplementary Data" vendor discussions are part of the Company's Annual Report on previously disclosed strategy to reduce costs, including as described in the Form 10-K for 10-K. The Company currently intends to reinstate all furloughed employees when the year ended December 31, 2022. Company's financial and operational position permits. There can, however, be no assurance that all such furloughed employees will be available and willing to return to work.

### Legal Proceedings

#### Securities Litigation



On October 24, 2022, the Company entered into a binding term sheet to resolve the putative class action (the “Securities Class Action”) brought in the Central District of California (Case No.2:21-cv-02072) on behalf of purchasers of the Company’s securities from March 10, 2020 through May 10, 2021. On January 13, 2023, the parties executed a Stipulation of Settlement setting forth the terms of the settlement of the class action and resolution of all claims.

On July 28, 2023 (the “Judgment Date”), the Court entered an order (the “Order”) granting final approval of the Stipulation of Settlement, resolving the Securities Class Action. Pursuant to the Stipulation of Settlement, in exchange for a release of all claims and dismissal with prejudice of the Securities Class Action, the Company agreed to create a settlement fund with an escrow agent (the “Settlement Fund”), consisting of \$15.0 million in cash and \$20.0 million in shares of common stock of the Company (the “Settlement Shares”) from which class members will receive payment. The escrow agent may sell the Settlement Shares and deposit the proceeds from such sales into the Settlement Fund or may distribute the Settlement Shares to class members.

Pursuant to the Stipulation of Settlement, the number of Settlement Shares to be issued was based on the volume weighted average price (“VWAP”) of the Company’s common stock for the 15 trading days immediately preceding the Judgment Date. The VWAP would be adjusted if, at market close on the trading day before the date the Company deposits the Settlement Shares, the market price per share of the Company’s common stock deviated more than 25% above or below the VWAP Price. Upon such deviation, the number of Settlement Shares would be adjusted, upward or downward, such that the aggregate value of the Settlement Shares equals \$20.0 million. Consistent with the foregoing, the Company issued 25,380,711 shares of its common stock into the Settlement Fund as Settlement Shares in September 2023.

For additional information regarding the Securities Class Action, see Note 17, “Commitments and Contingencies – Legal Proceedings – Securities Litigation” included in Item 8, “Financial Statements and Supplementary Data” of the Company’s Annual Report on Form 10-K for the year ended December 31, 2022.

## **14. DEBT**

On August 10, 2023, the Company entered into a Floorplan and Security Agreement (the “Agreement”) with Mitsubishi HC Capital America, Inc. Pursuant to this arrangement, the Company has obtained a revolving floorplan line of credit with a maximum borrowing limit of \$5.0 million, which remained undrawn and fully available as of September 30, 2023.

The floorplan line of credit allows the Company to finance the acquisition of inventory, which is primarily intended for use in our manufacturing and sales of our W4 CC and W750 vehicles. Under this arrangement, the Company can borrow funds up to the specified borrowing limit to acquire eligible inventory. As the inventory is sold, the Company is required to repay the borrowings from the proceeds of the sales.

The terms of the floorplan lending line of credit include interest charged on the outstanding borrowings and may also include other fees and covenants. Interest is typically charged at a variable rate based on a reference interest rate, such as the Secured Overnight Financing Rate (“SOFR”), plus 4.86%.

The floorplan lending line of credit is secured by a security interest in the eligible inventory. The term of the Agreement is one year and is subject to automatic renewal on an annual basis.



The Company believes that the Agreement provides a valuable source of financing to support its inventory management and sales operations. However, the Agreement also exposes the Company to risks related to changes in interest rates, inventory values, and the availability of eligible inventory.

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

### Overview

We are an American technology company with a vision to pioneer the transition to zero-emission commercial vehicles. Our primary focus is to provide sustainable and cost-effective solutions to the commercial transportation sector. We design and manufacture all-electric trucks, and drone systems, including the technology that optimizes the way these vehicles operate. We are focused on our core competency of bringing our electric delivery vehicle programs platforms to serve the last mile delivery market.

We continue to seek opportunities to grow the business organically, and by expanding relationships with existing and new customers. We believe we are well positioned to take advantage of long-term opportunities and continue our efforts to bring product innovations to-market. We are evaluating a broad range of strategic alternatives for our drone vehicles which may include a sale, strategic partnership, another transaction, or the continued execution of our strategic plan for drone vehicle production within Workhorse. to market.

### Recent Developments

#### Certified Dealer Program

#### Going Concern; Financing

DuringAs discussed more fully under Note 1, *Summary of Business and Significant Accounting Principles*; *Liquidity, Capital Resources, and Going Concern*, above, and *Liquidity and Capital Resources; Going Concern*, below, our ability to continue as a going concern is contingent upon successful execution of management's intended plan over the three next twelve months ended September 30, 2023 to improve the Company's liquidity and working capital requirements. A vital component of such plan is the consummation of a financing to address these requirements in the short term.

Accordingly, on March 15, 2024, we continued entered into a securities purchase agreement (the "2024 Securities Purchase Agreement") with an institutional investor (the "Investor"), under which we agreed to add dealers issue and sell, in one or more registered public offerings by the Company directly to the Investor, in multiple tranches over a period beginning on March 15, 2024, senior secured convertible notes for up to an aggregate principal amount of \$139.0 million (the "2024 Notes") that will be convertible into shares of the Company's common stock, par value of \$0.001 per share (the "Common Stock") and warrants to purchase shares of Common Stock (the "2024 Warrants"). Pursuant to the 2024 Securities Purchase Agreement, on May 10, 2024, the Company issued and sold to the Investor a (i) 2024 Note in the original principal amount of \$6,285,714 (the "First Additional 2024 Note") and (ii) 2024 Warrant to purchase up to 36,785,453 shares of Common Stock (the "First Additional 2024 Warrant"). If we are not able to

complete the additional closings or find another source of liquidity in the immediate future, we may be unable to continue our Certified Dealer Program, expanding operations or may need to substantially reduce them.

The 2024 Securities Purchase Agreement provides additional closings of up to \$123.7 million in aggregate principal amount of additional 2024 Notes and, if our share price makes such exercise feasible, the official network possible receipt of verified dealers trained proceeds from the exercise of the corresponding 2024 Warrants pursuant to safely repair the 2024 Securities Purchase Agreement. Additional information concerning the 2024 Securities Purchase Agreement, the 2024 Notes, and maintain the electric components 2024 Warrants is set forth in Note 1 and Note 7 to the Condensed Consolidated Financial Statements.

### *Cost-saving Measures*

Another vital component of management's intended plan over the next twelve months to improve our liquidity and working capital requirements is reducing our operating costs to, among other things, reduce demands on the liquidity that is available to us. Accordingly, in the first quarter of 2024 we took the measures described below.

- We completed a reduction in force (the "RIF") pursuant to which we terminated approximately 20% of our vehicles total workforce, excluding direct labor. We have not incurred and do not expect to incur material costs in connection with the RIF.
- Each of our executive officers agreed to defer payment of approximately 20% of their cash compensation into new states the second quarter of 2024.
- We decided to support fully transition our customers. Aero business from a design and manufacturing drone business to Drones as a Service business. This transition has resulted in, among other things, our stopping production and development of both drone product lines and the termination of employees who performed the related work.

