UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended September 30, 2022

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to

Commission File Number: 001-38821

Lordstown Motors Corp.

(Exact name of registrant as specified in its charter)

Delaware	**83-2533239**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**

2300 Hallock Young Road
Lordstown, Ohio 44481
(Address of principal executive offices)

Registrant's telephone number, including area code: (234) 285-4001

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

Title of each class	Trading symbol	Name of each exchange on which registered
Class A Common Stock, $0.0001 Par Value	**RIDE**	**NASDAQ**

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

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

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

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

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

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

As of November 7, 2022, 216,976,245 shares of the registrant's Class A common stock were outstanding.

LORDSTOWN MOTORS CORP.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This report, including, without limitation, statements under the heading "*Management's Discussion and Analysis of Financial Condition and Results of Operations*," includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These forward-looking statements can be identified by the use of forward-looking terminology, including the words "believes," "estimates," "anticipates," "expects," "intends," "plans," "may," "will," "potential," "projects," "predicts," "continue," or "should," or, in each case, their negative or other variations or comparable terminology, although not all forward-looking statements are accompanied by such terms. There can be no assurance that actual results will not materially differ from expectations. Such statements include, but are not limited to, any statements regarding our intentions, beliefs or current expectations concerning, among other things, our results of operations, financial condition, liquidity, prospects, growth, strategies and the industry in which we operate, and any other statements that are not statements of current or historical facts.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. Although we base these forward-looking statements on assumptions that we believe are reasonable when made, we caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and developments in the industry in which we operate may differ materially from those made in or suggested by the forward-looking statements contained in this report. In addition, even if our results of operations, financial condition and liquidity, and developments in the industry in which we operate, are consistent with the forward-looking statements contained in this report, those results or developments may not be indicative of results or developments in subsequent periods. These statements are based on management's current expectations, but actual results may differ materially due to various factors, including, but not limited to those described in the "*Risk Factors*" section of our Annual Report on Form 10-K for the year ended December 31, 2021, as filed with the SEC on February 28, 2022 (the "Form 10-K"), and in subsequent reports that we file with the Securities and Exchange Commission (the "SEC"), including this Form 10-Q for the quarter ended September 30, 2022, as well as the following:

- our ability to continue as a going concern, which requires us to manage costs, obtain significant additional funding to execute our business plan, achieve scaled production of the Endurance and develop any additional vehicle programs, and our ability to raise such funding on a reasonable timeline and with suitable terms;
- our ability to raise sufficient capital, including under the financing arrangements we have established, in order to invest in the tooling that we expect will enable us to eventually lower the Endurance bill of materials cost, continue design enhancements of the Endurance and fund any future vehicles we may develop;
- the cost and other impacts of contingent liabilities, such as extensive current and future litigation, claims, regulatory proceedings, investigations, complaints, product liability claims, stockholder demand letters, and availability of insurance coverage and/or adverse publicity with respect to these matters, which may have a material adverse effect, whether or not successful or valid, on our liquidity position, market price of our stock, cash projections, business prospects and ability and timeframe to obtain financing (See Note 5 – Commitments and Contingencies);
- our ability to effectively implement and realize the benefits from our recently completed transactions and agreements with Foxconn (as defined below) under the Asset Purchase Agreement (as defined below), the Contract Manufacturing Agreement (as defined below) and the Investment Agreement (as defined below), which depend on many variables that could include regulatory approval and other closing conditions, our ability to utilize the designs, engineering data and other foundational work of Foxconn, its affiliates, and other members of the MIH consortium as well as other parties, for all such parties to adhere to timelines to develop, commercialize, industrialize, homologate and certify a vehicle in North America, along with variables that are out of the parties' control, such as technology, innovation, adequate funding, supply chain and other economic conditions, competitors, customer demand and other factors, and the funding under the Investment Agreement is subject to regulatory

approval and other closing conditions (See Note 1 — Organization and Description of Business and Basis of Presentation and Note 8 – Subsequent Events);

- our ability to execute our business plan, expansion plans, strategic alliances and other opportunities, including development and market acceptance of our planned products;
- risks related to our limited operating history, the rollout of our business and the timing of expected business milestones, including the ability to ensure the completion of tooling, establish and maintain appropriate supplier relationships, successfully complete testing, homologation and certification and continue ramp of commercial production (which is currently expected to be slow) and start delivery of the Endurance, in accordance with our projected timeline;
- our ability to source and maintain suppliers for our critical components and the terms of such arrangements, and our ability to complete building out our supply chain;
- the availability and cost of raw materials and components, particularly in light of current supply chain disruptions and labor concerns, inflation, and the consequences of such shortages on testing and other activities, which could present challenges that impact the timing of our commercial production;
- our ability to successfully identify and implement actions that will lower the Endurance bill of materials cost, including sourcing benefits anticipated from our relationship with Foxconn;
- our ability to obtain binding purchase orders and build customer relationships, including uncertainties as to whether and to what degree we are able to convert previously-reported nonbinding pre-orders and other indications of interest in our vehicle into binding orders and ultimately sales;
- our ability to deliver on the expectations of customers with respect to the pricing, performance, quality, reliability, safety and efficiency of the Endurance and to provide the levels of after sale service, support and warranty coverage that they will require;
- the risk that our technology, including our hub motors, do not perform as expected;
- our ability to conduct business using a direct sales model, rather than through a dealer network used by most other OEMs;
- our ability to remain in compliance with our financing covenants and the risks associated with having pledged significant assets as collateral for recently incurred indebtedness;
- the effects of competition on our ability to market and sell vehicles;
- our ability to attract and retain key personnel and hire additional personnel;
- the pace and depth of electric vehicle adoption generally;
- our expectations regarding our ability to obtain and maintain intellectual property protection and not infringe on the rights of others;
- our ability to obtain required regulatory approvals and changes in laws, regulatory requirements, interpretations of existing law, governmental incentives and fuel and energy prices;
- the impact of health epidemics, including the COVID-19 pandemic, on our business, the other risks we face and the actions we may take in response thereto;
- cybersecurity threats and breaches and compliance with privacy and data protection laws;
- failure to timely implement and maintain adequate financial, information technology and management processes and controls and procedures; and
- the possibility that we may be adversely affected by other economic, geopolitical, business and/or competitive factors, including rising interest rates and the direct and indirect effects of the war in Ukraine.

PART I

FINANCIAL INFORMATION

Item 1. Financial Statements

Balance Sheets

(in thousands except for share data)

(Unaudited)

	September 30, 2022	December 31, 2021
ASSETS:		
Current Assets		
Cash and cash equivalents	$ 154,232	$ 244,016
Short-term investments	49,304	—
Inventory, net	11,180	—
Prepaid expenses and other current assets	37,462	47,121
Total current assets	$ 252,178	$ 291,137
Property, plant and equipment	220,020	382,746
Intangible assets	1,000	1,000
Other non-current assets	27,882	13,900
Total Assets	**$ 501,080**	**$ 688,783**
LIABILITIES AND STOCKHOLDERS' EQUITY:		
Current Liabilities		
Accounts payable	$ 15,634	$ 12,098
Accrued and other current liabilities	57,014	35,507
Purchase price down payment from Foxconn	—	100,000
Note payable to Foxconn	13,500	—
Total current liabilities	$ 86,148	$ 147,605
Warrant and other non-current liabilities	2,495	1,578
Total liabilities	$ 88,643	$ 149,183
Stockholders' equity		
Class A common stock, $0.0001 par value, 450,000,000 shares authorized; 216,904,965 and 196,391,349 shares issued and outstanding as of September 30, 2022 and December 31, 2021, respectively	$ 22	$ 19
Additional paid in capital	1,137,628	1,084,390
Accumulated deficit	(725,213)	(544,809)
Total stockholders' equity	$ 412,437	$ 539,600
Total liabilities and stockholders' equity	**$ 501,080**	**$ 688,783**

See Notes to Condensed Consolidated Financial Statements

Lordstown Motors Corp.

Statements of Operations

(in thousands except for per share data)

(unaudited)

	Three months ended September 30, 2022	Three months ended September 30, 2021	Nine months ended September 30, 2022	Nine months ended September 30, 2021
Net sales	$ —	$ —	$ —	$ —
Operating expenses				
Selling, general and administrative expenses	60,145	31,281	116,105	79,468
Research and development expenses [1]	19,839	56,890	92,213	225,246
Impairment of fixed assets	74,865	—	74,865	—
Amortization of intangible assets	—	11,111	—	11,111
Gain on sale	—	—	(101,736)	—
Total operating expenses	$ 154,849	$ 99,282	$ 181,447	$ 315,825
Loss from operations	(154,849)	(99,282)	$ (181,447)	$ (315,825)
Other (expense) income				
Other (expense) income	(643)	3,467	(144)	(13,788)
Interest income	1,062	9	1,187	396
Loss before income taxes	$ (154,430)	$ (95,806)	$ (180,404)	$ (329,217)
Income tax expense	—	—	—	—
Net loss	$ (154,430)	$ (95,806)	$ (180,404)	$ (329,217)
Income (loss) per share attributable to common shareholders				
Basic	(0.73)	(0.54)	(0.89)	(1.86)
Weighted-average number of common shares outstanding				
Basic	211,946	178,761	203,147	176,573

1 Research and development expenses for the nine months ended September 30, 2022 are net of $18.4 million in operating expense reimbursements as described in Note 1.

See Notes to Condensed Consolidated Financial Statements

Lordstown Motors Corp.
Statements of Stockholders' Equity/(Deficit)
(in thousands)
(unaudited)

	Three Months Ended September 30, 2022				
	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balance at June 30, 2022	205,871	$ 21	$1,106,521	$ (570,783)	$ 535,759
Issuance of common stock	—	—	—	—	—
RSU Vesting	132	—	—	—	—
Common stock issued under the Equity Purchase Agreement	10,902	1	26,704	—	26,705
Stock compensation	—	—	4,403	—	4,403
Net income	—	—	—	(154,430)	(154,430)
Balance at September 30, 2022	216,905	$ 22	$1,137,628	$ (725,213)	$ 412,437

	Three Months Ended September 30, 2021				
	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balance at June 30, 2021	176,606	$ 18	$ 966,837	$ (367,852)	$ 599,003
Issuance of common stock	1,522	—	2,724	—	2,724
Common stock issued under the Equity Purchase Agreement	3,947	—	20,000		20,000
Stock compensation	—	—	6,585	—	6,585
Net loss	—	—	—	(95,806)	(95,806)
Balance at September 30, 2021	182,075	$ 18	$ 996,146	$ (463,658)	$ 532,506

	Nine Months Ended September 30, 2022				
	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balance at December 31, 2021	196,391	$ 19	$1,084,390	$ (544,809)	$ 539,600
Issuance of common stock	1,106	1	1,852	—	1,853
RSU Vesting	1,944	—	—	—	—
Common stock issued under the Equity Purchase Agreement	17,464	2	40,437		40,439
Stock compensation	—	—	10,949	—	10,949
Net loss	—	—	—	(180,404)	(180,404)
Balance at September 30, 2022	216,905	$ 22	$1,137,628	$ (725,213)	$ 412,437

	Nine Months Ended September 30, 2021				
	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balance at December 31, 2020	168,008	$ 17	$ 765,162	$ (134,441)	$ 630,738
Issuance of common stock	2,136	—	3,822	—	3,822
Common stock issued for exercise of warrants	7,984	1	194,797	—	194,798
Common stock issued under Equity Purchase Agreement	3,947	—	20,000		20,000
Stock compensation	—	—	12,365	—	12,365
Net loss	—	—	—	(329,217)	(329,217)
Balance at September 30, 2021	182,075	$ 18	$ 996,146	$ (463,658)	$ 532,506

See Notes to Condensed Consolidated Financial Statements

Lordstown Motors Corp.

Statements of Cash Flows

(in thousands)

(unaudited)

	Nine months ended September 30, 2022	Nine months ended September 30, 2021
Cash flows from operating activities		
Net loss	$ (180,404)	$ (329,217)
Adjustments to reconcile net loss to cash used by operating activities:		
Stock-based compensation	10,949	12,365
Gain on disposal of fixed assets	(101,736)	—
Impairment of fixed assets	74,865	—
Amortization of intangible assets	—	11,111
Other non-cash changes	26,108	13,903
Changes in assets and liabilities:		
Accounts receivables	—	21
Inventory	(36,695)	—
Prepaid expenses and other assets	10,289	(3,001)
Accounts payable	5,120	10,929
Accrued expenses and other liabilities	20,482	37,649
Net Cash used by operating activities	$ (171,022)	$ (246,240)
Cash flows from investing activities		
Purchases of capital assets	$ (50,563)	$ (255,528)
Purchases of short-term assets	(49,304)	—
Investment in Foxconn Joint Venture	(13,500)	—
Proceeds from the sale of capital assets	38,813	—
Net Cash used by investing activities	$ (74,554)	$ (255,528)
Cash flows from financing activities		
Proceeds from notes payable	$ 13,500	$ 82,016
Down payments received from Foxconn	100,000	—
Issuance of common stock	1,853	3,822
Proceeds from Equity Purchase Agreement with YA, net of issuance costs	40,439	20,000
Net Cash provided by financing activities	$ 155,792	$ 105,838
Decrease in cash and cash equivalents	$ (89,784)	$ (395,930)
Cash and cash equivalents, beginning balance	244,016	629,761
Cash and cash equivalents, ending balance	$ 154,232	$ 233,831
Non-cash items		
Derecognition of Foxconn down payments for sale of capital assets	$ 200,000	$ —
Capital assets acquired with payables	$ 2,162	$ 10,793

See Notes to Condensed Consolidated Financial Statements

LORDSTOWN MOTORS CORP

NOTES TO INTERIM FINANCIAL STATEMENTS
(unaudited)

NOTE 1 — ORGANIZATION AND DESCRIPTION OF BUSINESS AND BASIS OF PRESENTATION

Lordstown Description of Business

Lordstown Motors Corp., a Delaware corporation ("Lordstown," the "Company" or "we"), is an original equipment manufacturer ("OEM") of electric light duty vehicles focused on the commercial fleet market. Since inception, we have been developing our flagship vehicle, the Endurance, an electric full-size pickup truck. In September of 2022, the Company started commercial production of the Endurance with the first two vehicles completing assembly. Production volume is expected to ramp slowly primarily as a result of supply chain constraints, with engineering readiness, quality, and part availability continuing to govern the speed of launch. We anticipate sales starting in the fourth quarter of 2022 subject to full homologation, testing and required certification. We intend to design, develop, engineer, test and industrialize all-electric commercial vehicles ("EC Vehicles") leveraging the Foxconn ecosystem, including its Mobility-in-Harmony ("MIH") consortium, which would also be built at the Foxconn Ohio plant.

Foxconn Transactions

The Company has entered into a series of transactions with affiliates of Hon Hai Technology Group ("HHTG"; either HHTG or applicable affiliates of HHTG are referred to herein as "Foxconn"), beginning with the Agreement in Principal that was announced on September 30, 2021, pursuant to which we entered into definitive agreements to sell our manufacturing facility in Lordstown, Ohio under an Asset Purchase Agreement, outsource manufacturing of the Endurance to Foxconn under a Contract Manufacturing Agreement, and established the Foxconn Joint Venture (as defined below) for the development of other electric vehicles that included $100 million of capital commitment from Foxconn, of which $45 million was made available to us to fund our 45% share under the Notes (as defined below), each discussed in greater detail below.

On November 7, 2022, we entered into an Investment Agreement with Foxconn under which Foxconn agreed to purchase $70 million of our Class A common stock and up to $100 million in convertible preferred stock, subject to certain conditions, including regulatory approvals and achievement of vehicle development milestones established by the parties (the "Investment Agreement"). Pursuant to the Investment Agreement, the parties have agreed to terminate the Foxconn Joint Venture and cause development activities to be undertaken directly by us. (See Note 8 – Subsequent Events.)

The Asset Purchase Agreement, Contract Manufacturing Agreement, the Joint Venture Agreement, Note, Security and Guarantee Agreement and the Investment Agreement together are herein referred to as the "Foxconn Transactions."

Closing of the APA with Foxconn

On May 11, 2022, Lordstown EV Corporation, a Delaware corporation and wholly-owned subsidiary of the Company ("Lordstown EV"), closed the transactions contemplated by the asset purchase agreement with Foxconn EV Technology, Inc., an Ohio corporation, and an affiliate of HHTG, dated November 10, 2021 (the "Asset Purchase Agreement" or "APA" and the closing of the transactions contemplated thereby, the "APA Closing").

Pursuant to the APA, Foxconn purchased Lordstown EV's manufacturing facility located in Lordstown, Ohio. Lordstown EV continues to own our hub motor assembly line, as well as our battery module and pack line assets, certain tooling, intellectual property rights and other excluded assets, and outsourced all of the

manufacturing of the Endurance to Foxconn under the Contract Manufacturing Agreement (defined below). Lordstown EV also entered into a lease pursuant to which Lordstown EV leases space located at the Lordstown, Ohio facility from Foxconn for its Ohio-based employees for a term equal to the duration of the Contract Manufacturing Agreement plus 30 days. The right of use asset and liability related to this lease is immaterial.

The purchase price for the Lordstown facility consisted of $230 million and a reimbursement payment for certain operating and expansion costs incurred by Lordstown EV from September 1, 2021 until the APA Closing. Foxconn made down payments of the purchase price totaling $200 million through April 15, 2022, of which $100 million was received during the nine months ended September 30, 2022. The $30 million balance of the purchase price and a reimbursement payment of approximately $27.5 million were paid at the APA Closing; $17.5 million was attributable to the reimbursement of certain operating expenses reported in research and development and $10 million was attributable to expansion costs. Under the terms of the APA, the $17.5 million reimbursement costs were an estimate which was subsequently increased to $18.4 million as of September 30, 2022.

Research and development costs are presented net of the $18.4 million reimbursement of costs by Foxconn for the nine months ended September 30, 2022. Included in the $18.4 million reimbursement were approximately $7.7 million of research and development costs incurred in 2021. Of the $10 million expansion costs, $7.5 million is attributable to assets sold to Foxconn at the APA Closing with the remaining $2.5 million being a prepayment for open purchase orders as of the APA Closing related to expansion costs. Also in connection with the APA Closing, the Company issued warrants to Foxconn that are exercisable until the third anniversary of the APA Closing for 1.7 million shares of Class A common stock at an exercise price of $10.50 per share (the "Foxconn Warrants"). In October 2021, prior to entering into the APA, Foxconn purchased 7.2 million shares of the Company's Class A common stock for approximately $50.0 million.

Contract Manufacturing Agreement

On May 11, 2022, Lordstown EV and Foxconn entered into a manufacturing supply agreement (the "Contract Manufacturing Agreement" or "CMA") in connection with the APA Closing. Pursuant to the Contract Manufacturing Agreement, Foxconn will (i) manufacture the Endurance at the Lordstown facility for a fee per vehicle, (ii) following a transition period, procure components for the manufacture and assembly of the Endurance, subject to sourcing specifications provided by Lordstown EV, and (iii) provide certain post-delivery services. The CMA provides us with an entirely variable manufacturing cost structure and alleviates us of the burden to invest in and maintain the facility.

The CMA requires Foxconn to use commercially reasonable efforts to assist with reducing component and logistics costs, and otherwise improving the commercial terms of procurement with suppliers, and the parties to work together to reduce the overall bill of materials cost of the Endurance. Foxconn conducts testing in accordance with procedures established by us and we are generally responsible for all motor vehicle regulatory compliance and reporting. The Contract Manufacturing Agreement also allocates responsibility between the parties for other matters, including component defects, quality assurance and warranties of manufacturing and design. Foxconn invoices us for manufacturing costs on a fee per vehicle produced basis, and to the extent purchased by Foxconn, component and other costs. Production volume and scheduling are based upon rolling weekly forecasts we provide that are generally binding only for a twelve-week period, with some ability to vary the quantities of vehicle type.

The CMA became effective on May 11, 2022 and continues for an initial term of 18 months plus a 12-month notice period in the event either party seeks to terminate the agreement. In the event no party terminates the Contract Manufacturing Agreement following the initial term, it will continue on a month-to-month basis unless terminated upon 12 months' prior notice. The CMA can also be terminated by either party due to a material breach of the agreement and will terminate immediately upon the occurrence of any bankruptcy event.

Foxconn Joint Venture Agreement

Also in connection with the APA Closing, Lordstown EV and Foxconn entered into a Limited Liability Company Agreement (the "Foxconn Joint Venture Agreement") and filed a Certificate of Formation on May 11, 2022 to form MIH EV Design LLC, a Delaware limited liability company, as a joint venture to design, develop, test and industrialize EC Vehicles (the "Foxconn Joint Venture"). Foxconn committed $100 million to the Foxconn Joint Venture, consisting of $55 million in the form of direct capital contributions, and a $45 million loan to Lordstown EV pursuant to and on the conditions set forth in the Notes (as defined below), the proceeds of which are only to be used to fund our capital contributions to the Foxconn Joint Venture. Initially, Foxconn has an ownership interest in the Foxconn Joint Venture of 55% and Lordstown EV has a 45% interest. On June 24, 2022, Foxconn made its initial investment totaling $16.5 million in the Foxconn Joint Venture pursuant to the Foxconn Joint Venture Agreement. Lordstown EV's 45% share, or $13.5 million, was invested with proceeds from issuance of the Notes on June 27, 2022. The initial funding was provided in anticipation of funding to be agreed upon vehicle development activities. Pursuant to the Investment Agreement entered into on November 7, 2022, the parties have agreed to terminate the Foxconn Joint Venture and will no longer be subject to their capital commitments. In connection with the termination, all remaining funds held by the Foxconn Joint Venture will be distributed to Foxconn as a distribution for amounts contributed by it and as a repayment in full of any loans advanced by it to Lordstown EV. (See Note 8 – Subsequent Events.) The following description of the Foxconn Joint Venture and the Notes reflect the terms in effect until the termination of the obligations of the parties with respect to the Foxconn Joint Venture is effected by the parties as a condition to the closing of the initial funding under the Investment Agreement.

The Foxconn Joint Venture Agreement contemplates a license to the Foxconn Joint Venture to use certain intellectual property owned by Foxconn and its affiliated entities relating to certain automotive related designs (the "FX IP") to develop EC Vehicles, with the Foxconn Joint Venture owning all intellectual property rights it develops (other than the FX IP). The Foxconn Joint Venture Agreement also contemplates an exclusive license of all intellectual property owned by the Foxconn Joint Venture relating to any EC Vehicle designed by the Foxconn Joint Venture to Lordstown EV for use in the North American commercial market, and to Foxconn for use outside of North America, each subject to customary and reasonable licensing fees. The parties have not yet entered into these licensing arrangements.

The Foxconn Joint Venture Agreement provides for oversight of the Foxconn Joint Venture by a five-person management board with Foxconn initially having the right to appoint three members and Lordstown EV initially having the right to appoint two members. Certain major decisions, including, but not limited to, the approval of budgets, raising additional equity, incurring third party indebtedness, mergers, related party transactions, dissolution and increases in the size of the management board, require the consent of at least one member of the management board appointed by Lordstown EV for so long as we own at least 30% of the Foxconn Joint Venture. Other than with respect to certain customary permitted transfers, neither Lordstown EV nor Foxconn is permitted to transfer its interest in the Foxconn Joint Venture for a period of three years following the formation of the Foxconn Joint Venture. Thereafter, each party has a right of first refusal and a tag-along right with respect to any proposed transfer by the other party.

Under the Foxconn Joint Venture Agreement, we are designated as Foxconn's primary development partner in North America. The Foxconn Joint Venture Agreement provides for our development of a portfolio of electric vehicles targeting commercial fleet customers, built at the Lordstown, Ohio plant using the advanced designs from Foxconn and its affiliates. The agreement also provides that Foxconn will supply the FX IP for the vehicles to be customized for and homologated in North America by the Foxconn Joint Venture, along with certain vehicle components and subsystems, enabling us to leverage Foxconn's manufacturing expertise, supply-chain network and extensive experience in software development and integration (key capabilities in the production of EVs) to complement our EV design, development, engineering and homologation contributions.

Note, Guaranty and Security Agreements

The Foxconn Joint Venture Agreement provides that Lordstown EV, as the issuer, and guaranteed by our wholly-owned subsidiary Lordstown EV Sales LLC, and the Company (collectively, the "Note Parties"), will enter into note, guaranty and security agreements (the "Notes") with Foxconn, as the payee, pursuant to

which Foxconn makes term loans to Lordstown EV in an aggregate original principal amount not to exceed $45 million as advances are requested by Lordstown EV. On June 27, 2022, Foxconn funded $13.5 million in exchange for Lordstown EV delivering a Note in such amount. The proceeds were used for our initial investment in the Foxconn Joint Venture.

To secure its obligations under the Notes, Lordstown EV has granted Foxconn a security interest in (i) all of Lordstown EV's equity interests in the Foxconn Joint Venture, and (ii) personal property constituting the hub motor, battery module and battery pack assembly lines, among other assets. We may use the proceeds only to fund our capital commitment of $45 million to the Foxconn Joint Venture, pursuant to the Foxconn Joint Venture Agreement. Pursuant to the Investment Agreement, the parties have agreed to terminate the Foxconn Joint Venture and the parties will no longer be subject to their capital commitments. In connection with the termination, all remaining funds held by the Foxconn Joint Venture will be distributed to Foxconn as a distribution for amounts contributed by it and as a repayment in full of any loans advanced by it to Lordstown EV and the security interest in the assets of the Company will be released.

The Notes will accrue interest at a rate of 7.0% per annum, to be paid-in-kind, and are due on the earlier of (i) the first anniversary of issuance and (ii) December 31, 2025, unless earlier terminated in the event of a default. Pursuant to the Foxconn Joint Venture Agreement, each Note maturing before December 31, 2025 will be refinanced by Foxconn with a new Note in the principal amount equal to the outstanding principal amount of the refinanced Note, plus accrued and unpaid interest thereon, and will have terms substantively identical to the terms of the refinanced Note. Events of default include, among other things, the breach of certain covenants or representations, defaults under other loans or obligations, judgments, orders or claims not vacated or otherwise paid, involvement in bankruptcy proceedings, an occurrence of a change of control or the loss of any material collateral (as such terms are defined in the Notes). Each Note is to contain negative covenants which, while in effect, restrict the Note Parties from, among other things, incurring certain types of other debt (subject to various baskets), making certain expenditures or investments, any mergers or other fundamental changes, or changing the character of the Note Parties' businesses. While it is not intended that any amounts will become due under the Notes prior to December 31, 2025, each Note has a term of one year and the refinancing of each Note is subject to certain conditions, including the absence of an event of default. Given the risk of the incurrence of an event of default, we classified the Notes as a current liability.

Each Note and all accrued but unpaid interest thereon may be prepaid, in whole or in part, at any time or from time to time, without any penalty or premium. Lordstown EV is required to prepay each Note and all accrued but unpaid interest thereon with proceeds received upon distributions from the Foxconn Joint Venture or cash proceeds of certain asset dispositions.

Ongoing Operations

We need additional funding to execute our business plan that includes scaling production of the Endurance and developing other vehicles, due to the capital required to complete testing and validation, purchase the raw materials and vehicle components for saleable vehicles, invest in the hard tooling to lower our bill of materials cost and fund future engineering and corporate expenditures. By entering into the Investment Agreement with Foxconn, subject to the conditions set forth in the Investment Agreement, we expect to receive approximately $52.7 million from the issuance of our Class A common stock and Preferred Stock (as defined below) in the fourth quarter of 2022, of which approximately $22.7 million can be used for general corporate purposes and $30 million is restricted for use in connection with the planning, designing, developing, engineering, testing, industrializing, certifying, homologating and launching one or more electric vehicles in collaboration with Foxconn (the "EV Program"). The additional capital that may be available to us under the Investment Agreement is subject to regulatory approvals and achieving certain program milestones, among other conditions. Notwithstanding this funding arrangement, we will continue to require substantial additional capital in order to fulfill our business plans under the EV Program and otherwise. No assurance can be given that we will successfully or timely implement the terms of the Investment Agreement or be able to realize the potential benefits of the Foxconn Transactions and otherwise.

