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 June 30, 2023

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	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☐

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

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

The number of shares of the Registrant's Common Stock, $0.001 par value per share, outstanding as of July 31, 2023, was210,793,111.

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Forward-Looking Statements

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, 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, W750, W56 and WNext platforms; 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, incentives and regulations; supply chain disruptions, including constraints on steel, semiconductors and other material inputs and resulting cost increases impacting our 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 inability to raise additional capital to fund our operations and business plan; our inability to maintain our listing of our securities on the Nasdaq Capital Market; our ability to protect our intellectual property; market acceptance for our products; our ability to control our expenses; 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 conflict in Ukraine) 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; 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 on Form 10-K filed with the SEC and this Report. 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)

	June 30, 2023	December 31, 2022
Assets		
Current assets:		
Cash and cash equivalents	$ 62,379,740	$ 99,276,301
Accounts receivable, less allowance for credit losses of $2.4 million and zero as of June 30, 2023 and December 31, 2022	2,837,242	2,079,343
Other receivable	15,000,000	15,000,000
Inventory, net	34,623,566	8,850,142
Prepaid expenses and other current assets	9,450,740	14,152,481
Total current assets	124,291,288	139,358,267
Property, plant and equipment, net	31,300,436	21,501,095
Investment in Tropos	10,000,000	10,000,000
Lease right-of-use assets	11,158,562	11,706,803
Other assets	176,310	176,310
Total Assets	$ 176,926,596	$ 182,742,475
Liabilities		
Current liabilities:		
Accounts payable	$ 10,228,919	$ 10,235,345
Accrued and other current liabilities	43,049,743	46,207,431
Deferred revenue, current	1,406,250	3,375,000
Warranty liability	1,922,580	2,207,674
Current portion of lease liabilities	1,486,417	1,285,032
Total current liabilities	58,093,909	63,310,482
Deferred revenue, long-term	3,368,831	2,005,000
Lease liability, long-term	8,076,135	8,840,062
Total Liabilities	69,538,875	74,155,544
Commitments and contingencies		
Stockholders' Equity:		
Series A preferred stock, par value $0.001 per share, 75,000,000 shares authorized, zero shares issued and outstanding as of June 30, 2023 and December 31, 2022	—	—
Common stock, par value $0.001 per share, 250,000,000 shares authorized, 205,221,154 shares issued and outstanding as of June 30, 2023 and 165,605,355 shares issued and outstanding as of December 31, 2022	205,221	165,605
Additional paid-in capital	782,848,275	736,070,388
Accumulated deficit	(675,665,775)	(627,649,062)
Total stockholders' equity	107,387,721	108,586,931
Total Liabilities and Stockholders' Equity	$ 176,926,596	$ 182,742,475

See accompanying notes to the Condensed Consolidated Financial Statements.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Sales, net of returns and allowances	$ 3,966,463	$ 12,555	$ 5,659,878	$ 26,854
Cost of sales	8,427,377	3,020,204	13,755,496	6,943,555
Gross loss	(4,460,914)	(3,007,649)	(8,095,618)	(6,916,701)
Operating expenses				
Selling, general and administrative	14,002,517	13,030,143	28,692,360	24,940,402
Research and development	5,059,745	5,027,061	12,284,594	9,038,995
Total operating expenses	19,062,262	18,057,204	40,976,954	33,979,397
Loss from operations	(23,523,176)	(21,064,853)	(49,072,572)	(40,896,098)
Interest income (expense), net	505,500	(95,419)	1,055,859	(2,318,709)
Loss before benefit for income taxes	(23,017,676)	(21,160,272)	(48,016,713)	(43,214,807)
Benefit for income taxes	—	—	—	—
Net loss	$ (23,017,676)	$ (21,160,272)	$ (48,016,713)	$ (43,214,807)
Net loss per share of common stock				
Basic & Diluted	$ (0.12)	$ (0.13)	$ (0.27)	$ (0.28)
Weighted average shares used in computing net loss per share of common stock				
Basic & Diluted	185,660,305	159,107,776	176,453,477	155,543,436

See accompanying notes to the 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	Total Stockholders' Equity
	Number of Shares	Amount				
Balance as of March 31, 2022	151,993,870	$ 151,994	$ 688,472,154	$ (532,429,379)	$ —	$ 156,194,769
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*	131,990	132	(128,358)	—	—	(128,226)
Stock-based compensation	—	—	3,292,409	—	—	3,292,409
Net loss for the three months ended June 30, 2022	—	—	—	(21,160,272)	—	(21,160,272)
Balance as of June 30, 2022	160,058,512	$ 160,059	$ 717,258,045	$ (553,589,651)	$ —	$ 163,828,453

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Number of Shares	Amount				
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*	210,405	210	(324,698)	—	—	(324,488)
Stock-based compensation	—	—	5,642,702	—	—	5,642,702
Net loss for the six months ended June 30, 2022	—	—	—	(43,214,807)	—	(43,214,807)
Other comprehensive loss	—	—	—	—	1,402,500	1,402,500
Balance as of June 30, 2022	160,058,512	$ 160,059	$ 717,258,045	$ (553,589,651)	$ —	$ 163,828,453

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

See accompanying notes to the Condensed Consolidated Financial Statements.

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

	Common Stock									
	Number of Shares		Amount		Additional Paid-in Capital		Accumulated Deficit		Accumulated Other Comprehensive Loss		Total Stockholders' Equity
Balance as of March 31, 2023	180,580,698	$	180,580	$	757,288,067	$	(652,648,099)	$	—	$	104,820,548
Common stock issued through At-The-Market offering	24,299,355		24,300		21,675,120		—		—		21,699,420
Issuance of common stock	116,347		116		199,884		—		—		200,000
Stock options and vesting of restricted shares*	224,754		225		(91,892)		—		—		(91,667)
Stock-based compensation	—		—		3,777,096		—		—		3,777,096
Net loss for the three months ended June 30, 2023	—		—		—		(23,017,676)		—		(23,017,676)
Balance as of June 30, 2023	205,221,154	$	205,221	$	782,848,275	$	(675,665,775)	$	—	$	107,387,721

	Common Stock										
	Number of Shares		Amount		Additional Paid-in Capital		Accumulated Deficit		Accumulated Other Comprehensive Loss		Total Stockholders' Equity
Balance as of December 31, 2022	165,605,355	$	165,605	$	736,070,388	$	(627,649,062)	$	—	$	108,586,931
Common stock issued through At-The-Market offering	38,684,131		38,684		40,252,923		—		—		40,291,607
Issuance of common stock	116,347		116		199,884		—		—		200,000
Stock options and vesting of restricted shares*	815,321		816		(476,405)		—		—		(475,589)
Stock-based compensation	—		—		6,801,485		—		—		6,801,485
Net loss for the six months ended June 30, 2023	—		—		—		(48,016,713)		—		(48,016,713)
Balance as of June 30, 2023	205,221,154	$	205,221	$	782,848,275	$	(675,665,775)	$	—	$	107,387,721

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

See accompanying notes to the Condensed Consolidated Financial Statements.

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

	Six Months Ended June 30, 2023	Six Months Ended June 30, 2022
Cash flows from operating activities:		
Net loss	$ (48,016,713)	$ (43,214,807)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,386,621	710,348
Change in fair value and loss on exchange of convertible notes	—	1,769,857
Deferred revenue	(604,918)	—
Stock-based compensation	6,801,485	5,642,702
Change in inventory and prepaid purchases reserve	54,369	425,130
Non-cash lease expense	425,421	583,406
Other non-cash items	200,000	175,750
Effects of changes in operating assets and liabilities:		
Accounts receivable	(851,649)	(634,892)
Inventory	(25,909,707)	(3,187,163)
Prepaid expenses and other current assets	4,783,655	(7,119,454)
Other assets	—	(34,401)
Accounts payable, accrued liabilities and other	(3,783,596)	(9,317,242)
Warranty liability	(285,094)	(1,261,704)
Net cash used in operating activities	(65,800,126)	(55,462,470)
Cash flows from investing activities:		
Capital expenditures	(10,472,730)	(5,658,776)
Net cash used in investing activities	(10,472,730)	(5,658,776)
Cash flows from financing activities:		
Proceeds from issuance of common stock	40,291,607	248,695
Payments on finance lease	(439,722)	(389,780)
Exercise of warrants and options and restricted share award activity	(475,590)	(324,488)
Net cash provided by (used in) financing activities	39,376,295	(465,573)
Change in cash and cash equivalents	(36,896,561)	(61,586,819)
Cash, cash equivalents and restricted cash, beginning of the period	99,276,301	201,647,394
Cash and cash equivalents, end of the period	$ 62,379,740	$ 140,060,575

See accompanying notes to the Condensed Consolidated Financial Statements.

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

1. SUMMARY OF BUSINESS AND SIGNIFICANT ACCOUNTING PRINCIPLES

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 delivery 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 platforms to market.

Liquidity and Capital Resources

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

The Company had sales of $5.7 million, incurred a net loss of $48.0 million and used $65.8 million of cash in operating activities during the six months ended June 30, 2023. As of June 30, 2023, the Company had $62.4 million of cash and cash equivalents, working capital of $66.2 million and an accumulated deficit of $675.7 million.

We have made significant progress executing on our revised strategic product roadmap for our electric vehicle offerings and expect to generate additional sales within the next twelve months to help support our operations. Additionally, management plans to reduce its discretionary spend related to non-contracted capital expenditures and other expenses, if necessary. These plans alleviated the substantial doubt about our ability to continue as a going concern caused by the significant losses from operations and cash used in operating activities. 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 working capital needs will prove accurate, or that any additional funding would be sufficient to continue operations in future periods.

Our future liquidity and working capital requirements will depend on numerous factors, including, the ability to generate sales, the ability to control capital expenditures and other expenses, and the ability to raise funds via private or public placement of our equity securities.

We currently intend to raise additional funds through issuance of equity, including through the continued use of our at-the-market offering program (the "ATM Program"). If we are unable to maintain sufficient financial resources, our business, financial condition and results of operations will be materially and adversely affected. This could affect future vehicle program production and sales. Failure to obtain additional equity financing will have a material, adverse impact on our business operations. There can be no assurance that we will be able to obtain the needed financing on acceptable terms or at all. Additionally, any equity financings would likely have a dilutive effect on the holdings of our existing stockholders.

Principles of Consolidation

The accompanying Condensed Consolidated Financial Statements have been prepared in conformity with U.S. generally accepted accounting principles ("GAAP") and reflect our accounts and operations and those of our wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated upon consolidation.

In the opinion of our management, the Unaudited Condensed Consolidated Financial Statements include all adjustments that are 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.

Reclassifications

Certain prior period balances have been reclassified to conform to the current year presentation in the condensed consolidated financial statements and the accompanying notes. These reclassifications have no effect on previously reported results of operations or stockholders' equity.