In addition, on April 22, 2024, the Company furloughed 73 employees at its Union City manufacturing facility without pay. The Certified Dealer Program allows us Company expects the furloughs to establish provide operational savings and has not incurred, and does not expect to incur, material costs in connection with the furloughs. The Company is also currently working with certain of its vendors to extend or restructure the payment terms of certain of its accounts payable. The furloughs, salary deferrals and vendor discussions are part of the Company's previously disclosed strategy to reduce costs. The Company currently intends to reinstate all furloughed employees when the Company's financial and operational position permits. There can, however, be no assurance that all such furloughed employees will be available and willing to return to work.

Management plans to continue to seek additional opportunities to reduce costs and, in particular, cash expenditures, in a comprehensive training program enabling dealers manner intended to safely assist customers with vehicle maintenance minimize their adverse impact on our core operations. There can be no assurance that the measures described above, or any other cost-cutting measures we may implement in the future will be sufficient to address our immediate or longer-term liquidity and working capital needs. Moreover, it is possible that such measures will have an adverse effect on our operations.

## *Aero Drone Design and Manufacturing Operations*

As previously disclosed in the Form 10-K and discussed above as part of our cost-saving measures, on February 20, 2024, our Board of Directors approved a plan to cease the production operations of our drone design and manufacturing business and transition to only operating as a Drones as a Service business. The decision to cease operation of our drone design and manufacturing product line was not considered a strategic shift having major effects on operations and therefore does not meet the criteria to qualify as a discontinued operation.

In addition to providing strategies for vehicle deployment into their fleets. To ensure high quality vehicle maintenance, Workhorse certified dealers have also made investments in electric vehicle ("EV") charging infrastructure, tooling, the decision to transition our Aero business to Drones as a Service business, the Company is currently working with a third party to complete the divestiture of its Aero business. The Company does not expect to realize cash proceeds upon consummation of the sale but expects the transition to a Drones as a Service business and building out spare parts inventory. The Certified Dealer Program is designed the subsequent divestiture to provide operational savings. In addition, the Company expects that the final divestiture agreements will include limited earn-out provisions under which the Company would receive a strong foundation portion of safety the proceeds if Aero realizes revenues from certain contingent sources. The Company expects to consummate this transaction during the second fiscal quarter of 2024.

## ***NASDAQ Listing Requirements; Proposed Reverse Stock Split***

As previously disclosed, on September 22, 2023, the Company received notice from Nasdaq indicating that the closing bid price for its common stock had fallen below the \$1.00 minimum bid price for continued listing for 30 consecutive trading days and reliability was no longer in compliance with the minimum bid requirement. In order for the Company to regain compliance, the closing bid price of its common stock must be equal to or above the \$1.00 minimum bid price for a period of 10 consecutive trading days prior to March 20, 2024. As also previously disclosed, on March 21, 2024, the Company received written notification from Nasdaq granting the Company's request for a 180-day extension to regain compliance with the minimum bid requirement. After the granting of the extension, the closing bid price of the Company's common stock must be equal to or above the \$1.00 minimum bid price for a period of 10 consecutive trading days prior to September 16, 2024. Based on recent trading prices of our vehicles common stock, we believe that it is highly unlikely that we will be able to meet this requirement by that date.

Accordingly, we intend to regain compliance by effecting a reverse split of the Company's outstanding shares of Common Stock by a ratio of any whole number between 1-for-10 and 1-for-20, at any time prior to August 30, 2024, to be determined at the discretion of the Board of Directors, for both the purpose of complying with the Nasdaq Listing Rules, subject to the Board of Directors' discretion to abandon such reverse stock split (the "Reverse Split"), following the 2024 Annual General Meeting of our dealers stockholders. On May 14, 2024, our stockholders approved the Reverse Split. The Company is currently determining when and end customers. Our California dealers are eligible at what ratio to participate effect the Reverse Split. We may not be able to regain compliance with the NASDAQ continuing listing requirements if we do not effect the Reverse Split. The Reverse Split also presents certain other risks to the Company and its stockholders, including the risk of a decline in the California Air Resources Board ("CARB") Hybrid and Zero-Emission Truck and Bus Incentive Project ("HVIP") program as a result aggregate market value of our recent approval by CARB to participate as an intermediate-stage manufacturer. outstanding common stock.

## *Vehicles in Production*

We continue to focus on product quality, manufacturing capacity and operational planning, and engineering and design to enable increased deliveries and deployments of our products and future revenue growth. During the first three months ended September 30, 2023, of 2024, we began continued executing our strategic product roadmap for our electric vehicle offerings, including the production of our the W56 vehicle program in both strip chassis and Step Van step van variants. We also recognized sales of W4CC, W750 and HorseFly vehicles, and continued to develop and commercialize our package delivery trucks and drones. Our progress on the W750 production supports the electrification of electrify the fleet of trucks vehicles being utilized by used in our Stables & Stalls by Workhorse initiative, which operates FedEx Ground delivery routes in the greater Cincinnati area. The electrification of the fleet provides us with firsthand data on the benefits and challenges of independent fleet operators experience while executing last-mile delivery operations. The initiative also provides valuable insights into how our customers can plan for and manage the transition to EV operations, including how to develop adequate charging infrastructure, training and maintenance services. Despite concluding that our equity investment in Tropos was impaired during the period based on the economic conditions and uncertainties that have significantly affected Tropos' performance and financial position, we continued executing our assembly services for the Tropos vehicles. In addition to our ongoing production ramp in 2023, we intend to continue to generate demand and brand awareness by improving our vehicles' performance and functionality, and by developing new vehicle programs, including new W56 variants and the WNext platform. We expect to continue to benefit from ongoing electrification of the automotive sector commercial vehicle market and increasing environmental awareness.

#### *Securities Litigation and Shareholder Derivative Litigation*

During the third quarter of 2023, each of the previously disclosed securities class action and shareholder derivative action settled in accordance with the terms of their respective terms of settlement without the Company owing any further financial obligations. As previously disclosed, during the three months ended September 30, 2023, we issued 25.4 million shares of common stock in settlement of our previously disclosed securities class action litigation, pursuant to the stipulation of settlement. For further information regarding each the securities class action and shareholder derivative litigation and the respective settlement thereof, please see Note 13, "Commitments and Contingencies – Shareholder Derivative Litigation" included in Item 1 of this Form 10-Q, and Note 17, "Commitments and Contingencies – Legal Proceedings" included in Item 8 of the Company's Annual Report on Form 10-K for the year ended December 31, 2022.

particular "last mile delivery" sector.

#### *Recent Trends and Market Conditions*

We continue to monitor macroeconomic conditions to remain flexible and to optimize and evolve our business as appropriate, and we will have to accurately project demand and infrastructure requirements globally and deploy our production, workforce and other resources accordingly. For more detailed descriptions of the impact and risks to our business, please see the risk factors described in Part I, Item 1A, Risk Factors in our Annual Report on Form 10-K filed with the Securities and Exchange Commission ("SEC") on March 1, 2023 (the Form 10-K") and Part II, Item 1A, Risk Factors in our Quarterly Reports on Form 10-Q filed with the SEC on May 15, 2023 and August 14, 2023, as well as this Quarterly Report on Form 10-Q.

