

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 10-K**

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

For the Fiscal Year Ended December 31, 2022  
Commission file number: 000-22490

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 No. 000-22490

**FORWARD AIR CORPORATION**  
(Exact name of Registrant as specified in its charter)

**Tennessee**  
(State or other jurisdiction of incorporation or organization)

**62-1120025**  
(I.R.S. Employer Identification No.)

**1915 Snapps Ferry Road**      **Building N**      **Greeneville**      **TN**  
(Address of principal executive offices)

**37745**  
(Zip Code)

(423) 636-7000

Registrant's telephone number, including area code

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

Title of Each Class  
Common Stock, \$0.01 par value

Trading Symbol(s)  
FWRD

Name of Each Exchange on Which Registered  
The Nasdaq Stock Market LLC

**Securities registered pursuant to Section 12(g) of the Act: None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes  No

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 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 checkmark 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.

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Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the Registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the Registrant's executive officers during the relevant recovery period pursuant to §240.10D.1(b).

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

The aggregate market value of the voting stock held by non-affiliates of the Registrant was approximately \$ 1,821,797,582 as of June 30, 2022.

The number of shares outstanding of the Registrant's common stock (as of February 27, 2023): 26,339,171.

#### **Documents Incorporated By Reference**

Portions of the proxy statement for the 2023 Annual Meeting of Shareholders are incorporated by reference into Part III of this report.

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## Part I

### Cautionary Note Regarding Forward-Looking Statements

*This Annual Report on Form 10-K for the fiscal year ended December 31, 2022 (this “Form 10-K”) contains “forward-looking statements,” as defined in Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Forward-looking statements are statements other than historical information or statements of current condition and relate to future events or our future financial performance. Some forward-looking statements may be identified by use of such terms as “believes,” “anticipates,” “intends,” “plans,” “estimates,” “projects” or “expects.”*

*In this Form 10-K, forward-looking statements include, but are not limited to, any statements regarding any projections of earnings, revenues, payment of dividends, other financial items or related accounting treatment, or cost reduction measures; any statements regarding future performance; any statements regarding the availability of cash; any statements regarding the impact of the Ransomware Incident on our business, future operations and results; any statements of plans, strategies, and objectives of management for future operations; any statements regarding future insurance, claims and litigation and any associated estimates or projections; any statements regarding regulation and legislative impacts on our business; any statements regarding an increase in the cost of new equipment; any statements concerning proposed or intended, new services, developments or integration measures; any statements regarding our technology and information systems, including the effectiveness of each; any statements regarding competition, including our specific advantages, the capabilities of our segments, including the integration of services and our geographic location; any statement regarding our properties; any statements regarding intended expansion through acquisition or greenfield startups; any statements regarding future business, economic conditions or performance; any statements regarding our ESG and sustainability initiatives; any statement regarding certain tax and accounting matters, including the impact on our financial statements; any statement regarding the impact and implementation of disclosure control systems; and any statements of belief and any statements of assumptions underlying any of the foregoing.*

*These forward-looking statements are subject to a number of known and unknown risks, uncertainties and assumptions, including those described in “Risk Factors” below. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this Form 10-K may not occur, and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements. Important factors that may materially affect the forward-looking statements include the risk factors summarized below.*

*The factors identified below are believed to be important factors, but not necessarily all of the important factors, that could cause actual results to differ materially from those expressed in any forward-looking statement made by us. Other factors not discussed herein could also have a material adverse effect on us. You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, level of activity, performance or achievements. These forward-looking statements speak only as of the date of this Form 10-K. We assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future, except as required by applicable law.*

*The following is a list of factors, among others, that could cause actual results to differ materially from those contemplated by the forward-looking statements: economic factors such as recessions, inflation, higher interest rates and downturns in customer business cycles, our ability to manage our growth and ability to grow, in part, through acquisitions, while being able to successfully integrate such acquisitions, our ability to secure terminal facilities in desirable locations at reasonable rates, more limited liquidity than expected which limits our ability to make key investments, the creditworthiness of our customers and their ability to pay for services rendered, our inability to maintain our historical growth rate because of a decreased volume of freight or decreased average revenue per pound of freight moving through our network, the availability and compensation of qualified Leased Capacity Providers and freight handlers as well as contracted, third-party motor carriers needed to serve our customers’ transportation needs, our inability to manage our information systems and inability of our information systems to handle an increased volume of freight moving through our network, the occurrence of cybersecurity risks and events, market acceptance of our service offerings, claims for property damage, personal injuries or workers’ compensation, enforcement of and changes in governmental regulations, environmental, tax, insurance and accounting matters, the handling of hazardous materials, changes in fuel prices, loss of a major customer, increasing competition and pricing pressure, our dependence on our senior management team and the potential effects of changes in employee status, seasonal trends, the occurrence of certain weather events, restrictions in our charter and bylaws, the cost of new equipment and the impact and efficacy of our disclosure controls and procedures. As a result of the foregoing, no assurance can be given as to future financial condition, cash flows or results of operations. Except as required by law, we undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.*

## Part I

### Item 1. Business

#### Overview

Forward Air Corporation (“Forward”, the “Company”, “we”, “our”, or “us”) is a leading asset-light freight and logistics company. We provide less-than-truckload (“LTL”), final mile, truckload and intermodal drayage services across the United States and in Canada. We offer premium services that typically require precision execution, such as expedited transit, delivery during tight time windows and special handling. We utilize an asset-light strategy to minimize our investments in equipment and facilities and to reduce our capital expenditures. Forward Air was formed as a corporation under the laws of the State of Tennessee on October 23, 1981. Our common stock is listed on the Nasdaq Global Select Market under the symbol “FWRD”.

#### Discontinued Operation

On April 23, 2020, the Company made a decision to divest of Pool and the sale was completed on February 12, 2021. As a result, the results of Pool were classified to “Loss from discontinued operation, net of tax” in the Consolidated Statements of Comprehensive Income for the year ended December 31, 2021. Certain corporate overhead and other costs previously allocated to Pool for segment reporting purposes did not qualify for classification within discontinued operation and were allocated to continuing operations.

#### Services Provided

Our services are classified into two reportable segments: Expedited Freight and Intermodal. For financial information relating to each of our business segments, see Note 12, *Segment Reporting* to our Consolidated Financial Statements included in this Form 10-K.

*Expedited Freight.* We operate a comprehensive national network that provides expedited regional, inter-regional and national LTL services. Expedited Freight offers customers local pick-up and delivery and other services including final mile, truckload, shipment consolidation and deconsolidation, warehousing, customs brokerage and other handling services. We have, and plan to continue to grow our LTL and final mile geographic footprints through greenfield start-ups as well as acquisitions. During the year ended December 31, 2022, Expedited Freight accounted for 78.7% of our consolidated revenue.