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:

	June 30, 2023	December 31, 2022
Raw materials	$ 26,673,327	$ 42,500,878
Work in process	—	25,210,131
Finished goods	10,281,415	301,645
	36,954,742	68,012,654
Less: inventory reserves	(2,331,176)	(59,162,512)
Inventory, net	$ 34,623,566	$ 8,850,142

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 June 30, 2023 and December 31, 2022, the Company recorded inventory reserves of $2.3 million and $59.2 million, respectively. The period over period decrease in inventory reserves was primarily driven by our efforts to sell and dispose of C-Series 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 six months ended June 30, 2023.

3. CONTRACT MANUFACTURING SERVICES AND INVESTMENT IN TROPOS

We have a minority ownership in Tropos Technologies, Inc. ("Tropos") with a value of $10.0 million as of June 30, 2023 and December 31, 2022. The investment was obtained 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. The non-cash consideration was initially recorded as deferred revenue and is recognized as revenue over time as assembly service performance obligations are satisfied.

We elected to utilize the measurement alternative allowed under GAAP to record our Investment in Tropos at cost less impairment, if applicable, as of June 30, 2023 and December 31. 2022.

4. PREPAID EXPENSES AND OTHER CURRENT ASSETS

Prepaid expenses and other current assets consisted of the following:

	June 30, 2023	December 31, 2022
Prepaid purchases[1]	$ 25,878,084	$ 34,611,649
Less: prepaid purchases reserve[2]	(17,669,622)	(22,163,338)
Prepaid purchases, net	8,208,462	12,448,311
Prepaid insurance	414,803	1,198,769
Other	827,475	505,401
Prepaid expenses and other current assets	$ 9,450,740	$ 14,152,481

[1] The Company's prepaid purchases consist primarily of deposits made to our suppliers for non-recurring engineering costs, capital expenditures, and production parts. The decrease in prepaid purchases as compared to December 31, 2022 is primarily due to receiving inventory on supplier orders related to our W4 CC, W750 and W56 vehicle platforms, with limited new supplier orders receiving prepayment. Additionally, we wrote-off prepaid purchases related to the C-Series vehicle platform, which were fully reserved as the program was discontinued in 2022.

[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 platform, 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 is driven by the write-off of prepaid purchases related to the C-Series vehicle platform, 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 June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Sales, net of returns and allowances	$ 3,367,666	$ —	$ 4,948,966	$ —
Other sales	598,797	12,555	710,912	26,854
Total sales, net of returns and allowances	$ 3,966,463	$ 12,555	$ 5,659,878	$ 26,854

Sales for the three and six months ended June 30, 2023 consisted primarily of W4 CC vehicle sales. Other sales for the three and six months ended June 30, 2023 consisted of delivery services, service parts and other services.

Deferred revenue is equivalent to the total service fee allocated to the assembly service performance obligations that are unsatisfied as of the balance sheet date. Deferred revenue was $4.8 million and $5.4 million as of June 30, 2023 and December 31, 2022, respectively.

Revenue recognized from the deferred revenue balance as of June 30, 2023 and 2022 was $0.1 million and zero for the three and six months ended June 30, 2023 and 2022, respectively. Of the total deferred revenue for assembly services, we expect to recognize $1.4 million of revenue in the next 12 months.

6. ACCRUED AND OTHER CURRENT LIABILITIES

Accrued and other current liabilities consisted of the following:

	June 30, 2023	December 31, 2022
Legal reserve (Note 13)	$ 35,500,000	$ 35,000,000
Compensation and related costs	3,138,072	4,967,187
Other	4,411,671	6,240,244
Total accrued and other current liabilities	$ 43,049,743	$ 46,207,431

Warranties

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Warranty liability, beginning of period	$ 2,066,588	$ 4,315,463	$ 2,207,674	$ 4,583,916
Warranty costs incurred	(307,500)	(348,005)	(595,313)	(698,958)
Provision for warranty	163,492	(645,246)	310,219	(562,746)
Warranty liability, end of period	$ 1,922,580	$ 3,322,212	$ 1,922,580	$ 3,322,212

7. 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 in the 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 to5 years. Some of our leases also include options to terminate the lease prior to the end of the agreed upon lease term. For purposes 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 June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Short-term lease expense	$ 68,368	$ 248,103	$ 126,675	$ 424,008
Operating lease expense	568,157	465,544	1,140,497	762,967
Total lease expense	$ 636,525	$ 713,647	$ 1,267,172	$ 1,186,975

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

	June 30, 2023	December 31, 2022
Operating leases	$ 5,437,003	$ 5,884,865
Finance leases	5,721,559	5,821,938
Total lease right-of-use assets	$ 11,158,562	$ 11,706,803

Lease liabilities consisted of the following:

	June 30, 2023	December 31, 2022
Operating leases	$ 6,707,406	$ 6,977,896
Finance leases	2,855,146	3,147,198
Total lease liabilities	9,562,552	10,125,094
Less: current portion	(1,486,417)	(1,285,032)
Long-term portion	$ 8,076,135	$ 8,840,062

8. 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 (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 under the Plan may be either vested or unvested options, or unvested restricted stock. The Plans have authorized 17.5 million shares for issuance of stock-based awards. As of June 30, 2023 there were approximatey 3.1 million shares available for issuance of future stock awards under the Plans.

Stock-based compensation expense

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Stock options	$ 242,571	$ 254,585	$ 483,109	$ 486,963
Restricted stock awards	2,505,234	2,226,865	4,567,072	3,906,109
Performance-based restricted stock awards	1,029,291	810,959	1,751,304	1,249,630
Total stock-based compensation expense	$ 3,777,096	$ 3,292,409	$ 6,801,485	$ 5,642,702

Stock options

A summary of stock option activity for the six months ended June 30, 2023 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	(200)	1.8	
Forfeited	(70,997)	1.8	
Balance, June 30, 2023	352,429	$ 8.8	7.2
Number of options exercisable at June 30, 2023	204,213	$ 7.8	6.2

As of June 30, 2023, unrecognized compensation expense was $1.1 million for unvested options which is expected to be recognized over the next1.2 years.

Restricted stock awards

A summary of restricted stock award activity for the six months ended June 30, 2023 is as follows:

	Number of Unvested Shares	Weighted Average Grant Date Fair Value per Share
Balance, December 31, 2022	3,525,331	$ 4.9
Granted	3,753,965	1.5
Vested	(1,090,357)	4.4
Forfeited	(276,051)	2.6
Balance, June 30, 2023	5,912,888	$ 2.9

As of June 30, 2023, unrecognized compensation expense was $14.0 million for unvested restricted stock awards which is expected to be recognized over the next1.7 years.

Performance share units ("PSUs")

As of June 30, 2023, the number of unvested PSUs was3.1 million. The vesting of the PSUs is conditioned upon achievement of certain performance objectives over performance periods ending December 31, 2024 and 2025 as defined in each award agreement. 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"). Depending on the actual achievement of 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 six months ended June 30, 2023 is as follows:

	Number of Unvested Shares	Weighted Average Grant Date Fair Value per Share
Balance, December 31, 2022	738,751	$ 11.8
Granted	986,144	0.9
Forfeited	(22,278)	0.9
Balance, June 30, 2023	1,702,617	$ 5.6

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 June 30, 2023, unrecognized compensation expense was $5.9 million for unvested TSR PSUs, which is expected to be recognized over the next 1.8 years.

A summary of the PSU awards with cumulative adjusted EBITDA targets for the six months ended June 30, 2023 is as follows:

	Number of Unvested Shares
Balance, December 31, 2022	432,546
Granted	986,144
Forfeited	(22,278)
Balance, June 30, 2023	1,396,412

The fair value of performance share units 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, which has not yet occurred, as the cumulative adjusted EBITDA target condition is not yet defined.

9. STOCKHOLDERS' EQUITY

At-The-Market Sales Agreement

On March 10, 2022, we entered into the ATM Program. Under the ATM Program, 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 six months ended June 30, 2023, we issued 24.3 million and 38.68 million shares, respectively, under the ATM Program for net proceeds of $ 21.7 million and $40.3 million, respectively. The remaining aggregate sales available under the ATM Program is $ 120.7 million as of June 30, 2023. During the three and six months ended June 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.

10. INCOME TAXES

As of June 30, 2023 and December 31, 2022, the Company's 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 Condensed Consolidated Financial Statements due to the loss for the periods.

11. EARNINGS (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 June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Stock-based awards and warrants	10,199,166	6,765,581	10,199,166	6,765,581
Convertible notes[1]	—	7,833,666	—	7,833,666

[1] Represents shares issued in exchange of convertible notes in April 2022.

12. 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. 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 ("FMVSS") Certification and Other Regulatory Matters

For information regarding certain regulatory matters, see Note 17, "Commitments and Contingencies – Federal Motor Vehicle Safety Standards ("FMVSS") Certification and Other Regulatory Matters" 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.

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 as well as the related Shareholders Derivative Litigation described below. 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. Under these terms, Workhorse will pay $15 million in cash, which is expected to be funded fully by proceeds of available insurance, and $20 million payable in shares of Workhorse stock. A Stipulation of Settlement and Motion for Preliminary Approval of Class Action Settlement was filed on January 13, 2023, and the Court granted preliminary approval of the settlement on February 14, 2023. The Company recorded a $15 million insurance receivable in Other receivable and a $35 million legal reserve in Accrued and other current liabilities in the Consolidated Balance Sheet at June 30, 2023.

On July 24, 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 million in cash and $20 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 is 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 Company has calculated the VWAP for the 15 trading days immediately preceding the Judgment Date to be $1.011 (the "VWAP Price"). As a result, subject to the possible adjustments discussed below, the Company expects to issue 19,782,394 shares of its common stock to be deposited into the Settlement Fund as Settlement Shares. However, 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 deviates more than 25% above or below the VWAP Price, the number of Settlement Shares will be adjusted, upward or downward, as the case may be, such that the aggregate value of the Settlement Shares equals $20 million.

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.

Shareholder Derivative Litigation

As described in detail in the Company's Annual Report on Form 10-K for the year ended December 31, 2022, a total of eight substantively similar derivative actions were originally filed for breach of fiduciary duty and unjust enrichment against Duane Hughes, Steve Schrader, Stephen Fleming, Robert Willison, Anthony Furey, Gregory Ackerson, H. Benjamin Samuels, Raymond J. Chess, Harry DeMott, Gerald B. Budde, Pamela S. Mader, Michael L. Clark and Jacqueline A. Dedo in state court in Nevada, state court in Ohio, and federal courts in Nevada, Ohio and California (collectively, the "Shareholder Derivative Litigation"). In these actions, the plaintiffs allege the defendants breached their fiduciary duties by allowing or causing the Company to violate the federal securities laws as alleged in the Securities Class Action discussed above and by selling Company stock and receiving other compensation while allegedly in possession of material non-public information about the prospect of the USPS awarding the contract to an electric vehicle manufacturer given electrifying the USPS's entire fleet allegedly have been impractical and expensive. The plaintiffs seek damages and disgorgement in an indeterminate amount.