As discussed under Note 8 – Subsequent Events and Part II, Item 5. Other Events, on November 7, 2022, the Company entered into an Open Market Sales Agreement (the "Sales Agreement") with Jefferies LLC, as agent ("Jefferies"), pursuant to which the Company may offer and sell up to approximately 50.2 million shares of its Class A common stock from time to time through Jefferies (the "ATM Offering"). The Company intends to file a prospectus supplement, concurrent with this Form 10-Q, with the Securities and Exchange Commission in connection with the ATM Offering (the "Prospectus Supplement") under the Company's existing shelf Registration Statement on Form S-3 (File No. 333-267052), which became effective on September 2, 2022 (the "Registration Statement"). The Company is not obligated to make any sales of shares of Class A common stock under the Sales Agreement. Actual sales will depend on a variety of factors and no assurance can be given that the Company will sell any shares of Class A common stock under the Sales Agreement, or, if it does, as to the price or amount of the shares that it sells or the dates when such sales will take place and, even if funds are raised under the ATM Offering, the Company will require additional financing to execute its business plan. It is expected that the Sales Agreement will replace our existing Equity Purchase Agreement (as defined below) with YA II PN, LTD. ("YA"). See Note 8 – Subsequent Events and Part II, Item 5. Other Events for additional information.

We continue to explore all financing alternatives as our operations are anticipated to require significant capital for the foreseeable future, along with maintaining liquidity in excess of our targeted minimum liquidity of $75 million to $100 million. We are also seeking strategic partners, including other automakers, to provide additional capital and other support to enable us to scale the Endurance program and to develop new vehicle programs in coordination with Foxconn or otherwise. As we seek additional sources of financing, there can be no assurance that such financing would be available to us on favorable terms or at all.

Basis of Presentation

The accompanying unaudited condensed consolidated interim financial statements are presented in conformity with accounting principles generally accepted in the United States of America ("GAAP") for interim financial statements and the instructions to the Quarterly Report on Form 10-Q and Rule 10-01 of Regulation S-X. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to these rules and regulations. Accordingly, these unaudited condensed consolidated interim financial statements should be read in conjunction with our audited consolidated financial statements and related notes included in our Form 10-K.

In the opinion of management, these unaudited condensed consolidated interim financial statements reflect all adjustments necessary for a fair presentation of our interim financial results. All such adjustments are of a normal and recurring nature. The results of operations for any interim period are not indicative of results for the full fiscal year. The accompanying unaudited condensed consolidated interim financial statements include

our accounts and those of our controlled subsidiaries. Intercompany accounts and transactions have been eliminated in consolidation. The preparation of these financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent liabilities at the dates of the financial statements and the amounts of expenses during the reporting periods. Actual amounts realized or paid could differ from those estimates.

Liquidity and Going Concern

The accompanying unaudited condensed consolidated interim financial statements have been prepared assuming the Company will continue as a going concern. The going concern basis of presentation assumes that the Company will continue in operation one year after the date these unaudited condensed consolidated interim financial statements are issued and will be able to realize its assets and discharge its liabilities and commitments in the normal course of business.

Pursuant to the requirements of the Financial Accounting Standards Board's ("FASB") Accounting Standards Codification ("ASC") Topic 205-40, Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern, management must evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for one year from the date these unaudited condensed consolidated interim financial statements are issued. This evaluation does not take into consideration the potential mitigating effect of management's plans that have not been fully implemented or are not within control of the Company as of the date the unaudited condensed consolidated interim financial statements are issued. When substantial doubt exists, management evaluates whether the mitigating effect of its plans sufficiently alleviates substantial doubt about the Company's ability to continue as a going concern. The mitigating effect of management's plans, however, is only considered if both (1) it is probable that the plans will be effectively implemented within one year after the date that the unaudited condensed consolidated interim financial statements are issued, and (2) it is probable that the plans, when implemented, will mitigate the relevant conditions or events that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the unaudited condensed consolidated interim financial statements are issued.

We had cash, cash equivalents and short-term investments of approximately $203.5 million and an accumulated deficit of $725.2 million at September 30, 2022 and a net loss of $180.4 million for the nine months ended September 30, 2022. Since inception, we have been developing our flagship vehicle, the Endurance, an electric full-size pickup truck. In September of 2022, the Company started commercial production of the Endurance with the first two vehicles completing assembly. Production volume is expected to ramp slowly primarily as a result of supply chain constraints, with engineering readiness, quality, and part availability continuing to govern the speed of launch. We anticipate sales starting in the fourth quarter of 2022 subject to full homologation, testing and required certification.

The Company's ability to continue as a going concern is dependent on our ability to effectively implement and realize the benefits of the Foxconn Transactions, raise substantial additional capital, complete the development of the Endurance, obtain regulatory approval, launch the sale of the Endurance and develop additional vehicles. The Company's current level of cash and cash equivalents are not sufficient to execute our business plan, achieve scaled production of the Endurance due to the substantial additional capital required to complete testing and validation, purchase the raw materials and vehicle components for saleable vehicles, invest in the hard tooling to lower our bill of materials cost and fund future engineering and corporate expenditures. For the foreseeable future, we will incur significant operating expenses, capital expenditures and working capital funding that will deplete our cash on hand. These conditions raise substantial doubt regarding the Company's ability to continue as a going concern for a period of at least one year from the date of issuance of these condensed consolidated financial statements. As a result of having insufficient capital to execute our business plan, we have substantially limited investments in tooling and other aspects of the Endurance and our operations. The trade-offs we are making, including related to hard tooling, are likely to result in higher costs for the Company in the future and are likely to slow or impair future design enhancements or options we may otherwise seek to make available to Endurance customers.

Our research and development expenses and capital expenditures are significant due to spending needed to achieve certification, homologation and all the related activities to commence commercial sale of the Endurance. During 2021, we experienced the stress that the COVID-19 pandemic put on the global automotive supply chain. Furthermore, in 2021 and 2022, we have incurred significant freight charges due in part to the COVID-19 pandemic and challenging logistics that created delays and higher pricing on standard freight, as well as substantially higher expedited freight charges to mitigate delays. The Company expects continued supply chain constraints including the availability of and long lead times for components, as well as raw materials and other pricing pressures that are likely to negatively impact our cost structure and production timeline. We also have meaningful exposure to material losses and costs related to ongoing litigation for which insurance has been denied for certain claims and may be unavailable for those and other claims. See Note 5 – Commitments and Contingencies for additional information.

In an effort to alleviate these conditions, management continues to seek and evaluate opportunities to raise additional funds through the issuance of equity or debt securities, asset sales, through arrangements with strategic partners or through financing from government or financial institutions. We have engaged a financial advisor to advise the Company on additional financing alternatives. No assurances can be given that any such financing will be available on commercially reasonable terms or at all.

As further described in Note 7, on July 23, 2021, the Company entered into the Equity Purchase Agreement with YA, pursuant to which YA has committed to purchase up to $400 million of its Class A common stock, at the Company's direction from time to time, subject to the satisfaction of certain conditions (the "Equity Purchase Agreement"). During the nine months ended September 30, 2022, the Company issued 17.5 million shares to YA and received $40.4 million, net of equity issuance costs. During the nine months ended September 30, 2021, the Company issued 3.9 million shares to YA and received $20.0 million, net of equity issuance costs. The actual amount that the Company may raise under this agreement will depend on market conditions and limitations in the agreement. In particular, without stockholder approval, the amount of shares the Company can issue would be limited to up to 35.1 million shares (unless the average price of all shares sold is $7.48 or higher) (the "Exchange Cap"), less the 27.1 million shares already issued, and therefore this share limitation and the current market price that would be the basis for the price of the shares of Class A common stock to be sold limit the funds the Company is able to raise to significantly less than the original $400 million commitment under the Equity Purchase Agreement. As of September 30, 2022, the Company was in compliance with the terms and conditions of the Equity Purchase Agreement and the remaining availability under the Equity Purchase Agreement was limited to approximately 8 million shares due to the conditions described above. In addition, it is expected that the Sales Agreement will replace the Equity Purchase Agreement as the means for the Company to obtain financing through the periodic sale of Class A common stock in at-the-market transactions, subject to various conditions and limitations, and the Equity Purchase Agreement will be terminated. See Note 8 – Subsequent Events and Part II, Item 5. Other Events for additional information.

On May 11, 2022, pursuant to the APA Closing, the Company sold the Lordstown facility to Foxconn for $230 million and a reimbursement payment for certain operating and expansion costs incurred by the Company from September 1, 2021 through the APA Closing (see – *Closing of the APA with Foxconn*).

Foxconn made down payments of the purchase price totaling $200 million through April 15, 2022, of which $100 million was received during the nine months ended September 30, 2022, and the $30 million balance of the purchase price as well as a reimbursement payment of approximately $27.5 million were paid at the APA Closing. Under the terms of the APA, the $17.5 million reimbursement costs were an estimate which was subsequently increased to $18.4 million as of September 30, 2022, and on October 13, 2022, the final settlement payment was received.

In addition to providing the Company with additional capital, the Foxconn Transactions provide opportunity for the benefits of scaled manufacturing, more cost-effective access to certain raw materials, components and inputs, and will reduce the overhead costs associated with the Lordstown facility that were previously borne by the Company. In connection with the Foxconn Joint Venture Agreement, Foxconn committed to make term loans to Lordstown EV exclusively to fund our capital commitments to the Foxconn Joint Venture in an

aggregate original principal amount not to exceed $45 million pursuant to Notes. As of September 30, 2022, $13.5 million was borrowed by Lordstown EV under a Note dated June 24, 2022. Under the Investment Agreement, the parties have agreed to terminate the Foxconn Joint Venture and the parties will no longer be subject to their capital commitments. In connection with the termination, all remaining funds held by the Foxconn Joint Venture will be distributed to Foxconn as a distribution for amounts contributed by it and as a repayment in full of any loans advanced by it to Lordstown EV.

By entering into the Investment Agreement with Foxconn, subject to the conditions set forth in the Investment Agreement, we expect to receive approximately $52.7 million from the issuance of our Class A common stock and Preferred Stock in the fourth quarter of 2022, of which approximately $22.7 million can be used for general corporate purposes and $30 million is restricted for use in connection with the EV Program. The additional capital that may be available to us under the Investment Agreement is subject to regulatory approvals and achieving certain program milestones, among other conditions. Notwithstanding this funding arrangement, we will continue to require substantial additional capital in order to fulfill our business plans under the EV Program and otherwise. (See Note 8 - Subsequent Events for additional information.)

As we seek additional sources of financing and strategic partners, there can be no assurance that such financing would be available to us on favorable terms or at all. The Company's ability to obtain additional financing is subject to several factors, including market and economic conditions, the significant amount of capital required, the fact that the Endurance bill of materials cost is currently, and expected to continue to be, substantially higher than the anticipated selling price of the Endurance, uncertainty surrounding regulatory approval and the performance of the vehicle, meaningful exposure to material expenses and losses related to ongoing litigation, the market price of our stock, our performance and investor sentiment with respect to the Company and our business and industry, as well as our ability to effectively implement and realize the expected benefits of the Foxconn Transactions. As a result of these uncertainties, and notwithstanding management's plans and efforts to date, there continues to be substantial doubt about the Company's ability to continue as a going concern. If we are unable to raise substantial additional capital in the near term, our operations and production plans will be scaled back or curtailed. If the funds raised are insufficient to provide a bridge to full commercial production at a profit, our operations could be severely curtailed or cease entirely and we may not realize any significant value from our assets.

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Use of Estimates in Financial Statement Preparation

The preparation of financial statements in accordance with GAAP requires the use of estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, if any, at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Asset impairment loss calculations require us to apply judgment in estimating asset group fair values and future cash flows, including periods of operation, projections of product pricing, production levels, product costs, market supply and demand, inflation, projected capital spending and, specifically for fixed assets acquired, assigned useful lives, functional obsolescence, asset condition and discount rates. When performing impairment tests, we estimate the fair values of the assets using management's best assumptions, which we believe would be consistent with the assumptions that a hypothetical marketplace participant would use. Estimates and assumptions used in these tests are evaluated and updated as appropriate. The assessment of whether an asset group should be classified as held and used or held for sale requires us to apply judgment in estimating the probable timing of the sale, and in testing for impairment loss, judgment is required in estimating the net proceeds from the sale. Actual asset impairment losses could vary considerably from estimated impairment losses if actual results are not consistent with the assumptions and judgments used in estimating future cash flows and asset fair values.

Cash, cash equivalents and short-term investments

Cash includes cash equivalents which are highly liquid investments that are readily convertible to cash. The Company considers all liquid investments with original maturities of three months or less to be cash equivalents. At September 30, 2022 our cash and cash equivalents totaled approximately $154.2 million. In general, investments with original maturities of greater than three months and remaining maturities of less than one year are classified as short-term investments. Our short-term investments consist primarily of liquid investment grade commercial paper, which are diversified among individual issuers, including non-U.S. governments, non-U.S. governmental agencies, supranational institutions, banks and corporations. At September 30, 2022, we had short-term investments with a fair value of approximately $49.3 million with maturities in January and February of 2023. The short-term investments are accounted for as available-for-sale securities. The settlement risk related to these investments is insignificant given that the short-term investments held are primarily highly liquid investment-grade fixed-income securities.

The Company maintains its cash in bank deposit and securities accounts that exceed federally insured limits. We have not experienced significant losses in such accounts and management believes it is not exposed to material credit risk.

Inventory and Inventory Valuation

Inventory is stated at the lower of cost or net realizable value ("LCNRV"). Net realizable value ("NRV") is the estimated future selling price of the inventory in the ordinary course of business. Non-cash charges to reflect the NRV of inventory on hand are recorded within Selling, General & Administrative expenses in the Company's condensed consolidated statement of operations.

Property, plant and equipment

Property and equipment are stated at cost less accumulated depreciation. Depreciation will be computed using the straight-line method over the estimated useful lives of the related assets.

Upon retirement or sale, the cost and related accumulated depreciation are removed from the balance sheet and the resulting gain or loss is reflected in operations. Maintenance and repair expenditures are expensed as incurred, while major improvements that increase functionality of the asset are capitalized and depreciated ratably to expense over the identified useful life. Further, interest on any debt financing arrangement is capitalized to the purchased property, plant, and equipment if the requirements for capitalization are met.

Long-lived assets, such as property, plant, and equipment are reviewed for potential impairment whenever events or changes in circumstances indicate that the carrying amount of an asset or asset group may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset or asset group to estimated undiscounted future cash flows expected to be generated by the asset or asset group. If the carrying amount of an asset or asset group exceeds its estimated undiscounted future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset or asset group exceeds the fair value of the asset or asset group. See Note 4 for details regarding our impairment.

Equity-Method Investments

We recognize our investments in unconsolidated entities over whose operating and financial policies we have the ability to exercise significant influence but not control, under the equity method of accounting. We initially record our investments based on our cash invested.

Research and development costs

The Company expenses research and development costs as they are incurred. Research and development costs consist primarily of personnel costs for engineering, testing and manufacturing costs, along with expenditures for prototype manufacturing, testing, validation, certification, contract and other professional services and costs associated with operating the Lordstown facility, prior to its sale.

Stock-based compensation

The Company has adopted ASC Topic 718, *Accounting for Stock-Based Compensation* ("ASC Topic 718"), which establishes a fair value-based method of accounting for stock-based compensation plans. In accordance with ASC Topic 718, the cost of stock-based awards issued to employees and non-employees over the awards' vest period is measured on the grant date based on the fair value. The fair value is determined using the Black-Scholes option pricing model, which incorporates assumptions regarding the expected volatility, expected option life and risk-free interest rate.

The resulting amount is charged to expense on the straight-line basis over the period in which the Company expects to receive the benefit, which is generally the vesting period. Further, pursuant to ASU 2016-09 – *Compensation – Stock Compensation (Topic 718)*, the Company has elected to account for forfeitures as they occur.

Warrants

The Company accounts for the Public Warrants (as defined below), the Private Warrants (as defined below) and the Foxconn Warrants as described in Note 3 in accordance with the guidance contained in ASC Topic 815-40-15-7D and 7F under which the Public Warrants, the Private Warrants and the Foxconn Warrants do not meet the criteria for equity treatment and must be recorded as liabilities. Accordingly, the Company classifies the Public Warrants, the Private Warrants and the Foxconn Warrants as liabilities at their fair value and adjusts the Public Warrants, the Private Warrants and the Foxconn Warrants to fair value at each reporting period or at the time of settlement. Any change in fair value is recognized in the statement of operations. The Company accounts for the BGL Warrants as equity as these warrants qualify as share-based compensation under ASC Topic 718.

Income taxes

Income taxes are recorded in accordance with ASC Topic 740, *Income Taxes* ("ASC Topic 740"). Deferred tax assets and liabilities are determined based on the difference between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. Valuation allowances are provided, if based upon the weight of available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized. The Company has recorded a full valuation allowance against its deferred tax assets.

The Company accounts for uncertain tax positions in accordance with the provisions of ASC Topic 740. When uncertain tax positions exist, the Company recognizes the tax benefit of tax positions to the extent that the benefit would more likely than not be realized assuming examination by the taxing authority. The determination as to whether the tax benefit will more likely than not be realized is based upon the technical merits of the tax position as well as consideration of the available facts and circumstances. The Company recognizes any interest and penalties accrued related to unrecognized tax benefits as income tax expense. The Company does not have material uncertain tax positions.

Recent accounting pronouncements

In February 2016, FASB issued ASU 2016-02, *Leases*, and has subsequently issued several supplemental and/or clarifying ASUs (collectively, "ASC 842") to increase transparency and comparability among

organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. The Company adopted ASC 842 effective January 1, 2021, but there was no material impact on the condensed consolidated financial statements.

NOTE 3 — FAIR VALUE MEASUREMENTS

The Company follows the accounting guidance in ASC Topic 820 for its fair value measurements of financial assets and liabilities measured at fair value on a recurring basis. Fair value is defined as an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability. The three-tiered fair value hierarchy, which prioritizes when inputs should be used in measuring fair value, is comprised of: (Level I) observable inputs such as quoted prices in active markets; (Level II) inputs other than quoted prices in active markets that are observable either directly or indirectly and (Level III) unobservable inputs for which there is little or no market data. The fair value hierarchy requires the use of observable market data when available in determining fair value.

The Company has short-term investments which are primarily commercial paper that are classified as Level II. The valuation inputs for the short-term investments are based upon quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant inputs are observable in the market or can be corroborated by observable market data for substantially the full term of the assets.

The Company has issued the following warrants: (i) warrants (the “Public Warrants”) to purchase shares of Class A common stock with an exercise price of $11.50 per share, (ii) warrants (the “Private Warrants”) to purchase Class A common stock with an exercise price of $11.50 per share, (iii) warrants (the “BGL Warrants”) to purchase Class A common stock with an exercise price of $10.00 per share, and (iv) the Foxconn Warrants to purchase shares of Class A common stock with an exercise price of $10.50. The BGL Warrants are classified as equity as they qualify as share-based compensation under ASC Topic 718.

During the nine months ended September 30, 2021, approximately 6.7 million Public Warrants and 0.6 million of the Private Warrants were exercised which resulted in cash proceeds of $82.0 million. As of December 31, 2021 and September 30, 2022, there were 2.3 million Private Warrants, 1.6 million BGL Warrants and no Public Warrants outstanding. Additionally, as of September 30, 2022, there were also 1.7 million Foxconn Warrants outstanding. The fair value of the Foxconn Warrants was $0.3 million at issuance. The Public Warrants, the Private Warrants and the Foxconn Warrants are classified as a liability with any changes in the fair value recognized immediately in our condensed consolidated statements of operations.

The following table summarizes the net (loss) gain on changes in fair value (in thousands) related to the Public Warrants, the Private Warrants, and the Foxconn Warrants:

	Three months ended September 30, 2022	Three months ended September 30, 2021	Nine months ended September 30, 2022	Nine months ended September 30, 2021
Public Warrants	$ —	$ —	$ —	$ (27,180)
Private Warrants	(523)	3,344	(246)	12,263
Foxconn Warrants	(238)	—	(238)	—
Net (loss) gain on changes in fair value	$ (761)	$ 3,344	$ (484)	$ (14,918)

Observed prices for the Public Warrants are used as Level 1 inputs as they were actively traded until being redeemed in January 2021. The Private Warrants and the Foxconn Warrants are measured at fair value using Level 3 inputs. These instruments are not actively traded and are valued using a Monte Carlo option pricing model and Black Scholes option pricing model, respectively, that use observable and unobservable market data as inputs.

A Monte Carlo model was used to simulate a multitude of price paths to measure fair value of the Private Warrants. The Monte Carlo model simulates risk-neutral stock price paths utilizing two parameters – a drift term (based on the risk-free rate and assumed volatility) and an error term (determined using a random number and assumed volatility). This analysis simulates possible paths for the stock price over the term of the Private Warrants. For each simulated price path, we evaluate the conditions under which the Company could redeem each Private Warrant for a fraction of whole shares of the underlying as detailed within the applicable warrant agreement. If the conditions are met, we assume redemptions would occur, although the Private Warrant holders would have the option to immediately exercise if it were more advantageous to do so. For each simulated price path, if a redemption does not occur the holders are assumed to exercise the Private Warrants if the stock price exceeds the exercise price at the end of the term. Proceeds from either the redemption or the exercise of the Private Warrants are reduced to a present value amount at each measurement date using the risk-free rate for each simulated price path. Present value indications from iterated priced paths were averaged to derive an indication of value for the Private Warrants.

The Foxconn Warrants do not have any redemption features and their fair value was measured using the Black-Scholes closed-form option pricing model. Inputs to the model include remaining term, prevailing stock price, strike price, risk-free rate, and volatility.

The stock price volatility rates utilized were 90% and 50% for the valuations as of September 30, 2022 and December 31, 2021, respectively. This assumption considers observed historical stock price volatility of other companies operating in the same or similar industry as the Company over a period similar to the remaining term of the Private Warrants and the Foxconn Warrants, as well as the volatility implied by the traded options of the Company. The risk-free rates utilized were 4.173% and 1.123% for the valuations as of September 30, 2022 and December 31, 2021, respectively, for the Private Warrants. The risk-free rate utilized for the valuation of the Foxconn Warrants as of September 30, 2022 was 4.173%.

The following tables summarize the valuation of our financial instruments (in thousands):

	Total	Quoted prices in active markets (Level 1)	Prices with observable inputs (Level 2)	Prices with unobservable inputs (Level 3)
September 30, 2022				
Cash and cash equivalents	$ 154,232	$ 154,232	$ —	$ —
Short-term investments	49,304	—	49,304	—
Private Warrants	731	—	—	731
Foxconn Warrants	561	—	—	561

	Total	Quoted prices in active markets (Level 1)	Prices with observable inputs (Level 2)	Prices with unobservable inputs (Level 3)
December 31, 2021				
Cash and cash equivalents	$ 244,016	$ 244,016	$ —	$ —
Short-term investments	—	—	—	—
Private Warrants	485	—	—	485

The following table summarizes the changes in our Level 3 financial instruments (in thousands):

	Balance at December 31, 2021	Additions	Settlements	Loss on fair value adjustments included in earnings	Balance at September 30, 2022
Private Warrants	$ 485	—	—	246	$ 731
Foxconn Warrants	—	323	—	238	561

NOTE 4 — PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment, net, consisted of the following:

(in thousands)

	September 30, 2022	December 31, 2021
Property, Plant & Equipment		
Land	$ —	$ 326
Buildings	—	6,223
Machinery and equipment	43,723	39,073
Tooling	127,225	—
Construction in progress	49,072	337,124
	$ 220,020	$ 382,746
Less: Accumulated depreciation	—	—
Total	$ 220,020	$ 382,746

As of December 31, 2021, construction in progress included manufacturing equipment, operating equipment and other general assets, retooling and construction at the Company's facilities in Lordstown, Ohio, Farmington Hills, Michigan, and Irvine, California, along with tooling held at various supplier locations. During the nine months ended September 30, 2022, the Company sold its manufacturing facility, certain equipment, and other assets located in Lordstown, Ohio and recorded a gain of $101.7 million. We continue to own our hub motor assembly line, as well as our battery module and pack line assets, certain tooling and other excluded assets. As all of our fixed assets currently support the production of the Endurance, we determined that our assets represent one asset group as this is the lowest level for which identifiable cash flows are

available. In September of 2022, we began commercial production with two vehicles completing assembly and completed assets were transferred to their respective asset classes. Depreciation during the quarter ended September 30, 2022 was immaterial.

As of the end of the fiscal years ended December 31, 2020 and December 31, 2021, the Company determined that there was a substantial doubt in our ability to continue as a going concern. Our capital constraints have limited our ability to: (a) invest in hard tooling for scaled production of the Endurance and (b) establish multi-year production volumes consistent with our suppliers' expectations. These factors together result in a bill of materials ("BOM") cost for the Endurance that is significantly higher than the expected selling price.

As of September 30, 2022, property, plant, and equipment was reviewed for potential impairment for recoverability by comparing the carrying amount of our asset group to estimated undiscounted future cash flows expected to be generated by the asset group. As the carrying amount of our asset group exceeds its estimated undiscounted future cash flows, we recognized a $74.9 million charge based on the difference between the carrying value of the fixed assets and their fair value. The fair value was based on total enterprise value using level 1 inputs as we believe this technique results in the highest and best use of a hypothetical marketplace participant. Additional impairments could occur in future periods.

As of September 30, 2022, construction in progress primarily includes certain production equipment and tooling not yet placed in service and uninstalled equipment acquired for higher capacity production, and general assets at Farmington Hills, Michigan, and Irvine, California.

We outsource all of the manufacturing of the Endurance and operation of certain remaining assets to Foxconn under the Contract Manufacturing Agreement.

NOTE 5 — COMMITMENTS AND CONTINGENCIES

The Company has entered into a supply agreement with Samsung to purchase lithium-ion cylindrical battery cells. The agreement provides for certain pricing and minimum quantity parameters, including our obligation to purchase such minimum amounts, subject to change for increases in raw material pricing. The agreement was amended for 2022 such that our minimum obligations for the year were satisfied as of September 30, 2022.

The Company is subject to extensive pending and threatened legal proceedings arising in the ordinary course of business and we have already incurred, and expect to continue to incur, significant legal expenses in defending against these claims. The Company records a liability for loss contingencies in the condensed consolidated interim financial statements when a loss is known or considered probable and the amount can be reasonably estimated. The Company has and may in the future enter into discussions regarding settlement of these matters, and may enter into settlement agreements if it believes it is in the best interest of the Company. Settlement by the Company or adverse decisions with respect to the matters disclosed, individually or in the aggregate, may result in liability material to the Company's condensed consolidated results of operations, financial condition or cash flows.

During the three and nine months ended September 30, 2022, the Company recorded accruals of $30.0 million and $32.0 million, respectively, for certain of its outstanding legal proceedings within Accrued and other current liabilities on its Consolidated Balance Sheet. The accrual is based on current information, legal advice and the potential impact of the outcome of one or more claims on related matters and may be adjusted in the future based on new developments**.** This accrual does not reflect a full range of possible outcomes for these proceedings or the full amount of any damages alleged, which are significantly higher. Furthermore, the Company may use Class A common stock as consideration in any settlement. While the Company believes that additional losses beyond current accruals are likely, and any such additional losses may be significant, it cannot presently estimate a possible loss contingency or range of reasonably possible loss

contingencies beyond current accruals. Estimating probable losses requires the analysis of multiple forecasted factors that often depend on judgments and potential actions by third parties.

Lordstown was notified by its primary insurer under our post-merger directors and officers insurance policy that the insurer is taking the position that no coverage is available for the consolidated securities class action, various shareholder derivative actions, the consolidated stockholder class action, various demands for inspection of books and records, the SEC investigation, and the investigation by the United States Attorney's Office for the Southern District of New York described below, and certain indemnification obligations, under an exclusion to the policy called the "retroactive date exclusion." The insurer has identified other potential coverage issues as well. Excess coverage attaches only after the underlying insurance has been exhausted, and generally applies in conformance with the terms of the underlying insurance. Lordstown is analyzing the insurer's position, and intends to pursue any available coverage under this policy and other insurance. As a result of the denial of coverage, no or limited insurance may be available to us to reimburse our expenses or cover any potential losses for these matters, which could be significant. The insurers in our Side A D&O insurance program, providing coverage for individual directors and officers in derivative actions and certain other situations, have not denied coverage on this basis or otherwise.