*Intermodal.* We provide first- and last-mile high value intermodal container drayage services both to and from seaports and railheads. Intermodal also offers dedicated contract and Container Freight Station (“CFS”) warehouse and handling services. Intermodal operates primarily in the Midwest and Southeast, with a smaller operational presence in the Southwest, Mid-Atlantic, and West Coast. We have, and plan to grow Intermodal’s geographic footprint through greenfield start-ups where we do not have an acceptable acquisition target, as well as acquisitions. During the year ended December 31, 2022, Intermodal accounted for 21.3% of our consolidated revenue.

#### Strategy

Our strategy is to take advantage of our core competencies in precision execution to provide asset-light freight and logistics services to profitably grow in the premium segments of the markets we serve. Principal components of our efforts include:

- *Expand Service Offerings and Terminal Footprint.* A key part of our growth strategy is to offer new and enhanced services that address our customers’ premium transportation needs. Over the past few years, we added or enhanced LTL pickup and delivery, final mile solutions, expedited truckload, temperature-controlled shipments, warehousing, drayage, customs brokerage and shipment consolidation and handling services. These services benefit our existing customers and increase our ability to attract new customers. Another part of our key growth strategy is to pursue geographic expansion in under penetrated markets to better meet the current and future needs of customers. As a result, we plan to invest in new terminals, in our trailer fleet and technology to enable us to efficiently handle the increased freight in the new markets.

- *Manage Pricing and Freight Characteristics.* Our business strategy involves managing both the price we charge for our services and the mix of freight we transport to operate our LTL network efficiently and more profitably. Over the past several years, we have implemented initiatives to improve the freight characteristics in our LTL network that has allowed us to increase our yield and revenue per shipment.
- *Continue to Focus on Delivering Best-in-Class Service.* The foundation of our growth strategy is our commitment to provide our customers with the most reliable and damage-free alternative for their shipments. Commitment to precision execution service is valued by customers and allows us to charge fair compensation for our services and positions us to improve market share.
- *Pursue Strategic Acquisitions.* We continue to evaluate and pursue acquisitions that help expand geographic reach while gaining the business base of the acquired entity. In 2014 we created the foundation for what is our Intermodal segment by acquiring Central States Trucking Co. (“CST”). Since the acquisition of CST, we have completed fifteen additional intermodal acquisitions. In order to enhance our final mile footprint, we acquired FSA Network, Inc. (“FSA”) in April 2019, Linn Star Holdings, Inc., Linn Star Transfer, Inc. and Linn Star Logistics, LLC (collectively, “Linn Star”) in January 2020 and CLW Delivery, Inc. (“CLW”) in October 2020. In May 2021, we acquired J&P Hall Express Delivery (“J&P”) to expand the expedited LTL footprint across the Southeast.
- *Enhance Information Systems.* We are committed to the development and enhancement of our information systems to provide competitive service advantages and increased productivity. We believe our information systems have and will assist us in capitalizing on new business opportunities with existing and new customers.

## Operations

The following describes in more detail the operations of each of our reportable segments: Expedited Freight and Intermodal.

### *Expedited Freight*

#### *Overview*

Our Expedited Freight segment provides expedited regional, inter-regional and national LTL, final mile and truckload services. We market our Expedited Freight services primarily to freight and logistics intermediaries (such as freight forwarders and third-party logistics companies), airlines (such as integrated air cargo carriers, and passenger and cargo airlines) and retailers (such as retailers of heavy bulky appliances). We offer our customers a high level of service with a focus on on-time, damage-free deliveries. Our Expedited Freight network encompasses approximately 92% of all continental U.S. zip codes, with service in Canada and Mexico.

#### *Shipments*

During 2022, approximately 28% of the freight handled by our LTL network was for overnight delivery, approximately 59% was for delivery within two to three days and the balance was for delivery in four or more days.

The average weekly volume of freight moving through our LTL network was approximately 54.8 million pounds per week and our average shipment weighed approximately 764 pounds in 2022. Although we impose no significant size or weight restrictions, we focus our marketing and price structure on shipments of 200 pounds or more.

Expedited Freight markets its services primarily to freight and logistics intermediaries; however, it may at times, provide such services to shippers if the opportunity is consistent with Expedited Freight’s strategy. Also, because Expedited Freight does not place significant size or weight restrictions on shipments, we generally do not compete directly with integrated air cargo carriers such as United Parcel Service and FedEx Corporation in the overnight delivery of small parcels.

The table below summarizes the average weekly volume of freight moving through our LTL network for each year since 2008.

<b>Year</b>	<b>Average Weekly Volume in Pounds (In millions)</b>
2008	34.2
2009	28.5
2010	32.6
2011	34.0
2012	34.9
2013	35.4
2014	37.4
2015	47.2
2016	46.5
2017	49.5
2018	50.2
2019	48.6
2020	46.3
2021	55.4
2022	54.8

### *Transportation*

Expedited Freight secures transportation capacity from four sources:

- independent contractors that own and lease their equipment (primarily tractors) to the Company (“Leased Capacity Providers”);
- third-party contracted motor carriers;
- capacity secured by transportation intermediaries, including freight brokers; and
- Company-owned equipment operated by employee drivers.

The majority of the transportation capacity utilized by Expedited Freight is provided by Leased Capacity Providers, with whom we seek to establish long-term relationships with to assure dependable service and availability. We believe Expedited Freight has experienced significantly higher average retention of Leased Capacity Providers compared to other over-the-road transportation providers. Expedited Freight has established specific guidelines relating to safety records, driving experience and personal evaluations that we use to select our Leased Capacity Providers. To enhance our relationship with the Leased Capacity Providers, Expedited Freight seeks to pay rates that are generally above prevailing market rates, and our Leased Capacity Providers often are able to negotiate a consistent work schedule for their drivers. Usually, Leased Capacity Providers negotiate schedules for their drivers that are between the same two cities or along a consistent route, improving quality of work life for the drivers of our Leased Capacity Providers and, in turn, increasing the retention rate of drivers and Leased Capacity Providers.

We also purchase transportation capacity supplied by third-party contracted motor carriers and transportation intermediaries. The majority of the transportation capacity utilized in our big and bulky final mile service is provided by third-party motor carriers, and we utilize capacity from both third-party motor carriers and transportation intermediaries to support other Expedited Freight service offerings in response to seasonal demands and volume surges in particular markets, to handle overflow volume. A small portion of Expedited Freight's transportation capacity is provided by employee drivers operating company-owned equipment.

### *Other Services*

Expedited Freight provides additional value-added services that are integrated into the overall operation of its network.

Expedited Freight offers final mile services which include the delivery and installation of heavy bulky appliances such as washing machines, dryers, dishwashers and refrigerators. We significantly expanded the final mile geographic footprint and operate in over 117 locations nationwide. Expedited Freight continues to integrate these deliveries into its LTL pickup and delivery and terminal operations so as to increase network density and lower overall LTL unit costs.