On October 24, 2022, the Company and the individual defendants entered into a binding term sheet to resolve all of the shareholder derivative actions described above. The settlement was subject to final documentation, public notice and court approval by the State District Court of Nevada. The parties also agreed to promptly request that the courts in such actions stay all proceedings and/or enter an order enjoining all other stockholders of the Company from commencing, instituting, or prosecuting any similar claims.

On April 10, 2023, the parties executed a Stipulation of Settlement setting forth the terms of the settlement of the derivative actions and resolving all claims. Under the terms of the settlement, the Company will receive $12.5 million of the $15.0 million described above from the Company's directors and officers insurers and will, in turn, deliver the $12.5 million in connection with the settlement of the Securities Class Action. The Company has also agreed to adopt various corporate governance changes. On June 21, 2023, the State District Court of Nevada granted final approval of the settlement. The parties agreed to a $4.0 million fee to the derivative plaintiffs' attorneys, $3.5 million of which is payable by the D&O insurers and $0.5 million of which is payable by the Company, which was recorded in the Condensed Consolidated Statements of Operations for the period ended June 30, 2023.

14. SUBSEQUENT EVENT

On August 10, 2023, a subsidiary of 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.

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 vehicle platforms to 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.

Recent Developments

Certified Dealer Program

During the second quarter, we continued to add dealers to our Certified Dealer Program, expanding the official network of verified dealers trained to safely repair and maintain the electric components of the Company's vehicles into new states to support our customers. The Certified Dealer Program allows us to establish a comprehensive training program enabling dealers to safely assist customers with vehicle maintenance 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, and building out spare parts inventory. The Certified Dealer Program is designed to provide a strong foundation of safety and reliability in our vehicles for both our dealers and end customers.

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 period, we experienced increased sales of the W4CC, W750 and HorseFly vehicles and we continued developing and commercializing our package delivery trucks and drones. Additionally, our progress on the W750 production supports the electrification of the fleet of trucks being utilized by our Stables & Stalls initiative, which operates FedEx Ground delivery routes in the greater Cincinnati area. The electrification of the fleet will provide us with firsthand data on of the challenges and benefits 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, including how to develop adequate charging infrastructure, training and maintenance services. We also 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 platforms such as the W56 and WNext. We expect to continue to benefit from ongoing electrification of the automotive sector and increasing environmental awareness.

Securities Litigation and Shareholder Derivative Litigation

On July 24, 2023, the U.S. District Court for the Central District of California entered an order granting final approval of the Stipulation of Settlement entered into by the parties to the Securities Litigation on January 13, 2023. 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 million in cash and $20 million in shares of common stock of the Company (the "Settlement Shares") from which class members will receive payment. For further information regarding the Securities Class Action and the settlement thereof, please see Note 13, "Commitments and Contingencies – Legal Proceedings – Securities Litigation" included in Item 1 of this Form 10-Q, and Note 17, "Commitments and Contingencies – Legal Proceedings – Securities Litigation" included in Item 8 of the Company's Form 10-K for the year ended December 31, 2022.

On June 21, 2023, the State District Court of Nevada granted final approval of the settlement of the Shareholder Derivative Litigation. Under the terms of the settlement, the Company will receive $12.5 million of the $15.0 million described above from the Company's directors and officers insurers and will, in turn, deliver the $12.5 million in connection with the settlement of the Securities Litigation. The Company has also agreed to adopt various corporate governance changes. The parties agreed to a $4.0 million fee to the derivative plaintiffs' attorneys, $3.5 million of which is payable by the D&O insurers and $0.5 million of which is payable by the Company. For further information regarding the Shareholder Derivative Litigation and the settlement thereof, please see Note 13, “Commitments and Contingencies – Legal Proceedings – Shareholder Derivative Litigation” included in Item 1 of this Form 10-Q, and Note 17, “Commitments and Contingencies – Legal Proceedings – Shareholder Derivative Litigation” included in Item 8 of the Company’s Form 10-K for the year ended December 31, 2022.

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 certain 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 this Quarterly Report on Form 10-Q.

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 the COVID-19 pandemic and 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 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 platforms, we will continue to identify supplier relationship and vehicle platform 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.

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 Ukraine and Russia conflict. 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 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.

Results of Operations

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Sales, net of returns and allowances	$ 3,966,463	$ 12,555	$ 5,659,878	$ 26,854
Cost of sales	8,427,377	3,020,204	13,755,496	6,943,555
Gross loss	(4,460,914)	(3,007,649)	(8,095,618)	(6,916,701)
Operating expenses				
Selling, general and administrative	14,002,517	13,030,143	28,692,360	24,940,402
Research and development	5,059,745	5,027,061	12,284,594	9,038,995
Total operating expenses	19,062,262	18,057,204	40,976,954	33,979,397
Loss from operations	(23,523,176)	(21,064,853)	(49,072,572)	(40,896,098)
Interest income (expense), net	505,500	(95,419)	1,055,859	(2,318,709)
Other income (loss)	—	—	—	—
Loss before benefit for income taxes	(23,017,676)	(21,160,272)	(48,016,713)	(43,214,807)
Benefit for income taxes	—	—	—	—
Net loss	$ (23,017,676)	$ (21,160,272)	$ (48,016,713)	$ (43,214,807)

Sales, net of returns and allowances

Sales, net of returns and allowances for the three months ended June 30, 2023 and 2022 were $4.0 million and $12,555, respectively. Sales, net of returns and allowances for the six months ended June 30, 2023 and 2022 were $5.7 million and $26,854, respectively. The increase in sales is primarily driven by sales of the W4 CC vehicle during the first six months of 2023.

Cost of sales

Cost of sales for the three months ended June 30, 2023 and 2022 were $8.4 million and $3.0 million, respectively. The increase in cost of sales was primarily due to a $4.8 million increase in costs related to vehicle sales and a $0.6 million increase in employee compensation and related expenses.

Cost of sales for the six months ended June 30, 2023 and 2022 were $13.8 million and $6.9 million, respectively. The increase in cost of sales was primarily due to a $5.6 million increase in costs related to vehicle sales and a $1.7 million increase in employee compensation and related expenses. The increase was offset by a $0.5 million decrease in inventory reserves, which was driven by the disposition of the C-Series inventory items in 2022.

Selling, general and administrative expenses

Selling, general and administrative ("SG&A") expenses during the three months ended June 30, 2023 and 2022 were $14.0 million and $13.0 million, respectively. The increase was primarily driven by a $0.5 million increase in employee compensation and related expenses, including non-cash stock-based compensation expense, a $0.4 million increase in professional services, and a $0.5 million increase in other operational expenses. The increase was partially offset by a $0.6 million decrease in legal expenses.

SG&A expenses during the six months ended June 30, 2023 and 2022 were $28.7 million and $24.9 million, respectively. The increase was primarily driven by a $3.9 million increase in employee compensation and related expenses, including non-cash stock-based compensation expense, a $0.6 million increase in IT related expenses, a $0.5 million increase in insurance premiums, and a $1.0 million increase in professional services. The increase was partially offset by a $2.4 million decrease in legal expenses.

Research and development expenses

Research and development ("R&D") expenses during the three months ended June 30, 2023 and 2022 were $5.1 million and $5.0 million, respectively.

R&D expenses during the six months ended June 30, 2023 and 2022 were $12.3 million and $9.0 million, respectively. The increase was primarily driven by an increase of $1.7 million in employee compensation and related expenses. Additionally, there was a $1.0 million increase in prototype expenses and a $0.2 million increase in consulting expenses related to the continued development of our HorseFly™, W56, W750 and W4 CC vehicle programs.

Interest income (expense), net

Net interest income for the three months ended June 30, 2023 was $0.5 million as compared to $0.1 million of interest expense for the three months ended June 30, 2022.

Net interest income for the six months ended June 30, 2023 was $1.1 million as compared to $2.3 million of interest expense for the six months ended June 30, 2022. Net interest income in the current period is driven by interest earned on cash in our money market investment account. Net interest expense in the prior period is 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.

Income taxes

Benefit for income taxes during the three and six months ended June 30, 2023 was zero.

Liquidity and Capital Resources

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 $5.7 million of sales for the six months ended June 30, 2023. As of June 30, 2023, the Company had $62.4 million in cash and cash equivalents, positive working capital of $66.2 million, accumulated deficit of $675.7 million, and during the six months ended June 30, 2023 incurred a loss from operations of $49.1 million and used $65.8 million of cash in operating activities. 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, management plans to reduce its discretionary spend related to non-contracted capital expenditures and other expenses, if necessary. 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 working capital needs will prove accurate, or that any additional funding would be sufficient to continue operations in future years.

Our annual cash burn remained high during the six month period ended June 30, 2023, however we expect it to decrease overall for the period ending December 31, 2023, despite increased working capital requirements and R&D activities.

We will primarily rely upon a private or public placement of our equity securities, including the continued use of the ATM Program, for which there can be no assurance we will be successful in such efforts. 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 platforms, will be materially and adversely affected. This could affect future vehicle program production and sales. Failure to obtain additional equity financing will have a material, adverse impact on the Company's 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 financings would likely have a dilutive effect on the holdings of the Company's existing stockholders.

Cash Requirements

From time to time in the ordinary course of business, we enter into agreements with vendors for the purchase of components and raw materials to be used in the manufacture of our products. However, due to contractual terms, variability in the precise growth curves of our development and production ramps, and opportunities to renegotiate pricing, we generally do not have binding and enforceable purchase orders under such contracts beyond the short term, and the timing and magnitude of purchase orders beyond such period is difficult to accurately project.

We currently expect our capital expenditures to upgrade our facilities in Indiana, Ohio and Michigan to be between $15.0 and $25.0 million in 2023.

As of June 30, 2023, our total minimum future lease payments were $9.6 million. A description of our lease obligations is contained in Note 7, *Leases*, of the Condensed Consolidated Financial Statements included elsewhere in this Quarterly Report on Form 10-Q.

Sources and Condition of Liquidity

On March 10, 2022, we entered into the ATM Program. Under the ATM Program, 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 six months ended June 30, 2023, we issued 24.3 million and 38.7 million shares under the ATM Program for net proceeds of $21.7 million and $40.3 million, respectively. During the three and six months ended June 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. As of June 30, 2023 we have approximately $120.7 million available through the issuance of shares of common stock under the ATM Program.

With the exception of contingent and royalty payments we may receive under our existing agreements, we do not currently have any committed future funding. To the extent we raise additional capital by issuing equity securities, including under the ATM Program, our stockholders could at that time experience substantial dilution. Any debt financing that we can obtain may include operating covenants that restrict our business.