Legal fees and costs of litigation or an adverse judgment or settlement in any one or more of our ongoing litigation matters that are not insured or that is in excess of insurance coverage could significantly exceed our current accrual and ability to pay. This would have a material adverse effect on our financial position and results of operations and could severely curtail or cause our operations to cease entirely.

On October 30, 2020, the Company, together with certain of its current and former executive officers including Mr. Burns, Mr. LaFleur, Mr. Post and Mr. Schmidt, and certain of our other current and former employees, were named as defendants in a lawsuit filed by Karma Automotive LLC ("Karma") in the United States District Court for the Central District of California ("District Court"). On November 6, 2020, the District Court denied Karma's request for a temporary restraining order. On April 16, 2021, Karma filed an Amended Complaint that added additional defendants (two Company employees and two Company contractors that were previously employed by Karma) and a number of additional claims alleging generally that the Company unlawfully poached key Karma employees and misappropriated Karma's trade secrets and other confidential information. The Amended Complaint contains a total of 28 counts, including: (i) alleged violations under federal law of the Computer Fraud and Abuse Act and the Defend Trade Secrets Act, (ii) alleged violations of California law for misappropriation of trade secrets and unfair competition; (iii) common law claims for breach of contract and tortious interference with contract; (iv) common law claims for breach of contract, including confidentiality agreements, employment agreements and the non-binding letter of intent; and (v) alleged common law claims for breach of duties of loyalty and fiduciary duties. The Amended Complaint also asserts claims for conspiracy, fraud, interstate racketeering activity, and violations of certain provisions of the California Penal Code relating to unauthorized computer access. Karma is seeking permanent injunctive relief and monetary damages based on a variety of claims and theories asserting very substantial losses by Karma and/or improper benefit to the Company that significantly exceed the Company's accrual with respect to the matter and ability to pay. The Company has opposed Karma's damages claims on factual and legal grounds, including lack of causality. The Company is vigorously challenging Karma's asserted damages.

After several months of discovery, Karma filed a motion for preliminary injunction on August 8, 2021, seeking to temporarily enjoin the Company from producing any vehicle that incorporated Karma's alleged trade secrets. On August 16, 2021, Karma also moved for sanctions for spoliation of evidence. On September 16, 2021, the District Court denied Karma's motion for a preliminary injunction, and denied, in part, and granted, in part, Karma's motion for sanctions. As a result of its partial grant of Karma's sanctions motion, the District Court awarded Karma a permissive adverse inference jury instruction, the scope of which will be determined at trial.

On January 14, 2022, Karma filed a motion for terminating sanctions (i.e., judgment in its favor on all claims) against the Company and defendant, Darren Post, as a result of Mr. Post's handling of documents subject to discovery requests. The Company and Mr. Post opposed the request for sanctions. On February 18, 2022, the Court granted in part Karma's motion for sanctions against Mr. Post and the Company, finding that Karma

was entitled to reasonable attorneys' fees and costs incurred as a result of Mr. Post's and the Company's failure to comply with the Court's discovery orders. Karma's request for terminating sanctions was denied. As a result of the Court's order, on March 4, 2022, Karma submitted its application for attorneys' fees and costs in the amount of $0.1 million. The Company did not oppose Karma's application, and on March 21, 2022 the Court ordered an award of Karma's costs and attorneys' fees against the Company and Mr. Post in the amount of $0.1 million, which has been paid by the Company.

On July 22, 2022, Karma filed a second motion for terminating sanctions against the Company and against Mr. Post based upon Mr. Post's installation of anti-forensic software on his personal computers following his second deposition. Karma has requested that the Court enter default judgment on all claims against Mr. Post and the Company. Karma also asks that, in the event terminating sanctions are not issued, the Court order a negative adverse inference on "remaining issues," specifically that "Defendants Lordstown Motors Corp. and Darren Post shall be presumed to have misappropriated Karma's trade secrets and confidential information, used Karma's trade secrets and confidential information, and deliberately and maliciously destroyed evidence of their misappropriation and use of Karma's trade secrets and confidential information in considering all damages and maliciousness." The Court denied Karma's second request for terminating sanctions in all respects.

On September 27, 2022, Karma filed an *ex parte* application to continue the trial date until January 2023. The Company opposed the request. On September 28, 2022, the Court denied Karma's request to continue the trial. However, on October 26, following the receipt of the parties' pretrial filings, the Court, on its own initiative vacated the December 6, 2022 trial date. The case will be rescheduled for a trial date in 2023.

The Company and the individual defendants have moved for summary judgment on many of the claims and issues in the case. A hearing on the summary judgment motions is scheduled for November 14, 2022.The Company is continuing to evaluate the matters asserted in the lawsuit and is vigorously defending against Karma's claims. The Company continues to believe that there are strong defenses to the claims and any damages demanded. The proceedings are subject to uncertainties inherent in the litigation process.

Six related putative securities class action lawsuits were filed against the Company and certain of its current and former officers and directors and former DiamondPeak Holdings Corp. ("DiamondPeak") directors between March 18, 2021 and May 14, 2021 in the U.S. District Court for the Northern District of Ohio (Rico v. Lordstown Motors Corp., et al. (Case No. 21-cv-616); Palumbo v. Lordstown Motors Corp., et al. (Case No. 21-cv-633); Zuod v. Lordstown Motors Corp., et al. (Case No. 21-cv-720); Brury v. Lordstown Motors Corp., et al. (Case No. 21-cv-760); Romano v. Lordstown Motors Corp., et al., (Case No. 21-cv-994); and FNY Managed Accounts LLC v. Lordstown Motors Corp., et al. (Case No. 21-cv-1021)). The matters have been consolidated and the Court appointed George Troicky as lead plaintiff and Labaton Sucharow LLP as lead plaintiff's counsel. On September 10, 2021, lead plaintiff and several additional named plaintiffs filed their consolidated amended complaint, asserting violations of federal securities laws under Section 10(b), Section 14(a), Section 20(a), and Section 20A of the Exchange Act and Rule 10b-5 thereunder against the Company and certain of its current and former officers and directors. The complaint generally alleges that the Company and individual defendants made materially false and misleading statements relating to vehicle pre-orders and production timeline. Defendants filed a motion to dismiss, which is fully briefed as of March 3, 2022. A hearing on the motion to dismiss has not been scheduled and a decision has not yet been rendered. We intend to vigorously defend against the claims. The proceedings are subject to uncertainties inherent in the litigation process.

Four related stockholder derivative lawsuits were filed against certain of the Company's officers and directors, former DiamondPeak directors, and against the Company as a nominal defendant between April 28, 2021 and July 9, 2021 in the U.S. District Court for the District of Delaware (Cohen, et al. v. Burns, et al. (Case No. 21-cv-604); Kelley, et al. v. Burns, et al. (Case No. 12-cv-724); Patterson, et al. v. Burns, et al. (Case No. 21-cv-910); and Sarabia v. Burns, et al. (Case No. 21-cv-1010)). The derivative actions in the District Court of Delaware have been consolidated. On August 27, 2021, plaintiffs filed a consolidated amended complaint, asserting violations of Section 10(b), Section 14(a), Section 20(a) and Section 21D of the Exchange Act and Rule 10b-5 thereunder, breach of fiduciary duties, insider selling, and unjust enrichment, all relating to vehicle

pre-orders, production timeline, and the merger with DiamondPeak. On October 11, 2021, defendants filed a motion to stay this consolidated derivative action pending resolution of the motion to dismiss in the consolidated securities class action. On March 7, 2022, the court granted in part defendants' motion to stay, staying the action until the resolution of the motion to dismiss in the consolidated securities class action, but requiring the parties to submit a status report if the motion to dismiss was not resolved by September 3, 2022. The court further determined to dismiss without a motion on the grounds that the claim was premature plaintiffs' claim for contribution for violations of Sections 10(b) and 21D of the Exchange Act without prejudice. The parties filed a joint status report as required because the motion to dismiss in the consolidated securities class action was not resolved as of September 3, 2022. The parties filed another court-ordered joint status report on October 28, 2022. We intend to vigorously defend against the claims. The proceedings are subject to uncertainties inherent in the litigation process.

Another related stockholder derivative lawsuit was filed in U.S. District Court for the Northern District of Ohio on June 30, 2021 (Thai v. Burns, et al. (Case No. 21-cv-1267)), asserting violations of Section 10(b), Section 14(a), Section 20(a) and Section 21D of the Exchange Act and Rule 10b-5 thereunder, breach of fiduciary duties, unjust enrichment, abuse of control, gross mismanagement, and waste, based on similar facts as the consolidated derivative action in the District Court of Delaware. On October 21, 2021, the court in the Northern District of Ohio derivative action entered a stipulated stay of the action and scheduling order relating to defendants' anticipated motion to dismiss and/or subsequent motion to stay that is similarly conditioned on the resolution of the motion to dismiss in the consolidated securities class action. We intend to vigorously defend against the claims. The proceedings are subject to uncertainties inherent in the litigation process.

Another related stockholder derivative lawsuit was filed in the Delaware Court of Chancery on December 2, 2021 (Cormier v. Burns, et al. (C.A. No. 2021-1049)), asserting breach of fiduciary duties, insider selling, and unjust enrichment, based on similar facts as the federal derivative actions. An additional related stockholder derivative lawsuit was filed in the Delaware Court of Chancery on February 18, 2022 (Jackson v. Burns, et al. (C.A. No. 2022-0164)), also asserting breach of fiduciary duties, unjust enrichment, and insider selling, based on similar facts as the federal derivative actions. On April 19, 2022, the parties in Cormier and Jackson filed a stipulation and proposed order consolidating the two actions, staying the litigation until the resolution of the motion to dismiss in the consolidated securities class action and appointing Schubert Jonckheer & Kolbe LLP and Lifshitz Law PLLC as Co-Lead Counsel. On May 10, 2022, the court granted the parties' proposed stipulation and order to consolidate the actions, and to stay the consolidated action pending the resolution of the motion to dismiss in the consolidated securities class action. While the action remains stayed, on June 24, 2022, the plaintiffs filed a consolidated complaint asserting similar claims, and substituting a new plaintiff (Ed Lomont) for Cormier, who no longer appears to be a named plaintiff in the consolidated action. We intend to vigorously defend against these actions. The proceedings are subject to uncertainties inherent in the litigation process.

Two putative class action lawsuits were filed against former DiamondPeak directors and DiamondPeak Sponsor LLC on December 8 and 13, 2021 in the Delaware Court of Chancery (Hebert v. Hamamoto, et al. (C.A. No. 2021-1066); and Amin v Hamamoto, et al. (C.A. No. 2021-1085)). The plaintiffs purport to represent a class of investors in DiamondPeak and assert breach of fiduciary duty claims based on allegations that the defendants made or failed to prevent alleged misrepresentations regarding vehicle pre-orders and production timeline, and that but for those allegedly false and misleading disclosures, the plaintiffs would have exercised a right to redeem their shares prior to the de-SPAC transaction. On February 9, 2022, the parties filed a stipulation and proposed order consolidating the two putative class action lawsuits, appointing Hebert and Amin as co-lead plaintiffs, appointing Bernstein Litowitz Berger & Grossmann LLP and Pomerantz LLP as co-lead counsel and setting a briefing schedule for the motions to dismiss and motions to stay. The motions to stay were fully briefed as of February 23, 2022 and the court held oral argument on February 28, 2022. On March 7, 2022, the court denied the motion to stay. On March 10, 2022, defendants filed their brief in support of their motion to dismiss. The motion to dismiss was fully briefed on April 27, 2022, and was scheduled for oral argument on May 10, 2022. On May 6, 2022, defendants withdrew the motion to dismiss without prejudice. On July 22, 2022, co-lead plaintiffs filed an amended class action complaint asserting similar claims. Defendants filed a motion to dismiss the amended class action complaint on October 14, 2022. Plaintiffs' answering brief and Defendants' reply brief are due on November 18 and December 9,

2022, respectively. Oral argument on the motion to dismiss has been scheduled for January 6, 2022. The defendants intend to vigorously defend against the claims. The proceedings are subject to uncertainties inherent in the litigation process.

In addition, between approximately March 26, 2021 and September 23, 2021, LMC received eight demands for books and records pursuant to Section 220 of the Delaware General Corporation Law from stockholders who state they are investigating whether to file similar derivative lawsuits, among other purposes. A lawsuit to compel inspection of books and records under 8 Del. C. § 220 was filed against the Company on May 31, 2022 in the Delaware Court of Chancery (Turner v. Lordstown Motors Corp. (C.A. No. 2022-0468)). The plaintiff seeks production of documents related to, among other things, vehicle pre-orders, production timeline, and stock sales by insiders. The parties are engaged in discussions to resolve or narrow this action and do not have a schedule for responding to the complaint. We intend to vigorously defend against this action to the extent it is not resolved. The proceedings are subject to uncertainties inherent in the litigation process.

The Company has also received two subpoenas from the SEC for the production of documents and information, including relating to the merger between DiamondPeak and Lordstown EV Corporation (formerly known as Lordstown Motors Corp.), a Delaware corporation ("Legacy Lordstown") and pre-orders of vehicles, and the Company has been informed by the U.S. Attorney's Office for the Southern District of New York that it is investigating these matters. The Company has cooperated, and will continue to cooperate, with these and any other regulatory or governmental investigations and inquiries.

On March 24, 2022, the Company received a letter addressed to its Board from the law firm of Purcell & Lefkowitz LLP ("Purcell") on behalf of three purported stockholders.

The stockholder letter alleged that we would be required by Rules 14a-4(a)(3) and (b)(1) of the Exchange Act to present two separate proposals at the annual meeting of stockholders held on May 19, 2022 (the "2022 Annual Meeting") relating to the proposed amendment of our Second Amended and Restated Certificate of Incorporation, as amended (the "Charter") to increase the number of authorized shares, such that separate votes could be cast on a proposed increase in the number of shares of Class A common stock and a proposed increase in the number of shares of preferred stock. The Company does not believe that separate proposals would be required by the Exchange Act. Irrespective of the position asserted in the stockholder letter, the Company no longer believes an increase in the shares of preferred stock is needed and did not include this aspect of the proposal in the definitive proxy statement for the 2022 Annual Meeting filed with the SEC on April 8, 2022, as supplemented on May 9, 2022 (the "2022 Proxy Statement").

The stockholder letter also addressed the approval of the Charter at the special meeting of stockholders held on October 22, 2020 (the "2020 Special Meeting"), which included a 200 million share increase in the number of authorized shares of Class A common stock and was approved by majority of the then-outstanding shares of both series of the Company's common stock, voting as a single class. The stockholder letter alleged that the Charter approval required a separate vote in favor by at least a majority of the outstanding shares of Class A common stock under Section 242(b)(2) of the Delaware General Corporation Law ("DGCL"), and that the 200 million shares in question are thus unauthorized. The stockholder letter requested that the Company present a proposal at the 2022 Annual Meeting seeking ratification of the number of shares of Class A common stock authorized under the Company's current Charter.

The Board has completed its review of the matters raised by the stockholder letter with the assistance of outside counsel not involved in the underlying transactions at issue and determined, (a) in reliance upon, among other things, advice of several law firms including a legal opinion of Delaware counsel, that the assertions regarding DGCL Section 242(b)(2) are wrong and that a separate class vote of the Class A common stock was not required to approve the amendment of the Charter at the 2020 Special Meeting to increase the shares of Class A common stock, and (b) that the remaining allegations therein are without merit. However, no assurances can be made regarding the outcome of any claims, proceedings or litigation regarding the authorization of our Class A common stock, including the claims raised by the stockholder letter. Any proceedings on these matters would be subject to uncertainties inherent in the litigation process.

Claims alleging that a portion of our Class A common stock was not authorized could lead to shares of our Class A common stock being voidable and have a material adverse effect on the Company and its prospects.

On May 20, 2022, the Company received a second letter addressed to its Board from Purcell on behalf of the same three purported stockholders regarding the vote at the 2022 Annual Meeting to approve the amendment to our Charter to increase the total number of authorized shares of Class A common stock from 300 million shares to 450 million shares (the "Charter Amendment"), as further described in the 2022 Proxy Statement. The letter asserted, among other things, that that in connection with the vote at the Annual Meeting to approve the Charter Amendment, brokers had cast discretionary votes on such proposal despite a statement in the 2022 Proxy Statement that they would not have authority to do so. The Proxy Statement erroneously indicated that brokers would not have discretionary authority to vote with respect to the proposal to approve the Charter Amendment and that if beneficial owners did not provide direction to their broker as to how to vote, a broker non-vote would result that would have the effect of a vote cast against such proposal. The Company's Current Report on Form 8-K filed with the SEC on May 19, 2022 reported that the Charter Amendment was approved at the Annual Meeting and that the Charter was thereby amended, as the Charter Amendment had been filed with the Secretary of State of the State of Delaware.

The Company's Current Report on Form 8-K filed on May 23, 2022 reported that the Purcell letter had been received (and filed it as an exhibit), that the report of the votes at the Annual Meeting regarding the approval of the Charter Amendment was not considered final and that, to date, none of the shares authorized by the Charter Amendment had been issued. On May 31, 2022, after further review by the Company and its Board of the votes on the proposal to approve the Charter Amendment, due to uncertainty in counting the number of votes cast "for" by brokers exercising discretion without direction from the beneficial owner, the Board determined not to consider the Charter Amendment approved by the Company's stockholders and we filed a Certificate of Correction with the Secretary of State of the State of Delaware, voiding the Charter Amendment and causing the number of authorized shares of Class A common stock to remain at 300 million.

The Company's Form 8-K/A filed with the SEC on June 1, 2022, amending and supplementing the Forms 8-K filed by the Company on May 19, 2022, and May 23, 2022, reported that the Company had filed the Certificate of Correction and announced that the Board had called a special meeting of stockholders to be held on August 17, 2022 ("2022 Special Meeting"), to resubmit for approval an amendment to our Charter to increase the number of authorized shares of our Common Stock from 300 million to 450 million shares (the "Certificate of Amendment"). On July 7, 2022, we filed a definitive proxy statement for the 2022 Special Meeting and, at the 2022 Special Meeting, our stockholders approved the Certificate of Amendment. The parties have reached a settlement agreement to resolve the issues raised in both of the letters from Purcell. The amount of the settlement is not material to the Company.

Except as described above, the Company is not a party to any material legal proceedings and is not aware of any pending or threatened material claims. From time to time however, the Company may be subject to various legal proceedings and claims that arise in the ordinary course of its business activities.

NOTE 6 — RELATED PARTY TRANSACTIONS

On November 7, 2019, the Company entered into a transaction with Workhorse Group Inc., for the purpose of obtaining certain intellectual property. In connection with granting this license, Workhorse Group received 10% of the outstanding Legacy Lordstown common stock and was entitled to royalties of 1% of the gross sales price of the first 200,000 vehicle sales. In November 2020, we pre-paid a royalty payment to Workhorse Group in the amount of $4.75 million. The upfront royalty payment represented an advance on the royalties discussed above. The upfront royalty payment was recorded as other non-current assets as of September 30, 2022 and December 31, 2021.

During the nine months ended September 30, 2021, we continued to refine the design of the Endurance and considered technologies we would use in future vehicles. Given the lack of Workhorse technology used in the Endurance and new management's strategic direction of the Company, inclusive of the transactions contemplated with Foxconn as detailed in Note 1, we deemed it appropriate to change the useful life of the technology we acquired from Workhorse to zero months. As such, we recorded accelerated amortization of $11.1 million during the third quarter of 2021.

As of September 30, 2021, Workhorse Group was no longer determined to be a related party.

As described in Note 1, the Company invested $13.5 million into the Foxconn Joint Venture, of which the Company owns 45%. Pursuant to the Investment Agreement, the Company will be reimbursed for certain costs incurred by the Company on behalf of the Foxconn Joint Venture (See Note 8 – Subsequent Events).

The Company has adopted a related party transaction policy that instituted a process to review and approve all material transactions between the Foxconn Joint Venture and the Company. The Company intends to modify this policy to apply to those transactions contemplated by the Investment Agreement.

NOTE 7 — CAPITAL STOCK AND LOSS PER SHARE

Our Charter provides for 462 million authorized shares of capital stock, consisting of (i) 450 million shares of Class A common stock and (ii) 12 million shares of preferred stock each with a par value of $0.0001. We had 216.9 million and 196.4 million shares of common stock issued and outstanding as of September 30, 2022 and December 31, 2021, respectively. Prior to the Initial Closing (as defined below), the Company will file with the Secretary of the State of Delaware a Certificate of Designation, Preferences and Rights of the Series A Convertible Preferred Stock designating 1 million shares as Series A Convertible Preferred Stock and designating the rights, preferences and limitations of such shares. (See Note 8 – Subsequent Events.)

FASB ASC Topic 260, Earnings Per Share, requires the presentation of basic and diluted earnings per share ("EPS"). Basic EPS is calculated based on the weighted average number of shares outstanding during the period. Dilutive EPS is calculated to include any dilutive effect of our share equivalents. For the three months ended September 30, 2022, our share equivalent included 0.3 million options,1.6 million BGL Warrants, 2.3 million Private Warrants, and 1.7 million Foxconn Warrants outstanding. For the three months ended September 30, 2021, our share equivalent included 3.1 million options, 1.6 million BGL Warrants, and 2.3 million Private Warrants outstanding. None of the stock options or warrants were included in the calculation of diluted EPS because we recorded a net loss for the three and nine months ended September 30, 2022 and 2021 as including these instruments would be anti-dilutive.

The weighted-average number of shares outstanding for basic and diluted loss per share is as follows:

(in thousands)

	Three months ended September 30, 2022	Three months ended September 30, 2021	Nine months ended September 30, 2022	Nine months ended September 30, 2021
Basic and diluted weighted average shares outstanding	211,946	178,761	203,147	176,573

On July 23, 2021, the Company entered into the Equity Purchase Agreement with YA, pursuant to which YA has committed to purchase up to $400 million of our Class A common stock, at our direction from time to time, subject to the satisfaction of certain conditions. Such sales of Class A common stock, are subject to certain limitations, and may occur from time to time at our sole discretion, over the approximately 36-month period commencing on the date of the Equity Purchase Agreement, provided that a registration statement covering the resale by YA of the shares of Class A common stock purchased from us is declared effective by the SEC and the other conditions set forth in the Equity Purchase Agreement are satisfied. We filed the registration statement with the SEC on July 30, 2021, and it was declared effective on August 11, 2021.

Under applicable Nasdaq rules and the Equity Purchase Agreement, we will not sell to YA shares of our Class A common stock in excess of 35.1 million shares, or the Exchange Cap, which is 19.9% of the shares of Class A common stock outstanding immediately prior to the execution of the Equity Purchase Agreement, unless (i) we obtain stockholder approval to issue shares of Class A common stock in excess of the Exchange Cap or (ii) the average price of all applicable sales of shares of Class A common stock under the Equity Purchase Agreement (including the Commitment Shares described below in the number of shares sold for these purposes) equals or exceeds $7.48 per share (which represents the lower of (i) the Nasdaq Official Closing Price (as reflected on Nasdaq.com) immediately preceding the signing of the Equity Purchase Agreement; or (ii) the average Nasdaq Official Closing Price of the Class A common stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the signing of the Equity Purchase Agreement). At current market prices of our shares of Class A common stock, without stockholder approval, the Exchange Cap would limit the amount of funds we are able to raise to significantly less than the $400 million commitment under the Equity Purchase Agreement.

We may direct YA to purchase amounts of our Class A common stock under the Equity Purchase Agreement that we specify from time to time in a written notice (an “Advance Notice”) delivered to YA on any trading day. The maximum amount that we may specify in an Advance Notice without YA’s consent is equal to the lesser of: (i) an amount equal to thirty percent (30%) of the Daily Value Traded of the Class A common stock on the trading day immediately preceding an Advance Notice, or (ii) $30.0 million. For these purposes, “Daily Value Traded” is the product obtained by multiplying the daily trading volume of our Class A common stock by the volume weighted average price for that trading day. Subject to the satisfaction or waiver of the conditions under the Equity Purchase Agreement, we may deliver Advance Notices from time to time, provided that we have delivered all shares relating to all prior Advance Notices, and the purchase price of the shares of Class A common stock will be equal to 97% of the simple average of the daily volume weighted average prices for the three trading days following the Advance Notice as set forth in the Equity Purchase Agreement.

As consideration for YA’s irrevocable commitment to purchase shares of the Company’s Class A common stock upon the terms of and subject to satisfaction of the conditions set forth in the Equity Purchase Agreement, upon execution of the Equity Purchase Agreement, the Company issued 0.4 million shares of its Class A common stock to YA (the “Commitment Shares”).

During the nine months ended September 30, 2021, inclusive of the 0.4 million Commitment Shares, we issued 3.9 million shares to YA and received $20.0 million cash. During the nine months ended September 30, 2022, we issued 17.5 million shares to YA and received $40.4 million cash, net of equity issuance costs.

As of September 30, 2022, we were in compliance with the terms and conditions of the Equity Purchase Agreement and the remaining availability under the Equity Purchase Agreement was $309.1 million which is subject to certain limitations as described above. In particular, without stockholder approval, the amount of shares the Company can issue would be limited to up to 35.1 million shares (unless the average price of all shares sold is $7.48 or higher) (“the Exchange Cap”), less the 27.1 million shares already issued, and therefore this share limitation and the current market price that would be the basis for the price of the shares of Class A common stock to be sold limit the funds the Company is able to raise to significantly less than the original $400 million commitment under the Equity Purchase Agreement.

It is expected that the Equity Purchase Agreement will be terminated as the Sales Agreement will be used as the means for the Company to obtain financing through the periodic sale of the Class A common stock in at the-market transactions, subject to various conditions and limitations. See Note 8 – Subsequent Events and Part II, Item 5. Other Events for additional information.

NOTE 8 — SUBSEQUENT EVENTS

Investment Transactions

On November 7, 2022, the Company and an affiliate of Foxconn, Foxconn Ventures Pte, Ltd. (which is part of the entities we collectively refer to herein as "Foxconn"), entered into the Investment Agreement, pursuant to which Foxconn agreed to make an additional equity investment (collectively, the "Investment Transactions") in the Company in the form of $70 million of our Class A common stock and up to $100 million of Series A Convertible Preferred Stock, $0.0001 par value per share (the "Preferred Stock," and together with the Class A common stock, the "Securities"). The Company will use the proceeds from the sale of the Class A common stock for general corporate purposes as determined by the Company's Board of Directors (the "Board") and the proceeds from the sale of the Preferred Stock to fund the EV Program.

Investment Agreement

At an initial closing to be held on or after November 22, 2022 (the "Initial Closing"), subject to the conditions set forth in the Investment Agreement, Foxconn will purchase: (a) 12.9 million shares of Class A common stock at a purchase price of $1.76 per share for an aggregate purchase price of approximately $22.7 million, and (b) 0.3 million shares of Preferred Stock at a purchase price of $100 per share for an aggregate purchase price of $30 million.

Following the parties' receipt of a written communication from the U.S. government's Committee on Foreign Investment in the United States ("CFIUS") that CFIUS has concluded that the transactions contemplated by the Investment Agreement are not a "covered transaction" or CFIUS has concluded that there are no unresolved national security concerns with respect to the transactions ("CFIUS Clearance") and any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, has expired or terminated and subject to the other conditions set forth in the Investment Agreement, at a second closing (the "Subsequent Common Closing") Foxconn will purchase 26.9 million additional shares of Class A common stock at a purchase price of $1.76 per share.

Upon satisfaction of certain EV Program milestones (including establishing an EV Program budget) and subject to satisfaction of other customary conditions set forth in the Investment Agreement, Foxconn will purchase in two tranches up to 0.7 million additional shares of Preferred Stock at a purchase price of $100 per share. The first tranche will be in an amount up to 0.3 million shares for an aggregate purchase price of $30 million; and the second tranche will be in an amount up to 0.4 million shares for an aggregate purchase price of $40 million. The parties have agreed to use commercially reasonable efforts to agree upon the EV Program budget and funding milestones no later than May 7, 2023.