**Market Demand.** Sales performance Our sales during the three and nine month periods ended September 30, 2023 first quarter of 2024 were down largely lower than the prior year period due to slower-than-anticipated industry wide electric vehicle adoption rates and lack of government subsidies and incentives available to our dealers. On November 8, 2023 CARB approved Workhorse's application dealers as well as slower than expected roll-out of additional power to participate in electric grids and the resulting effect on roll-outs of electric vehicle charging infrastructure, nationwide. However, we expect adoption rates to accelerate through 2024 driven by more stringent state and federal emissions requirements and continued government subsidies and incentives that will continue to reduce cost barriers for EV ownership, including the approval for our W56 platform for the HVIP program with its W4 CC through CARB, providing an \$85,000 base voucher per W56 vehicle purchased. The accelerated adoption rates are related to the enforcement of California's Advanced Clean Fleets Regulation ("ACF Regulation") which is contingent upon the Environmental Protection Agency ("EPA") granting a waiver or determining that a waiver is not necessary. Under the Clean Air Act, California holds the unique authority to request a waiver of preemption, which typically restricts states from setting their own emissions standards for new motor vehicles. The EPA's role involves a thorough review of comments and W750 vehicles, an assessment to determine if the criteria for granting a waiver are satisfied. This approval regulatory landscape is part of a first-of-its-kind program that allows vehicle modifiers to list their vehicles directly with HVIP. We will be the first company to participate in the program and will have our own manufacturer's pool significant consideration for our W4 CC operations and W750 vehicles. We expect this certification will help drive overall demand for our vehicles. strategic planning.

**Commodities.** Prices for commodities remain volatile, and we expect to experience price increases for base metals and raw materials that are used in batteries for electric vehicles (e.g., lithium, cobalt, and nickel) as well as steel, aluminum and other material inputs. Global demand and differences in output across sectors as a result of geopolitical uncertainties have generated divergence in price movements across different commodities. We expect the net impact on us overall will be higher material costs.

**Supply Chain.** We continue to develop relationships with suppliers of key parts, components and raw materials to be used in the manufacturing manufacture of our products such as batteries, electronics, and vehicle chassis that are sourced from suppliers across the world. As we continue to execute on our new vehicle programs, we will continue to identify supplier relationship and vehicle program synergies which may allow us to take advantage of pricing efficiencies from economies of scale. Where available, we will utilize multiple supply sources for key parts, and we will work to qualify multiple supply sources to achieve pricing efficiencies and minimize potential production risks related to supply chain. As previously disclosed, the Company is currently working with certain of its vendors to extend or restructure the payment terms of certain accounts payable. We are also currently in litigation with one of our battery suppliers, Coulomb Solutions Inc. For more information concerning this matter, see Note 15, *Commitments and Contingencies* to the Condensed Consolidated Financial Statements attached hereto.

**Inflation.** Inflation continues to impact our operations, resulting from both supply and demand imbalances as economies continue to face constraints as well as the impact on the availability and cost of energy and other commodities as a result of the ongoing conflicts in Ukraine and Russia conflict. Israel. We are seeing a near-term impact on our business due to inflationary pressure. In an effort to dampen inflationary pressures, central banks have continued to raise interest rates which will likely raise the cost of any financing the Company may undertake in the future.

The following section provides a narrative discussion about our financial condition and results of operations. The comments should be read in conjunction with our unaudited Condensed Consolidated Financial Statements and related Notes thereto included in Item 1 of this Form 10-Q and in conjunction with the 10-K filed with the SEC on March 1, 2023, our Form 10-K.

## Results of Operations

The following table sets forth, for the periods indicated, the components of the Company's unaudited Condensed Consolidated Statements of Operations:

		Three Months Ended September 30,		Nine Months Ended September 30,			
		2023	2022	2023	2022		
						Three Months Ended March 31,	
						2024	2023
Sales, net of returns and allowances	Sales, net of returns and allowances	\$ 3,028,545	\$ 1,548,798	\$ 8,688,423	\$ 1,575,652		
Cost of sales	Cost of sales	6,557,358	9,515,547	20,312,854	16,459,102		
Gross loss	Gross loss	(3,528,813)	(7,966,749)	(11,624,431)	(14,883,450)		
Operating expenses	Operating expenses						
Selling, general and administrative	Selling, general and administrative	11,756,291	34,753,017	40,448,651	59,693,419		
	Selling, general and administrative						
	Selling, general and administrative						
Research and development	Research and development	5,771,588	6,126,951	18,056,182	15,165,946		
Total operating expenses	Total operating expenses	17,527,879	40,879,968	58,504,833	74,859,365		
Loss from operations	Loss from operations	(21,056,692)	(48,846,717)	(70,129,264)	(89,742,815)		



Interest income (expense), net	Interest income (expense), net	410,980	27,716	1,466,839	(2,290,993)
Other income (loss)		(10,000,000)	13,413,500	(10,000,000)	13,413,500
Loss before benefit for income taxes					
Loss before benefit for income taxes					
Loss before benefit for income taxes	Loss before benefit for income taxes	(30,645,712)	(35,405,501)	(78,662,425)	(78,620,308)
Benefit for income taxes	Benefit for income taxes	—	—	—	—
Net loss	Net loss	<u>\$(30,645,712)</u>	<u>\$(35,405,501)</u>	<u>\$(78,662,425)</u>	<u>\$(78,620,308)</u>

### ***Sales, net of returns and allowances***

Sales, net of returns and allowances for the three months ended September 30, 2023, March 31, 2024 and 2022 were \$3.0 million, \$1.3 million and \$1.5 million, respectively. The increase in sales was primarily driven by the reversal of a \$2.4 million sales allowance in the current period related to the sale of W4 CC vehicles in vehicle sales compared with the second quarter of 2023.

Sales, net of returns and allowances for the nine months ended September 30, 2023 and 2022 were \$8.7 million and \$1.6 million, respectively. The same period a year ago, which was partially offset by an increase in sales was primarily driven by other service revenue generated from operating our Stables by sales of W4 CC vehicles during 2023. Workhorse route, Drones as a Service and other service revenue.

### ***Cost of sales***

Cost of sales for the three months ended September 30, 2023, March 31, 2024 and 2022 were \$6.6 million, \$7.4 million and \$9.5 million, respectively. The decrease in cost of sales was primarily due to a \$2.9 million decrease in inventory reserves and adjustments recognized in the prior year period as a result of the disposition of C-Series inventory. Additionally, lower sales volume in the current period led to reserve expenses, a \$1.0 million decrease in costs which were offset by depreciation expenses, and a \$1.2 million increase in employee compensation and related expenses.

Cost of sales to support vehicle production during the period. The increase in cost of sales for the nine months ended September 30, 2023 and 2022 were \$20.3 million and \$16.5 million, respectively. The increase was primarily due to higher sales volume during the current period, resulting in a \$5.1 million increase in production costs and a \$2.8 million increase in employee compensation and related expenses. These increases were partially offset by a \$3.9 million decrease in inventory reserves costs related to direct materials and adjustments, which was driven by the disposition of C-Series inventory in 2022. warranty expenses previously accrued.