Our future funding requirements will depend upon many factors, including, but not limited to:
- our ability to acquire or license other technologies we may seek to pursue;
- our ability to manage our growth;
- competing technological and market developments;
- the costs and timing of obtaining, enforcing and defending our patent and other intellectual property rights; and
- expenses associated with any litigation or other legal proceedings.

For the three and six months ended June 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

	Six Months Ended June 30,	
	2023	2022
Net cash used in operating activities	$ (65,800,126)	$ (55,462,470)
Net cash used in investing activities	$ (10,472,730)	$ (5,658,776)
Net cash provided by (used in) financing activities	$ 39,376,295	$ (465,573)

Cash Flows from Operating Activities

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

During the six months ended June 30, 2023 and 2022, net cash used in operating activities was $65.8 million and $55.5 million, respectively. The increase in net cash used in operations was primarily attributable to an increase in spend related to the initial inventory build as we continue to ramp up our production of the W4 CC and W750 vehicle platforms.

Cash Flows from Investing Activities

Cash flows from investing activities and their variability across each period related primarily to capital expenditures to upgrade our administrative, research, and production facilities, which were $10.5 million for the six months ended June 30, 2023 and $5.7 million for the six months ended June 30, 2022.

Cash Flows from Financing Activities

Net cash provided by financing activities during the six months ended June 30, 2023 was $39.4 million, which is primarily attributable to the issuance of common stock under our ATM Program.

Net cash used in financing activities during the six months ended June 30, 2022 was $0.5 million, which consisted primarily of payments on financing leases and tax payments related to shares withheld for option exercises and vesting of restricted share awards.

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

A discussion of our critical accounting estimates is contained in our Annual Report on 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,*Recent Accounting Pronouncements*, of the 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 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 Form 10-K for the year ended December 31, 2022.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Pursuant to Rules 13a-15(b) and 15-d-15(b) under the Securities Exchange Act of 1934, as amended ("Exchange Act"), we evaluated, with the participation of management, including our Chief Executive Officer and Chief Financial Officer, the effectiveness 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) under the Exchange Act, means controls and other procedures 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 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, evaluated the effectiveness of our disclosure controls and procedures as of 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, our disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting (as that term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the three months ended June 30, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

For a description of certain material legal proceedings, please see Note 13,*Commitments and Contingencies*, to the 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 Form 10-K for the year ended December 31, 2022. Except as set forth below, there have been no material changes in the current period regarding our risk factors.

We have a limited number of shares of common stock available for future issuance which could adversely affect our ability to raise capital, attract qualified personnel or consummate strategic transactions.

We are currently authorized to issue 250 million shares of common stock under ourarticles of incorporation. As of July 10, 2023, we had approximately 210 million shares outstanding and we expect to issue $20.0 million of common stock in connection with the Stipulation of Settlement we reached for our securities litigation. For further information regarding the Securities Litigation and the settlement thereof, please see Note 13, “Commitments and Contingencies – Legal Proceedings – Securities Litigation” included in Item 1 of this Form 10-Q, and Note 17, “Commitments and Contingencies – Legal Proceedings – Securities Litigation” included in Item 8 of the Company’s Form 10-K for the year ended December 31, 2022.

We need stockholder approval to increase the number of our authorized shares of our common stock. On July 25, 2023, we filed a definitive proxy statement with the SEC related to a Special Meeting of Stockholders to be held on August 28, 2023. At the Special Meeting, our stockholders are being asked to approve an increase in the number of authorized shares of common stock from 250 million shares to 450 million shares.

Due to the limited number of authorized shares of common stock available for future issuance, we may not able to raise additional equity capital or use our shares as consideration for a merger or other business combination unless we increase the number of shares we are authorized to issue. In addition, we use equity awards as a key element of executive compensation and believe this type of equity compensation is critical to our ability to attract and retain highly qualified personnel. If we do not have sufficient shares available for delivery on equity awards, our ability to accomplish these purposes will be diminished.

As a result of a decline in our stock price, we will have to issue more shares in equity awards to our executives, when raising capital and in strategic transactions. We can provide no assurance that we will succeed in getting stockholder approval to amend our articles of incorporation to increase the number of shares of common stock we are authorized to issue. Any failure or delay could negatively impact our business, prospects and results of 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 six months ended June 30, 2023, none of our officers or directorsadopted 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.

Floorplan and Security Agreement

On August 10, 2023, a subsidiary of the Company and Mitsubishi HC Capital America, Inc. ("Mitsubishi") entered into a Floorplan and Security Agreement (the “Agreement”), pursuant to which Mitsubishi has agreed to provide a revolving floorplan line of credit with a maximum borrowing limit of $5.0 million. For additional information concerning the Agreement please see Note 14, *Subsequent Event*, to the Condensed Consolidated Financial Statements included elsewhere in this Quarterly Report on Form 10-Q. The description of the Agreement does not purport to be complete and is qualified in its entirety by the complete text of such agreement, a form of which is filed as Exhibit 10.1 to this Quarterly Report on Form 10-Q, and incorporated herein by reference.

ITEM 6. EXHIBITS

Exhibit No.	Description
3.1	Second Amended and Restated Bylaws (incorporated by reference to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission July 12, 2023)
10.1*	Floorplan and Security Agreement, dated as of August 10, 2023, by and between Workhorse Technologies Inc. and Mistubishi HC Capital America, Inc.
31.1*	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.
31.2*	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.
32.1*	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
32.2*	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
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.

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: August 14, 2023

By: /s/ Richard Dauch
Name: Richard Dauch
Title: Chief Executive Officer
(Principal Executive Officer)

Dated: August 14, 2023

By: /s/ Robert M. Ginnan
Name: Robert M. Ginnan
Title: Chief Financial Officer
(Principal Financial Officer)

Dated: August 14, 2023

By: /s/ Gregory T. Ackerson
Name: Gregory T. Ackerson
Title: Chief Accounting Officer
(Principal Accounting Officer)

FLOORPLAN AND SECURITY AGREEMENT

This Floorplan and Security Agreement dated as of August 10, 2023 (as from time to time amended, amended and restated, supplemented and otherwise modified from time to time and together with all Transaction Statements (as defined herein) and all schedules, addendums, and other attachments to any of the foregoing, the "Agreement") is by and between Mitsubishi HC Capital America, Inc., a Delaware corporation with its chief executive office and principal place of business at 800 Connecticut Avenue, Norwalk, CT 06854 ("Lender") and Workhorse Group Inc., a Nevada corporation with its principal place of business located at 100 Commerce Drive, Loveland, OH 45140 and its subsidiaries, including Workhorse Technologies Inc., an Ohio corporation and principal place of business at 3600 Park 42 Dr Ste 160E, Sharonville, OH 45241-4039 ("Borrower").

1. **Extensions of Credit**. Subject to the terms of this Agreement, Lender may extend credit to or on behalf of Borrower from time to time to enable Borrower to purchase goods, including equipment, from certain vendors ("each a Vendor") listed in Schedule 1 attached hereto (as such schedule may be updated by the parties from time to time), which goods shall be held for sale by Borrower in the ordinary course of business, and if agreed in writing by Lender for lease by Borrower in the ordinary course of business ("Inventory"), and for other purposes. Vendor approval is an ongoing process and depends, in part, on the total value of invoices approved by Lender with any given Vendor at any point in time. Lender's decision to advance funds is at Lender's sole and absolute business discretion. Lender may combine all of Lender's advances to Borrower or on Borrower's behalf, whether under this Agreement or any other agreement, together with all finance charges, fees and expenses related thereto, to constitute one debt and loan owed by Borrower. Without limiting the discretionary nature of this credit facility, Lender may, without notice to Borrower, elect not to finance any Inventory sold by any Vendor in default to Lender under any existing agreements between Vendor and Lender, any Vendor that has exceeded or will exceed (if such Inventory is financed) the applicable maximum amount established for such Vendor, or any Vendor with respect to which Lender reasonably feels insecure. All advances and other transactions hereunder are exclusively for business purposes and not for personal, family, household or any other consumer purposes.

2. **Financing Terms**.

(a) Lender and Borrower agree to set forth in this Agreement only the general terms of Borrower's financing arrangement with Lender as certain financial terms depend, in part, on factors which vary from time to time, including without limitation, the availability of any applicable Vendor discounts, payment terms or other incentives, Lender's floor-planning volume with Borrower and such Vendor, and other economic factors. Upon agreeing to finance an item of Inventory for Borrower, Lender will transmit, send or otherwise make available to Borrower a transaction statement, which is a record that may be authenticated and which identifies the Collateral (as defined herein) financed and/or the advance made and the terms and conditions of repayment of such advance, substantially in the form attached hereto as Exhibit A (the "Transaction Statement"). Borrower agrees that Borrower's failure to notify Lender in writing of any objection to a Transaction Statement within three (3) days after a Transaction Statement is transmitted, sent or otherwise made available to Borrower, shall constitute Borrower's (a) acceptance of all terms thereof, (b) agreement that Lender is financing such Inventory at Borrower's request, and (c) agreement that such Transaction Statement will be incorporated herein by reference. If Borrower objects to the terms of any Transaction Statement, Borrower will pay Lender for such Inventory in accordance with the most recent terms for similar Inventory to which Borrower has not objected (or, if there are no prior terms, at the lesser of 10% per annum or the maximum lawful contract rate of interest permitted under applicable law), subject to termination of this Agreement by Lender and its rights under the termination provision contained herein.

(b) If Vendor program subsidies are part of and applicable to Borrower's financing program with a Vendor (each a "Lender Credit"), with respect to any advance on behalf of Borrower that Lender makes to such Vendor, Lender may apply against such the amount of such advance the amount of the Lender Credit actually paid to Lender; provided, however, in the event such Vendor does not remit the amount of the Lender Credit to Lender, Borrower agrees to pay the unpaid portion of such Lender Credit.

3. **Security Interest**.

(a) To secure the payment and performance of the Obligations (as defined herein) of Borrower to Lender, Borrower hereby grants to Lender a security interest in and to the Collateral. All capitalized terms used

herein, which are not otherwise defined in this Agreement, and which are defined in the Uniform Commercial Code (the "UCC"), as in effect from time to time, in Illinois, or of any other state the laws of which are required to be applied in connection with the attachment, perfection or priority of, or remedies with respect to, Lender's security interest in any Collateral shall be used herein as such term is defined in the UCC.