Expedited Freight offers truckload services which include expedited truckload brokerage, dedicated fleet services, as well as high security and temperature-controlled logistics services.

Other Expedited Freight services allow customers to access the following services from a single source:

- customs brokerage;
- warehousing, dock and office space;
- hotshot or ad hoc ultra-expedited services; and
- shipment consolidation and handling, such as shipment build-up and break-down and reconsolidation of air or ocean pallets or containers.

#### *Customers*

Our Expedited Freight wholesale customer base is primarily comprised of freight forwarders, third-party logistics (“3PL”) companies, integrated air cargo carriers and passenger, cargo airlines, steamship lines and retailers. Expedited Freight’s freight forwarder customers vary in size from small, independent, single facility companies to large, international logistics companies. Our dependable service and wide-ranging service offerings also make Expedited Freight an attractive option for 3PL providers, which is one of the fastest growing segments in the transportation industry. Integrated air cargo carriers use our network to provide overflow capacity and other services, including shipment of bigger packages and pallet-loaded cargo. In 2022, Expedited Freight’s ten largest customers accounted for approximately 38% of its revenue and no single customer had revenue greater than 10% of Expedited Freight revenue for 2022.

#### *Intermodal*

##### *Overview*

Our Intermodal segment provides first- and last-mile high value intermodal container drayage services both to and from seaports and railheads. Intermodal also offers dedicated contract and container freight station (“CFS”) warehouse and handling services. Intermodal also provides linehaul and local less-than-truckload service in the Midwest, as well as CFS warehousing services (e.g. devanning, unit load device build-up/tear-down, and security screening) for air and ocean import/export freight at five of its Midwest terminals. Our Intermodal service differentiators include:

- Immediate proof of delivery and signature capture capability via tablets;
- All drivers receive dispatch orders on hand-held units and are trackable via GPS; and
- Daily container visibility and per diem management reports.

##### *Operations*

Intermodal’s primary office is located in Oak Brook, Illinois. Intermodal’s network consists of 30 locations primarily in the Midwest and Southeast, with a smaller operational presence in the Southwest, Mid-Atlantic, and West Coast.

##### *Transportation*

Intermodal utilizes a mix of Company-employed drivers, Leased Capacity Providers and third-party motor carriers. During 2022, approximately 71% of Intermodal’s direct transportation expenses were provided by Leased Capacity Providers, 24% by Company-employed drivers, and 5% by third-party motor carriers.

All of our Intermodal company and independent contractor tractors are equipped with computer tablets, which enable us to communicate with our drivers, plan and monitor shipment progress and monitor our drivers’ hours of service. We use the real-time global positioning data obtained from these devices to improve customer and driver service, and provide a high level of shipment visibility to our customers (including immediate proof of delivery signature capture). We believe that our technology is a key differentiator and enables us to provide a higher level of service than our competitors.



## Customers

Intermodal's customer base is primarily comprised of international freight forwarders, passenger and cargo airlines, beneficial cargo owners and steamship lines. In 2022, Intermodal's ten largest customers accounted for approximately 33% of its operating revenue and had one customer with revenue greater than 10% of Intermodal revenue for 2022.

## Competition

We compete in the North American transportation and logistics services industry, and the markets in which we operate are highly competitive, very fragmented and historically have few barriers to entry. We compete with a large number of other asset-light logistics companies, asset-based carriers, integrated logistics companies, and third-party freight brokers. To a lesser extent, we also compete with integrated air cargo carriers and passenger airlines. Our competition ranges from small operators that operate within a limited geographic area to companies with substantially greater financial and other resources, including greater freight capacity.

Our Expedited Freight segment primarily competes with other national and regional truckload carriers. Expedited Freight also competes with less-than-truckload carriers, and to a lesser extent, integrated air cargo carriers and passenger and cargo airlines. Our Intermodal segment primarily competes with national and regional drayage providers.

We believe competition in our segments is based primarily on quality of service, price, available capacity, on-time delivery, flexibility, reliability, security, transportation rates, location of facilities, and business relationships, and we believe we compete favorably with other transportation service companies in these areas. To that end, we believe our Expedited Freight segment has an advantage over other truckload and less-than-truckload carriers because Expedited Freight delivers faster, more reliable services between cities at rates that are generally significantly below the price to transport the same shipments to the same destinations by air. We believe our Intermodal segment has a competitive advantage over other drayage providers because we deliver more reliable service while offering greater shipment visibility and security. Additionally, we believe our Intermodal segment is one of the leading providers of drayage and related services in North America today.

## Marketing

We market all of our services through a sales and marketing team located in major markets of the United States. Senior leadership is also actively involved in sales and marketing to national and local accounts. We participate in trade shows and advertise our services through digital marketing channels, trade publications, and the Internet via [www.tlxpedited.com](http://www.tlxpedited.com), [www.forwardair.com](http://www.forwardair.com), [www.forwardaircorp.com](http://www.forwardaircorp.com), and [www.forward-intermodal.com](http://www.forward-intermodal.com). Our websites promote and describe our services in addition to lead generation support. The information on our websites is not part of this filing and is therefore not incorporated by reference unless such information is specifically referenced elsewhere in this report.

## Seasonality

Generally, our operating results have been subject to seasonal trends when measured on a quarterly basis with the first quarter the weakest and the third and fourth quarters have been the strongest. This seasonal pattern has been the result of numerous factors such as economic conditions, customer demand, weather, and national holidays. Additionally, a significant portion of our revenue is derived from customers whose business levels are impacted by trends in the economy.

## Workforce

We recognize that our workforce, including our freight handlers, is our most valuable asset. Through ongoing talent development, comprehensive compensation and benefits, and a focus on health, safety and employee well-being, we strive to help our employees in all aspects of their lives so they can do their best at work. The recruitment, training and retention of qualified employees is essential to support our continued growth and to meet the service requirements of our customers.

As of December 31, 2022, we had 4,155 full-time employees, 924 of whom were freight handlers and an additional 272 part-time employees, the majority of whom were freight handlers. In 2022, none of our employees were covered by a collective bargaining agreement.

### *Roadway Health and Safety*

We are committed to educating our employees and promoting driver health and wellness through routine communication campaigns and information designed to emphasize the importance of safe operations. Drivers of our Leased Capacity Providers complete a three-day safety orientation as part of their onboarding where they are assigned several training courses, and from time-to-time, additional safety trainings may also be assigned on an ongoing basis, dependent upon driving behaviors.

We invest in a variety of programs focused on improving and maintaining driver health and wellness. We provide drivers access to a fatigue management service with the goal of reducing fatigue-related accidents and encouraging healthy, restful sleep. We have implemented fleet safety equipment, including electronic monitoring systems, to track driver safety, well-being, and health through monitoring of speed and proper hours-of-service-required rest breaks.