The Investment Agreement provides that:

- *Board Representation*: Foxconn will have the right to appoint two designees to the Board after receiving CFIUS Clearance and consummation of the Subsequent Common Closing. Foxconn will relinquish one Board seat if it does not continue to beneficially own shares of Class A common stock, Preferred Stock and shares of Class A common stock issued upon conversion of shares of Preferred Stock that represent (on an as-converted basis) at least 50% of the number of shares of Class A common stock (on an as-converted basis) acquired by Foxconn in connection with the Investment Transactions and will relinquish its other Board seat if it does not continue to beneficially own at least

25% of the number of shares of Class A common stock (on an as-converted basis) acquired by Foxconn in connection with the Investment Transactions (the "25% Ownership Requirement").

- *Termination of Foxconn Joint Venture*: The Company and Foxconn will cause (i) the Foxconn Joint Venture Agreement to be amended to terminate all obligations of Lordstown EV Corporation and Foxconn EV Technology, Inc. thereunder, (ii) the Note, dated June 24, 2022, issued by Lordstown EV Corporation and guaranteed by the Company and Lordstown EV Sales to be terminated, and (iii) all liens on assets of Lordstown EV Corporation and the Company to be released. In addition, Foxconn will pay Lordstown EV Corporation approximately $0.4 million for services and reimburse Lordstown EV Corporation approximately $0.1 million for expenses. All remaining funds held by the joint venture will be distributed to Foxconn EV Technology, Inc. as a distribution for amounts contributed by it and as a repayment in full of any loans advanced by it to Lordstown EV Corporation under the Note.
- *Standstill*: Until the date that is the later of December 31, 2024 and 90 days after the first day on which no Foxconn-appointed director serves on the Board and Foxconn no longer has a right to appoint any directors, without the approval of the Board, Foxconn will not (A) acquire any equity securities of the Company if after the acquisition Foxconn and its affiliates would own (i) prior to the Subsequent Common Closing, 9.99% of the capital stock of the Company that is entitled to vote generally in any election of directors of the Company ("Voting Power"), (ii) prior to the time the Company obtains the approval of stockholders contemplated by Rule 5635 of the Nasdaq listing rules as in effect on November 7, 2022 with respect to certain equity issuances (the "Requisite Stockholder Approval"), 19.99% of the Voting Power, and (iii) at all times following the Subsequent Common Closing and the Requisite Stockholder Approval, 24% of the Voting Power (collectively, the "Ownership Limitations"), or (B) make any public announcement with respect to, or offer, seek, propose or indicate an interest in, any merger, consolidation, business combination, tender or exchange offer, recapitalization, reorganization or purchase of more than 50% of the assets, properties or securities of the Company, or enter into discussions, negotiations, arrangements, understandings, or agreements regarding the foregoing.
- *Exclusivity*: Prior to the Subsequent Common Closing, (i) without Foxconn's consent, the Company will not (A) encourage, solicit, initiate or facilitate any Acquisition Proposal (as defined below), (B) enter into any agreement with respect to any Acquisition Proposal or that would cause it not to consummate any of the Investment Transactions or (C) participate in discussions or negotiations with, or furnish any information to, any person in connection with any Acquisition Proposal, and (ii) the Company will inform Foxconn of any Acquisition Proposal that it receives. An "Acquisition Proposal" means any proposal for any (i) sale or other disposition by merger, joint venture or otherwise of assets of the Company representing 30% or more of the consolidated assets of the Company, (ii) issuance of securities representing 15% or more of any equity securities of the Company, (iii) tender offer, exchange offer or other transaction that would result in any person beneficially owning 15% or more of any equity securities of the Company, (iv) merger, dissolution or similar transaction involving the Company representing 30% or more of the consolidated assets of the Company, or (v) combination of the foregoing. The Company has also agreed that, while the Preferred Stock is outstanding, it will not put in place a poison pill that applies to Preferred Stock held by Foxconn or to Common Stock that Foxconn acquires from the Company.
- *Voting Agreement and Consent Rights*: The terms of the Investment Agreement and Certificate of Designations (as defined below) provide that, until the later of (i) December 31, 2024 and (ii) 90 days after the first day on which no Foxconn-appointed director serves on the Board and Foxconn no longer has a right to appoint any directors Foxconn has agreed to vote all of its shares of Class A common stock and Preferred Stock (to the extent then entitled to vote) in favor of each director recommended by the Board and in accordance with any recommendation of the Board on all other proposals that are the subject of stockholder action (other than any action related to any merger or business combination or other change of control transaction or sale of assets). So long as the 25% Ownership Requirement is satisfied, without the consent of the holders of at least a majority of the then-issued and outstanding Preferred Stock (voting as a separate class), the Company cannot (i) amend any provision of the Charter or By-Laws in a manner that would adversely affect the Preferred Stock or increase or decrease the number of shares of Preferred Stock, (ii) authorize or create, or increase the number of shares of any parity or senior securities other than securities on parity with the Preferred Stock with an aggregate liquidation preference of not more than $30 million, (iii)

increase the size of the Board, or (iv) sell, license or lease or encumber any material portion of the Company's hub motor technology and production line other than in the ordinary course of business.

- *Participation Rights*: Following the Subsequent Common Closing and until Foxconn no longer has the right to appoint a director to the Board, other than with respect to certain excluded issuances, Foxconn has the right to purchase its pro rata portion of equity securities proposed to be sold by the Company; provided, that the Company is not required to sell Foxconn securities if the Company would be required to obtain stockholder approval under any applicable law or regulation.

The Investment Agreement contains customary representations, warranties and closing conditions. The Investment Agreement can be terminated by either party if the Initial Closing has not occurred on or before November 7, 2023 and also can be terminated by mutual consent of the parties.

Certificate of Designations of Preferred Stock

Prior to the Initial Closing, the Company will file with the Secretary of the State of Delaware a Certificate of Designation, Preferences and Rights of the Series A Convertible Preferred Stock (the "Certificate of Designations") designating 1 million shares as Series A Convertible Preferred Stock and designating the rights, preferences and limitations of such shares.

The Preferred Stock will, with respect to dividend rights, rights on the distribution of assets on any liquidation, dissolution or winding up of the affairs of the Company and redemption rights, rank: (a) on a parity basis with each other class or series of any equity interests ("Capital Stock") of the Company now or hereafter existing, the terms of which expressly provide that such class or series ranks on a parity basis with the Preferred Stock as to such matters (such Capital Stock, "Parity Stock"); (b) junior to each other class or series of Capital Stock of the Company now or hereafter existing, the terms of which expressly provide that such class or series ranks senior to the Preferred Stock as to such matters (such Capital Stock, "Senior Stock"); and (c) senior to the Class A common stock and each other class or series of Capital Stock of the Company now or hereafter existing, the terms of which do not expressly provide that such class or series ranks on a parity basis with, or senior to, the Preferred Stock as to such matters (such Capital Stock, "Junior Stock").

In the event of any liquidation, dissolution or winding up of the affairs of the Company, the holders of Preferred Stock will be entitled, out of assets legally available therefor, before any distribution or payment to the holders of any Junior Stock, and subject to the rights of the holders of any Senior Stock or Parity Stock and the rights of the Company's existing and future creditors, to receive in full a liquidating distribution in cash and in the amount per share of Preferred Stock equal to the greater of (1) the sum of $100 per share plus the accrued unpaid dividends with respect to such share and (2) the amount the holder would have received had it converted such share into Class A common stock immediately prior to the date of such event.

Holders of the Preferred Stock will be entitled to receive dividends at a rate equal to 8% per annum, which accrue and accumulate whether or not declared. Such dividends compound quarterly and are payable quarterly in arrears. In addition, the holders of the Preferred Stock participate with any dividends payable in respect of any Junior Stock or Parity Stock.

All holders of shares of Preferred Stock will be entitled to vote with the holders of Class A common stock on all matters submitted to a vote of stockholders of the Company as a single class with each share of Preferred Stock entitled to a number of votes equal to the number of shares of Common Stock into which such share could be converted; provided, that no holder of shares of Preferred Stock will be entitled to vote (i) until the expiration or termination of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, or (ii) to the extent that such holder would have the right to a number of votes in respect of such holder's shares of Class A common stock, Preferred Stock or other capital stock that would exceed the limitations set forth in clauses (i) and (ii) of the definition of Ownership Limitations.

Pursuant to the Certificate of Designation, commencing on the later of (1) May 7, 2023, and (2) the earlier of (x) the date of the Subsequent Common Closing and (y) November 7, 2023 (the "Conversion Right Date"), the Preferred Stock is convertible at the option of the holder into shares of Class A common stock at a

conversion price of $1.936 (the “Conversion Price”), subject to customary adjustments. At any time following the third anniversary of the date of issuance, the Company can cause the Preferred Stock to be converted if the volume-weighted average price of the Common Stock exceeds 200% of the Conversion Price for a period of at least twenty trading days in any period of thirty consecutive trading days. Foxconn’s ability to convert is limited by clauses (i) and (ii) of the definition of the Ownership Limitations. Upon a change of control, Foxconn can cause the Company to purchase any or all of its Preferred Stock at a purchase price equal to the greater of its liquidation preference (including any unpaid accrued dividends) and the amount of cash and other property that it would have received had it converted its Preferred Stock prior to the change of control transaction.

Registration Rights Agreement

The Company and Foxconn will enter into a Registration Rights Agreement (the “Registration Rights Agreement”) as a condition to the Initial Closing pursuant to which the Company will agree to use reasonable efforts to file and cause to be declared effective a registration statement with the Securities and Exchange Commission (“SEC”) registering the resale of the Securities, including any shares of Common Stock issuable upon conversion of the Preferred Stock, by the earlier to occur of (i) the Subsequent Common Closing, (ii) a determination that CFIUS Clearance will not occur and (iii) May 7, 2023. Foxconn also has customary demand and piggyback registration rights with respect to the Securities, and indemnification rights.

Sales Agreement and ATM Offering

On November 7, 2022, the Company entered into the Sales Agreement with Jefferies, as agent, pursuant to which the Company may offer and sell up to approximately 50.2 million shares of our Class A common stock, from time to time through Jefferies. The Company intends to file the Prospectus Supplement, concurrent with this Form 10-Q, in connection with the ATM Offering under the Registration Statement. The Company has agreed to pay Jefferies commissions for its services of acting as agent of up to 3% of the gross proceeds from the sale of the shares of Class A common stock pursuant to the Sales Agreement. The Company has also agreed to provide Jefferies with customary indemnification and contribution rights.

Upon delivery of an issuance notice and subject to the terms and conditions of the Sales Agreement, Jefferies may sell shares of Class A common stock at market prices by any method deemed to be an “at the market offering” as defined in Rule 415(a)(4) promulgated under the Securities Act of 1933, as amended, including sales made directly on or through The Nasdaq Global Select Market (“Nasdaq”), the existing trading market for the Class A common stock. The Company may instruct Jefferies to not sell the shares of Class A common stock if the sales cannot be transacted at or above the price designated by the Company in any issuance notice. The Company is not obligated to make any sales of the shares of Class A common stock under the Sales Agreement. Actual sales will depend on a variety of factors and no assurance can be given that the Company will sell any shares of Class A common stock under the Agreement, or, if it does, as to the price or amount of the shares of Class A common stock that it sells or the dates when such sales will take place. The shares of Class A common stock will be sold pursuant to the Registration Statement, and offerings of the shares of Class A common stock will be made only by means of the Prospectus Supplement and accompanying prospectus. This quarterly report on Form 10-Q shall not constitute an offer to sell or solicitation of an offer to buy the shares of Class A common stock, nor shall there be any sale of the shares of Class A common stock in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities law of such state or jurisdiction.

The Company or Jefferies may suspend or terminate the offering of shares of Class A commons stock upon notice to the other party, subject to certain conditions. Jefferies will act as sales agent on a commercially reasonable efforts basis consistent with its normal trading and sales practices and applicable state and federal law, rules and regulations and the rules of Nasdaq.

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

This Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") should be read in conjunction with the accompanying condensed consolidated financial statements and notes. Forward-looking statements in this MD&A are not guarantees of future performance and may involve risks and uncertainties that could cause actual results to differ materially from those projected. Refer to the "Cautionary Note Regarding Forward-Looking Statements" above and Item 1A. Risk Factors in our Form 10-K, prior Quarterly Reports on Form 10-Q and below for a discussion of these risks and uncertainties, including without limitation, with respect to our estimated production and sale timeline, need for additional financing and the risks related to effectively implementing and realizing the benefits of the Foxconn Transactions.

Our mission is to accelerate electric vehicle adoption and to be a catalyst in the transition of commercial fleets to all-electric vehicles for a more sustainable future. We are an EV innovator focused on developing high-quality light-duty work vehicles.

Since inception, we have been developing our flagship vehicle, the Endurance, an electric full-size pickup truck. During the first half of 2022, we built pre-production vehicles ("PPVs") for testing, validation, certification, regulatory approvals and to demonstrate the capabilities of the Endurance to potential customers. In September of 2022, we started commercial production of the Endurance with the first two vehicles completing assembly. Production volume is expected to ramp slowly primarily as a result of supply chain constraints, with engineering readiness, quality, and part availability continuing to govern the speed of launch. We anticipate sales starting in the fourth quarter of 2022 subject to full homologation, testing and required certification.

Our current bill of materials cost for the Endurance is well above our anticipated selling price. Our capital constraints have limited our ability to: (a) invest in hard tooling for scaled production of the Endurance, and (b) establish multi-year production volumes consistent with our suppliers' expectations. These factors together result in a bill of materials cost for the Endurance that is, and will continue to be, significantly higher than the expected selling price. While we believe we will be able to achieve cost improvements over time if we are able to scale production of the Endurance, we do not anticipate reaching a positive gross margin until or unless we are able to make the investments and design enhancements to reduce the bill of materials cost. We are also seeking strategic partners, including other automakers, to provide additional capital or other support to enable us to scale the Endurance program and to develop new vehicle programs in cooperation with Foxconn or otherwise. If we raise sufficient capital, we would have the opportunity to allocate funds to investments in hard tools that are designed for long term use and higher production volumes. We have identified significant piece price savings from these investments that we could seek to realize over time. Such hard tool investments and piece price reductions may not be sufficient to achieve profitability, and we expect to continue to evaluate the need and opportunity for design enhancements that may result in further reductions in the bill of materials cost. However, no assurances can be made regarding our ability to successfully identify and implement actions that will lower the Endurance bill of materials cost, including that we will have sufficient capital to make these investments or our suppliers will be willing or able to manufacture the tools or the parts. Until such time as we have sufficient capital and we are able to lower the bill of materials cost, we expect to limit or curtail our production of the Endurance in order to minimize our losses, which we anticipate to be through 2023 or potentially longer.

As of September 30, 2022, property, plant, and equipment was reviewed for potential impairment for recoverability by comparing the carrying amount of our asset group to estimated undiscounted future cash flows expected to be generated by the asset group. As the carrying amount of our asset group exceeds its estimated undiscounted future cash flows, an impairment charge of $74.9 million was recognized as the amount by which the carrying amount of the asset group exceeds the fair value of the asset group.

We plan to focus our sales and marketing efforts on direct sales through our subsidiary, Lordstown EV Sales, LLC, to commercial fleet operators and fleet management companies rather than through third-party

dealerships. However, we intend to explore other distribution strategies as our business grows. An important aspect of our sales and marketing strategy involves pursuing relationships with specialty upfitting and fleet management companies to incorporate the Endurance into their fleets or sales programs. As their main area of business, fleet management companies act as an intermediary facilitating the acquisition of new vehicles for the ultimate end user fleets. They provide a valuable distribution channel for us because of their extensive end user relationships and ability to offer attractive financing rates. As a result of this strategy, we expect that we will not be required to make significant investments in a large direct sales force or third-party dealership network, thereby avoiding substantial fixed costs. Our expected limited initial production levels may make it more difficult to get support from commercial fleets or fleet management companies in the marketing, sale and distribution of the Endurance.

We intend to leverage our advanced technologies and highly talented team to develop additional all-electric vehicles targeted for the commercial market.

Pursuant to and subject to the conditions in the Investment Agreement with Foxconn, Foxconn agreed to purchase $70 million of our Class A common stock and up to $100 million in convertible preferred stock. Subject to the conditions set forth in the Investment Agreement, we expect to receive approximately $52.7 million from the issuance of our Class A common stock and Preferred Stock in the fourth quarter of 2022, of which approximately $22.7 million can be used for general corporate purposes and $30 million is to be used in connection with the EV Program. The remainder of the investment is subject to regulatory approvals and other conditions. Any such program will require substantially more capital than the initial funding from Foxconn. See Note 1 ¾ Organization and Description of Business and Basis of Presentation ¾ *Lordstown Description of Business* ¾ *Foxconn Joint Venture Agreement* and Note 8 – Subsequent Events for additional detail.

See Liquidity and Capital Resources and Risk Factors under Part I - Item 1A. of our Form 10-K, prior Forms 10-Q and below for further discussion of the risks associated with the capital required to execute our business plan, implementation of the Foxconn Transactions and our production timeline.

The APA Closing with Foxconn on May 11, 2022 described in Note 1 resulted in more than $257 million in funding for the Company, of which $200 million was received in the form of down payments prior to the APA Closing, in addition to the $50 million purchase of our Class A common stock in October 2021. The Foxconn Transactions represent a shift in our business strategy from a fully vertically integrated designer, developer and manufacturer of EVs into a less capital-intensive business focused on developing, engineering, testing and industrializing vehicles in partnership with Foxconn. See Note 1 for additional detail.

The sale of the Lordstown facility allowed us to meaningfully reduce our operating complexity and fixed cost structure by transferring to Foxconn the current and future manufacturing employees along with nearly all of the fixed and variable overhead costs, such as maintenance, utilities, insurance and more. The Foxconn Transactions should also provide more cost-effective access to certain raw materials, components and other inputs over time. In addition, we believe we will realize the benefits of scaled manufacturing sooner, as Foxconn contracts with other OEMs to produce their vehicles in the Lordstown facility.

We believe that outsourcing our manufacturing to a highly qualified partner will enable us to leverage Foxconn's technology, supply chain network and expertise to accelerate the launch of current and future vehicle programs. The Foxconn Transactions should also allow us to leverage our EV product development and engineering capabilities across a broader platform. However, no assurances can be given that we will be able to effectively implement and realize the anticipated benefits of the Foxconn Transactions or as to the timing of such benefits. See Note 1 and Note 8 and Risk Factors under Part I - Item 1A. of our Form 10-K and prior Forms 10-Q and below for further discussion of the risks associated with the Foxconn Transactions.

Results of Operations for the three months ended September 30, 2022 and 2021

(in thousands)

	Three months ended September 30, 2022	Three months ended September 30, 2021
Net sales	$ —	$ —
Operating expenses		
Selling, general and administrative expenses	60,145	31,281
Research and development expenses	19,839	56,890
Amortization of intangible assets	—	11,111
Impairment of fixed assets	74,865	—
Total operating expenses	154,849	99,282
Loss from operations	(154,849)	(99,282)
Other (expense) income		
Other (expense) income	(643)	3,467
Interest income	1,062	9
Loss before income taxes	(154,430)	(95,806)
Income tax expense	—	—
Net loss	$ (154,430)	$ (95,806)

Selling, General and Administrative Expense

Selling, general and administration expenses of $60.1 million during the three months ended September 30, 2022 included a $30.0 million litigation accrual with respect to certain ongoing legal proceedings as described in Note 5 and a $16.2 million charge to reflect the NRV of inventory as described in Note 2. Our costs related to legal proceedings are subject to uncertainties inherent in the litigation process and we cannot predict the outcome of many of these matters. The remaining selling, general and administration expenses incurred in the third quarter of 2022 totaled $13.9 million primarily consisted of $6.4 million of personnel costs and $4.5 million of legal and insurance costs. Selling, general and administrative expenses increased $28.9 million during the three months ended September 30, 2022 compared to three months ended September 30, 2021 primarily due to increases of $19.8 million in legal and insurance costs and $16.2 million in the NRV charge, offset by a decrease of $7.0 million in professional fees.

Research and Development Expense

Research and development expenses were $19.8 million during the three months ended September 30, 2022 to support testing, certification and validation as we initiated a slow start of commercial production. Our research and development costs in the third quarter of 2022 consisted of $14.2 million of personnel and professional fees, $0.9 million in costs associated with manufacturing readiness and $1.7 million in prototype components and $3.0 million in other costs. The three months ended September 30, 2022 represents the first full quarter the Company did not own the Lordstown, Ohio facility, as it was sold to Foxconn on May 11, 2022. During the third quarter of 2021, research and development costs totaled $56.9 million and were primarily made up of $16.0 million related to the costs associated with operating the Lordstown facility, including approximately $11.5 million in personnel and professional fees and $12.3 million of prototype component costs. During the third quarter of 2021, we incurred $28.6 million of non-plant related costs, consisting primarily of $16.8 million in outside engineering, testing and other services, and $8.3 million in personnel costs. Total research and development expenditures decreased by $37.1 million for the three months ended 2022 as compared to 2021, primarily from the elimination of the costs associated with operating the plant, $10.6 million in prototype components and a reduction of $10.9 million in other personnel and professional fees.

Impairment of fixed assets

Impairment of fixed assets totaled $74.9 million during the three months ended September 30, 2022 as described in Note 4. As of September 30, 2022, property, plant, and equipment was reviewed for potential impairment for recoverability by comparing the carrying amount of our asset group to estimated undiscounted future cash flows expected to be generated by the asset group. As the carrying amount of our asset group exceeds its estimated undiscounted future cash flows, we recognized a $74.9 million charge based on the difference between the carrying value of the fixed assets and their fair value. The fair value was based on total enterprise value using level 1 inputs as we believe this technique results in the highest and best use of a hypothetical marketplace participant. Additional impairments could occur in future periods.

Amortization of Intangible Assets

During the quarter ended September 30, 2021, we continued to refine the design of the Endurance and consider technologies we would use in future vehicles. Given the lack of Workhorse technology used in the Endurance and new management's strategic direction of the Company, inclusive of the transactions contemplated with Foxconn, we deemed it appropriate to change the useful life of the technology we acquired from Workhorse to zero months. As such, we recorded accelerated amortization of $11.1 million during the quarter ended September 30, 2021.

Results of Operations for the nine months ended September 30, 2022 and 2021

(in thousands)

	Nine months ended September 30, 2022	Nine months ended September 30, 2021
Net sales	$ —	$ —
Operating expenses		
Selling, general and administrative expenses	116,105	79,468
Research and development expenses [1]	92,213	225,245
Impairment of fixed assets	74,865	—
Amortization of intangible assets	—	11,111
Gain on sale	(101,736)	—
Total operating expenses	181,447	315,825
Loss from operations	(181,447)	(315,825)
Other (expense) income		
Other expense	(144)	(13,788)
Interest income	1,187	396
Loss before income taxes	(180,404)	(329,217)
Income tax expense	—	—
Net loss	$ (180,404)	$ (329,217)

1 Research and development expenses for the nine months ended September 30, 2022 are net of $18.4 million in operating expense reimbursements as described in Note 1.

Selling, General and Administrative Expense

Selling, general and administration expenses of $116.1 million during the nine months ended September 30, 2022 included a $32.0 million litigation accrual with respect to certain ongoing legal proceedings, as described in Note 5 and a $25.6 million charge to reflect the NRV of inventory as described in Note 2. Our costs related to legal proceedings are subject to uncertainties inherent in the litigation process

and we cannot predict the outcome of many of these matters. The remaining selling, general and administrative expenses for the nine months ended September 30, 2022 totaled $58.5 million which consisted primarily of $32.3 million in personnel and professional fees and $20.8 million of legal and insurance costs. Total selling, general and administrative expenses increased $36.6 million during the nine months ended September 30, 2022 compared to 2021 primarily due to the NRV charge for inventory and increases of $14.9 million in legal and insurance costs and $5.4 million in personnel costs, offset by a $9.3 million decrease in professional fees.

Research and Development Expense

Research and development expenses were $92.2 million during the nine months ended September 30, 2022, which includes the impact of $18.4 million in reimbursement of certain operating costs incurred by the Company between September 1, 2021 and the APA Closing as described in Note 1. Until we initiate commercial sales, the costs associated with operating the Lordstown facility are included in research and development expense as they relate to the design and construction of beta and pre-production vehicles, along with manufacturing readiness. During the nine months ended September 30, 2022, we incurred $33.6 million in costs associated with the Lordstown facility, including $15.7 million in personnel and professional costs, $7.8 million in freight, $4.5 million in utilities and $5.6 million of other facility and manufacturing costs. The substantial majority of the costs associated with operating the Lordstown, Ohio facility were incurred prior to the sale of the plant to Foxconn on May 11, 2022 (see Note 1). During the nine months ended September 30, 2021, we incurred $42.4 million in costs associated with operating the Lordstown facility, including $26.9 million in personnel and professional costs, $5.1 million in utilities, and $10.3 million in other facility operating costs.

Also included in research and development expense are the prototype components used for part, module or system design testing and validation, as well as full production of beta and pre-production vehicles. In the nine months ended September 30, 2022, our prototype component costs totaled $22.8 million compared to $84.9 million in the same period of 2021. The substantial majority of the 2022 costs represented parts used in the production of PPVs.

All other research and development expenses totaled $54.1 million for the nine months ended September 30, 2022 which primarily consisted of $44.6 million of personnel and professional fees. This represents a decrease of $43.9 million in the nine months ended September 30, 2022 compared to the same period in 2021 primarily due to a $44.4 million decrease in outside engineering and testing services and $4.7 million in freight as Endurance development costs decline as we approached commercial production, partially offset by an increase in personnel costs.

Gain on sale

Gain on sale totaled $101.7 million during the nine months ended September 30, 2022 which was primarily attributable to the gain on the sale of the Lordstown facility sold to Foxconn as described in Note 1.

Liquidity and Capital Resources

We had cash, cash equivalents and short-term investments of approximately $203.5 million and an accumulated deficit of $725.2 million at September 30, 2022 and a net loss of $180.4 million for the nine months ended September 30, 2022.

In the first half of 2022, we continued to build PPVs for testing, validation, certification, regulatory approvals, and to demonstrate the capabilities of the Endurance to potential customers. In September of 2022, the Company started commercial production of the Endurance with the first two vehicles completing assembly. We expect production volume will primarily as a result of supply chain constraints, with engineering readiness, quality, and part availability continuing to govern the speed of launch. We anticipate sales starting in the fourth quarter of 2022 subject to full homologation, testing and required certification. For the

foreseeable future, we will incur significant operating expenses, capital expenditures and working capital funding that will deplete our cash on hand. As a result of having insufficient capital to execute our business plan, we have substantially limited investments in tooling and other aspects of the Endurance and our operations. The trade-offs we are making, including related to hard tooling, are likely to result in higher costs for the Company in the future and are likely to slow or impair future design enhancements or options we may otherwise seek to make available to customers. The Company's research and development expenses and capital expenditures are significant due to spending needed for PPVs, vehicle validation tests, securing necessary parts/equipment, and utilizing in-house and third-party engineering, testing and validation services. During 2021, the Company experienced the stress that the COVID-19 pandemic put on the global automotive supply chain including with regard to the availability, pricing and lead times for components and raw materials. Furthermore, in 2021 and 2022, we have incurred significant freight charges that in part were higher due to the COVID-19 pandemic and challenging logistics that created delays and higher pricing on standard freight, and incurred substantially higher expedited freight charges to mitigate delays. The Company expects continued supply chain constraints as well as raw material and other pricing pressures that are likely to negatively impact our cost structure and production timeline. See Part I - Item 1A. Risk Factors in our Form 10-K and Forms 10-Q for further discussion of the risks associated with disruptions to the supply chain.

We also have meaningful exposure to material losses and costs related to ongoing litigation and regulatory proceedings for which insurance coverage has been denied for certain claims and may be unavailable for those and other claims. See Note 5 – Commitments and Contingencies for additional information and Part I - Item 1A. Risk Factors in our Form 10-K and Forms 10-Q and below for further discussion of the risks associated with our exposure to litigation and regulatory proceedings and availability of insurance coverage.