(b) As used herein, "Collateral" means all of the following personal property of Borrower, whether such property or Borrower's right, title or interest therein or thereto is now owned or existing or hereafter acquired or arising, and wherever located, including without limitation:

(i) all Inventory of Borrower, including parts;

(ii) all returns, repossessions, exchanges, substitutions, replacements, attachments, parts, accessories and accessions of the foregoing;

(iii) all Vendor Credits (as defined below) related to Inventory;

(iv) all leases of Inventory and rents owed under such leases;

(v) all books and records related to Inventory, electronic or otherwise, which evidence or otherwise relate to any of the foregoing, and all computers, disks, tapes, media and other devices in which such records are stored, but only to the extent the same directly relate to the foregoing;

(vi) all Accounts (including Payment Intangibles, Deposit Accounts), General Intangibles, Chattel Paper (whether tangible or electronic), Instruments (including Promissory Notes), Investment Property and documents representing proceeds of any of the foregoing that are related to Inventory; and

(vii) all cash and insurance proceeds related to Inventory and products of the foregoing.

(c) "Obligations" means all indebtedness and other obligations of any nature whatsoever of Borrower to Lender, whether such indebtedness or other obligations arise under this Agreement or any other existing or future agreement between Borrower and Lender, and whether for principal, interest, fees, Charges (as defined herein), expenses, indemnification obligations or otherwise, and whether such indebtedness or other obligations are existing, future, direct, indirect, acquired, contractual, non-contractual, joint and/or several, fixed, contingent or otherwise.

(d) "Vendor Credits" means all of Borrower's rights to any price protection payments, rebates, discounts, credits, factory holdbacks, incentive payments and other amounts which at any time are due Borrower from the applicable Vendor.

4. Representations and Warranties. Borrower represents and warrants that at the time of execution of this Agreement and at the time of each approval and each advance hereunder:

(a) Borrower does not conduct business under any trade styles or trade names except as disclosed by the Borrower to Lender in writing and has all the necessary authority to enter into and perform this Agreement and Borrower will not violate its organizational documents, or any law, regulation or agreement binding upon it, by entering into or performing its obligations under this Agreement;

(b) Borrower will only keep Collateral at locations within the U.S. which have been disclosed to Lender either (i) in writing prior to the execution of this Agreement or (ii) upon thirty (30) days written notice, and, in either case, which have been approved by Lender ("Permitted Locations");

(c) this Agreement correctly sets forth Borrower's true legal name, the type of its organization (if not an individual), the state in which Borrower is incorporated or organized, and Borrower's organizational identification number, if any;

(d) all information supplied by Borrower to Lender, including any financial, credit or accounting statements or application for credit, in connection with this Agreement is true, correct and complete;

(e) Borrower has good title to all Collateral subject only to the security interest of Lender; and

(f) there are no actions or proceedings pending or threatened against Borrower which might result in any material adverse change in Borrower's financial or business condition.

5. Covenants.

(a) Until sold, as permitted by this Agreement, Borrower shall own all Collateral free and clear of all liens, security interests, claims and other encumbrances, whether arising by agreement or operation of law (collectively "Liens"), other than Liens in favor of Lender and subordinate Liens in favor of other persons with respect to which Lender shall have first consented in writing.

(b) Borrower will:

(i) keep all Collateral at Permitted Locations and keep all tangible Collateral safe and secure, in good order, repair and operating condition and insured as required by Lender;

(ii) promptly file all tax returns required by law and promptly pay all taxes, fees, and other governmental charges for which it is liable, including without limitation all governmental charges against the Collateral or this Agreement;

(iii) permit Lender and its designees, without notice, to inspect the Collateral during normal business hours and at any other time Lender deems desirable (and Borrower hereby grants Lender and its designees an irrevocable license to enter Borrower's business locations during normal business hours without notice to Borrower to account for and inspect all Collateral and to examine and copy Borrower's books and records related to the Collateral), and in connection with any inspection, provide Lender and its designees safe and secure access to the Collateral and comply with any request made by Lender or its designees to move the Collateral in order to provide such safe and secure access;

(iv) keep complete and accurate records of its business, including Inventory, Accounts and sales, and permit any representatives designated by the Lender (including employees of the Lender, or any consultants, accountants, lawyers, agents and appraisers retained by the Lender), upon reasonable prior notice and during business hours, to visit and inspect its properties, to conduct at Borrower's premises field examinations permitted in accordance with this Agreement of Borrower's assets, liabilities, books and records, including examining and making copies or extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested, provided that upon the occurrence of a Default, the expenses of the Lender for such visits, inspections and examinations shall be at the sole expense of the Borrower;

(v) furnish Lender with such additional information regarding the Collateral and Borrower's business and financial condition as Lender may from time to time reasonably request (including without limitation financial statements and projections more frequently than set forth below);

(vi) immediately notify Lender of any material adverse change in Borrower's prospects, business, operations or condition (financial or otherwise) or in any Collateral;

(vii) execute (or cause any third party in possession of Collateral to execute) all documents Lender requests to perfect and maintain Lender's security interest in the Collateral;

(viii) deliver to Lender immediately upon each request by Lender (and Lender may retain) each certificate of title or statement of origin issued for Collateral financed by Lender;

(ix) at all times be duly organized, existing, in good standing, qualified and licensed to do business in each jurisdiction in which the nature of its business or property so requires and, when requested, provide Lender with documentation evidencing the same;

(x) promptly pay any and all taxes, assessments and governmental charges upon the Collateral prior to the date penalties are attached thereto, except to the extent that a protest of such taxes, assessments and charges shall be instituted and diligently prosecuted in good faith by Borrower and (A) Borrower has given Lender notice of any such contest and (B) Lender is satisfied that while any such protest is pending there will be no impairment of the enforceability, validity, or priority of any of Lender's security interests in the Collateral;

(xi) Borrower will immediately notify Lender of any event causing a substantial loss or diminution in the value of all or any material part of the Collateral and an estimate of the amount of such loss or diminution;

(xii) Borrower will endeavor to collect or cause to be collected from its customers all amounts owing under or on account of any customer receivable;

(xiii) Borrower shall follow all procedures as required by the U.S. Export Administration Regulations and any related export control laws and regulations promulgated and administered by the government of any country having jurisdiction over the parties or the transactions contemplated herein n the event that Borrower contemplates any exporting of the assets financed (including technology supplied) herein;

(xiv) notify Lender of the commencement of any material legal proceedings against Borrower or any Guarantor (as defined below); and

(xv) comply with all applicable laws, rules, regulations and orders of all governmental bodies binding upon Borrower, including but not limited to, to the extent applicable, all relevant trade controls requirements, anti-money laundering requirements, anti-terrorist financing and know-your-client diligence requirements issued by the U.S. Office of Foreign Asset Control, the U.S. Department of Commerce's Bureau of Industry and Security, or the U.S. State Department's Directorate of Defense Trade Controls, and no such sale shall involve dealings between Borrower and any person or entity that a U.S. company would be prohibited from dealing with under any laws or regulations of the United States.

(c) Borrower will not, without Lender's prior written consent:

(i) use (except for demonstration for sale, if applicable), rent or lease, sell, transfer, consign, license, encumber or otherwise dispose of Collateral except for sales of Inventory at retail in the ordinary course of Borrower's business;

(ii) engage in any other material transaction not in the ordinary course of Borrower's business;

(iii) change its business in any material manner or its organizational structure or be a party to a merger or consolidation or change its registration to a registered organization other than as specified above;

(iv) change its name without giving Lender at least thirty (30) days' prior written notice thereof;

(v) change the state in which it is incorporated or otherwise organized (except upon thirty (30) days' prior written notice to Lender);

(vi) change its chief executive office or office where it keeps its records with respect to Accounts or Chattel Paper;

(vii) finance on a secured basis with any Vendor or any third party the acquisition of Inventory of the same brand as any Inventory financed or to be financed by Lender;

(viii) store Inventory financed by Lender with any third party; or

(ix) sell or otherwise transfer Inventory to a Borrower Affiliate (as defined herein).

As used herein, the term "<u>Borrower Affiliate</u>" means any person that: (i) directly or indirectly controls, is controlled by or is under common control with Borrower, (ii) directly or indirectly owns 5% or more of Borrower, (iii) is a director, partner, manager, or officer of Borrower or an affiliate of Borrower, or (iv) any natural person related to Borrower or an affiliate of Borrower.

6. Insurance. All risk of loss, damage to or destruction of Collateral shall at all times be on Borrower. Borrower shall keep tangible Collateral insured for full replacement value against all insurable risks under policies delivered to Lender and issued by insurers satisfactory to Lender with loss payable to Lender. Lender is to be provided with any written notice of cancellation or change in such policies within ten (10) Business Days (as defined herein) of the issuance of such notice. Lender is authorized, but not required, to act as attorney-in-fact for Borrower in adjusting and settling any insurance claims under any such policy and in endorsing any checks or drafts drawn by insurers. Borrower shall promptly remit to Lender in the form received, with all necessary endorsements, all proceeds of such insurance which Borrower may receive. Lender, at its election, shall either apply any proceeds of insurance it may receive toward payment of the Obligations or pay such proceeds to Borrower. For purposes of this Agreement, "Business Day" means any day the Federal Reserve Bank of New York is open for the transaction of business.

7. Financial Statements. Unless waived by Lender, Borrower will deliver to Lender, in a form satisfactory to Lender:

(a) Borrower's year-end balance sheet and annual profit and loss statement for each of its fiscal years, within ninety (90) days after the same are prepared but in no event later than one hundred-twenty (120) days after the end of each fiscal year;

(b) within forty-five (45) days after the end of each of Borrower's fiscal quarters, a reasonably detailed balance sheet and income statement as of the last day of such quarter covering Borrower's operations for such quarter; and

(c) within ten (10) days after Lenders request, any other information relating to the Collateral or the financial condition of Borrower or any Guarantor.

8. Payment Terms.

(a) Borrower will immediately pay Lender the outstanding balance of the principal amount of the Obligations owed Lender on each item of Collateral financed by Lender on the earliest occurrence of any of the following events:

(i) when such Collateral is lost, stolen or damaged;

(ii) when such Collateral is, without Lender's prior approval, sold, transferred, rented, leased, otherwise disposed of, unaccounted for, or its payment term has matured;

(iii) in strict accordance with the installment payment schedule;

(iv) in strict accordance with any curtailment schedule for such Collateral, which is or may be set forth in a Transaction Statement; and

(v) when otherwise required under the terms of this Agreement or a Transaction Statement.

Lender may apply payments to reduce finance charges first and then principal, regardless of Borrower's instructions; and apply principal payments to the oldest (earliest) invoice for Collateral financed by Lender, but, in any event, all principal payments, may, in Lenders sole business discretion, first be applied to such Collateral which is sold, lost, stolen, damaged, rented or leased without Lender's prior authorization, or otherwise disposed of or unaccounted for. Any payment hereunder which would otherwise be due on a day which is not a Business Day, shall be due on the next succeeding Business Day, with such extension of time included in any calculation of applicable finance charges.