We provide a quarterly safety bonus and annual vehicle giveaway to incentivize our Leased Capacity Providers to promote safe driving practices. Both initiatives celebrate drivers of our Leased Capacity Providers who have zero moving violations or accidents on a quarterly basis. Drivers who obtain four quarterly bonuses are eligible to win a new vehicle. In 2022, 209 Leased Capacity Providers as well as Company-employed drivers qualified for the vehicle giveaway. Looking ahead, we will continue to identify and promote programs that focus on the health and wellness for the drivers of our Leased Capacity Providers.

### *Workplace Health and Safety*

We are committed to the safety of our employees and independent contractors. Our safety program focuses on risk reduction and safety management procedures that promote preventative measures.

We employ, maintain, and monitor a robust health and safety program for all of our workers to prevent workplace incidents. Policies and procedures exist to investigate accidents and monitor lessons learned, driving continuous improvement in the health and safety practices across our facilities. All of our employees are assigned to training courses as part of onboarding and employees may be assigned additional refresher trainings based on corrective action or identified risk.

### *Diversity*

We believe that our employees' unique and diverse capabilities positively impact our success. Our commitment to diversity and inclusion starts at the top with a highly skilled and diverse board. Since 2017, we added four female directors to our Board, two directors who identify as Hispanic, one director who identifies as African American and one director who identifies as Indian.

We are committed to further increase the percentage of diverse representation in our overall employee base as well as to further initiatives for compensation equity, employee engagement, development and inclusion. We believe that incorporating diversity and inclusion ("D&I") initiatives into our everyday business practices enhances innovation and enables diversity of thought. Building upon our core values, our employees value learning from different perspectives and welcome the opportunity to work with those of diverse backgrounds. Through our D&I initiatives, employees take part in robust training, such as understanding diversity, generational awareness, and emotional intelligence. We also provide our employees with Employee Resource Groups to help foster a diverse and inclusive workplace as well as provide for the growth and development of underrepresented groups.

### *Compensation*

We regularly review surveys of market rates for jobs to ensure our compensation practices are competitive. We are committed to providing total rewards that are market-competitive and performance-based, driving innovation and operational excellence. Our compensation programs, practices, and policies reflect our commitment to reward short- and long-term performance that aligns with, and drives shareholder value. Total direct compensation is generally positioned within a competitive range of the market median, with differentiation based on tenure, skills, proficiency, and performance to attract and retain key talent. In addition to salaries, our compensation programs include annual incentive bonuses, stock awards, and participation in a retirement savings plan, dependent upon the position and level of employee. We also invest in talent development initiatives to support the ongoing career development of all employees, including learning workshops that target all levels of employees.

## Equipment

We manage a trailer pool that is utilized by all of our businesses to move freight through our networks. Our trailer pool includes dry van, refrigerated and roller-bed trailers, and substantially all of our trailers are 53 feet long. We own the majority of the trailers we use, but we supplement at times with leased trailers. As of December 31, 2022, we had 6,021 owned trailers in our fleet with an average age of approximately nine years. In addition, as of December 31, 2022, we also had 705 leased trailers in our fleet. As of December 31, 2022, we had 273 owned tractors and straight trucks in our fleet, with an average age of approximately three years. In addition, as of December 31, 2022, we also had 643 leased tractors and straight trucks in our fleet.

## Corporate Sustainability

We embrace a comprehensive approach to sustainability that addresses Environmental, Social, and Governance (“ESG”) factors.

Our integrated framework focuses on three pillars: (i) People and Communities; (ii) Customer; and (iii) Environment. After completing an ESG assessment in 2020 utilizing the Sustainable Accounting Standards Board (SASB) standards and conducting a third-party stakeholder assessment, we identified ten ESG priority areas within these three pillars that we believe are relevant to our business and important to our employees, communities, cusotmers, investors, partners and contractors, and which form the foundation for our sustainability strategy:

Practices	<ul style="list-style-type: none"><li>• Roadway Health &amp; Safety</li><li>• Workplace Health &amp; Safety</li><li>• Independent Contractor Practices</li><li>• Diversity, Equity, Inclusion, and Belonging (DEI&amp;B)</li><li>• Community Impact &amp; Partnerships</li></ul>	Practices	<ul style="list-style-type: none"><li>• Measurement &amp; Disclosure</li><li>• Information Security</li><li>• Responsible Supplier Practices</li><li>• Green House Gas (GHG) Emissions Reduction</li><li>• Air Quality Practices</li></ul>
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Since 2019, we have deployed meaningful resources to manage sustainability risks and to capitalize on related opportunities for the benefit of our stakeholders. In 2019, our Board amended the Corporate Governance and Nominating (“CG&N”) Committee Charter to give the CG&N Committee oversight over our ESG-related efforts. At least twice a year, the CG&N Committee is updated on each of these topics and provides feedback and direction that it deems appropriate. At least annually, the Chair of the CG&N Committee will provide a report on these topics to the full Board.

In 2020, Forward’s leadership created the Head of Corporate ESG role to provide oversight of Forward’s ESG vision, strategic planning, performance management, and improvement activities.

In 2021, we published our first ESG Report and created our internal ESG Steering Committee, which oversees our company-wide ESG strategy and meets at least quarterly and on an as-needed basis.

In 2022, we streamlined our internal data collection process, completed our Greenhouse Gas (GHG) inventory, set measurable targets and goals, and published our second ESG report through the launch of our new ESG website which we will update annually with our progress. The ESG report and new website are accessible through our investor relations site, <https://ir.forwardaircorp.com/esg>. The information on our website and our ESG report are not incorporated into, and are not a part of, this report.

### *People and Communities*

We are committed to maintaining safe facilities for our employees, independent contractors, customers and partners. As part of this pillar, we focus on Roadway Health & Safety, Workplace Health & Safety, Independent Contractor Practices, and DEI&B Practices.

For instance, we employ, maintain, and monitor a robust Health and Safety program for all of our workers which establishes procedures and policies to prevent workplace incidents. As part of our assessment, we have identified improvement activities to develop a comprehensive Emergency Preparedness Plan (“EPP”) for all our facilities. The EPP is under

development and in compliance with OSHA 29 CFR 1910 standards and FMCSA 49 CFR. When completed, we will distribute and maintain this EPPP for employees and independent contractors alike, across our facilities and corporate offices.

We also remain committed to fostering a more diverse, equitable and inclusive work environment. In 2020, we created a Diversity, Equity, Inclusion, and Belonging (DEI&B) Council to promote employee inclusion and engagement. Since the creation of the DEI&B Council, among other initiatives, we have implemented paid parental leave, launched Employee Resource Groups to foster an inclusive environment and celebrated different cultures by commemorating key diversity holidays, observances, celebrations and provided floating paid holidays.