### ***Selling, general and administrative expenses***

Selling, general and administrative (“SG&A”) expenses during the three months ended September 30, 2023 March 31, 2024 and 2022 2023 were \$11.8 million \$14.1 million and \$34.8 million \$14.7 million, respectively. The decrease in SG&A expenses was primarily driven by a \$23.9 million \$1.7 million decrease in expenses associated with the securities and derivative litigation settlements recognized in the same period last year. Employee compensation and related expenses, including non-cash stock-based compensation expense, decreased by \$0.4 million compared to the prior period. These decreases were partially offset by a \$0.8 million increase in professional services and other expenses.

SG&A expenses during the nine months ended September 30, 2023 and 2022 were \$40.4 million and \$59.7 million, respectively. The decrease was primarily driven by a \$26.3 million decrease in expenses associated with the securities and derivative litigation settlements recognized in the same period last year. This decrease was partially offset by a \$3.5 million increase in employee compensation and related expenses including primarily due to a decreased headcount which was partially offset by a \$0.3 million increase in non-cash stock-based compensation expense a \$2.0 million and an increase of \$0.6 million in professional services and other services expenses and a \$0.6 million increase in corporate insurance expenses during the period.

### **Research and development expenses**

Research and development (“R&D”) expenses during the three months ended September 30, 2023 March 31, 2024 and 2022 2023 were \$5.8 million \$3.5 million and \$6.1 million \$7.2 million, respectively. The decrease in R&D expenses was primarily driven by a \$0.9 million \$2.1 million decrease in prototype expenses related to development expenses for new products which launched in 2023, a \$0.7 million decrease in consulting expenses partially offset by and a \$0.5 million increase in employee compensation and related expenses.

R&D expenses during the nine months ended September 30, 2023 and 2022 were \$18.1 million and \$15.2 million, respectively. The increase was primarily driven by an increase of \$1.9 million \$0.8 million decrease in employee compensation and related expenses and a \$0.9 million increase in prototype expenses. These increases were partially offset by a \$0.7 million decrease in consulting expenses due to decreased headcount.

### **Interest (expense) income, (expense), net**

Net interest income for the three months ended September 30, 2023 was \$0.4 million as compared to \$27.7 thousand of interest expense for the three months ended September 30, 2022 March 31, 2024 was \$5.4 million compared to net interest income \$0.6 million for the three months ended March 31, 2023. Net interest expense in the current year was driven by a fair value adjustment of our 2024 Notes and 2024 Warrants during the period of \$7.0 million and \$1.2 million fees paid in connection with the 2024 Notes and 2024 Warrants issued during the period which were partially offset by a gain of \$2.9 million from the extinguishment of our 2026 Notes and conversion of our 2023 Warrants and \$0.1 million of interest earned on cash balances in our money market investment accounts. Net interest income in the current prior period is was primarily driven by interest earned on cash balances in our money market investment account.

Net interest income for the nine months ended September 30, 2023 was \$1.5 million as compared to \$2.3 million interest expense for the nine months ended September 30, 2022. Net interest income in the current period was driven by interest earned on cash in our money market investment account. Net interest expense in the prior year period was



primarily related to fair value adjustments, contractual interest expense, and loss on conversion of our former convertible notes, which were exchanged for shares of our common stock during 2022.

### **Other income (loss)**

Other (loss) for the three and nine months ended September 30, 2023 was \$10.0 million as compared to \$13.4 million other income for the three and nine months ended September 30, 2022. Other (loss) in the current period represents the impairment of our investment in Tropos. Other income in the prior year period was represents proceeds from the sale of C-Series inventory that was previously fully reserved.

### **Income taxes**

Benefit for income taxes during the three and nine months ended September 30, 2023 March 31, 2024 and 2023 was zero.

### **Liquidity and Capital Resources; Going Concern**

We have financed our operations primarily through sales of equity securities and issuance of debt. We have utilized this capital for research and development to fund designing, building and delivering vehicles to customers and for working capital purposes.

We had \$8.7\$1.3 million of sales for the nine three months ended September 30 Mar, 2023.ch 31, 2024. As of September 30, 2023 March 31, 2024, we the Company had total working capital of \$71.9\$6.7 million including \$38.9 million in cash and cash equivalents, accounts receivable of \$1.8 million, net inventory of \$49.9 million and accounts payable of \$14.2 million. As of March 31, 2024, the Company had positive working capital of \$24.2 million, accumulated deficit of \$706.3 million. During\$780.7 million, and during the nine three months ended September 30, 2023, we March 31, 2024 incurred a loss from operations of \$70.1\$23.7 million and used \$95.5\$18.0 million of cash in operating activities.

Our ability to continue as a going concern is contingent upon successful execution of management's intended plan over the next twelve months to improve the Company's liquidity and working capital requirements. We have made significant progress executing on our revised strategic product roadmap for our electric vehicle offerings, and we expect to generate additional sales revenue within the next twelve months which will help support our operations. Additionally, as previously disclosed, management plans to reduce has reduced its discretionary spend related to non-contracted capital expenditures, implemented cost-savings measures including a 20% reduction in force, our executive officers deferring approximately 20% of their cash compensation into the second quarter of 2024, furloughed 73 employees at our Union City manufacturing facility without pay, and other expenses, if necessary, fully transitioned our Aero business from a design and manufacturing drone business to Drones as a Service business. As previously disclosed, the Company is currently working with certain of its vendors to extend or restructure the payment terms of certain accounts payable. However, if the expected sales are not generated and management is not able to control capital expenditures and other expenses, we will continue to incur substantial operating losses and negative cash flows from operations. There can be no assurance that we will be successful in implementing our plans or acquiring additional funding, that our projections of our future capital needs will prove accurate, or that any additional funding would be sufficient to continue operations in future years. As a result of our losses, current liquidity level and our projected capital needs,

substantial doubt exists about the Company's ability to continue as a going concern over the next twelve months from the date of the accompanying unaudited Condensed Consolidated Financial Statements.

Our future funding requirements will depend upon many factors, including, but not limited to:

- our ability to produce our current generation of vehicles at required scale and to sell such vehicles to customers;
- our ability to acquire or license other technologies we may seek to pursue;
- our ability to manage our growth and operational expenses; and
- competing technological and market developments.

To the extent revenues from operations are insufficient to meet our liquidity requirements, we primarily plan our ability to rely upon continue as a going concern will be dependent on effectively raising capital through private or public placement of our equity securities, including the continued access to the additional closings of up to \$123.7 million in aggregate principal amount of additional 2024 Notes and, if our share price makes such exercise feasible, the possible receipt of proceeds from the exercise of the corresponding 2024 Warrants pursuant to the 2024 Securities Purchase Agreement and use of the ATM Program Agreement (as further described below), for which there can be no assurance we will be successful in such efforts. We may will also rely on debt financing or other sources of capital funding such as through the sale of assets to obtain sufficient financial resources to fund our operating activities. If we are unable to maintain sufficient financial resources, our business, financial condition and results of operations, as well as our ability to continue to develop, produce and market our new vehicle programs and satisfy our obligations as they become due, will be materially and adversely affected. This could affect future vehicle program production and sales. Failure to obtain additional financing will have a material, adverse impact on our business operations. There can be no assurance that we will be able to obtain the financing needed to achieve our goals on acceptable terms or at all. Additionally, any equity or equity linked financings would likely have a dilutive effect on the holdings of our existing stockholders. The Company's current level

of cash and cash equivalents are not sufficient to execute our business plan. For the foreseeable future, we will incur significant operating expenses, capital expenditures and working capital funding that will deplete our cash on hand.