(b) If Borrower (i) fails to immediately remit funds to Lender upon the maturity of Borrower's applicable payment terms with respect to such advance or upon the unauthorized sale, transfer, rental, lease, loss, theft, damage, or other disposition of or inability to account for any Inventory financed by Lender for Debtor (a "sale out of trust" or "SOT") or (ii) is required to make immediate payment to Lender of any past due obligation discovered during any Collateral review, or at any other time, then Lenders acceptance of any payment with respect to such past due obligation (whether in full or partial satisfaction of such obligation) shall not be construed to have waived or amended the terms of its financing program. Borrower will send all such payments to Lender as directed.

(c) Any Vendor Credit granted to Borrower for any Collateral will not reduce the Obligations that Borrower owes Lender until Lender has received payment therefor as set forth below. Borrower will: (i) pay Lender regardless of whether any Collateral is defective or fails to conform to any warranties extended by any third party; and (ii) indemnify and hold Lender harmless against all claims and defenses asserted by any buyer of any Collateral. Borrower waives all rights of setoff Borrower may have against Lender. Borrower will not assert against Lender any claim or defense Borrower may have against the applicable Vendor and any such claims or defenses shall not affect Borrower's liabilities or obligations to Lender.

(d) Any advances which are not used to acquire Inventory, as contemplated hereby, shall be paid on demand unless otherwise provided in this Agreement or in any Transaction Statement. In order to adequately secure Borrower's Obligations to Lender, Borrower shall, at Lenders request, immediately pay Lender the amount necessary to reduce the sum of Lender's outstanding advances with respect to Inventory received by Borrower to an amount which does not exceed the aggregate invoice price to Borrower of the Inventory in Borrower's possession which (i) is financed by Lender, and (ii) in which Lender has a perfected first priority security interest.

(e) All payments due by Borrower to Lender under this Agreement or otherwise shall be made by check made on a United States bank (payment by bank check may be subject to additional administrative charges payable by Borrower), ACH, EDI or federal wire, in each case drawn on an account established in the name of Borrower. Payment in any other form may delay processing or be returned to Borrower, and may cause Borrower to incur a late payment fee, in accordance with Section 10(a) below. Lender policy bars payment by cash or cash equivalents and any such payments will be declined. Lender reserves the right to decline other forms of payment, including but not limited to, cashier's checks, money orders, bank drafts, third-party checks and travelers' checks. In the event of any such payment decline, Borrower's debt will remain outstanding and interest/fees permitted under Borrower's agreement may accrue until acceptable payment is received.

9. Calculation of Charges.

(a) Borrower shall pay fees, charges and interest (collectively "Charges") with respect to each advance in accordance with this Agreement and any Transaction Statement. Borrower shall pay Lender its customary Charge for any check or other item which is returned unpaid to Lender. Unless otherwise provided in this Agreement, the following additional provisions shall be applicable to Charges: (i) "Term SOFR Rate" shall mean, for any calendar month the One-month Term SOFR Rate as displayed on the applicable Bloomberg page on the first Business Day of such month. If, for any reason, such rate is no longer displayed or discontinued, Lender shall select such replacement index as Lender in its sole discretion determines most closely approximates such rate. (ii) all Charges shall be paid by Borrower monthly pursuant to the terms of the billing statement in which such Charges appear; (iii) interest on each advance and principal amount of the Obligations related thereto shall be computed for any period by dividing the interest rate provided in each applicable Transaction Statement by 365 (the quotient of which is herein referred to as the "Daily Rate"), and then multiplying the Daily Rate by either (A) the average principal balance outstanding during such period, or (B) the actual principal balance outstanding on each day during such period; (iv) interest on an advance shall begin to accrue on the Start Date, which is defined as the earlier of: (A) the invoice date referred to in the applicable Vendor's invoice; or (B) the ship date referred to in the applicable Vendor's invoice; or (C) the date Lender makes such advance; provided, however, if such Vendor fails to fully pay, by honoring or paying any Lender Credit or otherwise, the interest or other cost of financing such Inventory during the period between the Start Date and the end of the Free Floor Period (as defined below), then Borrower shall pay such interest to Lender on demand as if there were no Free Floor Period with respect to such Inventory; (v) for the purpose of computing Charges, any payment will be credited pursuant to Lenders payment recognition policies, as in effect from time to time; (vi) advances or any part thereof not paid when due (and Charges not paid when due, at the option of Lender, shall become part of the principal amount of the Obligations and) shall bear interest at the Default Rate (as defined below); and (vii) all interest rates provided or referenced in Transaction Statements, including all references to base rate, prime rate and additions to base rate or prime rate, are provided and referenced on the basis of a 365-day year. The method of calculating interest provided in this Section 9(a) (i.e., the interest rate calculated based on a year of 365 days, for the actual number of days elapsed) will result in a higher effective rate than the quoted numeric rate provided in the Transaction Statement.

(b) For purposes of this Agreement, the following definitions shall apply:

"Default Rate" shall mean the default rate specified in Borrower's financing program with Lender, if any, or if there is none so specified, at the lesser of 10% per annum above the rate in effect immediately prior to the Default, or the highest lawful contract rate of interest permitted under applicable law;

"Free Floor Period" shall mean a period equal to the number of days during which the applicable Vendor agrees to assume the cost of financing Collateral purchased by Borrower by granting Lender a Lender Credit.

Lender intends to strictly conform to the usury laws governing this Agreement. Regardless of any provision contained herein, in any Transaction Statement, or in any other document, Lender shall never be deemed to have contracted for, charged or be entitled to receive, collect or apply as interest, any amount in excess of the maximum amount allowed by applicable law. If Lender ever receives any amount which, if considered to be interest, would exceed the maximum amount permitted by law, Lender will apply such excess amount to the reduction of the unpaid principal balance which Borrower owes, and then will pay any remaining excess to Borrower. In determining whether the interest paid or payable exceeds the highest lawful rate, Borrower and Lender shall, to the maximum extent permitted under applicable law, (1) characterize any non-principal payment (other than payments which are expressly designated as interest payments hereunder) as an expense or fee rather than as interest, (2) exclude voluntary pre-payments and the effect thereof, and (3) spread the total amount of interest throughout the entire term of this Agreement so that the interest rate is uniform throughout such term. Borrower agrees to pay an effective rate of interest that is the sum of (i) the interest rate provided in this Agreement, including as provided in each accepted Transaction Statement, as may be amended as provided herein; and (ii) any additional rate of interest resulting from any other charges or fees paid or to be paid by Borrower pursuant to this Agreement and that are determined to be interest or in the nature of interest.

10. Billing Statement/Fees; Right to Modify Charges and Other Terms.

(a) Lender will transmit, send or otherwise make available to Borrower a monthly billing statement identifying all charges due on Borrower's account with Lender. The charges specified on each billing statement will be (1) due and payable in full immediately on receipt, unless otherwise stated in writing in your billing statement, Transaction Statement or other written document provided by Lender, and (2) an account stated, unless Lender receives Borrower's written objection thereto within fifteen (15) days after it is transmitted, sent or otherwise made available to Borrower. If Lender does not receive, by the 25th day of any given month, payment of all charges accrued to Borrower's account with Lender during the immediately preceding month, Borrower will (to the extent allowed by law) pay Lender a late fee equal to the greater of (except to the extent, and for so long as, the same is subject to a good faith dispute) 5% of all unpaid amounts, not to exceed any maximum amounts under applicable law, or $25.00, until paid in full (payment of such fee does not waive the default caused by the late payment). Lender may adjust the billing statement at any time to conform to applicable law and this Agreement.

(b) Lender may charge one or more fees in connection with the servicing and administration of Borrower's account. From time to time, Lender may provide written notice to Borrower of new or changed fees, interest and/or other finance charges (including without limitation, increases or decreases in the periodic rate or amount of finance charges, the method of computing finance charges and when and how finance charges, and principal payments, are payable), policies, practices and other charges and/or credit terms (collectively, "Fees and Terms") payable by, or applicable to, Borrower or relating to Borrower's account generally, or in connection with specific services, or events, to be effective as of the notice date, or such other future effective date as Lender shall advise, with respect to existing Obligations owing by Borrower to Lender and/or to Obligations incurred or arising after such notice or future effective date, as the case may be, all as Lender may elect by so indicating in such notice. Such notice may be delivered by mail, courier or electronically in a separate writing or website posting, or set forth in the Transaction Statement and/or the billing statement. Borrower shall be deemed to have accepted such Fees and Terms by either (1) making any request for financing after the effective date of such notice, or (2) failing to notify Lender in writing of any objection to a Transaction Statement, billing statement or written notice advising of such Fees and Terms within fifteen (15) days after such notice has been sent to Borrower. If Borrower objects to the Fees and Terms, such Fees and Terms shall not be imposed, but Lender may charge or implement the last Fees and Terms to which Borrower has not objected, and may elect to terminate Borrower's financing program.

11. Default. The occurrence of one or more of the following events shall constitute a default by Borrower (a "Default"):

(a) Borrower shall fail to pay any Obligations hereunder or other amounts, however or wherever documented, owed to Lender or to any person that at any time directly or indirectly controls, is controlled by, or is under common control with Lender (a "Lender Affiliate") when due or any remittance for any such Obligations or such other amounts is dishonored when first presented for payment;

(b) any representation made to Lender by Borrower [or by any guarantor, surety, issuer of a letter of credit or any person other than Borrower primarily or secondarily liable with respect to any Obligations (a "Guarantor") shall not be true in all respects when made or if Borrower or any Guarantor shall breach any covenant, warranty or agreement to or with Lender;

(c) Borrower (including, if Borrower is a partnership or limited liability company, any partner or member of Borrower) or any Guarantor shall die, become insolvent or generally fail to pay its debts as they become due or, if a business, shall cease to do business as a going concern;

(d) any letter of credit or other form of collateral provided by Borrower or a Guarantor to Lender with respect to any Obligations or Collateral shall terminate or not be renewed at least sixty (60) days prior to its stated expiration or maturity;

(e) Borrower abandons any Collateral;

(f) any Guarantor shall revoke, terminate or limit, or take any action purporting to revoke, terminate or limit, any guaranty or other assurance of payment relating to any Obligations;

(g) Borrower or any Guarantor becomes insolvent, commits an act of bankruptcy, or voluntarily or involuntarily becomes subject a filing, notice or proceeding under the U.S. Bankruptcy Code seeking any stay of proceedings, protection from creditors, moratorium, reorganization, arrangement, composition, re-adjustment, or any other relief under any present or future law of any jurisdiction relative to bankruptcy, insolvency, reorganization or other relief for debtors or affecting creditors' rights, or any state or provincial insolvency law or any similar law, and, in each case, such proceeding is not dismissed within sixty (60) days (an "Automatic Default");

(h) any trustee in bankruptcy, receiver, or liquidator or any other person with similar powers shall be appointed in respect of the Borrower or the assets of Borrower, or any filing is made or proceeding is commenced by a third party in respect of the Borrower seeking the entry of an order for the appointment or relief in respect of any of the above;

(i) an attachment, sale or seizure shall be issued or shall be executed against any assets of Borrower or of any Guarantor;

(j) Borrower shall lose, or shall be in default of, any franchise, license or right to deal in any Collateral which Lender finances;

(k) Borrower, Guarantor or any third party shall file any amendment or termination statement with respect to any UCC filing made by Lender in connection herewith without Lender's prior written consent;

(l) a material adverse change shall occur in the business, operations or condition (financial or otherwise) of Borrower (including, if Borrower is a partnership or limited liability company, any partner or member of Borrower) or any Guarantor or with respect to the Collateral;

(m) Borrower or any Guarantor fails to pay any debt or perform any other obligation owed to any third party;

(n) Borrower or any Guarantor defaults under the terms of any agreement with any Lender Affiliate; or

(o) Lender in good faith believes the prospect of payment of any Obligations is impaired or Lender deems itself insecure.