We are committed to supporting and giving back to the communities where we live and work, particularly through the support of our employee Veterans, and to the community of Veterans in North America. For instance, we continue to support our Veterans through our charitable organization, Operation: Forward Freedom, a manifestation of our ongoing commitment to Veteran-related causes. In 2022, we hosted our first annual Drive for Hope Golf tournament where we raised more than \$375,000 for Hope for the Warriors. Hope for the Warriors is a 501c3 nonprofit whose mission is to care for and empower service members and military families challenged by the physical, moral and psychological effects of war.

We also partner with non-profit organizations that positively impact our communities and our industry such as Truckers Against Trafficking, Women in Trucking and Drexel Hamilton.

#### *Customer*

We are committed to providing the industry's highest quality service in delivering on our customers' expectations. As part of this pillar, we focus on Measurement & Disclosure, Information Security, and Responsible Supplier Practices.

We remain committed to transparent and sustainable business practices. As part of this ongoing commitment, we have transformed and innovated several of our digital and cloud technologies to create more efficient and integrated processes. We deploy various programs, including Safety and Environmental Management Systems, to collect meaningful data that is communicated with all divisions and management.

We have also employed proactive measures to protect our network, computer systems and data from cyber threats, in part, by creating a robust Information Security program in early 2020. We are continuously deploying infrastructure to meet the National Institute of Standards and Technology (NIST) requirements.

As part of our Responsible Supplier program, we work to understand the ESG goals of both our suppliers and customers. By 2024, we expect to establish data tracking infrastructure and explore opportunities to grow our supplier diversity program and partnerships. We aim to establish supplier diversification goals in the coming years.

#### *Environment*

We are committed to promoting a healthier natural and built environment by striving for continuous environmental improvements in all aspects of our business. Environmental leadership requires not only our own action, but transparency and participation in the industry, including conversations about innovations and advancements that make a difference. As part of this pillar, we focus on GHG Emissions Reduction Practices and Air Quality Practices.

As a transportation company, we are conscious of the environmental effects of our operations and are committed to tracking and reducing our GHG emissions and improving our energy efficiency. We have established a preliminary goal to reduce absolute Scope 1 and Scope 2 GHG emissions (combined) by 2030 from a 2021 base year. As part of this goal, in 2022, we partnered with carbon capture company Remora, reserving ten of its mobile devices for a pilot project tentatively scheduled for the second half of 2023. We are also aligning with industry certifications, continuing to be a SmartWay certified company. SmartWay is a certification from the U.S. Environmental Protection Agency ("EPA") verifying company compliance with EPA regulations, including fuel efficiency ranges and emission standards.

To learn more about our ESG strategy and all our focus areas, visit our ESG website <https://forwardair.metrio.net/>, also accessible through our investor relations site. The information in our ESG report is not incorporated into, and is not a part of, this report. We are committed to making our results count and will continue to update our future disclosures accordingly.

## Risk Management and Litigation

Under DOT regulations, we are liable for bodily injury and property damage caused by Leased Capacity Providers and employee drivers while they are operating equipment under our various motor carrier authorities. The potential liability associated with any accident can be severe and occurrences are unpredictable.

For vehicle liability, we retain a portion of the risk. Below is a summary of our risk retention on vehicle liability insurance coverage maintained by us through \$10,000 (in thousands):

		<b>Risk Retention</b>	<b>Frequency</b>	<b>Layer</b>	<b>Policy Term</b>
<b>Expedited Freight<sup>1</sup></b>					
	LTL business	\$ 5,000	Occurrence/Accident <sup>2</sup>	\$0 to \$5,000	10/1/2022 to 10/1/2023
	Truckload business	\$ 2,000	Occurrence/Accident <sup>2</sup>	\$0 to \$2,000	10/1/2022 to 10/1/2023
	LTL, Truckload and Intermodal businesses	\$ 5,000	Policy Term Aggregate <sup>3</sup>	\$5,000 to \$10,000	10/1/2022 to 10/1/2023
<b>Intermodal</b>		\$ 1,000	Occurrence/Accident <sup>2</sup>	\$0 to \$1,000	10/1/2022 to 10/1/2023

<sup>1</sup> Excluding the Final Mile business, which is primarily a brokered service.

<sup>2</sup> For each and every accident/incident, we are responsible for damages and defense up to these amounts, regardless of the number of claims associated with any accident/incident.

<sup>3</sup> During the Policy Term, we are responsible for damages and defense within the stated Layer up to the stated, aggregate amount of Risk Retention before insurance will contribute.

Also, from time to time, when brokering freight, we may face claims for the “negligent selection” of outside, contracted carriers that are involved in accidents, and we maintain third-party liability insurance coverage with a \$100 deductible per occurrence for most of our brokered services. Additionally, we maintain workers’ compensation insurance with a self-insured retention of \$500 per occurrence. We cannot guarantee that our self-insurance retention levels will not increase and/or that we may have to agree to more unfavorable policy terms as a result of market conditions, poor claims experience or other factors. We could incur claims in excess of our policy limits or incur claims not covered by our insurance. Any claims beyond the limits or scope of our insurance coverage may have a material adverse effect on us. Because we do not carry “stop loss” insurance, a significant increase in the number of claims that we must cover under our self-insurance retainage could adversely affect our profitability. In addition, we may be unable to maintain insurance coverage at a reasonable cost or in sufficient amounts or scope to protect us against losses.

From time to time, we are a party to other litigation arising in the normal course of our business, most of which involve claims for personal injury, property damage related to the transportation and handling of freight, or workers’ compensation. We do not believe that any of these pending actions, individually or in the aggregate, will have a material adverse effect on our business, financial condition or results of operations.

## Regulation

We are regulated by various United States and state agencies, including the DOT. The DOT and the Federal Motor Carrier Safety Administration (“FMCSA”), an agency within the DOT, manages a Compliance, Safety, Accountability initiative (“CSA”) which governs matters such as safety requirements and compliance, registration to engage in motor carrier operations, drivers’ hours of service (“HOS”) requirements, and certain mergers, consolidations, and acquisitions. We are also subject to laws and regulations under the U.S. Environmental Protection Agency and the Occupational Safety and Health Administration, which regulate safety, the supervision of hazardous materials, water discharges, air emissions, solid waste disposal and the release and cleanup of other substances. These regulatory authorities have broad powers, generally governing matters such as authority to engage in motor carrier operations, as well as motor carrier registration, driver hours of service, safety and fitness of transportation equipment and drivers, transportation of hazardous materials, certain mergers and acquisitions and periodic financial reporting. The trucking industry is also subject to regulatory and legislative changes from a variety of other governmental authorities, which address matters such as: increasingly stringent environmental, occupational safety and health regulations, limits on vehicle weight and size, ergonomics, port security, and hours of service. In addition, we are subject to compliance with cargo-security and transportation regulations issued by the Transportation Security Administration and Customs and Border Protection (“CBP”) within the U.S. Department of Homeland Security, and our domestic customs brokerage operations are licensed by CBP.