Our ability to obtain additional financing is extremely limited under current market conditions including the significant amount of capital required, the Nasdaq Listing Requirements, the market price of our stock and potential dilution from the issuance of any additional securities. If we are unable to identify other sources of funding, we may need to further adjust our operations, including and up to filing a voluntary petition for relief under the Bankruptcy Code. If this were to occur, the value available to our various stakeholders, including our creditors and stockholders, is uncertain and trading prices for our securities may bear little or no relationship to the actual recovery, if any, by holders of our securities in bankruptcy proceedings, if any.

As a result of all of the matters discussed above, including our losses, current liquidity level and our projected capital needs, substantial doubt exists about the Company's ability to continue as a going concern over the next twelve months from the date of issuance of the accompanying Condensed Consolidated Financial Statements. The Condensed Consolidated Financial Statements do not include any adjustments to the carrying amounts and

classification of assets, liabilities, and reported expenses that may be necessary if the Company were unable to continue as a going concern.

Under the ATM Program Agreement, we may offer and sell shares of our common stock having an aggregate sales price of up to \$175.0 million, in amounts and at times determined by management. During the three and nine months ended September 30, 2023 March 31, 2024, we issued 24.6 million and 63.3 million 9.8 million shares under the ATM Program Agreement for net proceeds of \$12.5 million and \$52.7 million, respectively. \$2.7 million. During the three and nine months year ended September 30, 2022 December 31, 2023, we issued 0.1 million and 0.1 million 89.3 million shares respectively, under the ATM Program Agreement for net proceeds of \$0.2 million and \$0.2 million, respectively. \$62.2 million. As of September 30, 2023 March 31, 2024 we have had approximately \$108.0 \$95.6 million available through the issuance of shares of common stock under the ATM Agreement. Certain of our other existing financing arrangements place certain conditions and restrictions on the use of our ATM Program.

For the three and nine months ended September 30, 2023, we maintained an investment in a bank money market fund. Cash in excess of immediate requirements is invested with regard to liquidity and capital preservation. Wherever possible, we seek to minimize the potential effects of concentration and degrees of risk. We will continue to monitor the impact of the changes in the conditions of the credit and financial markets to our investment portfolio and assess if future changes in our investment strategy are necessary.

Summary of Cash Flows

		Nine Months Ended September 30,	
		2023	2022
		Three Months Ended March 31,	
		2024	2023
Net cash used in operating activities	Net cash used in operating activities	\$(95,546,635)	\$(65,979,348)
Net cash used in investing activities	Net cash used in investing activities	\$(16,527,317)	\$(14,708,699)
Net cash provided by (used in) financing activities	Net cash provided by (used in) financing activities	\$ 51,662,716	\$ (841,485)

Net cash  
(used in)  
provided  
by  
financing  
activities

### *Cash Flows from Operating Activities*

Our cash flows used in from operating activities are affected by our cash investments to support the business in R&D, manufacturing, selling, general and administration, SG&A. Our operating cash flows are also affected by our working capital needs to support fluctuations in accounts receivable, inventory, personnel expenses, accounts payable and other current assets and liabilities.

During the nine three months ended September 30, 2023 March 31, 2024 and 2022, 2023, net cash used in operating activities was \$95.5 million \$18.0 million and \$66.0 million \$32.7 million, respectively. The increase decrease in net cash used in operations was primarily attributable to an increase a \$6.9 million decrease in spend related to initial inventory builds as we continue slowed our inventory build due to ramp up slower than anticipated sales throughout 2023 and the first three months of 2024. The decrease is also attributable to a \$4.8 million decline in employee compensation and related expenses, excluding non-cash stock-based compensation, resulting from our production of the W4 CC, W750 and W56 vehicle programs, reduction in force actions.

### *Cash Flows from Investing Activities*

Cash flows used in investing activities and their variability across each period related primarily to capital expenditures to upgrade our administrative, production and research and production development facilities, which were \$16.5 million \$3.0 million for the nine three months ended September 30, 2023 March 31, 2024 and \$9.7 million \$5.4 million for the nine three months ended September 30, 2022 March 31, 2023. The cash flows used decrease is primarily driven by a decline in investing activities for the nine months ended September 30, 2022 also included a \$5.0 million cash payment made spending in connection with tooling and equipment related to our investment in

Tropos, which is described in Note 3, Contract Manufacturing Services and Investment in Tropos, of the Condensed Consolidated Financial Statements included elsewhere in this Quarterly Report on Form 10-Q, vehicle programs at our Union City, Indiana manufacturing facility.

### *Cash Flows from Financing Activities*

Net cash used in financing activities during the three months ended March 31, 2024 was \$8.1 million, which was primarily attributable to the repayment of the 2026 Notes, which were fully redeemed during the period, partially offset by proceeds from our ATM Program and the issuance of our 2024 Notes.

Net cash provided by financing activities during the nine three months ended September 30, 2023 March 31, 2023 was \$51.7 million \$18.0 million, which was primarily attributable to the issuance of common stock under our ATM Program.

Net cash used in financing activities during the nine months ended September 30, 2022 was \$0.8 million. Program which consisted primarily provided net proceeds of payments on financing leases and tax payments related to shares withheld for option exercises and vesting of restricted share awards. approximately \$18.6 million.

## Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that are material to investors.

## Critical Accounting Estimates

There have been no material changes to the A discussion of our critical accounting estimates is contained in our Annual Report on the Form 10-K, for the year ended December 31, 2022, under the caption “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

## Recent Accounting Pronouncements

A description of recently issued and adopted accounting pronouncements is contained in Note 12, 14, Recent Accounting Pronouncements, of the unaudited Condensed Consolidated Financial Statements.

## ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

For a discussion of our quantitative and qualitative disclosures about market risk, see “Quantitative and Qualitative Disclosures About Market Risks” included in our Annual Report on the Form 10-K, for the year ended December 31, 2022, under the caption “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” There have been no material changes to the information provided in our Annual Report on the Form 10-K for the year ended December 31, 2022. 10-K.

## ITEM 4. CONTROLS AND PROCEDURES

### *Evaluation of Disclosure Controls and Procedures*

#### **Pursuant**

We maintain disclosure controls and procedures designed to Rules 13a-15(b) and 15-d-15(b) ensure that information required to be disclosed in reports filed under the Securities Exchange Act of 1934, as amended (“Exchange Act”), we evaluated, with is recorded, processed, summarized and reported within the participation of specified time periods and accumulated and communicated to our management, including our Chief Executive Officer principal executive officer and Chief Financial Officer, principal financial officer, as appropriate to allow timely decisions regarding required disclosure. An evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report. The term “disclosure controls and procedures”, as defined under Rules 13a-15(e) and 15d-15(e) Annual Report was made under the Exchange Act, means controls supervision and other procedures with the participation of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company

in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Our management, with the participation of our Principal Executive Officer and Principal Financial Officer, has evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of March 31, 2024, the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our Principal Executive Officer and Principal Financial Officer have concluded that, as of the end of the period covered by this Quarterly Report, such date, our disclosure controls and procedures were effective. not effective because of a previously reported material weakness in our internal control over financial reporting, which we describe in Part II, Item 9A of our Form 10-K for the fiscal year ended December 31, 2023.