We need additional funding to execute our business plan, including scaling production of the Endurance and developing other vehicles including through the EV Program, due to the capital required to complete testing and validation, purchase the raw materials and vehicle components for saleable vehicles, invest in the hard tooling to lower our bill of materials cost and fund future engineering, operating and corporate expenditures. If we are unable to raise substantial additional capital in the near term, our ability to invest in hard tooling to lower the bill of material cost of the Endurance will be significantly scaled back or curtailed. If the funds raised are insufficient to provide a bridge to full scale commercial production at a profit, our operations could be severely curtailed or cease entirely. Until such time as we have sufficient funds to invest in the necessary actions to reduce our bill of material costs, we will limit our curtail production in order to minimize our losses.

In an effort to alleviate these conditions, management continues to actively seek and evaluate opportunities to raise additional funds through the issuance of equity or debt securities, asset sales, arrangements with strategic partners or obtaining financing from government or financial institutions. We have engaged a financial advisor to advise the Company on additional financing alternatives. No assurances can be given that any such financing will be available on commercially reasonable terms or at all.

As part of our funding efforts, on July 23, 2021, the Company entered into the Equity Purchase Agreement with YA, pursuant to which YA has committed to purchase up to $400 million of our Class A common stock, at our direction from time to time, subject to the satisfaction of certain conditions. During the nine months ended September 30, 2021, we issued 3.9 million shares to YA and received $20.0 million cash, net of equity issuance costs. During the nine months ended September 30, 2022, we issued 17.5 million shares to YA and received $40.4 million cash, net of equity issuance costs.

The actual amount that we may raise under the Equity Purchase Agreement depends on market conditions and limitations in the agreement. In particular, without stockholder approval, the Exchange Cap provision would limit the amount of shares we can issue to 35.1 million shares (unless the average price of all shares sold is $7.48 or higher), including the 27.1 million shares previously issued, and therefore this share limitation and the current market price that would be the basis for the price of the shares of Class A common stock to be sold limit funds we are able to raise to significantly less than the $400 million commitment under the Equity Purchase Agreement. As of September 30, 2022, we were in compliance with the terms and conditions of the Equity Purchase Agreement and the remaining availability under the Equity Purchase Agreement was 8 million shares, due to certain limitations as described above and in Note 7 of the condensed consolidated

financial statements. In addition, it is expected that the Sales Agreement will replace the Equity Purchase Agreement as the means for the Company to obtain financing through the periodic sale of up to approximately 50.2 million shares of Class A common stock in at-the-market transactions, subject to various conditions and limitations, and the Equity Purchase Agreement will be terminated. See Note 8 – Subsequent Events and Part II, Item 5. Other Events for additional information.

The APA Closing with Foxconn provided more than $257 million in funding for the Company, including the $230 million purchase price and $27.5 million in reimbursements, in addition to the $50 million purchase of our Class A common stock in October 2021. The Foxconn Transactions represent a shift into a less capital-intensive business.

In addition, the Foxconn Joint Venture Agreement provides that Foxconn will make term loans to Lordstown EV in an aggregate original amount not to exceed $45 million as advances are requested by Lordstown EV to fund our capital commitment of $45 million pursuant to the Foxconn Joint Venture Agreement. To secure its obligations under the Notes, Lordstown EV has granted Foxconn a security interest in (i) all of Lordstown EV's equity interests in the Foxconn Joint Venture, and (ii) personal property constituting the hub motor assembly lines, battery module assembly lines and battery pack assembly lines. Each outstanding Note will accrue interest at a rate of 7.0% per annum, to be paid-in-kind, and is due on the earlier of (i) the first anniversary of issuance and (ii) December 31, 2025, unless earlier terminated in the event of a default. Pursuant to the Foxconn Joint Venture Agreement, each Note maturing before December 31, 2025 will be refinanced by Foxconn with a new Note in the principal amount equal to the outstanding principal amount of the refinanced Note, plus accrued and unpaid interest thereon, and will have terms otherwise substantively identical to the terms of the refinanced Note. As a result, it is not expected, absent a default, that any amounts will become due under the Notes prior to December 31, 2025. Lordstown EV will be required to prepay each Note and all accrued but unpaid interest thereon with proceeds received upon distributions from the Foxconn Joint Venture or cash proceeds of certain asset dispositions. On June 16, 2022, Lordstown EV requested an initial advance of $13.5 million, which was funded by Foxconn in exchange for the delivery by Lordstown EV of a Note in such amount on June 24, 2022. See Note 1 of the condensed consolidated financial statements for additional details. Under the Investment Agreement, the parties have agreed to terminate the Foxconn Joint Venture and the parties will no longer be subject to their capital commitments. In connection with the termination, all remaining funds held by the Foxconn Joint Venture will be distributed to Foxconn as a distribution for amounts contributed by it and as a repayment in full of any loans advanced by it to Lordstown EV, and the security interest in the assets of the Company will be released. (See Note 8 - Subsequent Events for additional information.)

Under the Investment Agreement, Foxconn agreed to purchase $70 million of our Class A common stock and up to $100 million in Preferred Stock, subject to certain conditions, including regulatory approvals and achievement of development milestones established by the parties, of which we expect to receive approximately $52.7 million in the fourth quarter of 2022 (subject to satisfaction of the funding conditions). Approximately $22.7 million can be used for general corporate purposes and $30 million is restricted for use in connection with the EV Program. The additional capital that may be available to us under the Investment Agreement is subject to regulatory approvals and achieving certain program milestones, among other conditions, and therefore may be limited. Notwithstanding this funding arrangement, we will continue to require substantial additional capital in order to fulfill our business plans under the EV Program and otherwise. (See Note 8 - Subsequent Events for additional information.)

As we seek additional sources of financing, there can be no assurance that such financing would be available to us on favorable terms or at all. Our ability to obtain additional financing is subject to several factors, including market and economic conditions, the significant amount of capital required, the fact that our bill of materials cost is currently, and expected to continue to be, substantially higher than our anticipated selling price, uncertainty surrounding regulatory approval and the performance of the vehicle, meaningful exposure to material losses and costs related to ongoing litigation and the SEC investigation, the market price of our stock, our performance and investor sentiment with respect to us and our business and industry, as well as our ability to effectively implement and realize the expected benefits of the Foxconn Transactions. As a result

of these uncertainties, and notwithstanding management's plans and efforts to date, there continues to be substantial doubt about our ability to continue as a going concern.

Pursuant to the requirements of the FASB's ASC Topic 205-40, Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern, management must evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for one year from the date the consolidated financial statements included in this report are issued. This evaluation does not take into consideration the potential mitigating effect of management's plans that have not been fully implemented or are not within control of the Company as of the date the financial statements are issued. When substantial doubt exists, management evaluates whether the mitigating effect of its plans sufficiently alleviates substantial doubt about the Company's ability to continue as a going concern. The mitigating effect of management's plans, however, is only considered if both (1) it is probable that the plans will be effectively implemented within one year after the date that the financial statements are issued, and (2) it is probable that the plans, when implemented, will mitigate the relevant conditions or events that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the consolidated financial statements are issued.

See Risk Factors under Part I - Item 1A. of our Form 10-K, and prior Forms 10-Q and below for further discussion of the risks associated with our need for additional financing and loss exposures, among other risks.

Summary of Cash Flows

The following table provides a summary of Lordstown's cash flow data for the period indicated:

(in thousands)

	Nine months ended September 30, 2022	Nine months ended September 30, 2021
Net Cash used by operating activities	$ (171,022)	$ (246,240)
Net Cash used by investing activities	$ (74,554)	$ (255,528)
Net Cash provided by financing activities	$ 155,792	$ 105,838

Net Cash Used by Operating Activities

For the nine months ended September 30, 2022 compared to 2021, net cash used by operating activities decreased by $75.2 million primarily due to changes in working capital and the $17.5 million received from Foxconn for the reimbursement of operating costs.

Net Cash Used by Investing Activities

For the nine months ended September 30, 2022 compared to 2021, cash used by investing activities decreased $181.0 million primarily due to lower capital spending in 2022. Cash used by investing activities in 2022 also included a $13.5 million investment into the Foxconn Joint Venture and was net of $37.5 million in proceeds from the sale of capital assets to Foxconn. The $200 million in down payments received prior to closing are reflected as financing proceeds and are reflected as a non-cash transaction when the down payment was applied at the APA Closing and the Company's repayment obligation was terminated. The capital spending in 2021 represented the early investments to retool the Lordstown Facility, acquire testing equipment and related capabilities, and to prepare for manufacturing.

Net Cash Provided by Financing Activities

For the nine months ended September 30, 2022 compared to 2021, cash flows from financing activities increased $50 million. Financing cash flows in 2022 was primarily related to the $100 million down payment received from Foxconn, $13.5 million from proceeds from Foxconn notes payable and $40.4 million from

sales under the Equity Purchase Agreement, net of issuance costs. Financing cash flows in 2021 was primarily due to $82.0 million of cash proceeds from the exercise of warrants in 2021 and $20.0 million from sales under the Equity Purchase Agreement, net of issuance costs.

Off-Balance Sheet Arrangements

We have no obligations, assets or liabilities, which would be considered off-balance sheet arrangements as of September 30, 2022. We do not participate in transactions that create relationships with unconsolidated entities or financial partnerships, often referred to as variable interest entities, which would have been established for the purpose of facilitating off-balance sheet arrangements. We have not entered into any off-balance sheet financing arrangements, established any special purpose entities, guaranteed any debt or commitments of other entities, or purchased any non-financial assets.

Recent Accounting Pronouncements

See Note 2 to the condensed consolidated financial statements for more information about recent accounting pronouncements, the timing of their adoption, and management's assessment, to the extent they have made one, of their potential impact on Lordstown's financial condition and results of operations.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

On September 30, 2022, we had cash, cash equivalents and short-term investments of approximately $203.5 million. We believe that a 10 basis point change in interest rates is likely in the near term. Based on our current level of investment, an increase or decrease of 10 basis points in interest rates would not have a material impact to our cash balances.

Item 4. Controls and Procedures

Management's Evaluation of our Disclosure Controls and Procedures

Disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act, are 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 in company reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

We do not expect that our disclosure controls and procedures will prevent all errors and all instances of fraud. Disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Further, the design of disclosure controls and procedures must reflect the fact that there are resource constraints, and the benefits must be considered relative to their costs. Because of the inherent limitations in all disclosure controls and procedures, no evaluation of disclosure controls and procedures can provide absolute assurance that we have detected all our control deficiencies and instances of fraud, if any. The design of disclosure controls and procedures also is based partly on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Based upon their evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were not effective as of December 31, 2021 due to the material weakness described below and discussed in our Form 10-K for the year ended December 31, 2021.

In the course of preparing the Company's financial statements for the Form 10-K, our management identified the following material weakness in internal control over financial reporting:

- The Company did not have a sufficient number of trained resources with assigned responsibilities and accountability for the design and operation of internal controls over financial reporting.

As a consequence, the Company did not effectively operate process-level control activities related to procure-to-pay (including operating expenses, prepaid expenses, and accrued liabilities), review and approval of manual journal entries, and user access controls to ensure appropriate segregation of duties.

These control deficiencies create a reasonable possibility that a material misstatement to the consolidated financial statements will not be prevented or detected on a timely basis, and therefore we conclude that the deficiencies represent a material weakness in internal control over financial reporting and our internal control over financial reporting is not effective as of December 31, 2021.

As required by Rules 13a-15 and 15d-15 under the Exchange Act, our Chief Executive Officer and Chief Financial Officer carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of September 30, 2022. Based upon their evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of September 30, 2022 as our material weakness has been remediated.

Management's Remediation of the Material Weakness

As of September 30, 2022, management has designed and implemented additional controls to remediate the material weakness previously reported in the Form 10-K for the year ended December 31, 2021 and Form 10-Q for each of the quarters ended March 31, 2022 and June 30, 2022.The Board and management, with the assistance of our third-party consultants and oversight of the Audit Committee, have implemented, among other items, the following measures:

- hired and trained additional qualified personnel
- performed detailed risk assessments in key process areas to identify risks of material misstatement
- with the assistance of a large nationally recognized accounting firm, designed and implemented control procedures to address the identified risks of material misstatements in key process areas and tested these quarterly.

Given the remediation efforts noted above, testing of applicable controls completed during the third quarter and the determination that controls are designed and operating effectively, management has concluded that the material weakness set forth above was remediated as of September 30, 2022. Our independent registered public accounting firm will complete their audit of the Company's internal control over financial reporting and report on their independent evaluation of the effectiveness of the Company's internal control over financial reporting as of December 31, 2022 in connection with the filing of the Company's 2022 annual financial statements.

Notwithstanding the material weakness that existed as of the beginning of the quarter ended September 30, 2022, management believes that the condensed consolidated financial statements included in this Quarterly Report on Form 10-Q present fairly in all material respects our condensed consolidated financial position, results of operations and cash flows for the period presented.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) during the quarter ended September 30, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting except for the remediation efforts with regard to the material weakness described above.

PART II: OTHER INFORMATION

Item 1. Legal Proceedings

For a description of our legal proceedings, see Note 5 - Commitments and Contingencies of the notes to the condensed consolidated financial statements of this Quarterly Report on Form 10-Q.

Item 1A. Risk Factors

There are no material changes from the risk factors set forth in Part I, “Item 1A. Risk Factors” in our Form 10-K and prior Forms 10-Q, except as set forth below. In addition to the risk factors set forth below and the other information set forth in this report, you should carefully consider the factors discussed in Part I, “Item 1A. Risk Factors” in our Form 10-K and Forms 10-Q, which could materially affect our business, financial condition or future operating results.

The funding transactions contemplated with Foxconn under the Investment Agreement are subject to closing conditions including regulatory approvals and further negotiation of development milestones, and the EV Program development plans contemplated with Foxconn will require additional funding and the establishment and implementation of the program requirements, among other matters, and may not be consummated, sufficiently implemented or provide the benefits we expect, which could have a material adverse effect on our business, operating results, financial condition and prospects.

The closing of all tranches of funding under the Investment Agreement for the aggregate sale of up to approximately 39.8 million shares of Class A common stock and up to $100 million of Preferred Stock to Foxconn is subject to certain conditions as follows: (a) the Initial Closing of the sale of approximately 12.9 million shares of Class A common stock for an aggregate purchase price of $22.7 million and $30 million of Preferred Stock is subject to satisfaction of customary representations and covenants, (b) the Subsequent Common Closing of the sale of approximately 26.9 million shares for an aggregate purchase price of $47.3 million will occur only if CFIUS Clearance is received and any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, has expired or terminated, and is subject to satisfaction of customary representations and covenants, and (c) once certain initial EV Program milestones to be agreed to by the parties (the “Preferred Funding Milestones”) have been established, the sale of the remaining $70 million of Preferred Stock is subject to satisfaction of such Preferred Funding Milestones and customary representations and covenants. If these conditions are not satisfied, the funding under the Investment Agreement may not be received or may be limited, which could result in a material adverse effect on our business, operating results, financial condition and prospects.

The funding from the sale of Preferred Stock may be used only to fund expenditures in respect of pre-development activities and related overhead and support in connection with the Company carrying out certain product development and engineering services in connection with the EV Program and to fund the design, development and production of the covered electric vehicle program in accordance with the terms of a related EV Program agreement; provided, that if the EV Program is abandoned, the Compay may use proceeds from the sale of the Preferred Stock that the Company receives prior to the date of such abandonment to fund expenditures in connection with the any substitute or replacement electric vehicle program agreed to by the Company and Foxconn. The parties are to use commercially reasonable good faith efforts to agree upon the Preferred Funding Milestones and a budget for the EV Program no later than May 7, 2023. There is no

assurance that the parties will meet these conditions and, if they are unable to do so, the lack of further funding and progress on the EV Program in accordance with the milestones may have a material adverse effect on the Company's ability to achieve its business plan with respect to the development of additional electric vehicles.

Further, implementation of the EV Program will require substantial funding beyond the amounts contemplated by the Investment Agreement and effective cooperation by the parties to establish plans, processes and a budget and to timely and effectively fulfill these commitments. Our ability to undertake these actions depends on many variables, which could include our ability to utilize the designs, engineering data and other foundational work of Foxconn, its affiliates, and other members of the MIH consortium as well as other parties, establish appropriate infrastructure and processes with such parties and for all such parties to adhere to timelines to develop, commercialize, industrialize, homologate and certify a vehicle in North America, along with variables that are out of the parties' control, such as technology, innovation, adequate funding, supply chain and other economic conditions, competitors, customer demand and other factors. We are still at an early stage of development and no assurances can be given as to the timing or completion of design, development, homologation, certification and production under the EV Program. If we are unable to obtain the additional funding that is needed or the parties are otherwise unable to successfully complete the steps required by the EV Program on a timely basis, our business plan, prospects, financial condition and results of operations could be materially and adversely impaired.

Furthermore, even if the EV Program is completed, we cannot predict whether we will be able to fully realize the anticipated benefits from the intended production of one or more electric vehicle. A variety of other factors, including competition, technological advances, supply chain disruptions, adequate testing, safety and reliability, certifications and government approvals, and the pace and extent of vehicle electrification generally, among other matters, could present challenges to the ultimate success of the EV Program and our business plan, prospects, financial condition and results of operations.

We have agreed to issue shares of Series A Convertible Preferred Stock that ranks senior to our Class A common stock in priority of distribution rights and rights upon our liquidation, dissolution or winding up, accrues dividends and is convertible into Class A common stock and provides associated corporate governance rights and rights with respect to subsequent transactions, which may adversely affect and/or limit the influence of holders of our Class A common stock.

On November 7, 2022, the Company and Foxconn entered into the Investment Agreement, pursuant to which Foxconn agreed, subject to certain funding conditions, to purchase $70 million of our Class A common stock and $30 million of Preferred Stock, and subject to the parties agreeing to an EV Program budget and attaining certain EV Program milestones to be established by the parties, up to an additional $70 million of Preferred Stock. If these transactions are consummated, Foxconn will have significant ownership, rights and preferences with respect to our equity securities which may adversely affect and/or limit the influence of holders of our Class A common stock.

The Preferred Stock ranks senior to our Class A common stock with respect to dividend rights, rights on the distribution of assets on any liquidation or winding up of the affairs of the Company and redemption rights. Upon any dissolution, liquidation or winding up, holders of the Preferred Stock will be entitled to receive distributions in cash in an amount per share equal to the greater of (1) the sum of $100 per share plus the accrued unpaid dividends with respect to such share and (2) the amount the holder would have received had it converted such share into Class A common stock immediately prior to the date of such event, before any distributions shall be made on any shares of our Class A common stock. In addition, holders of the Preferred Stock will be entitled to receive dividends at a rate equal to 8% per annum, which accrue and accumulate whether or not declared. The holders of the Preferred Stock also participate with any dividends payable in respect of any Junior Stock or Parity Stock. Such dividend obligations could limit our ability to obtain additional financing, which could have an adverse effect on our financial condition. The preferential rights described above could also result in divergent interests between the holders of shares of Preferred Stock and the holders of our Class A common stock.

Commencing on the Conversion Right Date, the Preferred Stock is convertible at the option of the holder, or by us in certain instances, into shares of Class A common stock based on the Conversion Price, which is subject to customary adjustments. The issuance of our Class A common stock upon conversion of the Preferred Stock will result in immediate dilution that may be substantial to the interests of holders of our Class A common stock and could affect the market price of our Class A common stock.

In addition, all holders of shares of Preferred Stock will be entitled to vote with the holders of Class A common stock on all matters submitted to a vote of stockholders of the Company as a single class on an as-converted basis; provided, that no holder of shares of Preferred Stock will be entitled to vote (i) until the expiration or termination of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, or (ii) to the extent that such holder would have the right to a number of votes in respect of such holder's shares of Class A common stock, Preferred Stock or other capital stock would exceed the limitations set forth in clauses (i) and (ii) of the definition of Ownership Limitations. Pursuant to the Investment Agreement, Foxconn will have the right to appoint two designees to the Board after receiving CFIUS Clearance and consummation of the Subsequent Common Closing. Foxconn will relinquish one Board seat if it does not continue to beneficially own shares of Class A common stock, Preferred Stock and shares of Class A common stock issued upon conversion of shares of Preferred Stock that represent (on an as-converted basis) at least 50% of the number of shares of Class A common stock (on an as-converted basis) acquired by Foxconn in connection with the Investment Transactions and will relinquish its other Board seat if it does not continue to beneficially own at least 25% of the number of shares of Class A common stock (on an as-converted basis) acquired by Foxconn in connection with the Investment Transactions.

Further, following the Subsequent Common Closing and until Foxconn no longer has the right to appoint a director to sit on the Board, other than with respect to certain excluded issuances, Foxconn has the right to purchase its pro rata portion of equity securities proposed to be sold by the Company, with some exceptions; provided, that the Company is not required to sell Foxconn securities if the Company would be required to obtain stockholder approval under any applicable law or regulation. Foxconn has agreed to a standstill until the later of (i) December 31, 2024 and (ii) 90 days after the first day on which no Foxconn-appointed director serves on the Board and Foxconn no longer has a right to appoint any directors. Pursuant to such stanstill, and without the approval of the Board, Foxconn will not (A) acquire any equity securities of the Company if after the acquisition Foxconn and its affiliates would cross an ownership threshold of 19.99% of the Voting Power and if CFIUS Clearance and the Requisite Stockholder Approval were received, 24% of the Voting Power, or (B) make any public announcement with respect to, or offer, seek, propose or indicate an interest in, any merger, consolidation, business combination, tender or exchange offer, recapitalization, reorganization or purchase of more than 50% of the assets, properties or securities of the Company, or enter into discussions, negotiations, arrangements, understandings, or agreements regarding the foregoing. Prior to the Subsequent Common Closing, we have agreed that, without Foxconn's consent, we will not encourage, initiate, facilitate or negotiate any Acquisition Proposal or enter into any agreement with respect to any Acquisition Proposal or that would cause us not to consummate any of the Investment Transactions, and will inform Foxconn of any Acquisition Proposal that we receive. We have also agreed that, while the Preferred Stock is outstanding, we will not put in place a poison pill arrangement that applies to Preferred Stock or to Common Stock that Foxconn acquires from the Company.

Until the later of (i) December 31, 2024 and (ii) 90 days after the first day on which no Foxconn-appointed director serves on the Board and Foxconn no longer has a right to appoint any directors, Foxconn has agreed to vote in favor of each director recommended by the Board and in accordance with any recommendation of the Board on all other proposals that are the subject of stockholder action (other than any action related to any merger or other change of control transaction or sale of assets). So long as the 25% Ownership Requirement is satisfied, we cannot take any of the following actions without the consent of the holders of at least a majority of the then-issued and outstanding Preferred Stock (voting as a separate class) (i) amend any provision of the Charter or By-Laws in a manner that would adversely affect the Preferred Stock or increase or decrease the number of shares of Preferred Stock, (ii) authorize or create, or increase the number of shares of any parity or senior securities other than securities on parity with the Preferred Stock with an aggregate liquidation preference of not more than $30 million, (iii) increase the size of the Board, or (iv) sell,

license or lease or encumber any material portion of our hub motor technology and production line other than in the ordinary course of business.

As long as Foxconn or another party or concentrated group owns or controls a significant percentage of our Preferred Stock or outstanding voting power, they have the ability to have a significant influence on our actions and operation of the Board and to influence certain corporate actions requiring stockholder approval, including the election of directors, any amendment of our Charter and the approval of significant corporate transactions. On a pro forma basis, solely giving effect to the Initial Closing and Subsequent Common Closing and not any conversion of Preferred Stock or exercise of Warrants, following the Second Closing, Foxconn would hold shares of Class A common stock representing approximately 18.3% of our outstanding Class A common stock. In addition, to our knowledge, as of November 4, 2022, Steven S. Burns held approximately 16.3% of our Class A common stock. These concentrations of voting power and other rights could have the effect of delaying or preventing a change of control or changes in management and would make the approval of certain transactions difficult or impossible without the support of these significant stockholders. Any of the foregoing could impact our ability to run our business, and may adversely affect the influence of the holders and market price of our Class A common stock.

Even if the Investment Transactions are consummated, we need substantial additional funding and expect to use the ATM Offering to raise capital, however, our ability to obtain funding through the ATM Offering and the amount that we may raise is uncertain, and a lack of sufficient funding for our operations would have an adverse effect on our business.

We have entered into the Sales Agreement for the ATM Offering and may sell up to approximately 50.2 million shares of Class A common stock from time to time through at-the-market offerings by Jefferies, as agent. Subject to certain limitations in the Sales Agreement and compliance with applicable law, we have the discretion to deliver a placement notice to Jefferies at any time throughout the term of the Sales Agreement. The proceeds we receive after delivering a placement notice will fluctuate based on a number of factors, including the market price of our Class A common stock during the sales period, any limits we may set with Jefferies in any applicable placement notice and the demand for our Class A common stock. Because the price per share of each share sold pursuant to the sales agreement will fluctuate over time, it is not currently possible to predict the aggregate proceeds to be raised in connection with sales under the Sales Agreement.

Further, given the decrease in the market price of our Class A common stock and volatility in the public markets, we may not be willing or able to use the ATM Offering to raise significant amounts, or any funding at all. In addition, the sale of a substantial number of shares of our Class A common stock or other securities convertible into or exchangeable for our Class A common stock in the public markets, or the perception that such sales could occur, could depress the market price of our Class A common stock and impair our ability to raise capital through such sales, which could result in a material adverse effect on our business, operating results, financial condition and prospects.

Even if the ATM Offering is successful and we receive the funds contemplated by the Investment Agreement, we need additional funding to execute our business plan that, including scaling production of the Endurance and developing other vehicles through the EV Program and otherwise, due to the capital required to complete testing and validation, purchase the raw materials and vehicle components for saleable vehicles, invest in the hard tooling to lower our bill of materials cost and fund future engineering, operating and corporate expenditures. We also have meaningful exposure to material losses and costs related to ongoing litigation and regulatory proceedings for which insurance coverage has been denied for certain claims and may be unavailable for those and other claims. The opinion of our independent registered public accountants on our audited financial statements as of and for the year ended December 31, 2021 contains an explanatory paragraph regarding substantial doubt about our ability to continue as a going concern. Until such time as we have sufficient funds to invest in the necessary actions to reduce our bill of material costs, we will limit our production in order to minimize our losses. If we are unable to raise substantial additional capital in the near term, our ability to invest in hard tooling to lower the bill of material cost of the Endurance will be significantly scaled back or curtailed. If the funds raised are insufficient to provide a bridge to full scale commercial production at a profit, our operations could be severely curtailed or cease entirely.

In an effort to alleviate these conditions, management continues to actively seek and evaluate opportunities to raise additional funds through the issuance of equity or debt securities, asset sales, arrangements with strategic partners or obtaining financing from government or financial institutions. We have engaged a financial advisor to advise the Company on additional financing alternatives. There can be no assurance that such financing would be available to us on favorable terms or at all. Our ability to obtain additional financing is subject to several factors, including market and economic conditions, the significant amount of capital required, the fact that our bill of materials cost is currently, and expected to continue to be, substantially higher than our anticipated selling price, uncertainty surrounding regulatory approval and the performance of the vehicle, meaningful exposure to material losses and costs related to ongoing litigation and the SEC investigation, the market price of our stock, potential dilution from the issuance of the Preferred Stock and future financings, our performance and investor sentiment with respect to us and our business and industry, as well as our ability to effectively implement and realize the expected benefits of the Foxconn Transactions. As a result of these uncertainties, and notwithstanding management's plans and efforts to date, there continues to be substantial doubt about our ability to continue as a going concern.

If we are unable to raise substantial additional capital, our continuing operations and production plans will be scaled back or curtailed and, if any funds raised are insufficient to provide a bridge to full commercial production, our operations could be severely curtailed or cease entirely.

We may issue additional shares of preferred stock or additional shares of Class A common stock, and sales of a substantial number of shares of our securities would dilute the interest of our stockholders and could cause the price of our Class A common stock to decline.