We are also subject to employment laws and regulations, including the changing regulatory landscape, with the potential effects of California Assembly Bill 5 (“California AB5”), which introduced a new test for determining worker classification that is viewed as expanding the scope of employee relationships and narrowing the scope of independent contractor relationships.

Additionally, our Canada business activities are subject to similar requirements imposed by the laws and regulations of Canada, as well as its provincial laws and regulations. Regulatory requirements, and changes in regulatory requirements, may affect our business or the economics of the industry by requiring changes in operating practices or by influencing the demand for and increasing the costs of providing transportation services.

#### **Service Marks**

Through one of our subsidiaries, we hold U.S. federal trademark registrations associated with the following service marks: Forward (logo), Forward Air, Inc. (logos), circle design (logo), Forward Air®, Forward Air (logos), Forward Air Complete®, Forward Air Complete (logo), Forward Air Solutions®, Forward Air Solutions (logo), TQI, inc. (logo), TQI (logo), Central States Trucking Co. (logo), FAF, Inc. (logo), FSA Logistix (logo), First in “last mile” Home Delivery®, North America’s Most Complete Road Feeder Network®, and Keeping Your Business Moving Forward®. We also hold an allowed federal trademark application for the Precision Execution logo. We additionally have certain common law service mark rights, including in the tagline When It Matters, Think Forward, that are not currently registered with the United States Patent and Trademark Office. As our brands evolve, certain of these marks may go out of use, and others may be developed over time. Our marks are of significant value to our business.

#### **Available Information**

We file reports with the Securities and Exchange Commission (the “SEC”), including annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, other reports and amendments to such reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities and Exchange Act of 1934, as amended from time to time. We are an electronic filer and the SEC maintains an Internet site at [www.sec.gov](http://www.sec.gov) that contains these reports and other information filed electronically. We make available free of charge through the Investor Relations portion of our website such reports as soon as reasonably practicable after such material is electronically filed with or furnished to the SEC. Our website address is [www.forwardaircorp.com](http://www.forwardaircorp.com). Our goal is to maintain our website as a portal through which investors can easily find or navigate to pertinent information about us. The information provided on the website is not part of this report, and is therefore not incorporated by reference unless such information is otherwise specifically referenced elsewhere in this report.

## Item 1A. Risk Factors

The following are important risk factors that could affect our financial performance and could cause actual results for future periods to differ materially from our anticipated results or other expectations, including those expressed in any forward-looking statements made in this Annual Report on Form 10-K or our other filings with the SEC or in oral presentations such as telephone conferences and webcasts open to the public. You should carefully consider the following factors and consider these in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Item 7 and our Consolidated Financial Statements and related Notes in Item 8.

### **Risks Relating to Our Business and Operations**

#### *Overall economic conditions that reduce freight volumes could have a material adverse impact on our operating results and ability to achieve growth.*

We are sensitive to changes in overall economic conditions that impact customer shipping volumes, industry freight demand and industry truck capacity. The transportation industry historically has experienced cyclical fluctuations in financial results due to economic recession, downturns in business cycles of customers, interest and currency rate fluctuations, inflation, supply chain disruptions, labor shortages and other economic factors beyond our control. Changes in U.S. trade policy could lead to “trade wars” impacting the volume of economic activity in the United States, and as a result, trucking freight volumes may be materially reduced. Such a reduction may materially and adversely affect our business. Deterioration in the economic environment subjects our business to various risks, including the following that may have a material and adverse impact on our operating results and cause us not to maintain previously achieved levels of profitability or achieve growth:

- A reduction in overall freight volumes reduces our revenues and opportunities for growth. In addition, a decline in the volume of freight shipped due to a downturn in customers’ business cycles or other factors (including our ability to assess dimensional and weight-based charges) generally results in decreases in freight pricing and decreases in revenue derived from various surcharges and accessorial charges. In our LTL business, these decreases typically reduce the average revenue per pound of freight, as carriers use price concession to compete for loads to maintain truck productivity.
- Our base transportation rates are determined based on numerous factors such as length of haul, weight per shipment and freight class. During economic downturns and periods of low freight volume, we may also have to lower our base transportation rates based on competitive pricing pressures and market factors.
- Some of our customers may face economic difficulties that affect their ability to pay us, and some may go out of business. In addition, some customers may not pay us as quickly as they have in the past, causing our working capital needs to increase.
- A significant number of our transportation providers may go out of business and we may be unable to secure sufficient equipment or other transportation services to meet our commitments to our customers.
- We may not be able to appropriately adjust our expenses to changing market demands. In order to maintain high degree of cost variability in our business model, it is necessary to adjust staffing levels to changing market demands. In periods of rapid change, it is more difficult to match our staffing levels to our business needs.
- If the domestic freight forwarder, Expedited Freight’s primary customer type, is disintermediated, and we are not able to transition effectively into servicing other customers, like third-party logistics companies and beneficial cargo owners, our business and financial results could be materially adversely affected.

#### *Inflation may increase our operating expenses and lower profitability*

The COVID-19 pandemic caused a global recession, and the sustainability of the economic recovery observed in 2022 remains unclear. The COVID-19 pandemic has also significantly increased economic and demand uncertainty, has led to inflationary pressure in the U.S. and elsewhere, and has led to disruption and volatility in demand for our services, our suppliers’ ability to fill orders and global capital markets.

Most of our operating expenses are sensitive to increases in inflation, including equipment prices, real property rental costs, fuel costs, insurance costs, employee wages and purchased transportation. Furthermore, inflation may generally increase costs for materials, supplies and services and capital. With increasing costs, we may have to increase our prices to maintain the same level of profitability. If we are unable to increase our prices sufficiently to offset increasing expenses, then inflation could have a material adverse effect on our financial condition, results of operations, liquidity and cash flows.

***We may have difficulty effectively managing our growth, which could adversely affect our business, results of operations and financial condition.***

Our growth strategy includes increasing freight volume from new and existing customers, improving our freight characteristics, implementing best practices and operational efficiencies, expanding our service offerings and pursuing strategic transactions. Our growth plans will place significant demands on our management and operating personnel.

To manage our current and anticipated future growth effectively, we must continue to maintain, and may need to enhance, our operating and management information systems and information technology infrastructure, which will place additional demands on our resources and operations. Failure to manage our growth effectively could lead us to over-invest or under-invest in technology and operations; result in weaknesses in our infrastructure, systems, or controls; give rise to operational mistakes, losses, or loss of productivity or business opportunities; reduce customer satisfaction; limit our ability to respond to competitive pressures; or result in loss of employees and reduced productivity of remaining employees. If our management is unable to effectively manage our growth, our expenses may increase more than expected, our revenue could decline or may grow more slowly than expected, and we may be unable to implement our growth strategy.