### *Management's Report on Internal Control Over Financial Reporting*

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Securities Exchange Act Rules 13a-15(f) and 15d-15(f). Internal control over financial reporting is a process designed by, or under the supervision of, our Chief Executive Officer and Chief Financial Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that (1) pertain to the maintenance of records in reasonable detail to accurately and fairly reflect the transactions and dispositions of our assets; (2) provide reasonable assurance transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and our receipts and expenditures are being made only in accordance with authorizations of our management and directors and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets could have a material effect on the financial statements.

As disclosed in our Form 10-K, management identified a material weakness in the design of one of the Company's internal controls related to the review of the fair value calculation of the convertible note and warrant liability performed by a third-party valuation expert. The controls were not designed with a level of precision that would detect the use of an inappropriate input that could have a material impact on the valuation.

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

There were no changes in the Company's internal control over financial reporting, (as that term is defined in Rules 13a-15(f) and 15d-15(f) under other than the Exchange Act) that occurred during the three months ended September 30, 2023 remediation actions described below, that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

### *Remediation of the Material Weakness*

We have undertaken and are continuing to design and implement remediation measures intended to address the material weakness discussed above. These remediation measures are focused on our precision of review of complex



valuation models performed by independent third-party valuation experts we use to value these types of complex financial instruments. The valuation procedures are to be reviewed and approved by responsible management of the Company. Under the supervision of the Audit Committee, we are working to remediate the material weakness and will continue to report regularly to the Audit Committee regarding the status of the implementation activities.

#### *Management's Conclusion on Internal Control Over Financial Reporting*

Based on the results of its evaluation and the material weakness described above, management concluded that the Company's internal control over financial reporting was not effective to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with GAAP as of March 31, 2024.

## **PART II – OTHER INFORMATION**

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

For a description of certain material legal proceedings, please see Note 13, 15, *Commitments and Contingencies*, to the unaudited Condensed Consolidated Financial Statements included elsewhere in this Quarterly Report on Form 10-Q.

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

For a detailed discussion of risk factors affecting us, see “Part I – Item 1A. Risk Factors” in our Annual Report on the Form 10-K for the year ended December 31, 2022. Except as set forth below, there 10-K. There have been no material changes in the current period regarding our risk factors.

Substantial doubt exists regarding the Company's ability to continue as a going concern through the twelve months following the date of the issuance of the financial statements accompanying this Form 10-Q.

We have incurred net losses of \$117.2 million and \$401.3 million for the fiscal years ended December 31, 2022 and December 31, 2021, respectively, and net losses of \$30.6 million and \$78.7 million for the three and nine month periods ended September 30, 2023, respectively. As a result of our recurring losses from operations, accumulated deficit, projected working capital needs and delays in bringing our vehicles to market, and, accordingly, lower than expected revenue from such vehicles sales, substantial doubt exists as to the Company's ability to continue as a going concern over the twelve months from the date of the issuance of the unaudited financial statements accompanying this Form 10-Q. To the extent we are unable to satisfy these capital needs, we will need to significantly modify or terminate our operations and our planned business activities.

***We are currently out of compliance with the Nasdaq's continuing listing requirements and if we fail to satisfy all such applicable Nasdaq continued listing requirements, our common stock may be delisted from Nasdaq, which could have an adverse impact on the liquidity and market price of our common stock.***

Our common stock is currently listed on The Nasdaq Capital Market, which has qualitative and quantitative continued listing requirements, including corporate governance requirements, public float requirements and a \$1.00 minimum closing bid price requirement. Our common stock price has been and may in the future be below the minimum bid price for continued listing on Nasdaq. On September 22, 2023, we received notice from Nasdaq indicating that the closing bid price for our common stock had fallen below the minimum bid price for continued listing for 30 consecutive trading days and was no longer in compliance with the minimum bid requirement. In order to regain compliance, the closing bid price of our common stock must be equal to or above the minimum bid price for a period of 10 consecutive trading days prior to March 20, 2024. In the event the Company fails to meet this requirement by such date, the Company may be eligible for an additional grace period of another 180 days, so long as it meets the applicable market value of publicly held shares requirement and other applicable listing standards for the Nasdaq Capital Market, other than the minimum bid price requirement, on the trading date prior to the deadline, and informs Nasdaq of its intent to cure this deficiency. If the Company fails to meet these requirements or fails to satisfy any other continued listing requirements, Nasdaq may take steps to delist our common stock. Delisting would likely have an adverse effect on the liquidity of our common stock, decrease the market price of our common stock, result in the potential loss of confidence by investors, suppliers, customers, and employees, and fewer business development opportunities, and adversely affect our ability to obtain financing for our continuing operations.

***The unavailability, reduction, elimination or adverse application of government subsidies, incentives and regulations could have an adverse effect on our business, prospects, financial condition and operating results.***

We believe the availability of government subsidies and incentives, including the California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (“HVIP”), is an important factor considered by our customers when purchasing our vehicles. Our growth depends in part on the availability and amounts of these subsidies and incentives. Many of our current and prospective customers are seeking to leverage HVIP due to its ease of access and amount of funding available per vehicle. In addition, some of our purchase orders have contingencies related to HVIP funding. If our vehicles, including our W4CC and W750, fail to qualify for the HVIP, or we experience a material delay in obtaining qualification for the HVIP program, our business, financial condition and results of operations would suffer. Furthermore, any reduction, elimination or discriminatory application of the HVIP or other government subsidies and incentives because of budgetary challenges, policy changes, the reduced need for such subsidies and incentives due to the perceived success of electric vehicles or other reasons may result in the diminished price competitiveness of the alternative fuel vehicle industry.

In addition, these factors could heighten many of our known risks described in Part I, Item 1A. “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2022.

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

None.

## **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

## **ITEM 4. MINE SAFETY DISCLOSURES**



Not applicable.

## ITEM 5. OTHER INFORMATION

### Insider Trading Arrangements

During the three and nine months ended September 30, 2023, none of our officers or directors adopted or terminated any contract, instruction or written plan for the purchase or sale of our securities that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) or any “non-Rule 10b5-1 trading arrangement.” However, certain of our directors and officers may adopt 10b5-1 Plans or non-Rule 10b5-1 trading arrangements in the future.

None.