Our Charter provides for 462 million authorized shares of capital stock, consisting of (i) 450 million shares of Class A common stock and (ii) 12 million shares of preferred stock, of which 1 million shares has been designated as Series A Convertible Preferred Stock.

To raise capital, we may sell additional shares of Class A common stock, preferred stock, convertible securities or other equity securities in one or more transactions. Such securities may be offered at a price per share that is less than the price per share paid by our current stockholders, and investors purchasing shares or other securities in the future could have rights superior to existing stockholders. Any such issuance:

- may significantly dilute the equity interest of our then-current stockholders;
- may subordinate the rights of holders of shares of Class A common stock if one or more classes of preferred stock are created, and such preferred shares are issued, with rights senior to those afforded to our Class A common stock;
- may have covenants that restrict our financial and operating flexibility;
- could cause a change in control if a substantial number of shares of Class A common stock are issued, which may affect, among other things, our ability to use our net operating loss carryforwards, if any, and could result in the resignation or removal of our present officers and directors; and
- may adversely affect the prevailing market price for our Class A common stock.

Sales of a substantial number of shares of Class A common stock in the public market could occur at any time, including sales pursuant to the Invesment Agreement and expected resale registration statement covering such shares, the Equity Purchase Agreement and resale registration statement covering such shares (although we expect this to be terminated), the Sales Agreement and ATM Offering, or other efforts to raise additional capital or in connection with a strategic alliance, business combination or similar transaction, as well as pursuant to a resale prospectus covering shares and Warrants issued in the Business Combination and registered pursuant to the Registration Rights and Lock-up Agreement entered into with certain investors, and our 2020 Equity Incentive Plan and other Warrants. These sales, or the perception in the market that the

holders of a large number of shares intend to sell shares, could reduce the market price of our Class A common stock and could impair our ability to raise capital through the sale of additional equity securities. We are unable to predict the effect that sales may have on the prevailing market price of our Class A common stock.

As of September 30, 2022, we had outstanding 216 million shares of our Class A common stock and Warrants to purchase approximately 5.6 million shares of our Class A common stock. The exercise price of the Warrants ranges from $10.00 to $11.50 per share. In addition, as of September 30, 2022, an aggregate of 18.6 million shares of Class A common stock are subject to outstanding awards or available for future issuance under the 2020 Equity Incentive Plan. Prior to the Initial Closing, the Company will file the Certificate of Designations to designate 1 million shares of Preferred Stock which are expected to be issued under the Investment Agreement, subject to the satisfaction of certain conditions. To the extent such Warrants or equity awards are exercised or vested and settled or the Preferred Stock is converted into Class A common stock, additional shares of our Class A common stock will be issued, which will result in dilution to the holders of our Class A common stock and will increase the number of shares eligible for resale in the public market. In addition, the Registration Rights and Lock-up Agreement provided that certain of our securities held by the parties to such agreement were locked-up following the Business Combination, and this restriction lapsed as to the remaining 50% of shares of Class A common stock held by Stephen S. Burns as of October 23, 2022. Sales, or the potential sales, of substantial numbers of shares in the public market, subject to certain restrictions on transfer until the termination of applicable lock-up periods, could increase the volatility of or adversely affect the market price of our Class A common stock.

We face risks and uncertainties related to ongoing and potential future litigation, as well as regulatory actions and government investigations and inquiries, for which we will continue to incur significant legal costs and may be subject to significant uninsured losses.

We are currently subject to extensive litigation, including securities class action litigation, shareholder derivative suits, a stockholder class action, an SEC investigation, and litigation involving alleged trade secret misappropriation, unfair competition and other related claims. We may in the future be subject to, or become a party to, additional litigation, claims, regulatory actions, and government investigations and inquiries, as, in the ordinary course of business, we may be subject to claims by customers, suppliers, vendors, contractors, competitors, government agencies, stockholders or other parties regarding our products, development, accidents, advertising, contract and corporate matter disputes, intellectual property infringement matters and employee claims against us based on, among other things, discrimination, harassment, wrongful termination, disability or violation of wage and labor laws. These proceedings and incidents include claims for which we have no or limited insurance coverage. See Part II – Item 1 and updates provided under the heading “Legal Proceedings” and otherwise in our subsequent filings with the SEC for additional information regarding our ongoing litigation matters.

These claims have and may in the future divert our financial and management resources that would otherwise be used to benefit our operations, increase our insurance costs and cause reputational harm. We have already incurred, and expect to continue to incur, significant legal expenses in defending against these claims. Further, the ongoing expense of lawsuits, investigations and any substantial settlement payment by us or damage award enforceable against us could adversely affect our business and results of operations.

While we currently carry commercial general liability, commercial automobile liability, excess liability, workers’ compensation, cyber security and directors’ and officers’ insurance policies, coverage amounts are limited and we may not maintain as much insurance coverage as other OEMs do. In some cases, we may not maintain any insurance coverage at all. Additionally, the policies that we do have may include significant deductibles and exclusions, and we cannot be certain that our insurance coverage will be applicable to or sufficient to cover all current and future claims against us.

Our insurers have asserted a denial of coverage under the main tower of our director and officer insurance program with respect to numerous ongoing matters, including the consolidated securities class action, various shareholder derivative actions, the consolidated stockholder class action, various demands for inspection of

books and records, the SEC investigation, and the investigation by the United States Attorney's Office for the Southern District of New York, and certain indemnification obligations, under an exclusion to the policy called the "retroactive date exclusion." The insurer has identified other potential coverage issues as well. Excess coverage attaches only after the underlying insurance has been exhausted, and generally applies in conformance with the terms of the underlying insurance. We are analyzing the insurer's position, and intend to pursue any available coverage under this policy and other insurance. As a result of the denial of coverage, no or limited insurance may be available to us to reimburse our expenses or cover any potential losses for these matters, which could be significant. The insurers in our Side A D&O insurance program, providing coverage for individual directors and officers in derivative actions and certain other situations, have not denied coverage on this basis or otherwise.

At this time, the Company cannot predict the results of many of the current proceedings, and future resolution of these matters could result in changes in management's estimates of losses, which could be material to our consolidated financial statements. As of September 30, 2022, we have an aggregate provision for litigation costs of $34 million. The

is based on current information, legal advice and the potential impact of the outcome of one or more claims on related matters and may be adjusted in the future based on new developments. This accrual does not reflect a full range of possible outcomes for these proceedings or the full amount of any damages alleged, which are significantly higher. Furthermore, we may use Class A common stock as consideration in any settlement. While we believe that additional losses beyond current accruals are likely, and any such additional losses may be significant, we cannot presently estimate a possible loss contingency or range of reasonably possible loss contingencies beyond current accruals. Estimating probable losses requires the analysis of multiple forecasted factors that often depend on judgments and potential actions by third parties. Legal fees and costs of litigation or an adverse judgment or settlement in any one or more of our ongoing litigation matters that are not insured or that is in excess of insurance coverage could significantly exceed our current accrual and ability to pay. This would have a material adverse effect on our financial position and results of operations and could severely curtail or cause our operations to cease entirely. Furthermore, our ability to raise the additional capital we need to execute our business plans is adversely impacted by the potential material adverse effect of any one or more of the pending litigations, SEC investigation and related ongoing significant legal costs.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Except as described below and previously disclosed in a Current Report on Form 8-K, there were no sales of equity securities during the quarter ended September 30, 2022 that were not registered under the Securities Act.

On August 10, 2022 and August 19, 2022, pursuant to the Equity Purchase Agreement the Company sold an aggregate of 10.9 million shares of its Class A common stock to YA and received $26.7 million cash, net of equity issuance costs.

The shares were issued and sold to an accredited investor in reliance upon the exemption from the registration requirements of the Securities Act of 1933 afforded by Section 4(a)(2) of the Securities Act of 1933.

Item 5. Other Information

On November 7, 2022, the Company entered into the Sales Agreement with Jefferies, as agent, pursuant to which the Company may offer and sell up to approximately 50.2 million shares of our Class A common Stock, from time to time through Jefferies. The Company filed the Prospectus Supplement in connection with the

ATM Offering under the Registration Statement. The Company has agreed to pay Jefferies commissions for its services of acting as agent of up to 3% of the gross proceeds from the sale of the shares of Class A common stock pursuant to the Sales Agreement. The Company has also agreed to provide Jefferies with customary indemnification and contribution rights.

Upon delivery of an issuance notice and subject to the terms and conditions of the Sales Agreement, Jefferies may sell shares of Class A common stock at market prices by any method deemed to be an “at the market offering” as defined in Rule 415(a)(4) promulgated under the Securities Act of 1933, as amended, including sales made directly on or through Nasdaq, the existing trading market for the Class A common stock. The Company may instruct Jefferies to not sell the shares of Class A common stock if the sales cannot be transacted at or above the price designated by the Company in any issuance notice, and in no event may sales occur below a minimum price of $1.00. The Company is not obligated to make any sales of the shares of Class A common stock under the Sales Agreement. Actual sales will depend on a variety of factors and no assurance can be given that the Company will sell any shares of Class A common stock under the Agreement, or, if it does, as to the price or amount of the shares of Class A common stock that it sells or the dates when such sales will take place.

The shares of Class A common stock will be sold pursuant to the Registration Statement, and offerings of the shares of Class A common stock will be made only by means of the Prospectus Supplement and accompanying prospectus. This quarterly report on Form 10-Q shall not constitute an offer to sell or solicitation of an offer to buy the shares of Class A common stock, nor shall there be any sale of the shares of Class A common stock in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities law of such state or jurisdiction.

The Company or Jefferies may suspend or terminate the offering of shares of Class A commons stock upon notice to the other party, subject to certain conditions. Jefferies will act as sales agent on a commercially reasonable efforts basis consistent with its normal trading and sales practices and applicable state and federal law, rules and regulations and the rules of Nasdaq.

A copy of the Sales Agreement is attached as Exhibit 10.3 to this quarterly report on Form 10-Q and is incorporated herein by reference. The foregoing description of the material terms of the Sales Agreement is qualified in its entirety by reference to such exhibit.

Baker & Hostetler LLP, counsel to the Company, has issued a legal opinion relating to the shares under the Sales Agreement. A copy of such legal opinion, including the consent included therein, is attached as Exhibit 5.1 to this quarterly report on Form 10-Q.

Item 6. Exhibits

Exhibit Index

Exhibit No.	Description
3.1	Form of Certificate of Designation, Preferences and Rights of Series A Convertible Preferred Stock (incorporated by reference to the current report on Form 8-K filed by the Company on November 7, 2022)
5.1*	Opinion of Baker & Hostetler LLP
10.1	Investment Agreement dated November 7, 2022, between Lordstown Motors Corp. and Foxconn Ventures Pte. Ltd. (incorporated by reference to the current report on Form 8-K filed by the Company on November 7, 2022)
10.2	Form of Registration Rights Agreement between Lordstown Motors Corp. and Foxconn Ventures Pte. Ltd. (incorporated by reference to the current report on Form 8-K filed by the Company on November 7, 2022)
10.3*	Open Market Sales Agreement, dated November 7, 2022, between Lordstown Motors Corp. and Jefferies LLC
23.1*	Consent of Baker & Hostetler LLP (included in exhibit 5.1)
31.1*	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a)
31.2*	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a)
32.1*	Certification pursuant to 18 U.S.C. 1350
32.2*	Certification pursuant to 18 U.S.C. 1350
101.INS*	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH*	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 Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
Exhibit 104*	Cover Page Interactive Data File – The cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document

* Filed herewith

SIGNATURE

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.

LORDSTOWN MOTORS CORP.

Date: November 7, 2022

/s/ Edward T. Hightower
Edward T. Hightower
Chief Executive Officer and President
(Principal Executive Officer)

Date: November 7, 2022

/s/ Adam Kroll
Adam Kroll
Chief Financial Officer
(Principal Financial and Accounting Officer)

BakerHostetler

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Key Tower
127 Public Square, Suite 2000
Cleveland, OH 44114-1214

T 216.621.0200
F 216.696.0740
www.bakerlaw.com

November 7, 2022

Lordstown Motors Corp.
2300 Hallock Young Road
Lordstown, OH 44481

Ladies and Gentlemen:

We have acted as counsel for Lordstown Motors Corp., a Delaware corporation (the "Company"), in connection with the Registration Statement on Form S-3 (the "Registration Statement") filed by the Company with the Securities and Exchange Commission (the "Commission") on August 24, 2022 and declared effective on September 2, 2022 and the Prospectus Supplement, dated November 7, 2022 (the "Prospectus Supplement"). The Prospectus Supplement relates to the offer and sale from time to time of shares of the Company's Class A common stock, par value $0.0001 per share (the "Common Stock"), up to 50,200,000 shares of Common Stock (the "Shares"), pursuant to an Open Market Sales Agreement℠, dated November 7, 2022, between the Company and Jefferies LLC.

We have examined such documents and such matters of fact and law as we deem necessary to render the opinions contained herein. In our examination, we have assumed, but have not independently verified, the genuineness of all signatures, the conformity to original documents of all documents submitted to us as certified, facsimile or other copies, and the authenticity of all such documents. As to questions of fact material to this opinion, we have relied on certificates or comparable documents of public officials and of officers and representatives of the Company.

For purposes of this opinion, we have assumed that:

(a) the Registration Statement will remain effective at the time of issuance and sale of the Shares;

(b) the Shares will be sold at prices and other terms authorized by the Company's Board of Directors or another duly authorized committee thereof; and

(c) at the time of the issuance and sale of the Shares, a sufficient number of shares of Common Stock will remain authorized and available for issuance pursuant to the Company's Second Amended and Restated Certificate of Incorporation, as it then may be amended.

Based on the foregoing, and subject to the qualifications stated herein, we are of the opinion that the Shares offered pursuant to the Prospectus Supplement will be validly issued, fully paid and non-assessable.

The opinions expressed herein are limited to the General Corporation Law of the State of Delaware and we express no opinion as to the effect on the matters covered by this letter of the laws of any other jurisdiction.

We hereby consent to the filing of this letter as Exhibit 5.1 to a Current Report on Form 8-K that will be filed by the Company and incorporated by reference into the Registration Statement. In giving such consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Commission.

Very truly yours,

/s/ Baker & Hostetler LLP

4884-9217-6689.3

OPEN MARKET SALE AGREEMENT[SM]

November 7, 2022

JEFFERIES LLC
520 Madison Avenue
New York, New York 10022

Ladies and Gentlemen:

Lordstown Motors Corp., a Delaware corporation (the "**Company**"), proposes, subject to the terms and conditions stated herein, to issue and sell from time to time through Jefferies LLC, as sales agent and/or principal (the "**Agent**"), shares of the Company's Class A common stock, par value $0.0001 per share (the "**Common Shares**"), in an aggregate amount of up to 50,200,000 shares of Common Stock on the terms set forth in this agreement (this "**Agreement**").

Section 1. DEFINITIONS

Certain Definitions. For purposes of this Agreement, capitalized terms used herein and not otherwise defined shall have the following respective meanings:

"**Affiliate**" of a Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first-mentioned Person. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agency Period**" means the period commencing on the date of this Agreement and expiring on the earliest to occur of (x) the date on which the Agent shall have placed the Maximum Program Amount pursuant to this Agreement and (y) the date this Agreement is terminated pursuant to Section 7.

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.

"**Floor Price Limitation**" means the minimum price set by the Company in the Issuance Notice below which the Agent shall not sell Shares during the applicable period set forth in the Issuance Notice, which may be adjusted by the Company at any time during the period set forth in the Issuance Notice by delivering written notice of such change to the Agent and which in no event

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SM "Open Market Sale Agreement" is a service mark of Jefferies LLC

shall be less than $1.00 without the prior written consent of the Agent, which may be withheld in the Agent's sole discretion.

"**Issuance Amount**" means the aggregate number or dollar amount of the Shares to be sold by the Agent pursuant to any Issuance Notice.

"**Issuance Notice**" means a written notice delivered to the Agent by the Company in accordance with this Agreement in the form attached hereto as Exhibit A that is executed by its Chief Executive Officer, President or Chief Financial Officer.

"**Issuance Notice Date**" means any Trading Day during the Agency Period that an Issuance Notice is delivered pursuant to Section 3(b)(i).

"**Issuance Price**" means the Sales Price less the Selling Commission.

"**Maximum Program Amount**" means a number of Common Shares equal to the lesser of (a) the number or dollar amount of Common Shares registered under the effective Registration Statement (as defined below) pursuant to which the offering is being made, (b) the number of authorized but unissued Common Shares (less Common Shares issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company's authorized capital stock), (c) the number or dollar amount of Common Shares permitted to be sold under Form S-3 (including General Instruction I.B.6 thereof, if applicable), or (d) the number or dollar amount of Common Shares for which the Company has filed a Prospectus (as defined below).

"**Person**" means an individual or a corporation, partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, governmental authority or other entity of any kind.

"**Principal Market**" means the Nasdaq Global Select Market or such other national securities exchange on which the Common Shares, including any Shares, are then listed.

"**Sales Price**" means the actual sale execution price of each Share placed by the Agent pursuant to this Agreement.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder.

"**Selling Commission**" means three percent (3%) of the gross proceeds of Shares sold pursuant to this Agreement as otherwise agreed between the Company and the Agent with respect to any Shares sold pursuant to this Agreement.

"**Settlement Date**" means the second business day following each Trading Day during the period set forth in the Issuance Notice on which Shares are sold pursuant to this Agreement, when the Company shall deliver to the Agent the amount of Shares sold on such Trading Day and the Agent shall deliver to the Company the Issuance Price received on such sales.

"**Shares**" means the Company's Common Shares issued or issuable pursuant to this Agreement.

"**Trading Day**" means any day on which the Principal Market is open for trading.

Section 2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to, and agrees with, the Agent that as of (1) the date of this Agreement, (2) each Issuance Notice Date, (3) each Settlement Date, (4) each Triggering Event Date (as defined below) and (5) as of each Time of Sale (as defined below) (each of the times referenced above is referred to herein as a "**Representation Date**"), except as may be disclosed in the Prospectus (including any documents incorporated by reference therein and any supplements thereto) on or before a Representation Date:

Registration Statement. The Company has prepared and filed with the Commission a shelf registration statement on Form S-3 (File No. 333-267052) that contains a base prospectus relating to certain securities, including the Common Shares to be issued from time to time by the Company. Such registration statement registers the issuance and sale by the Company of the Shares under the Securities Act. The Company may file one or more additional registration statements from time to time that will contain a base prospectus and related prospectus or prospectus supplement, if applicable, with respect to the Shares. Except where the context otherwise requires, such registration statement(s), including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, including all financial statements, exhibits and schedules thereto and all documents incorporated or deemed to be incorporated therein by reference pursuant to Item 12 of Form S-3 under the Securities Act as from time to time amended or supplemented, is herein referred to as the "**Registration Statement**," and the prospectus constituting a part of such registration statement(s), together with any prospectus supplement filed with the Commission pursuant to Rule 424(b) under the Securities Act relating to a particular issuance of the Shares, including all documents incorporated or deemed to be incorporated therein by reference pursuant to Item 12 of Form S-3 under the Securities Act, in each case, as from time to time amended or supplemented, is referred to herein as the "**Prospectus**," except that if any revised prospectus is provided to the Agent by the Company for use in connection with the offering of the Shares that is not required to be filed by the Company pursuant to Rule 424(b) under the Securities Act, the term "**Prospectus**" shall refer to such revised prospectus from and after the time it is first provided to the Agent for such use. The Registration Statement at the time it originally became effective is herein called the "**Original Registration Statement**." As used in this Agreement, the terms "amendment" or "supplement" when applied to the Registration Statement or the Prospectus shall be deemed to include the filing by the Company with the Commission of any document under the Exchange Act after the date hereof that is or is deemed to be incorporated therein by reference.

All references in this Agreement to financial statements and schedules and other information which is "contained," "included" or "stated" in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in or otherwise deemed under the Securities Act to be a part of or included in the Registration Statement or the Prospectus, as the case may be, as of any specified date; and all references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to

mean and include, without limitation, the filing of any document under the Exchange Act which is or is deemed to be incorporated by reference in or otherwise deemed under the Securities Act to be a part of or included in the Registration Statement or the Prospectus, as the case may be, as of any specified date.

At the time the Registration Statement was or will be originally declared effective and at the time the Company's most recent annual report on Form 10-K was filed with the Commission, if later, the Company met the then-applicable requirements for use of Form S-3 under the Securities Act. During the Agency Period, each time the Company files an annual report on Form 10-K the Company will meet the then-applicable requirements for use of Form S-3 under the Securities Act.

Compliance with Registration Requirements. The Original Registration Statement and any Rule 462(b) Registration Statement have been declared effective by the Commission under the Securities Act. The Company has complied to the Commission's satisfaction with all requests of the Commission for additional or supplemental information, if any. No stop order suspending the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the best knowledge of the Company, are contemplated or threatened by the Commission.

The Prospectus when filed complied in all material respects with the Securities Act and, if filed with the Commission through its Electronic Data Gathering, Analysis and Retrieval system (except as may be permitted by Regulation S-T under the Securities Act), was identical to the copy thereof delivered to the Agent for use in connection with the issuance and sale of the Shares. Each of the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendment thereto, at the time it became effective and at each Representation Date, complied and will comply in all material respects with the Securities Act and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the date of this Agreement, the Prospectus and any Free Writing Prospectus (as defined below) considered together (collectively, the "**Time of Sale Information**") did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Prospectus, as amended or supplemented, as of its date and at each Representation Date, did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the three immediately preceding sentences do not apply to statements in or omissions from the Registration Statement, any Rule 462(b) Registration Statement, or any post-effective amendment thereto, or the Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with information relating to the Agent furnished to the Company in writing by the Agent expressly for use therein, it being understood and agreed that the only such information furnished by the Agent to the Company consists of the information described in Section 6 below. There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration Statement which have not been described or filed as required. The Registration Statement and the offer and sale of the Shares as contemplated hereby meet the requirements of Rule 415 under the Securities Act and comply in all material respects with said rule.

Ineligible Issuer Status. The Company is not an "ineligible issuer" in connection with the offering of the Shares pursuant to Rules 164, 405 and 433 under the Securities Act. Any Free Writing Prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act. Each Free Writing Prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of Rule 433 under the Securities Act, including timely filing with the Commission or retention where required and legending, and each such Free Writing Prospectus, as of its issue date and at each Representation Date did not, does not and will not include any information that conflicted, conflicts with or will conflict with the information contained in the Registration Statement or the Prospectus, including any document incorporated by reference therein. Except for the Free Writing Prospectuses, if any, and electronic road shows, if any, furnished to the Agent before first use, the Company has not prepared, used or referred to, and will not, without the Agent's prior consent, prepare, use or refer to, any Free Writing Prospectus.

Incorporated Documents. The documents incorporated or deemed to be incorporated by reference in the Registration Statement and the Prospectus, at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the Exchange Act, as applicable, and, when read together with the other information in the Prospectus, do not and, at each Representation Date, will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

[Omitted].

Statistical and Market-Related Data. All statistical, demographic and market-related data included in the Registration Statement or the Prospectus are based on or derived from sources that the Company believes, after reasonable inquiry, to be reliable and accurate. To the extent required, the Company has obtained the written consent for the use of such data from such sources.

Disclosure Controls and Procedures; Deficiencies in or Changes to Internal Control Over Financial Reporting. The Company has established and maintains disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the Exchange Act), which (i) are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared; (ii) have been evaluated by management of the Company for effectiveness as of the end of the Company's most recent fiscal quarter; and (iii) are effective in all material respects to perform the functions for which they were established. Since the end of the Company's most recent audited fiscal year, there have been no significant deficiencies or material weaknesses in the Company's internal control over financial reporting that are not currently being remediated as disclosed in the Company's quarterly reports on Form 10-Q and annual reports on Form 10-K, and no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company is not aware of any change in its internal control over financial reporting that has occurred during its most recent fiscal quarter that has

materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

This Agreement. The execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and, to the extent disclosed in the Registration Statement and the Prospectus, by the Registration Statement and the Prospectus (including the use of proceeds set from the sale of Shares as described in the Registration Statement and the Prospectus under the caption "Use of Proceeds") have been duly authorized, executed and delivered by the Company.

Authorization of the Shares. The Shares have been duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company against payment therefor pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and the issuance and sale of the Shares is not subject to any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase the Shares.

No Applicable Registration or Other Similar Rights. There are no persons with registration or other similar rights to have any equity or debt securities included in the offering contemplated by this Agreement, except for such rights as have been duly waived.

No Material Adverse Change. Except as otherwise disclosed in the Registration Statement and the Prospectus, subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus: (i) there has been no material adverse change, or any development that would reasonably be expected to result in a material adverse change, in (A) the condition, financial or otherwise, or in the earnings, business, properties, operations, operating results, assets, liabilities or prospects, whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity or (B) the ability of the Company to consummate the transactions contemplated by this Agreement or perform its obligations hereunder (any such change being referred to herein as a "**Material Adverse Change**"); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, including without limitation any losses or interference with their business from fire, explosion, flood, earthquakes, accident or other calamity, whether or not covered by insurance, or from any strike, labor dispute or court or governmental action, order or decree, that are material, individually or in the aggregate, to the Company and its subsidiaries, considered as one entity; and (iii) there has not been any material decrease in the capital stock or any material increase in any short-term or long-term indebtedness of the Company or its subsidiaries and there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other subsidiaries, by any of the Company's subsidiaries on any class of capital stock, or any repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock other than, any repurchase or return of capital stock of the Company pursuant to the terms of outstanding equity awards and equity securities.

Independent Accountants. KPMG LLP and Clark, Schaefer, Hackett & Co., which have expressed their opinions with respect to the financial statements (which term as used in this Agreement includes the related notes thereto) filed with the Commission as a part of the Registration Statement and the Prospectus, are (i) independent registered public accounting firms as required by the

Securities Act, the Exchange Act, and the rules of the Public Company Accounting Oversight Board ("**PCAOB**"), (ii) in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X under the Securities Act and (iii) registered public accounting firms as defined by the PCAOB whose registration have not been suspended or revoked and who have not requested such registration to be withdrawn.

Financial Statements. The financial statements filed with the Commission as a part of the Registration Statement and the Prospectus present fairly in all material respects the consolidated financial position of the Company and its subsidiaries as of the dates indicated and the results of their operations, changes in stockholders' equity and cash flows for the periods specified. Such financial statements have been prepared in conformity with generally accepted accounting principles as applied in the United States applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto and except in the case of unaudited financial statements, which are subject to normal and recurring year-end adjustments and do not contain certain footnotes as permitted by the applicable rules of the Commission. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto. No other financial statements or supporting schedules are required to be included in the Registration Statement or the Prospectus. The financial data set forth in each of the Registration Statement and the Prospectus fairly present in all material respects the information set forth therein on a basis consistent with that of the audited financial statements contained in the Registration Statement and the Prospectus. All disclosures contained in the Registration Statement and the Prospectus that constitute non-GAAP financial measures (as defined by the rules and regulations under the Securities Act and the Exchange Act) comply in all material respects with Regulation G under the Exchange Act and Item 10 of Regulation S-K under the Securities Act, as applicable. To the Company's knowledge, no person who has been suspended or barred from being associated with a registered public accounting firm, or who has failed to comply with any sanction pursuant to Rule 5300 promulgated by the PCAOB, has participated in or otherwise aided the preparation of, or audited, the financial statements, supporting schedules or other financial data filed with the Commission as a part of the Registration Statement and the Prospectus.