***Volatility in fuel prices, shortages of fuel or the ineffectiveness of our fuel surcharge program could have a material adverse effect on our results of operations and profitability.***

We are subject to risks associated with the availability and price of fuel. Fuel prices have fluctuated dramatically over recent years. Future fluctuations in the availability and price of fuel could adversely affect our results of operations. Fuel availability and prices can be impacted by factors beyond our control, such as natural or man-made disasters, adverse weather conditions, political events, economic sanctions imposed against oil-producing countries or specific industry participants, disruption or failure of technology or information systems, price and supply decisions by oil producing countries and cartels, terrorist activities, armed conflict, tariffs, sanctions, other changes to trade agreements and world supply and demand imbalance. Over time we have been able to mitigate the impact of the fluctuations through fuel surcharge programs. Our fuel surcharge rates are set weekly based on the national average for fuel prices as published by the U.S. Department of Energy and our fuel surcharge table. Our fuel surcharge revenue is the result of our fuel surcharge rates and the tonnage transiting our networks. The impact of fuel on our results of operations depends on the relationship between the applicable surcharge, the fuel efficiency of our Company drivers, and load factor achieved by our operations. Fluctuations in fuel prices in either direction could have a positive or negative impact on our margins, particularly in our LTL business where the weight of a shipment subject to the fuel surcharge on a given trailer can vary materially. There can be no assurance that our fuel surcharge revenue programs will be effective in mitigating the full impact of future increases in fuel prices. Conversely, decreases in fuel prices reduce the amount of revenue derived from our fuel surcharge programs and accordingly, could reduce our consolidated revenues and may reduce margins for certain businesses. In addition to changing fuel prices, fluctuations in volumes and related load factors may subject us to volatility in our fuel surcharge revenue. Fuel shortages, changes in fuel prices and the potential volatility in fuel surcharge revenue may adversely impact our results of operations and overall profitability.

***If we have difficulty attracting and retaining Leased Capacity Providers, other third-party transportation capacity providers, or freight handlers, our profitability and results of operations could be adversely affected.***

We depend on Leased Capacity Providers, third-party contracted motor carriers, and other intermediaries like freight brokers for most of our transportation capacity needs. In 2022, 47.5% of our purchased transportation capacity was provided by Leased Capacity Providers. Competition for Leased Capacity Providers is intense, and sometimes there are shortages in the marketplace. In addition, a decline in the availability of trucks, tractors and trailers for purchase or use by Leased Capacity Providers may negatively affect our ability to obtain the needed transportation capacity. We also require a large number of employee freight handlers to operate our business efficiently. During periods of low unemployment in the areas where our terminals are located, we may have difficulty hiring and retaining a sufficient number of freight handlers. If we have difficulty attracting and retaining enough qualified freight handlers or Leased Capacity Providers, we may need to increase wages and benefits for our employees or to increase the cost at which we contract with our Leased Capacity Providers, either of which would increase our operating costs. This difficulty may also impede our ability to maintain our delivery schedules, which could make our service less competitive and curtailing our planned growth. A capacity deficit may lead to a decline in the volume of freight we receive from customers or a loss of customers.

To augment the transportation capacity provided by Leased Capacity Providers, we purchase transportation from other third-party motor carriers, typically at a higher cost. As with Leased Capacity Providers, competition for third-party motor carriers is intense, and sometimes there are shortages of available third-party motor carriers. If we cannot secure a sufficient number of Leased Capacity Providers and have to purchase transportation from third-party carriers, our operating costs will



increase. If our labor and operating costs increase, we may be unable to offset the increased costs by increasing rates without adversely affecting our business. As a result, our profitability and results of operations could be adversely affected.

***We may not make future acquisitions or, if we do, we may not realize the anticipated benefits of future acquisitions and integration of these acquisitions may disrupt our business and occupy management.***

We have grown through acquisitions, and we intend to pursue opportunities to expand our business by acquiring other companies in the future. Our ability to grow revenues, earnings and cash flow depends in part upon our ability to identify and successfully acquire and integrate businesses at appropriate prices and realize anticipated synergies and business performance from such acquisitions. Appropriate targets for acquisition are difficult to identify and transactions are difficult to complete for a variety of reasons, including but not limited to, limited due diligence, high valuations, other interested parties, negotiations of the definitive documentation, satisfaction of closing conditions, the need to obtain antitrust or other regulatory approvals on acceptable terms, and availability of funding. There is no assurance that we will be successful in identifying, negotiating, consummating or integrating any future acquisitions. Additionally, we may not realize the anticipated benefits of any future acquisitions. Each acquisition has numerous risks including:

- difficulty in integrating the operations and personnel of the acquired company;
- unanticipated costs to support new business lines or separate legal entities;
- disruption of our ongoing business, distraction of our management and employees from other opportunities and responsibilities due to integration issues;
- additional indebtedness or the issuance of additional equity to finance future acquisitions, which could be dilutive to our shareholders;
- inability to access capital markets on acceptable terms or at all;
- potential loss of key customers or employees of acquired companies along with the risk of unionization of employees;
- pricing pressure resulting from differing customer pricing practices of the acquired company or varying pricing dynamics in the acquired company's market;
- inability to achieve the financial and strategic goals for the acquired and combined businesses;
- potential impairment of tangible and intangible assets and goodwill acquired as a result of acquisitions; and
- potential failure of the due diligence processes to identify significant issues with legal and financial liabilities and contingencies, among other things.

In the event that we do not realize the anticipated benefits of an acquisition or if the acquired business is not successfully integrated, there could be a material adverse effect on our financial condition, results of operations, liquidity and cash flows.

***A determination by regulators that our Leased Capacity Providers or third-party motor carriers are employees rather than independent contractors could expose us to various liabilities and additional ongoing expenses, and related litigation could subject us to substantial costs, which could have a material adverse effect on our results of operations and our financial condition.***

At times, the Internal Revenue Service, the Department of Labor and state authorities have asserted that independent contractor transportation capacity providers like our Leased Capacity Providers and third-party motor carriers are “employees,” rather than “independent contractors.” Additionally, we are aware of certain judicial decisions and state laws that could bring about major reforms in the classification of workers, including the California Assembly Bill 5 (“California AB5”). California AB5 purports to codify a new test for determining worker classification that is broadly viewed as expanding the scope of employee relationships and narrowing the scope of independent contractor relationships. Although no enforcement actions under California AB5 have been asserted against the Company, if the State of California seeks to re-classify our use of our Leased Capacity Providers or ISPs as employees, that result could materially increase our exposure under a variety of federal and state tax, workers’ compensation, unemployment benefits, labor, employment and tort laws, as well as our potential liability for employee benefits. In addition, such changes may be applied retroactively, and if so, we may be required to pay additional amounts to compensate for prior periods. Any of the above increased costs would adversely affect our business and operating results. In addition, California AB5 has been the subject of widespread national discussion and it is possible that other jurisdictions may enact similar laws.