## ITEM 6. EXHIBITS

Exhibit No.	Description
3.1 + 10.1*	<a href="#">Certificate of Amendment to Employment Agreement and Salary Deferral Agreement, dated as of March 11, 2024, by and between the Company's Articles Company and Richard Dauch.</a>
+ 10.2*	<a href="#">Amendment to Employment Agreement and Salary Deferral Agreement, dated as of Incorporation March 11, 2024, by and between the Company and Robert Ginnan.</a>
+ 10.3*	<a href="#">Amendment to Employment Agreement and Salary Deferral Agreement, dated as of March 11, 2024, by and between the Company and James Harrington.</a>
+ 10.4	<a href="#">Purchase and Sale Agreement, dated as of January 31, 2024, between the Company and William Repny LLC (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission September 6, 2023 SEC on February 1, 2024).</a>
3.2 + 10.5	<a href="#">Second Amended and Restated Bylaws Letter Agreement, dated as February 29, 2024 (incorporated by reference to Exhibit 10.1 to the Company's Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission July 12, 2023 SEC on March 1, 2024).</a>
10.1 + 10.6	<a href="#">Floorplan and Security First Amendment to Green Senior Secured Convertible Note, dated February 29, 2024 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed with the SEC on March 1, 2024).</a>
+ 10.7	<a href="#">Form of Securities Purchase Agreement, dated as of August 10, 2023, March 15, 2024 (incorporated by and between Workhorse Technologies Inc. and Mitsubishi HC Capital America, Inc. (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Company's Current Report on Form 10-Q 8-K, filed with the Securities and Exchange Commission August 14, 202 SEC on March 15, 2024).</a>
+ 10.8	<a href="#">3 Form of Note (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed with the SEC on March 15, 2024).</a>

+ 10.9	<a href="#"><u>Form of Warrant (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K, filed with the SEC on March 15, 2024).</u></a>
+ 10.10	<a href="#"><u>Form of Second Supplemental Indenture (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K, filed with the SEC on March 15, 2024).</u></a>
+ 10.11	<a href="#"><u>Form of Security Agreement (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K, filed with the SEC on March 15, 2024).</u></a>
+ 10.12	<a href="#"><u>Form of Guarantee (incorporated by reference to Exhibit 10.6 to the Company's Current Report on Form 8-K, filed with the SEC on March 15, 2024).</u></a>
31.1*	<a href="#"><u>Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u></a> 2002.
31.2*	<a href="#"><u>Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u></a> 2002.
32.1*	<a href="#"><u>Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u></a>
32.2*	<a href="#"><u>Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u></a>
101.INS	Inline XBRL INSTANCE DOCUMENT
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Labels Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Inline XBRL Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

\* Filed herewith.

+ Indicates a management contract or compensatory arrangement.

## SIGNATURES

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

**WORKHORSE GROUP INC.**

Dated: November 14, 2023 May 20, 2024

By: /s/ Richard Dauch

Name: Richard Dauch

Title: Chief Executive Officer  
(Principal Executive Officer)

Dated: November 14, 2023 May 20, 2024

By: /s/ Robert M. Ginnan

Name: Robert M. Ginnan

Title: Chief Financial Officer  
(Principal Financial Officer and Principal  
Accounting Officer)

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Workhorse Headquarters  
3600 Park 42 Dr, Suite 160E,  
Sharonville, OH 45241

Richard Dauch

This Amendment to Employment Agreement and Salary Deferral Agreement (the "Agreement") is entered into as of March 11, 2024, between Workhorse Group Inc., (the "Company"), and Richard Dauch (the "Employee").

**Whereas**, the Company and Employee entered into an employment agreement dated July 25, 2021 ("Employment Agreement") providing for certain terms and conditions of Employee's employment with company, including but not limited to, the amount of Employee's salary and frequency of pay dates;

**Whereas**, as Employee currently is earning an annualized gross salary of \$780,000 ("Base Salary") for the services provided under the Employment Agreement;

**Whereas**, the Company and Employee recognize that it is in the best interests of the Company to conserve the Company's cash resources, and as part of its cash conservation measures, the Company has asked certain of its employees to accept a prospective salary reduction ("Deferral");

**Whereas**, the Company and Employee understand that the Company may be in a position to pay to the Employee additional salary at a later date according to the terms set forth below, but no payment can be guaranteed;

**Whereas**, the Company and Employee acknowledge that this Agreement has been entered into for the express purpose of conserving the Company's cash resources and not for executive compensation tax planning purposes; and

**Whereas**, Employee and Company hereby desire to amend the Employment Agreement only to the extent necessary to effectuate the Deferral, according to the terms set forth below;

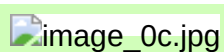
**Now, therefore**, in consideration of the mutual promises and benefits set forth below, the parties hereby agree as follows:

**1. Salary Deferral**

Effective March 4, 2024, Employee agreed to defer 20% of his Base Salary on a prospective basis. The sum of the salary deferrals for each week worked between March 4, 2024 and the Discontinuation Date will be the "Accumulated Deferred Salary" that may be paid to Employee as described below.

**2. Payment of Accumulated Deferred Salary**

The Company will pay the Accumulated Deferred Salary to Employee, in the form of cash, at the earliest of the following dates: (a) a date to be determined by the Company in its sole discretion; (b) 90 days following the termination of Employee's employment; (c) 90 days following the Discontinuation Date; (d) March 15, 2025.



Workhorse Headquarters  
3600 Park 42 Dr, Suite 160E,  
Sharonville, OH 45241

**3. Legal Compliance**

Notwithstanding the foregoing, the Company will not reduce Employee's salary below the minimum salary threshold required for exempt employees under the Fair Labor Standards Act and/or corresponding state or local law. This Agreement is expressly intended to comply with, and shall not be construed as an effort by either party to avoid, the any party's obligations under applicable law.

Employee and the Company agree that this agreement expressly supersedes any and all other verbal or written representations, promises or agreements relating to Employee's base salary.

The deferral of salary and payment of accumulated deferred salary set forth in this Agreement are not subject to the United States Internal Revenue Code sec. 409A under the short-term deferral exception.

Nothing in in this agreement modifies the employee's at will employment status or constitutes a contract for employment for any specific duration. Either the employee or Workhorse may conclude the employment relationship at any time for any reason, in accordance with applicable contractual terms regarding notice (if applicable)

## WORKHORSE GROUP INC.

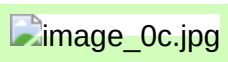
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## EMPLOYEE

By signing below, Employee knowingly and voluntarily agrees to the terms of the Amendment to Employment Agreement and Salary Deferral Agreement set forth above.

---

Richard Dauch, Chief Executive Officer



Workhorse Headquarters  
3600 Park 42 Dr, Suite 160E,  
Sharonville, OH 45241

## Robert Ginnan

This Amendment to Employment Agreement and Salary Deferral Agreement (the “Agreement”) is entered into as of March 11, 2024, between Workhorse Group Inc., (the “Company”), and Robert Ginnan (the “Employee”).