Company's Accounting System. The Company and each of its subsidiaries make and keep accurate books and records and maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Incorporation and Good Standing of the Company. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation and has the corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus and to enter into and perform its obligations under this Agreement. The Company is duly qualified as a

foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to be so qualified or in good standing would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

Subsidiaries. Each of the Company's "subsidiaries" (for purposes of this Agreement, as defined in Rule 405 under the Securities Act) has been duly incorporated or organized, as the case may be, and is validly existing as a corporation, partnership or limited liability company, as applicable, in good standing under the laws of the jurisdiction of its incorporation or organization and has the power and authority (corporate or other) to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus. Each of the Company's subsidiaries is duly qualified as a foreign corporation, partnership or limited liability company, as applicable, to transact business and is in good standing in each jurisdiction in which such qualification is required, except where failure to do so would not result in a Material Adverse Change, whether by reason of the ownership or leasing of property or the conduct of business. All of the issued and outstanding capital stock or other equity or ownership interests of each of the Company's subsidiaries have been duly authorized and validly issued, are fully paid and nonassessable and are owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance or adverse claim. None of the outstanding capital stock or equity interest in any subsidiary was issued in violation of preemptive or similar rights of any security holder of such subsidiary. The constitutive or organizational documents of each of the subsidiaries comply in all material respects with the requirements of applicable laws of its jurisdiction of incorporation or organization and are in full force and effect. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than MIH EV Design LLC or the subsidiaries listed in Exhibit 21 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021.

Capitalization and Other Capital Stock Matters. The authorized, issued and outstanding capital stock of the Company is as set forth in the Registration Statement and the Prospectus (other than for subsequent issuances, if any, pursuant to employee benefit plans described in the Prospectus or upon the exercise of outstanding options or warrants, in each case described in the Registration Statement and the Prospectus). The Common Shares (including the Shares) conform in all material respects to the description thereof contained in the Prospectus. All of the issued and outstanding Common Shares have been duly authorized and validly issued, are fully paid and nonassessable and have been issued in compliance with all applicable federal and state securities laws. None of the outstanding Common Shares were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those described in the Registration Statement and the Prospectus. The descriptions of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement and the Prospectus accurately and fairly present in all material respects the information required to be shown with respect to such plans, arrangements, options and rights.

Stock Exchange Listing. The Common Shares are registered pursuant to Section 12(b) or 12(g) of the Exchange Act and are listed on the Principal Market, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Shares under the Exchange Act or delisting the Common Shares from the Principal Market, nor has the Company received any notification that the Commission or the Principal Market is contemplating terminating such registration or listing. To the Company's knowledge, it is in compliance with all applicable listing requirements of the Principal Market.

Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required. Neither the Company nor any of its subsidiaries is in violation of its charter or by-laws, partnership agreement or operating agreement or similar organizational documents, as applicable, or is in default (or, with the giving of notice or lapse of time, would be in default) ("**Default**") under any indenture, loan, credit agreement, note, lease, license agreement, contract, franchise or other instrument (including, without limitation, any pledge agreement, security agreement, mortgage or other instrument or agreement evidencing, guaranteeing, securing or relating to indebtedness) to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of their respective properties or assets are subject (each, an "**Existing Instrument**"), except for such Defaults as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change. The Company's execution, delivery and performance of this Agreement, consummation of the transactions contemplated hereby and by the Registration Statement and the Prospectus and the issuance and sale of the Shares (including the use of proceeds from the sale of the Shares as described in the Registration Statement and the Prospectus under the caption "Use of Proceeds") (i) will not result in any violation of the provisions of the charter or by-laws, partnership agreement or operating agreement or similar organizational documents, as applicable, of the Company or any subsidiary, (ii) will not conflict with or constitute a breach of, or Default or a Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, or require the consent of any other party to, any Existing Instrument, and (iii) will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company or any of its subsidiaries, except, in the case of clauses (ii) and (iii), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change. No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency, is required for the Company's execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the Registration Statement and the Prospectus, except such as have been obtained or made by the Company and are in full force and effect under the Securities Act and such as may be required under applicable state securities or blue sky laws or FINRA (as defined below). As used herein, a "**Debt Repayment Triggering Event**" means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

No Material Actions or Proceedings. There is no action, suit, proceeding, inquiry or investigation brought by or before any legal or governmental entity now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries, which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

No material labor dispute with the employees of the Company or any of its subsidiaries, or with the employees of any principal supplier, manufacturer, customer or contractor of the Company, exists, or, to the knowledge of the Company, is threatened or imminent, except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

Intellectual Property Rights. Except as otherwise disclosed in the Registration Statement or the Prospectus, the Company and its subsidiaries own, or have obtained valid and enforceable licenses for, the inventions, patent applications, patents, trademarks, trade names, service names, copyrights, trade secrets and other intellectual property described in the Registration Statement and the Prospectus as being owned or licensed by them or which are necessary for the conduct of their respective businesses as currently conducted or as currently proposed to be conducted (collectively, "**Intellectual Property**"), and the conduct of their respective businesses does not and will not infringe, misappropriate or otherwise conflict in any material respect with any such rights of others, except where the failure to so own, license or otherwise hold would not reasonably be expected to result in a Material Adverse Change. No material Intellectual Property of the Company has been adjudged by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, and the Company is unaware of any facts which would form a reasonable basis for any such adjudication. To the Company's knowledge: (i) there are no third parties who have rights to any Intellectual Property, except for customary reversionary rights of third-party licensors with respect to Intellectual Property that is disclosed in the Registration Statement and the Prospectus as licensed to the Company or one or more of its subsidiaries; and (ii) there is no infringement by third parties of any Intellectual Property, except as would not reasonably be expected to result in a Material Adverse Change. There is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others: (A) challenging the Company's rights in or to any Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; (B) challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; or (C) asserting that the Company or any of its subsidiaries infringes or otherwise violates, or would, upon the commercialization of any product or service described in the Registration Statement or the Prospectus as under development, infringe or violate, any patent, trademark, trade name, service name, copyright, trade secret or other proprietary rights of others, the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim, except, in each case, as would not reasonably be expected to result in a Material Adverse Change. The Company and its subsidiaries have complied in all material respects with the terms of each agreement pursuant to which Intellectual Property has been licensed to and is being used by the Company or any subsidiary, and, to the Company's knowledge, all such agreements are in full force and effect. To the Company's knowledge, there are no material defects in any of the patents or patent applications included in the Intellectual Property. The Company and its subsidiaries have taken all reasonable steps to protect, maintain and safeguard their Intellectual Property, including the execution of appropriate nondisclosure, confidentiality agreements and invention assignment agreements and invention assignments with their employees, and, to the knowledge of the Company, no employee of the Company is in or has been in violation of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, nondisclosure agreement, or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee's employment with the Company, except as would not reasonably be expected, individually or in the aggregate, to result

in a Material Adverse Change. The duty of candor and good faith as required by the United States Patent and Trademark Office during the prosecution of the United States patents and patent applications included in the Intellectual Property have been complied with; and in all foreign offices having similar requirements, all such requirements have been complied with in all material respects. None of the Company owned Intellectual Property or technology (including information technology and outsourced arrangements) employed by the Company or its subsidiaries, has been obtained or is being used by the Company or its subsidiary in violation of any contractual obligation binding on the Company or its subsidiaries or any of their respective officers, directors or employees or otherwise in violation of the rights of any persons, except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

All Necessary Permits, etc. The Company and each subsidiary possess such valid and current certificates, authorizations or permits required by state, federal or foreign regulatory agencies or bodies to conduct their respective businesses as currently conducted and as described in the Registration Statement or the Prospectus ("**Permits**"), except whether the failure to possess such Permits would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change. Neither the Company nor any of its subsidiaries is in violation of, or in default under, any of the Permits or has received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such certificate, authorization or permit, except where such violation or default or such proceedings would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

Title to Properties. The Company, or one of its subsidiaries, as applicable, has good and marketable title to all of the real and personal property and other assets reflected as owned in the financial statements referred to in Section 2(m) above (or elsewhere in the Registration Statement or the Prospectus, in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, adverse claims and other defects, except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change. The real property, improvements, equipment and personal property held under lease by the Company or of its subsidiary are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company or such subsidiary.

Tax Law Compliance. The Company and its subsidiaries have filed all necessary federal, state and foreign income and franchise tax returns or have properly requested extensions thereof and have paid all material taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them except as may be being contested in good faith and by appropriate proceedings. The Company has made adequate charges, accruals and reserves in the applicable financial statements referred to in Section 2(m) above in respect of all material federal, state and foreign income and franchise taxes for all periods as to which the tax liability of the Company or any of its subsidiaries has not been finally determined.

Company Not an "Investment Company." The Company is not, and will not be, either after receipt of payment for the Shares or after the application of the proceeds therefrom as described under "Use of Proceeds" in the Registration Statement or the Prospectus, required to register as an "investment company" under the Investment Company Act of 1940, as amended (the **"Investment Company Act")**.

Insurance. Each of the Company and its subsidiaries are insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for their businesses including, but not limited to, policies covering real and personal property owned or leased by the Company and its subsidiaries against theft, damage, destruction, acts of vandalism and earthquakes and policies covering the Company and its subsidiaries for product liability claims. The Company has no reason to believe that it or any of its subsidiaries will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not reasonably be expected to result in a Material Adverse Change. Neither the Company nor any of its subsidiaries has been denied any insurance coverage which it has sought or for which it has applied.

No Price Stabilization or Manipulation; Compliance with Regulation M. Neither the Company nor any of its subsidiaries has taken, directly or indirectly, without giving effect to activities by the Agent, any action designed to or that might reasonably be expected to cause or result in stabilization or manipulation of the price of the Common Shares or of any "reference security" (as defined in Rule 100 of Regulation M under the Exchange Act (**"Regulation M"**)) with respect to the Common Shares, whether to facilitate the sale or resale of the Shares or otherwise, and has taken no action which would directly or indirectly violate Regulation M.

Related Party Transactions. There are no business relationships or related-party transactions involving the Company or any of its subsidiaries or any other person required to be described in the Registration Statement or the Prospectus which have not been described as required.

FINRA Matters. All of the information provided to the Agent or to counsel for the Agent by the Company, its counsel, its officers and directors and the holders of any securities (debt or equity) or options to acquire any securities of the Company in connection with the offering of the Shares is true, complete, correct and compliant in all material respects with Financial Industry Regulatory Authority, Inc.'s ("**FINRA**") rules and any letters, filings or other supplemental information provided to FINRA pursuant to FINRA Rules or NASD Conduct Rules is true, complete and correct. The Company meets the requirements for use of Form S-3 under the Securities Act specified in FINRA Rule 5110(h)(1)(c).

No Unlawful Contributions or Other Payments. Neither the Company nor any of its subsidiaries nor, to the Company's knowledge, any employee or agent of the Company or any subsidiary, has made any contribution or other payment to any official of, or candidate for, any applicable federal, state or foreign office in violation of any law or of the character required to be disclosed in the Registration Statement and the Prospectus.

Compliance with Environmental Laws. Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change: (i) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without

limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, "**Hazardous Materials**") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "**Environmental Laws**"), (ii) the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (iii) there are no pending or, to the knowledge of the Company, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its subsidiaries and (iv) there are no events or circumstances that might reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or any Environmental Laws.

ERISA Compliance. The Company and its subsidiaries and any "employee benefit plan" (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, "**ERISA**")) established or maintained by the Company, its subsidiaries or their "ERISA Affiliates" (as defined below) are in compliance in all material respects with ERISA. "**ERISA Affiliate**" means, with respect to the Company or any of its subsidiaries, any member of any group of organizations described in Sections 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the "**Code**") of which the Company or such subsidiary is a member. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Change, no "reportable event" (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Change, no "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates, if such "employee benefit plan" were terminated, would have any "amount of unfunded benefit liabilities" (as defined under ERISA). Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Change, neither the Company, its subsidiaries nor any of their ERISA Affiliates has incurred or reasonably expects to incur any liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan" or (ii) Sections 412, 4971, 4975 or 4980B of the Code. Each "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and to the knowledge of the Company, nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

Brokers. There is no broker, finder or other party that is entitled to receive from the Company any brokerage or finder's fee or other fee or commission as a result of any transactions contemplated by this Agreement.

No Outstanding Loans or Other Extensions of Credit. The Company does not have any outstanding extension of credit, in the form of a personal loan, to or for any director or executive

officer (or equivalent thereof) of the Company except for such extensions of credit as are expressly permitted by Section 13(k) of the Exchange Act.

Compliance with Laws. The Company and its subsidiaries have been and are in compliance with all applicable laws, rules and regulations, except where failure to be so in compliance would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

Dividend Restrictions. No subsidiary of the Company is prohibited or restricted, directly or indirectly, from paying dividends to the Company, or from making any other distribution with respect to such subsidiary's equity securities or from repaying to the Company or any other subsidiary of the Company any amounts that may from time to time become due under any loans or advances to such subsidiary from the Company or from transferring any property or assets to the Company or to any other subsidiary.

Anti-Corruption and Anti-Bribery Laws. Neither the Company nor any of its subsidiaries nor any director or officer or, to the knowledge of the Company, any employee of the Company or any of its subsidiaries or agent, Affiliate controlled by the Company or other person acting on behalf of the Company or any of its subsidiaries has, in the course of its actions for, or on behalf of, the Company or any of its subsidiaries (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made or taken any act in furtherance of an offer, promise, or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee, including of any government-owned or controlled entity or public international organization, or any political party, party official, or candidate for political office; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**"), the UK Bribery Act 2010, or any other applicable anti-bribery or anti-corruption law; or (iv) made, offered, authorized, requested, or taken an act in furtherance of any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment or benefit. The Company and its subsidiaries and, to the knowledge of the Company, the Company's Affiliates controlled by it have conducted their respective businesses in compliance with the FCPA and have instituted or are in the process of instituting and maintain or will maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

Money Laundering Laws. The operations of the Company and its subsidiaries are, and have been conducted at all times, in compliance in all material respects with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar applicable rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

Sanctions. Neither the Company nor any of its subsidiaries, directors or officers, nor, to the knowledge of the Company, after due inquiry, any of its employees, agents, Affiliates controlled by the Company or other persons acting on behalf of the Company or any of its subsidiaries is

currently the subject or the target of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**") or the U.S. Department of State, the United Nations Security Council, the European Union, His Majesty's Treasury of the United Kingdom, or other relevant sanctions authority (collectively, "**Sanctions**"); nor is the Company or any of its subsidiaries located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, Crimea, Cuba, Iran, North Korea, and Syria; and the Company will not directly or indirectly use the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, or any joint venture partner or other person or entity, for the purpose of financing the activities of or business with any person, or in any country or territory, that at the time of such financing, is the subject or the target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as underwriter, advisor, investor or otherwise) of applicable Sanctions. For the past three years, the Company and its subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

Sarbanes-Oxley. The Company is in compliance, in all material respects, with all applicable provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder.

Duties, Transfer Taxes, Etc. No stamp or other issuance or transfer taxes or duties and no capital gains, income, withholding or other taxes are payable by the Agent in the United States or any political subdivision or taxing authority thereof or therein in connection with the execution, delivery or performance of this Agreement by the Company or the sale and delivery by the Company of the Shares.

Cybersecurity. The Company and its subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "**IT Systems**") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants, except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change. The Company and its subsidiaries have implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data, including "Personal Data," used in connection with their businesses. "**Personal Data**" means (i) a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number, credit card number, bank information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) "personal data" as defined by GDPR; (iv) any information which would qualify as "protected health information" under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "**HIPAA"**); and (v) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related

to an identified person's health or sexual orientation. To the Company's knowledge, there have been no material breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same. The Company and its subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification, except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

Compliance with Data Privacy Laws. The Company and its subsidiaries are, and at all prior times were, in material compliance with all applicable state and federal data privacy and security laws and regulations, including without limitation HIPAA, and the Company and its subsidiaries have taken commercially reasonable actions to prepare to comply with, and, to the extent applicable, since May 25, 2018, have been and currently are in material compliance with, the European Union General Data Protection Regulation ("**GDPR**") (EU 2016/679) (collectively, the "**Privacy Laws**"). To ensure compliance with the Privacy Laws, the Company and its subsidiaries have in place, comply with, and take appropriate steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and analysis of Personal Data (the "**Policies**"). The Company and its subsidiaries in all material respects have made all disclosures to users or customers required by applicable Privacy Laws, and none of such disclosures made or contained in any Policy have, to the knowledge of the Company, been inaccurate or in violation of any applicable Privacy Laws in any material respect. The Company further certifies that neither it nor any subsidiary: (i) has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

Other Underwriting Agreements. The Company is not a party to any agreement with an agent or underwriter for any other "at the market" or continuous equity transaction.

Any certificate signed by any officer or representative of the Company or any of its subsidiaries and delivered to the Agent or counsel for the Agent in connection with an issuance of Shares shall be deemed a representation and warranty by the Company to the Agent as to the matters covered thereby on the date of such certificate.

The Company acknowledges that the Agent and, for purposes of the opinions to be delivered pursuant to Section 4(o) hereof, counsel to the Company and counsel to the Agent, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

Section 3. ISSUANCE AND SALE OF COMMON SHARES

Sale of Securities. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company and the Agent agree that the Company may from time to time seek to sell Shares through the Agent, acting as sales agent, or directly to the Agent, acting as principal, as follows, up to the Maximum Program Amount, based on and in accordance with Issuance Notices as the Company may deliver, during the Agency Period.

Mechanics of Issuances.

(i) Issuance Notice. Upon the terms and subject to the conditions set forth herein, on any Trading Day during the Agency Period on which the conditions set forth in Section 5(a) and Section 5(b) shall have been satisfied, the Company may exercise its right to request an issuance of Shares by delivering to the Agent an Issuance Notice; *provided, however*, that (A) in no event may the Company deliver an Issuance Notice to the extent that the sum of (x) the number of Shares in the requested Issuance Amount, plus (y) the aggregate number of all Shares issued under all previous Issuance Notices effected pursuant to this Agreement, would exceed the Maximum Program Amount; and (B) prior to delivery of any Issuance Notice, the period set forth for any previous Issuance Notice shall have expired or been terminated. An Issuance Notice shall be considered delivered on the Trading Day that it is received by e-mail to the persons set forth in Schedule A hereto and confirmed by the Company by telephone (including a voicemail message to the persons so identified), with the understanding that, with adequate prior written notice, the Agent may modify the list of such persons from time to time.

(ii) Agent Efforts. Upon the terms and subject to the conditions set forth in this Agreement, upon the receipt of an Issuance Notice, the Agent will use its commercially reasonable efforts consistent with its normal sales and trading practices to place the Shares with respect to which the Agent has agreed to act as sales agent, subject to, and in accordance with the information specified in, the Issuance Notice, unless the sale of the Shares described therein has been suspended, cancelled or otherwise terminated in accordance with the terms of this Agreement. For the avoidance of doubt, the parties to this Agreement may modify an Issuance Notice at any time provided they both agree in writing to any such modification.

(iii) Method of Offer and Sale. The Shares may be offered and sold (A) in privately negotiated transactions with the consent of the Company; (B) as block transactions; or (C) by any other method permitted by law deemed to be an "at the market offering" as defined in Rule 415(a)(4) under the Securities Act, including sales made directly on the Principal Market or sales made into any other existing trading market of the Common Shares. Nothing in this Agreement shall be deemed to require either party to agree to the method of offer and sale specified in the preceding sentence, and (except as specified in clauses (A) and (B) above) the method of placement of any Shares by the Agent shall be at the Agent's discretion.

(iv) Confirmation to the Company. If acting as sales agent hereunder, the Agent will provide written confirmation to the Company no later than the opening of the Trading Day next following the Trading Day on which it has placed Shares hereunder setting forth the number of

Shares sold on such Trading Day, the corresponding Sales Price and the Issuance Price payable to the Company in respect thereof.

(v) Settlement. Each issuance of Shares will be settled on the applicable Settlement Date for such issuance of Shares and, subject to the provisions of Section 5, on or before each Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Shares being sold by crediting the Agent or its designee's account at The Depository Trust Company through its Deposit/Withdrawal At Custodian (DWAC) System, or by such other means of delivery as may be mutually agreed upon by the parties hereto and, upon receipt of such Shares, which in all cases shall be freely tradable, transferable, registered shares in good deliverable form, the Agent will deliver, by wire transfer of immediately available funds, the related Issuance Price in same day funds delivered to an account designated by the Company prior to the Settlement Date. The Company may sell Shares to the Agent as principal at a price agreed upon at each relevant time Shares are sold pursuant to this Agreement (each, a "**Time of Sale**").

(vi) Suspension or Termination of Sales. Consistent with standard market settlement practices, the Company or the Agent may, upon notice to the other party hereto in writing or by telephone (confirmed immediately by verifiable email), suspend any sale of Shares, and the period set forth in an Issuance Notice shall immediately terminate; *provided, however*, that (A) such suspension and termination shall not affect or impair either party's obligations with respect to any Shares placed or sold hereunder prior to the receipt of such notice; (B) if the Company suspends or terminates any sale of Shares after the Agent confirms such sale to the Company, the Company shall still be obligated to comply with Section 3(b)(v) with respect to such Shares; and (C) if the Company defaults in its obligation to deliver Shares on a Settlement Date, the Company agrees that it will hold the Agent harmless against any loss, claim, damage or expense (including, without limitation, penalties, interest and reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company. The parties hereto acknowledge and agree that, in performing its obligations under this Agreement, the Agent may borrow Common Shares from stock lenders in the event that the Company has not delivered Shares to settle sales as required by subsection (v) above, and may use the Shares to settle or close out such borrowings. The Company agrees that no such notice shall be effective against the Agent unless it is made to the persons identified in writing by the Agent pursuant to Section 3(b)(i).

(vii) No Guarantee of Placement, Etc. The Company acknowledges and agrees that (A) there can be no assurance that the Agent will be successful in placing Shares; (B) the Agent will incur no liability or obligation to the Company or any other Person if it does not sell Shares; and (C) the Agent shall be under no obligation to purchase Shares on a principal basis pursuant to this Agreement, except as otherwise specifically agreed by the Agent and the Company.

(viii) Material Non-Public Information. Notwithstanding any other provision of this Agreement, the Company and the Agent agree that the Company shall not deliver any Issuance Notice to the Agent, and the Agent shall not be obligated to place any Shares, during any period in which the Company is in possession of material non-public information.

Fees. As compensation for services rendered, the Company shall pay to the Agent, on the applicable Settlement Date, the Selling Commission for the applicable Issuance Amount actually sold by the Agent deducting the Selling Commission from the applicable Issuance Amount.

Expenses. The Company agrees to pay all reasonable costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including without limitation (i) all expenses incident to the issuance and delivery of the Shares; (ii) all fees and expenses of the registrar and transfer agent of the Shares; (iii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Shares; (iv) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors; (v) all necessary and out-of-pocket costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Registration Statement (including financial statements, exhibits, schedules, consents and certificates of experts), the Prospectus, any Free Writing Prospectus (as defined below) prepared by or on behalf of, used by, or referred to by the Company, and all amendments and supplements thereto, and this Agreement; (vi) all filing fees, attorneys' fees and expenses incurred by the Company or the Agent in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Shares for offer and sale under the state securities or blue sky laws or the provincial securities laws of Canada, and, if requested by the Agent, preparing and printing a "**Blue Sky Survey**" or memorandum and a "Canadian wrapper", and any supplements thereto, advising the Agent of such qualifications, registrations, determinations and exemptions; (vii) the reasonable fees and disbursements of the Agent's counsel, including the reasonable fees and expenses of counsel for the Agent in connection with, FINRA review, if any, and approval of the Agent's participation in the offering and distribution of the Shares; (viii) the filing fees incident to FINRA review, if any; (ix) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Shares, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, reasonable travel and lodging expenses of the representatives, employees and officers of the Company and of the Agent and any such consultants, and the cost of any aircraft chartered by the Company in connection with the road show; and (x) the fees and expenses associated with listing the Shares on the Principal Market. The fees and disbursements of the Agent's counsel pursuant to subsections (vi) and (vii) above shall not exceed (A) an aggregate of $100,000 in connection with the execution of this Agreement and (B) an aggregate of $15,000 in connection with each Triggering Event Date (as defined below) on which the Company is required to provide a certificate pursuant to Section 4(o).

Section 4. ADDITIONAL COVENANTS

The Company covenants and agrees with the Agent as follows, in addition to any other covenants and agreements made elsewhere in this Agreement:

Exchange Act Compliance. During the Agency Period, the Company shall (i) file, on a timely basis, with the Commission all reports and documents required to be filed under Section 13, 14 or 15 of the Exchange Act in the manner and within the time periods required by the Exchange Act; and (ii) either (A) include in its quarterly reports on Form 10-Q and its annual reports on Form 10-K, a summary detailing, for the relevant reporting period, (1) the number of Shares sold through the Agent pursuant to this Agreement and (2) the net proceeds received by the Company from such sales or (B) prepare a prospectus supplement containing, or include in such other filing permitted

by the Securities Act or Exchange Act (each an "**Interim Prospectus Supplement")**, such summary information and, at least once a quarter and subject to this Section 4, file such Interim Prospectus Supplement pursuant to Rule 424(b) under the Securities Act (and within the time periods required by Rule 424(b) and Rule 430B under the Securities Act)).

Securities Act Compliance. After the date of this Agreement, the Company shall promptly advise the Agent in writing (i) of the receipt of any comments of, or requests for additional or supplemental information from, the Commission relating to the Registration Statement, the Prospectus or sale of the Shares hereunder; (ii) of the time and date of any filing of any post-effective amendment to the Registration Statement, any Rule 462(b) Registration Statement or any amendment or supplement to the Prospectus, or any Free Writing Prospectus; (iii) of the time and date that any post-effective amendment to the Registration Statement or any Rule 462(b) Registration Statement becomes effective; and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto, any Rule 462(b) Registration Statement or any amendment or supplement to the Prospectus or of any order preventing or suspending the use of any Free Writing Prospectus or the Prospectus, or of any proceedings to remove, suspend or terminate from listing or quotation the Common Shares from any securities exchange upon which they are listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes. If the Commission shall enter any such stop order at any time, the Company will use its best efforts to obtain the lifting of such order as soon as practicable. Additionally, the Company agrees that it shall comply with the provisions of Rule 424(b) and Rule 433, as applicable, under the Securities Act and will use its reasonable efforts to confirm that any filings made by the Company under such Rule 424(b) or Rule 433 were received in a timely manner by the Commission.

Amendments and Supplements to the Prospectus and Other Securities Act Matters. If any event shall occur or condition exist as a result of which the Company believes it is necessary to amend or supplement the Prospectus so that the Prospectus does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, or it is otherwise necessary to amend or supplement the Prospectus to comply with applicable law, including the Securities Act, the Company agrees (subject to Sections 4(d) and 4(f)) to promptly prepare, file with the Commission and furnish at its own expense to the Agent, amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not be misleading or so that the Prospectus, as amended or supplemented, will comply with applicable law including the Securities Act (it being acknowledged that the Company may delay the filing of any amendment or supplement if, in the Company's judgment, it is in the best interest of the Company). Neither the Agent's consent to, or delivery of, any such amendment or supplement shall constitute a waiver of any of the Company's obligations under Sections 4(d) and 4(f).

Agent's Review of Proposed Amendments and Supplements. Prior to amending or supplementing the Registration Statement (including any registration statement filed under Rule 462(b) under the Securities Act) or the Prospectus (excluding any amendment or supplement through incorporation

of any report filed under the Exchange Act), the Company shall furnish to the Agent for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each such proposed amendment or supplement, and the Company shall not file or use any such proposed amendment or supplement without the Agent's prior consent, which will not be unreasonably withheld, conditioned or delayed, and to file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule.

Use of Free Writing Prospectus. Neither the Company nor the Agent has prepared, used, referred to or distributed, or will prepare, use, refer to or distribute, without the other party's prior written consent, any "written communication" that constitutes a "free writing prospectus" as such terms are defined in Rule 405 under the Securities Act with respect to the offering contemplated by this Agreement (any such free writing prospectus being referred to herein as a "**Free Writing Prospectus**").