12. Rights and Remedies Upon Default. Upon the occurrence of a Default, Lender shall have all rights and remedies of a secured party under the UCC as in effect in any applicable jurisdiction and other applicable law and all the rights and remedies set forth in this Agreement. Lender may terminate any obligations it has under this Agreement and any outstanding credit approvals immediately and/or declare any and all Obligations immediately due and payable without notice or demand. Borrower waives notice of intent to accelerate, and of acceleration of any Obligations. Lender may enter any premises of Borrower, with or without process of law, without force, to search for, take possession of, and remove the Collateral, or any part thereof. If Lender requests, Borrower shall cease disposition of and shall assemble the Collateral and make it available to Lender, at Borrower's expense, at a convenient place or places designated by Lender. Lender may take possession of the Collateral or any part thereof on Borrower's premises and cause it to remain there at Borrower's expense, pending sale or other disposition. Borrower agrees that the sale of Inventory by Lender to a person who is liable to Lender under a guaranty, endorsement, repurchase agreement or the like shall not be deemed to be a transfer subject to UCC §9-618 or any similar provision of any other applicable law, and Borrower waives any provision of such laws to that effect. Borrower agrees that the repurchase of Inventory by the applicable Vendor pursuant to a repurchase agreement with Lender shall be a commercially reasonable method of disposition. Borrower shall be liable to Lender for any deficiency resulting from Lenders disposition, including without limitation a repurchase by the applicable Vendor, regardless of any subsequent disposition thereof. Borrower is not a beneficiary of, and has no right to require Lender to enforce, any repurchase agreement. If Borrower fails to perform any of its obligations under this Agreement, Lender may perform the same in any form or manner Lender in its business discretion deems necessary or desirable, and all monies paid by Lender in connection therewith shall be additional Obligations and shall be immediately due and payable without notice together with interest payable on demand at the Default Rate. All of Lenders rights and remedies shall be cumulative. At Lenders request, or without request in the event of an Automatic Default, Borrower shall pay all Vendor Credits to Lender as soon as the same are received for application to the Obligations. Borrower authorizes Lender to collect such amounts directly from the applicable Vendor and, upon request of Lender, shall instruct such Vendor to pay Lender directly. Borrower irrevocably waives any requirement that Lender retain possession and not dispose of any Collateral until after trial or final judgment or appeal thereof. Lenders election to extend or not extend credit to Borrower is solely at Lenders business discretion and does not depend on the absence or existence of a Default. If a Default is in effect, and without regard to whether Lender has accelerated any Obligations, Lender may, without notice, apply the Default Rate.

13. Power of Attorney. Borrower authorizes Lender to:

(a) file financing statements and amendments thereto describing Lender as "Secured Party," Borrower as "Debtor" and indicating the Collateral;

(b) authenticate, execute or endorse on behalf of Borrower any instruments, Chattel Paper, certificates of title, manufacturer statements of origin, builder's certificate, or other notices or records comprising or related to Collateral or evidencing financing under this Agreement or evidencing or maintaining the perfection of the security interest granted hereby, as attorney-in-fact for Borrower; and

(c) supply any omitted information and correct errors in any documents between Lender and Borrower. This power of attorney and the other powers of attorney granted herein are irrevocable and coupled with an interest.

14. Collection and Other Costs. In the event of a Default, Borrower shall pay to Lender on demand all attorneys' fees and legal expenses and other costs and expenses incurred by Lender in connection with establishing, perfecting, maintaining perfection of, protecting and enforcing its Lien on the Collateral and collecting any Obligations, or in connection with any modification of this Agreement, any Default or in connection with any action or proceeding for possession or under any receivership, assignment for benefit of creditors, bankruptcy or other insolvency laws (including, without limitation, filing a proof of claim, motion for stay relief or monitoring such proceeding under any such laws to the full extent permitted under such law), involving the Borrower, any Guarantor or any Collateral. All fees, expenses, costs and other amounts described in this Section shall constitute Obligations, shall be secured by the Collateral and interest shall accrue thereon at the Default Rate.

15. Information.

(a) To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. When Borrower opens an account, Lender will ask for the name(s), address(es), date(s) of birth, and other information that will allow Lender to identify Borrower, and its owner(s) and Guarantor(s) as applicable. Lender may also ask to see driver's licenses or other identifying documents related to Borrower, and its owner(s) and Guarantors as applicable. Failure to comply with such requests will constitute a Default under this Agreement.

(b) Borrower irrevocably authorizes Lender to investigate and make inquiries of former, current, or future creditors or other persons and credit bureaus regarding or relating to Borrower (including, to the extent permitted by law, any equity holders of Borrower). Lender may provide to any Lender Affiliate or any third parties any financial, credit or other information regarding Borrower (including, to the extent permitted by law, any equity holders of Borrower) that Lender may at any time possess, whether such information was supplied by Borrower to Lender or otherwise obtained by Lender. Further, Borrower irrevocably authorizes and instructs any third parties (including without limitation, any Vendor or customers of Borrower) to provide to Lender any credit, financial or other information regarding Borrower that such third parties may at any time possess.

16. Termination. Unless sooner terminated as provided in this Agreement or by at least sixty (60) days prior written notice from either party to the other, the term of this Agreement shall be for one (1) year from the date hereof and automatically renewed from year to year thereafter; *provided, however*, that Lender may terminate this Agreement immediately by notice to Borrower if Borrower objects to any terms of any Transaction Statement, billing statement or written notice advising of Fees and Terms. Upon termination of this Agreement, all Obligations shall become immediately due and payable without notice or demand. Upon any termination, Borrower shall remain fully liable to Lender for all Obligation, arising prior to or after termination, and all of Lenders rights and remedies and its security interest shall continue until all Obligations to Lender are paid and all obligations of Borrower are performed in full. If Lender makes advances in reliance on a repurchase agreement from the applicable Vendor, it may cease making such advances if it has any concern as to whether such repurchase agreement will cover future advances or be performed by such Vendor. No provision of this Agreement shall be construed to obligate Lender to make any advances. All waivers and indemnifications in Lenders favor set forth in this Agreement will survive any termination of this Agreement.

17. Binding Effect. Borrower cannot assign its interest in this Agreement without Lender's prior written consent. Lender may assign or participate Lender's interest, in whole or in part, without Borrower's consent. This Agreement will protect and bind Lender's and Borrower's respective heirs, representatives, successors and assigns, as the case may be.

18. Notices. Except as required by law or as otherwise provided herein, all notices or other communications to be given under this Agreement or under the UCC shall be in writing served either personally, by overnight courier addressed to Borrower at its chief executive office shown below or to any office to which or to Lender at its address shown in the preamble hereto, to the attention of General Manager – Wholesale Division, or at such other address designated by such party by notice to the other. Any such communication shall be deemed to have been given upon delivery in the case of personal delivery, one Business Day after deposit with an overnight courier, except that any notice of change of address shall not be effective until actually received.

19. Severability. If any provision of this Agreement or its application is invalid or unenforceable, the remainder of this Agreement will not be impaired or affected and will remain binding and enforceable.

20. Supplement. If Borrower and Lender have previously executed other agreements pertaining to all or any part of the Collateral, this Agreement will supplement, but not amend, such agreement, and this Agreement will neither be deemed a novation nor a termination of such agreement, nor will execution of this Agreement be deemed a satisfaction of any obligation secured by such agreement. This Agreement will only pertain to financing related to Borrower's acquisition of Inventory from any Vendor or the refinancing of Inventory acquired from any such Vendor.

21. Miscellaneous. Time is of the essence regarding Borrower's performance of its obligations to Lender. Lender may accept this Agreement by issuance of an approval to the applicable Vendor for the purchase of Inventory by Borrower or by making an advance hereunder. Borrower's liability to Lender is direct and unconditional and will not be affected by the release or nonperfection of any security interest granted hereunder unconditional and will not be affected by the release or nonperfection of any security interest granted hereunder.

Lender may refrain from or postpone enforcement of this Agreement or any other agreements between Lender and Borrower without prejudice, and the failure to strictly enforce these agreements will not create a course of dealing which waives, amends or modifies such agreements. Any waiver by Lender of a Default shall only be effective if in writing signed by Lender and transmitted to Borrower. The express terms of this Agreement will not be modified by any course of dealing, usage of trade, or custom of trade which may deviate from the terms hereof. If Borrower fails to pay any taxes, fees or other obligations which may impair Lenders interest in the Collateral, or fails to keep any Collateral insured, Lender may, but shall not be required to, pay such amounts. Such paid amounts will be: (a) additional Obligations which Borrower owes to Lender, which are subject to finance charges as provided herein and shall be secured by the Collateral; and (b) due and payable immediately in full. Section titles used herein are for convenience only, and do not define or limit the contents of any Section. All words used herein shall be understood and construed to be of such number and gender as the circumstances may require. This Agreement may be validly executed in one or more multiple counterpart signature pages. Notwithstanding anything herein to the contrary, Lender may rely on any facsimile copy, electronic data transmission, or electronic data storage of: this Agreement, any Transaction Statement, billing statement, financing statement, authorization to pre-file financing statements, invoice from the applicable Vendor, financial statements or other reports, which will be deemed an original, and the best evidence thereof for all purposes. This Agreement shall be construed without presumption for or against any party who drafted all or any portion of this Agreement. No modification of this Agreement shall bind Lender unless in a writing signed by Lender and transmitted to Borrower. Among other symbols, Lender hereby adopts "MHCCA" or "Lender" as evidence of its intent to authenticate a record. The Obligations may, from time to time be secured by a lien or security interest on other assets of the Borrower (assets other than the Collateral), provided that any document, instrument or agreement creating or relating to any such lien or security interest and authenticated by the Borrower, shall not be deemed a part of this Agreement.