**Whereas**, the Company and Employee entered into an employment agreement dated January 4, 2022 (“Employment Agreement”) providing for certain terms and conditions of Employee’s employment with company, including but not limited to, the amount of Employee’s salary and frequency of pay dates;

**Whereas**, as Employee currently is earning an annualized gross salary of \$400,000 (“Base Salary”) for the services provided under the Employment Agreement;

**Whereas**, the Company and Employee recognize that it is in the best interests of the Company to conserve the Company’s cash resources, and as part of its cash conservation measures, the Company has asked certain of its employees to accept a prospective salary reduction (“Deferral”);

**Whereas**, the Company and Employee understand that the Company may be in a position to pay to the Employee additional salary at a later date according to the terms set forth below, but no payment can be guaranteed;

**Whereas**, the Company and Employee acknowledge that this Agreement has been entered into for the express purpose of conserving the Company’s cash resources and not for executive compensation tax planning purposes; and

**Whereas**, Employee and Company hereby desire to amend the Employment Agreement only to the extent necessary to effectuate the Deferral, according to the terms set forth below;

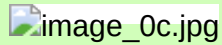
**Now, therefore**, in consideration of the mutual promises and benefits set forth below, the parties hereby agree as follows:

### 1. Salary Deferral

Effective March 4, 2024, Employee agreed to defer 20% of his Base Salary on a prospective basis. The sum of the salary deferrals for each week worked between March 4, 2024 and the Discontinuation Date will be the “Accumulated Deferred Salary” that may be paid to Employee as described below.

### 2. Payment of Accumulated Deferred Salary

The Company will pay the Accumulated Deferred Salary to Employee, in the form of cash, at the earliest of the following dates: (a) a date to be determined by the Company in its sole discretion; (b) 90 days following the termination of Employee’s employment; (c) 90 days following the Discontinuation Date; (d) March 15, 2025.



Workhorse Headquarters  
3600 Park 42 Dr, Suite 160E,  
Sharonville, OH 45241

### 3. Legal Compliance

Notwithstanding the foregoing, the Company will not reduce Employee's salary below the minimum salary threshold required for exempt employees under the Fair Labor Standards Act and/or corresponding state or local law. This Agreement is expressly intended to comply with, and shall not be construed as an effort by either party to avoid, the any party's obligations under applicable law.

Employee and the Company agree that this agreement expressly supersedes any and all other verbal or written representations, promises or agreements relating to Employee's base salary.

The deferral of salary and payment of accumulated deferred salary set forth in this Agreement are not subject to the United States Internal Revenue Code sec. 409A under the short-term deferral exception.

Nothing in in this agreement modifies the employee's at will employment status or constitutes a contract for employment for any specific duration. Either the employee or Workhorse may conclude the employment relationship at any time for any reason, in accordance with applicable contractual terms regarding notice (if applicable)

## WORKHORSE GROUP INC.

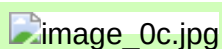
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## EMPLOYEE

By signing below, Employee knowingly and voluntarily agrees to the terms of the Amendment to Employment Agreement and Salary Deferral Agreement set forth above.

---

Robert Ginnan, Chief Finance Officer



Workhorse Headquarters  
3600 Park 42 Dr, Suite 160E,  
Sharonville, OH 45241

James Harrington

This Amendment to Employment Agreement and Salary Deferral Agreement (the “Agreement”) is entered into as of March 11, 2024, between Workhorse Group Inc., (the “Company”), and James Harrington (the “Employee”).

**Whereas**, the Company and Employee entered into an employment agreement dated August 16, 2021 (“Employment Agreement”) providing for certain terms and conditions of Employee’s employment with company, including but not limited to, the amount of Employee’s salary and frequency of pay dates;

**Whereas**, as Employee currently is earning an annualized gross salary of \$375,003 (“Base Salary”) for the services provided under the Employment Agreement;

**Whereas**, the Company and Employee recognize that it is in the best interests of the Company to conserve the Company’s cash resources, and as part of its cash conservation measures, the Company has asked certain of its employees to accept a prospective salary reduction (“Deferral”);

**Whereas**, the Company and Employee understand that the Company may be in a position to pay to the Employee additional salary at a later date according to the terms set forth below, but no payment can be guaranteed;

**Whereas**, the Company and Employee acknowledge that this Agreement has been entered into for the express purpose of conserving the Company’s cash resources and not for executive compensation tax planning purposes; and

**Whereas**, Employee and Company hereby desire to amend the Employment Agreement only to the extent necessary to effectuate the Deferral, according to the terms set forth below;



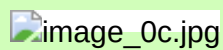
Now, therefore, in consideration of the mutual promises and benefits set forth below, the parties hereby agree as follows:

1. Salary Deferral

Effective March 4, 2024, Employee agreed to defer 20% of his Base Salary on a prospective basis. The sum of the salary deferrals for each week worked between March 4, 2024 and the Discontinuation Date will be the "Accumulated Deferred Salary" that may be paid to Employee as described below.

2. Payment of Accumulated Deferred Salary

The Company will pay the Accumulated Deferred Salary to Employee, in the form of cash, at the earliest of the following dates: (a) a date to be determined by the Company in its sole discretion; (b) 90 days following the termination of Employee's employment; (c) 90 days following the Discontinuation Date; (d) March 15, 2025.



Workhorse Headquarters  
3600 Park 42 Dr, Suite 160E,  
Sharonville, OH 45241

3. Legal Compliance

Notwithstanding the foregoing, the Company will not reduce Employee's salary below the minimum salary threshold required for exempt employees under the Fair Labor Standards Act and/or corresponding state or local law. This Agreement is expressly intended to comply with, and shall not be construed as an effort by either party to avoid, the any party's obligations under applicable law.

Employee and the Company agree that this agreement expressly supersedes any and all other verbal or written representations, promises or agreements relating to Employee's base salary.

The deferral of salary and payment of accumulated deferred salary set forth in this Agreement are not subject to the United States Internal Revenue Code sec. 409A under the short-term deferral exception.

Nothing in in this agreement modifies the employee's at will employment status or constitutes a contract for employment for any specific duration. Either the employee or Workhorse may conclude the employment relationship at any time for any reason, in accordance with applicable contractual terms regarding notice (if applicable)

## WORKHORSE GROUP INC.

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## EMPLOYEE

By signing below, Employee knowingly and voluntarily agrees to the terms of the Amendment to Employment Agreement and Salary Deferral Agreement set forth above.

---

James Harrington, General Counsel and CCO

EXHIBIT 31.1

### CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Richard Dauch, Chief Executive Officer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Workhorse Group Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant) and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal controls over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial data information; and b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 14, 2023 May 20, 2024

/s/ Richard Dauch

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Richard Dauch,  
Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE  
SARBANES-OXLEY ACT OF 2002**

I, Robert M. Ginnan, Chief Financial Officer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Workhorse Group Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant) and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal controls over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial data information; and b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 14, 2023 May 20, 2024

/s/ Robert M. Ginnan

Robert M. Ginnan,  
Chief Financial Officer  
(Principal Financial Officer)

**Exhibit 32.1**

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO**

**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly report of Workhorse Group Inc. (the "Company") on Form 10-Q for the period ended September 30, 2023 March 31, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Richard Dauch, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities and Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 14, 2023 May 20, 2024

/s/ Richard Dauch

Richard Dauch,  
Chief Executive Officer  
(Principal Executive Officer)

**Exhibit 32.2**

**CERTIFICATION PURSUANT TO**

**18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO**

**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly report of Workhorse Group Inc. (the "Company") on Form 10-Q for the period ended **September 30, 2023** **March 31, 2024** as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert M. Ginnan, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities and Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: **November 14, 2023** **May 20, 2024**

/s/ Robert M. Ginnan

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Robert M. Ginnan,  
Chief Financial Officer  
(Principal Financial Officer)

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