Free Writing Prospectuses. The Company shall furnish to the Agent for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each proposed Free Writing Prospectus or any amendment or supplement thereto to be prepared by or on behalf of, used by, or referred to by the Company and the Company shall not file, use or refer to any proposed Free Writing Prospectus or any amendment or supplement thereto without the Agent's consent, which shall not be unreasonably withheld, conditioned or delayed. The Company shall furnish to the Agent, without charge, as many copies of any Free Writing Prospectus prepared by or on behalf of, or used by the Company, as the Agent may reasonably request. If at any time when a prospectus is required by the Securities Act (including, without limitation, pursuant to Rule 173(d)) to be delivered in connection with sales of the Shares (but in any event if at any time through and including the date of this Agreement) there occurred or occurs an event or development as a result of which any Free Writing Prospectus prepared by or on behalf of, used by, or referred to by the Company conflicted or would conflict with the information contained in the Registration Statement or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company shall promptly amend or supplement such Free Writing Prospectus to eliminate or correct such conflict or so that the statements in such Free Writing Prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at such subsequent time, not misleading, as the case may be; *provided, however*, that prior to amending or supplementing any such Free Writing Prospectus, the Company shall furnish to the Agent for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of such proposed amended or supplemented Free Writing Prospectus and the Company shall not file, use or refer to any such amended or supplemented Free Writing Prospectus without the Agent's consent, which shall not be unreasonably withheld, conditioned or delayed.

Filing of Agent Free Writing Prospectuses. The Company shall not take any action that would result in the Agent or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a Free Writing Prospectus prepared by or on behalf of the Agent that the Agent otherwise would not have been required to file thereunder.

Copies of Registration Statement and Prospectus. After the date of this Agreement through the last time that a prospectus is required by the Securities Act (including, without limitation, pursuant to Rule 173(d)) to be delivered in connection with sales of the Shares, the Company agrees to furnish the Agent with copies (which may be electronic copies) of the Registration Statement and each amendment thereto, and with copies of the Prospectus and each amendment or supplement thereto in the form in which it is filed with the Commission pursuant to the Securities Act or Rule 424(b) under the Securities Act, both in such quantities as the Agent may reasonably request from time to time; and, if the delivery of a prospectus is required under the Securities Act or under the blue sky or securities laws of any jurisdiction at any time on or prior to the applicable Settlement Date for any period set forth in an Issuance Notice in connection with the offering or sale of the Shares and if at such time any event has occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it is necessary during such same period to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, to notify the Agent and to request that the Agent suspend offers to sell Shares (and, if so notified, the Agent shall cease such offers as soon as practicable); and if the Company decides to amend or supplement the Registration Statement or the Prospectus as then amended or supplemented, to advise the Agent promptly by telephone (with confirmation in writing) and to prepare and cause to be filed promptly with the Commission an amendment or supplement to the Registration Statement or the Prospectus as then amended or supplemented that will correct such statement or omission or effect such compliance; provided, however, that if during such same period the Agent is required to deliver a prospectus in respect of transactions in the Shares, the Company shall promptly prepare and file with the Commission such an amendment or supplement.

Blue Sky Compliance. The Company shall cooperate with the Agent and counsel for the Agent to qualify or register the Shares for sale under (or obtain exemptions from the application of) the state securities or blue sky laws or Canadian provincial securities laws of those jurisdictions designated by the Agent, shall comply with such laws and shall continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Shares. The Company shall not be required to qualify as a foreign corporation or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company will advise the Agent promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Shares for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its best efforts to obtain the withdrawal thereof as soon as practicable.

Earnings Statement. As soon as practicable, the Company will make generally available to its security holders and to the Agent an earnings statement (which need not be audited) covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the date of this Agreement which shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 under the Securities Act, which requirement shall be satisfied by publicly filing

the required information on the Commission's Electronic Data Gathering, Analysis and Retrieval system.

Listing; Reservation of Shares. (a) The Company will maintain the listing of the Shares on the Principal Market; and (b) the Company will reserve and keep available at all times, free of preemptive rights, Shares for the purpose of enabling the Company to satisfy its obligations under this Agreement.

Transfer Agent. The Company shall engage and maintain, at its expense, a registrar and transfer agent for the Shares.

Due Diligence. During the term of this Agreement, the Company will reasonably cooperate with any reasonable due diligence review conducted by the Agent in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during normal business hours and at the Company's principal offices, as the Agent may reasonably request from time to time.

Representations and Warranties. The Company acknowledges that each delivery of an Issuance Notice and each delivery of Shares on a Settlement Date shall be deemed to be (i) an affirmation to the Agent that the representations and warranties of the Company contained in or made pursuant to this Agreement are true and correct as of the date of such Issuance Notice or of such Settlement Date, as the case may be, as though made at and as of each such date, except as may be disclosed in the Prospectus (including any documents incorporated by reference therein and any supplements thereto); and (ii) an undertaking that the Company will advise the Agent if any of such representations and warranties will not be true and correct as of the Settlement Date for the Shares relating to such Issuance Notice, as though made at and as of each such date (except that such representations and warranties shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented relating to such Shares).

Deliverables at Triggering Event Dates; Certificates. The Company agrees that on or prior to the date of the first Issuance Notice and, during the term of this Agreement after the date of the first Issuance Notice, upon:

(A) the filing of the Prospectus or the amendment or supplement of any Registration Statement or Prospectus (other than a prospectus supplement relating solely to an offering of securities other than the Shares or a prospectus filed pursuant to Section 4(a)(ii)(B)), by means of a post-effective amendment, sticker or supplement, but not by means of incorporation of documents by reference into the Registration Statement or Prospectus;

(B) the filing with the Commission of an annual report on Form 10-K or a quarterly report on Form 10-Q (including any Form 10-K/A or Form 10-Q/A containing amended financial information or a material amendment to the previously filed annual report on Form 10-K or quarterly report on Form 10-Q), in each case, of the Company; or

(C) the filing with the Commission of a current report on Form 8-K of the Company containing amended financial information (other than information "furnished" pursuant to Item 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K

relating to reclassification of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) that is material to the offering of securities of the Company in the Agent's reasonable discretion;

(any such event, a "**Triggering Event Date**"), the Company shall furnish the Agent (but in the case of clause (C) above only if the Agent reasonably determines that the information contained in such current report on Form 8-K of the Company is material) with a certificate as of the Triggering Event Date, in the form and substance reasonably satisfactory to the Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as amended or supplemented, (A) confirming that the representations and warranties of the Company contained in this Agreement are true and correct, (B) confirming that the Company has performed all of its obligations hereunder to be performed on or prior to the date of such certificate and as to the matters set forth in Section 5(a)(iii) hereof, and (C) containing any other certification that the Agent shall reasonably request. The requirement to provide a certificate under this Section 4(o) shall be waived for any Triggering Event Date occurring at a time when no Issuance Notice is pending or a suspension is in effect, which waiver shall continue until the earlier to occur of the date the Company delivers an Issuance Notice hereunder (which for such calendar quarter shall be considered a Triggering Event Date) and the next occurring Triggering Event Date; provided, that the requirement to provide a certificate under this Section 4(o) shall continue to be waived for such next occurring Triggering Event Date if no Issuance Notice is pending or a suspension is in effect. Notwithstanding the foregoing, if the Company subsequently decides to sell Shares following a Triggering Event Date when a suspension was in effect and did not provide the Agent with a certificate under this Section 4(o), then before the Company delivers the Issuance Notice or the Agent sells any Shares pursuant to such instructions, the Company shall provide the Agent with a certificate in conformity with this Section 4(o) dated as of the date that the instructions for the sale of Shares are issued.

Legal Opinion. On or prior to the date of the first Issuance Notice and on or prior to each Triggering Event Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 4(o) for which no waiver is applicable or suspension is in effect and excluding the date of this Agreement, the Company shall cause Baker & Hostetler LLP, counsel to the Company, to deliver a negative assurances letter and the written legal opinion, each dated the date of delivery, in form and substance reasonably satisfactory to Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as then amended or supplemented. In lieu of such opinions for subsequent periodic filings, in the discretion of the Agent, the Company may furnish a reliance letter from such counsel to the Agent, permitting the Agent to rely on a previously delivered opinion letter, modified as appropriate for any passage of time or Triggering Event Date (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of such Triggering Event Date).

Comfort Letters. On or prior to the date of the first Issuance Notice and on or prior to each Triggering Event Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 4(o) for which no waiver is applicable or suspension is in effect and excluding the date of this Agreement, the Company shall cause (i) KPMG LLP, the independent registered

public accounting firm who has audited the financial statements included or incorporated by reference in the Registration Statement, and (ii) Clark, Schaefer, Hackett & Co., the independent registered public accounting firm who has audited the 2019 financial statements included or incorporated by reference in the Registration Statement, to each furnish the Agent a comfort letter, dated the date of delivery, in form and substance reasonably satisfactory to the Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel; provided, however, that any such comfort letter will only be required on the Triggering Event Date specified to the extent that it contains financial statements filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into a Prospectus; provided further, that Clark, Schaefer Hackett & Co. shall deliver a comfort letter until such time that the 2019 financial statements are no longer included or incorporated by reference in the Registration Statement. If requested by the Agent, the Company shall also cause a comfort letter to be furnished to the Agent on the date of occurrence of any material transaction or event requiring the filing of a current report on Form 8-K containing material amended financial information of the Company, including the restatement of the Company's financial statements. The Company shall be required to furnish no more than one comfort letter hereunder per calendar quarter.

(r) Secretary's Certificate. On or prior to the date of the first Issuance Notice and on or prior to each Triggering Event Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 4(o) for which no waiver is applicable or suspension is in effect and excluding the date of this Agreement, the Company shall furnish the Agent a certificate executed by the Secretary of the Company, signing in such capacity, dated the date of delivery (i) certifying that attached thereto are true and complete copies of the resolutions duly adopted by the Board of Directors of the Company authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby (including, without limitation, the issuance of the Shares pursuant to this Agreement), which authorization shall be in full force and effect on and as of the date of such certificate, (ii) certifying and attesting to the office, incumbency, due authority and specimen signatures of each Person who executed this Agreement for or on behalf of the Company, and (iii) containing any other certification that the Agent shall reasonably request.

(s) Agent's Own Account; Clients' Account. The Company consents to the Agent trading, in compliance with applicable law, in the Common Shares for the Agent's own account and for the account of its clients at the same time as sales of the Shares occur pursuant to this Agreement.

Investment Limitation. The Company shall not invest, or otherwise use the proceeds received by the Company from its sale of the Shares in such a manner as would require the Company or any of its subsidiaries to register as an investment company under the Investment Company Act.

Market Activities. The Company will not take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in stabilization or manipulation of the price of the Shares or any other reference security, whether to facilitate the sale or resale of the Shares or otherwise, and the Company will, and shall cause each of its Affiliates to, comply with all applicable provisions of Regulation M. If the limitations of Rule 102 of Regulation M ("**Rule 102**") do not apply with respect to the Shares or any other reference security pursuant to any exception set forth in Section (d) of Rule 102, then promptly upon notice from the Agent (or, if later, at the time stated in the notice), the Company will, and shall cause each of its Affiliates to,

comply with Rule 102 as though such exception were not available but the other provisions of Rule 102 (as interpreted by the Commission) did apply. The Company shall promptly notify the Agent if it no longer meets the requirements set forth in Section (d) of Rule 102.

Notice of Other Sale. Without the written consent of the Agent, the Company will not, directly or indirectly, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Shares or securities convertible into or exchangeable for Common Shares (other than Shares hereunder), warrants or any rights to purchase or acquire Common Shares, including any sales pursuant to the YA ELOC (defined below), during the period beginning on the third Trading Day immediately prior to the date on which any Issuance Notice is delivered to the Agent hereunder and ending on the third Trading Day immediately following the Settlement Date with respect to Shares sold pursuant to such Issuance Notice; and will not directly or indirectly enter into any other "at the market" or continuous equity transaction offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Shares (other than the Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Shares, warrants or any rights to purchase or acquire, Common Shares prior to the termination of this Agreement, except pursuant to the Equity Purchase Agreement, dated July 23, 2021, between the Company and YA II PN, LTD. (the "**YA ELOC**"), which the Company shall terminate within 30 days of the date hereof; provided, however, that such restrictions will not be required in connection with the Company's (i) issuance or sale of Common Shares, options to purchase Common Shares or Common Shares issuable upon the exercise of options or other equity awards pursuant to any employee or director share option, incentive or benefit plan, share purchase or ownership plan, long-term incentive plan, dividend reinvestment plan, inducement award under Nasdaq rules or other compensation plan of the Company or its subsidiaries, (ii) issuance or sale of Common Shares issuable upon exchange, conversion or redemption of securities or the exercise or vesting of warrants, options or other equity awards outstanding, or issuance or sale subject to an agreement providing for such issuance in existence, at the date of this Agreement and included in the Registration Statement and the Prospectus, (iii) issuance or sale of Common Shares or securities convertible into or exchangeable for Common Shares in connection with strategic transactions, mergers, acquisitions, other business combinations, joint ventures, strategic alliances or other strategic arrangements, including, without limitation, manufacturing, marketing, sponsored research, collaboration, license or distribution arrangements, provided that the aggregate number of Common Shares or securities convertible into or exchangeable for Common Shares issued or sold under this subsection (iii) shall not exceed 5% of the number of Common Shares outstanding immediately prior to giving effect to such sale of issuance, and (iv) modification of any outstanding options, warrants of any rights to purchase or acquire Common Shares.

Section 5. CONDITIONS TO DELIVERY OF ISSUANCE NOTICES AND TO SETTLEMENT

Conditions Precedent to the Right of the Company to Deliver an Issuance Notice and the Obligation of the Agent to Sell Shares. The right of the Company to deliver an Issuance Notice hereunder is subject to the satisfaction, on the date of delivery of such Issuance Notice, and the obligation of the Agent to use its commercially reasonable efforts to place Shares during the applicable period set forth in the Issuance Notice is subject to the satisfaction, on each Trading Day during the applicable period set forth in the Issuance Notice, of each of the following conditions:

(i) Accuracy of the Company's Representations and Warranties; Performance by the Company. The Company shall have delivered the certificate required to be delivered pursuant to Section 4(o) on or before the date on which delivery of such certificate is required pursuant to Section 4(o). The Company shall have performed, satisfied and complied with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to such date, including, but not limited to, the covenants contained in Section 4(p), Section 4(q) and Section 4(r).

(ii) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby that prohibits or directly and materially adversely affects any of the transactions contemplated by this Agreement, and no proceeding shall have been commenced that may have the effect of prohibiting or materially adversely affecting any of the transactions contemplated by this Agreement.

(iii) Material Adverse Changes. Except as disclosed in the Prospectus and the Time of Sale Information, (a) in the judgment of the Agent there shall not have occurred any Material Adverse Change; and (b) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading, in the rating accorded any securities of the Company or any of its subsidiaries by any "nationally recognized statistical rating organization" as such term is defined for purposes of Section 3(a)(62) of the Exchange Act.

(iv) No Suspension of Trading in or Delisting of Common Shares; Other Events. The trading of the Common Shares (including without limitation the Shares) shall not have been suspended by the Commission, the Principal Market or FINRA and the Common Shares (including without limitation the Shares) shall have been approved for listing or quotation on and shall not have been delisted from the Nasdaq Stock Market, the New York Stock Exchange or any of their constituent markets. There shall not have occurred (and be continuing in the case of occurrences under clauses (i) and (ii) below) any of the following: (i) trading or quotation in any of the Company's securities shall have been suspended or limited by the Commission or by the Principal Market or trading in securities generally on the Principal Market shall have been suspended or limited, or minimum or maximum prices shall have been generally established on any of such stock exchanges by the Commission or FINRA; (ii) a general banking moratorium shall have been declared by any of federal or New York, authorities; or (iii) any outbreak or escalation of national or international hostilities or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective substantial change in United States' or international political, financial or economic conditions, as in the judgment of the Agent is material and adverse and makes it impracticable to market the Shares in the manner and on the terms described in the Prospectus or to enforce contracts for the sale of securities.

Documents Required to be Delivered on each Issuance Notice Date. The Agent's obligation to use its commercially reasonable efforts to place Shares hereunder shall additionally be conditioned upon the delivery to the Agent on or before the Issuance Notice Date of a certificate in form and substance reasonably satisfactory to the Agent, executed by the Chief Executive Officer, President or Chief Financial Officer of the Company, to the effect that all conditions to the delivery of such Issuance Notice shall have been satisfied as at the date of such certificate (which certificate shall not be required if the foregoing representations shall be set forth in the Issuance Notice).

No Misstatement or Material Omission. The Agent shall not have advised the Company that the Registration Statement, the Prospectus or the Time of Sale Information, or any amendment or supplement thereto, contains an untrue statement of fact that in the Agent's reasonable opinion, in consultation with counsel, is material, or omits to state a fact that in the Agent's reasonable opinion, in consultation with counsel, is material and is required to be stated therein or is necessary to make the statements therein not misleading.

Section 6. INDEMNIFICATION AND CONTRIBUTION

Indemnification of the Agent. The Company agrees to indemnify and hold harmless the Agent, its officers and employees, and each person, if any, who controls the Agent within the meaning of the Securities Act or the Exchange Act against any loss, claim, damage, liability or reasonable expense, as incurred, to which the Agent or such officer, employee or controlling person may become subject, under the Securities Act, the Exchange Act, other federal or state statutory law or regulation, or the laws or regulations of foreign jurisdictions where Shares have been offered or sold or at common law or otherwise (including in settlement of any litigation), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact contained in any Free Writing Prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433(d) of the Securities Act or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and to reimburse the Agent and each such officer, employee and controlling person for any and all reasonable expenses (including the reasonable and documented fees and disbursements of counsel chosen by the Agent) as such expenses are reasonably incurred by the Agent or such officer, employee or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by the Agent expressly for use in the Registration Statement, any such Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), it being understood and agreed that the only such information furnished by the Agent to the Company consists of the information described in subsection (b) below the information set forth in the first sentence of the ninth paragraph under the caption "**Plan**

of Distribution" in the Prospectus (the "**Agent Information**"). The indemnity agreement set forth in this Section 6(a) shall be in addition to any liabilities that the Company may otherwise have.

Indemnification of the Company, its Directors and Officers. The Agent agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which the Company or any such director, officer or controlling person may become subject, under the Securities Act, the Exchange Act, or other federal or state statutory law or regulation, or the laws or regulations of foreign jurisdictions where Shares have been offered or sold or at common law or otherwise (including in settlement of any litigation), arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact contained in any Free Writing Prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433(d) of the Securities Act or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; but, for each of (i) and (ii) above, only to the extent arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by the Agent expressly for use in the Registration Statement, any such Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), it being understood and agreed that the only such information furnished by the Agent to the Company consists of the Agent Information, and to reimburse the Company and each such director, officer and controlling person for any and all expenses (including the reasonable and documented fees and disbursements of one counsel chosen by the Company) as such expenses are reasonably incurred by the Company or such officer, director or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The indemnity agreement set forth in this Section 6(b) shall be in addition to any liabilities that the Agent may otherwise have.

Notifications and Other Indemnification Procedures. Promptly after receipt by an indemnified party under this Section 6 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 6, notify the indemnifying party in writing of the commencement thereof, but the omission to so notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party for contribution or otherwise than under the indemnity agreement contained in this Section 6 or to the extent it is not prejudiced as a proximate result of such failure. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably

concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election to so assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 6 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the fees and expenses of more than one separate counsel (together with local counsel), representing the indemnified parties who are parties to such action), which counsel (together with any local counsel) for the indemnified parties shall be selected by the indemnified party (in the case of counsel for the indemnified parties referred to in Section 6(a) and Section 6(b) above), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action or (iii) the indemnifying party has authorized in writing the employment of counsel for the indemnified party at the expense of the indemnifying party, in each of which cases the reasonable fees and reasonable out-of-pocket expenses of counsel shall be at the expense of the indemnifying party and shall be paid as they are incurred.

Settlements. The indemnifying party under this Section 6 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 6(b) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by such indemnifying party of the aforesaid request; and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

Contribution. If the indemnification provided for in this Section 6 is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such

proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Agent, on the other hand, from the offering of the Shares pursuant to this Agreement; or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Agent, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Agent, on the other hand, in connection with the offering of the Shares pursuant to this Agreement shall be deemed to be in the same respective proportions as the total gross proceeds from the offering of the Shares (before deducting expenses) received by the Company bear to the total commissions received by the Agent. The relative fault of the Company, on the one hand, and the Agent, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or the Agent, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 6(c), any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 6(c) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 6(e); *provided, however,* that no additional notice shall be required with respect to any action for which notice has been given under Section 6(c) for purposes of indemnification.

The Company and the Agent agree that it would not be just and equitable if contribution pursuant to this Section 6(e) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 6(e).

Notwithstanding the provisions of this Section 6(e), the Agent shall not be required to contribute any amount in excess of the agent fees received by the Agent in connection with the offering contemplated hereby. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 6(e), each officer and employee of the Agent and each person, if any, who controls the Agent within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as the Agent, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company.

Section 7. TERMINATION & SURVIVAL

Term. Subject to the provisions of this Section 7, the term of this Agreement shall continue from the date of this Agreement until the end of the Agency Period, unless earlier terminated by the parties to this Agreement pursuant to this Section 7.

Termination; Survival Following Termination.

(i) Either party may terminate this Agreement prior to the end of the Agency Period, by giving written notice as required by this Agreement, upon ten (10) Trading Days' notice to the other party; provided that, (A) if the Company terminates this Agreement after the Agent confirms to the Company any sale of Shares, the Company shall remain obligated to comply with Section 3(b)(v) with respect to such Shares and (B) Section 2, Section 6, Section 7 and Section 8 shall survive termination of this Agreement. If termination shall occur prior to the Settlement Date for any sale of Shares, such sale shall nevertheless settle in accordance with the terms of this Agreement.

(ii) In addition to the survival provision of Section 7(b)(i), the respective indemnities, agreements, representations, warranties and other statements of the Company, of its officers and of the Agent set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Agent or the Company or any of its or their partners, officers or directors or any controlling person, as the case may be, and, anything herein to the contrary notwithstanding, will survive delivery of and payment for the Shares sold hereunder and any termination of this Agreement.

Section 8. MISCELLANEOUS

Press Releases and Disclosure. The Company may issue a press release describing the material terms of the transactions contemplated hereby as soon as practicable following the date of this Agreement, and may file with the Commission a Current Report on Form 8-K, with this Agreement attached as an exhibit thereto, describing the material terms of the transactions contemplated hereby, and the Company shall consult with the Agent prior to making such disclosures, and the parties hereto shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosures that is reasonably satisfactory to all parties hereto. No party hereto shall issue thereafter any press release or like public statement (including, without limitation, any disclosure required in reports filed with the Commission pursuant to the Exchange Act) related to this Agreement or any of the transactions contemplated hereby without the prior written approval of the other party hereto, except as may be necessary or appropriate in the reasonable opinion of the party seeking to make disclosure to comply with the requirements of applicable law or stock exchange rules. If any such press release or like public statement is so required, the party making such disclosure shall consult with the other party prior to making such disclosure, and the parties shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosure that is reasonably satisfactory to all parties hereto. Notwithstanding the foregoing, in no event shall the Company be required to consult with or seek prior consent of the Agent to make (i) any public statements made by the Company (including, without limitation, any statement included in reports filed with the Commission) that are consistent with the statements set forth in the press release and Current Report on Form 8-K described above, (ii) make any public statements that are consistent with statements previously discussed with or consented to by the Agent, or (iii) the public disclosure by the Company of the number of Shares sold pursuant to this Agreement.

No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (i) the transactions contemplated by this Agreement, including the determination of any fees, are arm's-length commercial transactions between the Company and the Agent, and do not constitute a recommendation, investment advice, or solicitation of any action by the Agent, (ii) when acting as a principal under this Agreement, the Agent is and has been acting solely as a principal and is not the agent or fiduciary of the Company, or its stockholders, creditors, employees or any other party, (iii) the Agent has not assumed nor will assume an advisory or fiduciary responsibility in favor of the Company with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether the Agent has advised or is currently advising the Company on other matters) and the Agent does not have any obligation to the Company with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement, (iv) the Agent and its respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, (v) the Agent has not provided any legal, accounting, regulatory, financial, investment or tax advice with respect to the transactions contemplated hereby and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate and (vi) none of the activities of the Agent in connection with the transactions contemplated herein constitutes a recommendation, investment advice or solicitation of any action with respect to any entity or natural person.

Research Analyst Independence. The Company acknowledges that the Agent's research analysts and research departments are required to and should be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and as such the Agent's research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company or the offering that differ from the views of their respective investment banking divisions. The Company understands that the Agent is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Agent:

Jefferies LLC
520 Madison Avenue
New York, NY 10022
Attention: General Counsel.

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, California
Attention: B. Shayne Kennedy.

If to the Company:

Lordstown Motors Corp.
2300 Hallock Young Road
Lordstown, Ohio 44481
Attention: Melissa Leonard, EVP and General Counsel.

with a copy (which shall not constitute notice) to:

Baker & Hostetler LLP
127 Public Square, Suite 2000
Cleveland, Ohio 44114
Attention: Janet A. Spreen.

Any party hereto may change the address for receipt of communications by giving written notice to the others in accordance with this Section 8(d).

Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto, and to the benefit of the employees, officers and directors and controlling persons referred to in Section 6, and in each case their respective successors, and no other person will have any right or obligation hereunder. The term "successors" shall not include any purchaser of the Shares as such from the Agent merely by reason of such purchase.

Partial Unenforceability. The invalidity or unenforceability of any Article, Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Article, Section, paragraph or provision hereof. If any Article, Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

Governing Law Provisions. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed in such state. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America located in the Borough of Manhattan in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York (collectively, the "**Specified Courts**"), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court, as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party's address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

General Provisions. This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and may be delivered by facsimile, transmission or by electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or other transmission method. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The Article and Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

[Signature Page Immediately Follows]

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms

Very truly yours,

LORDSTOWN MOTORS CORP.

By: /s/ Adam Kroll
Name: Adam Kroll
Title: Chief Financial Officer

The foregoing Agreement is hereby confirmed and accepted by the Agent in New York, New York as of the date first above written.

JEFFERIES LLC

By: /s/ Sean Costello
Name: Sean Costello
Title: Managing Director

EXHIBIT A

ISSUANCE NOTICE

[Date]

Jefferies LLC
520 Madison Avenue
New York, New York 10022

Attn: [_____]

Reference is made to the Open Market Sale Agreement between Lordstown Motors Corp. (the "**Company**") and Jefferies LLC (the "**Agent**") dated as of November 7, 2022. The Company confirms that all conditions to the delivery of this Issuance Notice are satisfied as of the date hereof.

Date of Delivery of Issuance Notice (determined pursuant to Section 3(b)(i)):
_____

Issuance Amount (equal to the total amount of such Shares):

_____

Number of days in selling period: _____

First date of selling period: _____

Last date of selling period: _____

Settlement Date(s) if other than standard T+2 settlement:

_____

Floor Price Limitation (in no event less than $1.00 without the prior written consent of the Agent, which consent may be withheld in the Agent's sole discretion): $ ____ per share

Comments: _____

_____

By: _____
Name:
Title:

Schedule A

Notice Parties

The Company

Adam Kroll, adam.kroll@lordstownmotors.com

Melissa Leonard, melissa.leonard@lordstownmotors.com

The Agent

Sean Costello, scostello@jefferies.com

Donald Lynaugh, dlynaugh@jefferies.com

Justin Smolkin, jsmolkin@jefferies.com

Exhibit 31.1

CERTIFICATIONS

I, Edward Hightower, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Lordstown Motors Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

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

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

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

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

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors:

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2022

/s/ Edward T. Hightower
Edward T. Hightower
Chief Executive Officer and President
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS

I, Adam Kroll, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Lordstown Motors Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

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

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

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

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

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors:

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting

Date: November 7, 2022

/s/ Adam Kroll
Adam Kroll
Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADDED BY
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Lordstown Motors Corp. (the "Company") on Form 10-Q for the period ended September 30, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Edward Hightower, Chief Executive Officer and President of the Company, certify, pursuant to 18 U.S.C. §1350, as added by §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 Exchange Act of 1934; and

2. To my knowledge, the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of and for the period covered by the Report.

November 7, 2022

By: /s/ Edward T. Hightower
Edward T. Hightower
Chief Executive Officer and President
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADDED BY
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Lordstown Motors Corp. (the "Company") on Form 10-Q for the period ended September 30, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Adam Kroll, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as added by §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 Exchange Act of 1934; and

2. To my knowledge, the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of and for the period covered by the Report.

November 7, 2022

/s/Adam Kroll
Adam Kroll
Chief Financial Officer
(Principal Financial and Accounting Officer)