22. CLASS ACTION WAIVER. BORROWER AND LENDER AGREE THAT BY ENTERING INTO THIS AGREEMENT, BORROWER AND LENDER WAIVE THEIR RIGHT TO PARTICIPATE IN A CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE ACTION AGAINST THE OTHER IN COURT. BORROWER AND LENDER FURTHER AGREE THAT EACH MAY BRING DISPUTES AGAINST EACH OTHER ONLY IN THEIR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both Borrower and Lender agree otherwise, no claims may be joined or consolidated into any other existing proceeding.

23. Privacy. Lender and Borrower acknowledge that they are aware of various US federal and State laws that require the protection of personal data, including, without limitation, Graham Leach Bliley Act ("GLBA" 15 U.S.C. § 6801 et seq.), California Consumer Protection Act ("CCPA" California Civil Code § 1798.185 et seq.), and New York SHIELD Act (N.Y. Gen Bus. Law § 899-bb), and each agree to perform all necessary obligations will be in done in accordance with all applicable data protection and data privacy laws. The parties understand and agree that telematics and audit data from the manufactured Equipment may be collected and shared among the parties and that the parties are service providers pursuant to the terms of CCPA and any other applicable law. The parties agree and represent that the data is not sold or transferred for value and agree to cooperate in any data subject access requests within the periods dictated by the applicable laws. This telematics data may also include personally identifiable information or identifiable household data and will be collected, processed, and stored in accordance with all applicable laws. The parties further agree to cooperate in the event of any security incident or any data subject access request. The parties acknowledge that each is individually responsible for making appropriate disclosures regarding data collection and use.

24. Unconditional Obligation. Borrower acknowledges and agrees that its obligations to pay the Obligations and any and all amounts due and owing in accordance with the terms hereof, and any Transaction Statements, shall be absolute and unconditional, and such Obligations shall not be released, discharged, waived, reduced, set-off or affected by any circumstances whatsoever, including, without limitation, any damage to or destruction of any Collateral, defects in the Collateral, including under any applicable "lemon laws", or Borrower no longer can use such Collateral. Borrower further acknowledges that Borrower is not entitled to reduce or set-off against any Obligations or any other amounts due to Lender, whether or not Borrower's claim arises out of this Agreement, any Transaction Statements, Lender's liability or any Vendor's liability, strict liability, negligence or otherwise.

otherwise.

25. **Monetary Designations**. Unless otherwise stated herein, all monetary amounts are stated in United States dollars.

26. **Limitation of Remedies and Damages**. In the event there is any dispute under this Agreement, the aggrieved party shall not be entitled to exemplary, punitive, incidental or consequential damages so that the aggrieved party's remedy in connection with any action against any party to this Agreement arising under or in any way related to this Agreement shall be limited to actual and direct damages.

27. **JURY TRIAL WAIVER; CONSENT TO JURISDICTION; PUNITIVE DAMAGE WAIVER**. ANY LEGAL PROCEEDING WITH RESPECT TO ANY DISPUTE HEREUNDER, OR SUCH PARTICULAR DISPUTE, WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE WITHOUT A JURY. BORROWER AND LENDER IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL IN ANY SUCH PROCEEDING. BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF ILLINOIS, INCLUDING WITHOUT LIMITATION ANY STATE COURT LOCATED IN DUPAGE COUNTY AND ANY FEDERAL COURT LOCATED IN THE NORTHERN DISTRICT OF ILLINOIS AND BORROWER HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY ACTION OR PROCEEDING IN ANY SUCH COURT. LENDER AND BORROWER HEREBY WAIVE ANY RIGHT TO PUNITIVE DAMAGES OF ANY KIND AGAINST ONE ANOTHER IN ANY PROCEEDING OR AWARD RELATING TO THIS AGREEMENT.

28. **GOVERNING LAW**. THE INTERNAL LAWS OF THE STATE OF ILLINOIS (EXCLUDING CONFLICT OF LAW PRINCIPLES PROVIDING FOR THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION) WILL GOVERN THIS AGREEMENT AND ALL TRANSACTIONS HEREUNDER AS TO INTERPRETATION, ENFORCEMENT, VALIDITY, CONSTRUCTION, EFFECT AND IN ALL OTHER RESPECTS.

29. **Confidentiality**. As used herein, the term "Confidential Information" means written and oral information provided by or on behalf of either party to the other party, or to any of the other party's affiliates in connection with this Agreement, which information has competitive value and/or is confidential in nature, and any other information designated by Borrower or Lender as being confidential, including, without limitation, any and all financial, technical, commercial or other information- and documents concerning the business and affairs of either party, its affiliates and any studies or documents prepared during the review thereof by the respective parties and/or their respective directors, officers, employees, and representatives that contain or otherwise reflect such information. The term "Confidential Information" does not include such parts of the information which (a) are or become generally available to the public other than as a result of an unauthorized disclosure by any party, (b) become generally available to a party on a non-confidential basis from a source which is not known to such party to be prohibited from disclosing such information to such party or (c) are hereafter or were heretofore independently developed or compiled by such party without use of the Confidential Information. The parties shall treat the Confidential Information as confidential and proprietary and not use all or any part thereof for any purpose other than with respect to the performance of its obligations in connection with the transactions contemplated by this Agreement. Any party may disclose all or any part of the Confidential Information to such of its affiliates, officers, employees and other representatives who need to have access thereto with respect to the transactions contemplated by this Agreement. Each party will be responsible for any breach of the provisions of this Section by such party and their respective affiliates, directors, officers, employees, and representatives. All originals and copies of written Confidential Information in the possession or under the control of any party will be promptly destroyed or returned to the other party upon such other party's request. In the event that any party becomes legally compelled to disclose any of the Confidential Information, such party will provide the other party with notice thereof so that the other party may; at such other party's sole cost and expense, seek a protective order or other appropriate remedy. This Section will survive the expiration or termination of this Agreement and will, in any such case, expire two (2) years from the date of such expiration or termination; *provided, however,* that nothing herein will be deemed or construed to authorize the disclosure of any information in violation of applicable laws.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first written above.

LENDER: **Mitsubishi HC Capital America, Inc.**	BORROWER: **Workhorse Group Inc.**
	Name of Individual(s), corporation or partnership. Give trade name, if any, after name.
Signature:	Signature:
Name: Navin Uttamchandani	Name (print): Robert M. Ginnan
Title: Vice President	Title: Authorized Officer CFO
Dated: 8/11/2023	Dated: 8/10/23
	If corporation, authorized officer must sign and show corporate title. If partnership, general partner must sign. If LLC, authorized Manager or Member must sign
	By executing above, Buyer acknowledges receipt of an exact copy of this Agreement

(****Attach copy of Driver's License or state-issued ID card for any Borrower party signing in its individual capacity****)

<u>Address for Notices:</u> Workhorse Group Inc.
100 Commerce Drive,
Loveland, OH 45140

<u>Address for Notices:</u> **Mitsubishi HC Capital America, Inc.**
Attn: Inventory Finance
800 Connecticut Avenue, 4N
Norwalk, CT 06854

With a copy to: Reed Smith LLP
Attn: Richard J. Tannenbaum
599 Lexington Avenue, 22nd Floor
New York, NY

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first written above.

LENDER:	BORROWER:
Mitsubishi HC Capital America, Inc.	**WORKHORSE TECHNOLOGIES INC.**
	Name of Individual(s), corporation or partnership. Give trade name, if any, after name.
Signature:	Signature:
Name: Navin Uttamchandani	Name (print): Robert M. Ginnan
Title: Vice President	Title: Authorized Officer CFO
Dated: 8/11/2023	Dated: 8/10/23
	If corporation, authorized officer must sign and show corporate title. If partnership, general partner must sign. If LLC, authorized Manager or Member must sign
	By executing above, Buyer acknowledges receipt of an exact copy of this Agreement

(****Attach copy of Driver's License or state-issued ID card for any Borrower party signing in its individual capacity****)

Address for Notices: WORKHORSE TECHNOLOGIES INC.
3600 Park 42 Dr Ste 160E,
Sharonville, OH 45241-4039

Address for Notices: **Mitsubishi HC Capital America, Inc.**
Attn: Inventory Finance
800 Connecticut Avenue, 4N
Norwalk, CT 06854

With a copy to: Reed Smith LLP
Attn: Richard J. Tannenbaum
599 Lexington Avenue, 22nd Floor
New York, NY

INVENTORY FINANCING AGREEMENT

Permitted Locations for Inventory Financing

Permitted Location effective date: 8/10/2023 (continuing in perpetuity unless amended)

Location	Approved Collateral Address
	940 South State Route 32, Union City, IN 47390

BORROWER:

Workhorse Group Inc.

Signature:

Name (print): Robert M. Ginnan

Title: Authorized Officer CFO

Dated: 8/10/23

BORROWER:

WORKHORSE TECHNOLOGIES INC.

Signature:

Name (print): Robert M. Ginnan

Title: Authorized Officer

Dated: 8/10/23

Schedule 1

Vendors

WORKHORSE TECHNOLOGIES INC.

GREENPOWER MOTOR COMPANY, INC.

Exhibit A

Transaction Statement

[to be attached]

Report Date : [ ]

Statement of Financial Transaction

Supplier :
Invoice Number :
Invoice Amount :
Invoice Date :
Interest Start :

PO Number :
Maturity Date :
Interest Calculation :
Dealer Rate Adjustment :

Payment Schedule

Date	Amount	Date	Amount	Date	Amount	Date	Amount

Invoice/Item Detail

Model Number	Serial/VIN	Amount	Model Number	Serial/VIN	Amount

Dealer Interest Details

From	To	Rate Type	Min Index	Tier *	Spread
				- *	
				*	

*End of Month Balance

Delinquency Details

Rate Type	Min Index	Spread
--	--	--

Early Pay Discount Schedule

Pay By	Discount %	Pay By	Discount %	Pay By	Discount %	Pay By	Discount %

Mitsubishi HC Capital America, Inc. and Mitsubishi HC Capital Canada, Inc. hereby acknowledges and accepts dealer's request for an extension of credit pursuant to and in accordance with the provisions of the Floor Plan and Security Agreement and sets forth the terms and conditions related to such extension of credit as provided in the Floor Plan and Security Agreement.

This Statement of Financial Transactions/Credit Transaction Confirmation and its terms are set forth and established pursuant to the terms of the Floor Plan and Security Agreement and dealer's acceptance of the terms hereof is governed by the Floor Plan and Security Agreement. The terms used in this confirmation have the meanings set forth for such terms in the Floor Plan and Security Agreement unless otherwise defined herein.

Remit Payment To :

For the purposes of this Document, whenever interest to be paid hereunder is to be calculated on the basis of a year of three hundred and sixty (360) days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by either three hundred and sixty (360) or such other period of time, as the case may be.

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: August 14, 2023

/s/ Richard Dauch

Richard Dauch,
Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

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: August 14, 2023

/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 June 30, 2023 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: August 14, 2023	/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 June 30, 2023 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: August 14, 2023

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