A determination by regulators that some or all of our Leased Capacity Providers or third-party motor carriers are employees rather than independent contractors could expose us to various liabilities and additional ongoing expenses, including but not limited to, the cost of assets to be operated by employee drivers, employment-related expenses such as workers' compensation insurance coverage and reimbursement of work-related expenses. Our exposure could include prior period compensation, as well as potential liability for employee benefits and tax withholdings. In addition, the topic of the classification of individuals as employees or independent contractors has gained increased attention among the plaintiffs' bar and certain states have recently seen numerous class action lawsuits filed against transportation companies that engage independent contractors, some of which have resulted in significant damage awards and/or monetary settlements for workers who have been allegedly misclassified as independent contractors. The legal and other costs associated with any of these matters can be substantial and could have a material adverse effect on our results of operations and our financial condition.

***Because a portion of our network costs are fixed, any factors that result in a decrease in the volume or revenue per pound of freight shipped through our networks will adversely affect our results of operations.***

Our operations, particularly our networks of hubs and terminals, represent substantial fixed costs. As a result, any decline in the volume or revenue per pound of freight we handle will have an adverse effect on our operating margin and our results of operations. Several factors can result in such declines, including adverse business and economic conditions affecting shippers of freight as discussed above. In addition, volumes shipped through our network may be negatively impacted by lack of customer contractual obligations or cancellations of existing customer contracts. Generally, we do not enter into long-term contracts with our customers. Rather, our customer contracts generally allow for cancellation within 30 to 60 days. As a result, we cannot guarantee that our current customers will continue to utilize our services or that they will continue at the same levels. The timing of our capital investments, pricing models and service availability is generally based on our existing and anticipated customer contracts and freight volumes.

***Our profitability could be negatively impacted if our pricing structure proves to be inaccurate or off-market.***

The price we charge our customers for the services we provide is based on our calculations of, among other things, the costs of providing those services. The Company's assessment of its costs and resulting pricing structure relies on the effective identification and measurement of the impact of a number of key operational variables including, but not limited to volumes, operational efficiencies, length of haul, the mix of fixed versus variable costs, productivity and other factors. If we are incorrect in our assumptions and do not accurately calculate or predict the costs to us to provide our services, we could experience lower margins than anticipated, loss of business, or an inability to offer competitive products and services.

***We derive a significant portion of our revenue from a few major customers, the loss of one or more of which could have a material adverse effect on our business.***

While no customer accounted for more than 10% of consolidated revenues for the calendar year ended December 31, 2022, our top ten customers, based on revenue, accounted for approximately 31% of our revenue. These customers can impact our revenues and profitability based on factors such as: industry trends related to e-commerce that may apply downward pricing pressures on the rates our customers can charge; the seasonality associated with the fourth quarter holiday season; business combinations and the overall growth of a customer's underlying business; and any disruptions to our customers' businesses. These customers could choose to divert all or a portion of their business with us to one of our competitors, demand pricing concessions for our services, require us to provide enhanced services that increase our costs, or develop their own shipping and distribution capabilities. Our Expedited Freight and Intermodal segments generally do not have long-term contracts with their customers. A reduction in, or termination of, our services by one or more of our major customers could have a material adverse effect on our business and operating results. In addition, any increased direct sales efforts to direct shippers and beneficial cargo owners, as well as the potential acquisition of other businesses that may be perceived as competing more directly with our customers, could adversely affect our expenses, pricing, third-party relationships and revenues, particularly if such actions affect any of these key customers.

***We are dependent on our senior management team and other key employees, and the loss of any such personnel could materially and adversely affect our business, operating results and financial condition.***

Our future performance depends, in significant part, upon the continued service of our senior management team and other key employees. We cannot be certain that we can retain these employees. The loss of the services of one or more of these or other key personnel could have a material adverse effect on our business, operating results and financial condition if we are unable to timely secure replacement personnel who have sufficient experience in our industry or in the management of our business. If we fail to develop, compensate, and retain a core group of senior management and other key employees and maintain an adequate succession plan, it could hinder our ability to execute on our business strategies and maintain our level of service.

***Our business is subject to seasonal trends.***

Generally, our operating results have been subject to seasonal trends when measured on a quarterly basis with the first and second quarters generally weaker compared to our third and fourth quarters. This trend is dependent on numerous factors including economic conditions, customer demand and weather. Revenue is directly related to the available working days of shippers, national holidays and the number of business days during a given period, which may also create seasonal variability on our results of operations. During the remaining winter months after the winter holiday season, our freight volumes are generally lower because some customers reduce shipment levels. In addition, a substantial portion of our revenue is derived from customers in industries whose shipping patterns are tied closely to consumer demand, which can sometimes be difficult to predict, or are based on just-in-time production schedules. Therefore, our revenue is, to a large degree, affected by factors that are outside of our control. There can be no assurance that our historic operating patterns will continue in future periods as we cannot influence or reliably forecast many of these factors. Our ability to predict and adapt to future seasonality in our business will affect our operations and financial results.

***Our results of operations may be affected by harsh weather conditions, disasters and pandemics.***

Certain weather-related conditions such as ice and snow can disrupt our operations. Our operating expenses have historically been higher in the winter months because of cold temperatures and other adverse winter weather conditions, which generally result in decreased fuel efficiency, increased cold weather-related maintenance costs of equipment and increased insurance and claims costs. Harsh weather can temporarily halt deliveries, which could result in decreased revenues and operational challenges resulting from the interruption. Disasters, including severe weather, such as hurricanes or blizzards, and public health issues, such as pandemics, including the COVID-19 pandemic, occurring in the United States or abroad, could result in the temporary lack of an adequate work force and the temporary disruption in the transport of goods to or from overseas which could prevent, delay or reduce freight volumes and could have an adverse impact on consumer spending and confidence levels, all of which could result in decreased revenues.

Our business may continue to be adversely affected by the COVID-19 pandemic. Our products and services are directly tied to the production and sale of goods and, more generally, to the North American economy. As a result, transportation and supply chain companies such as ours experienced slowdowns and reduced demand for our services as a result of the COVID-19 pandemic. The spread of COVID-19 had a material economic effect on our business due to government-imposed restrictions on travel and shelter-in-place orders, increased teleworking, a reduction in business travel and disrupted supply chains worldwide. Although our business and operations have returned to pre-COVID levels, should we experience another COVID-19-like virus outbreak in the future with similar restrictions, we would anticipate a similar impact on our business.

***Labor shortages and increased turnover or increases in employee and employee-related costs could have adverse effects on our profitability.***

A number of factors may adversely affect the labor force available to us, including high employment levels, federal unemployment subsidies, and other government regulations, which include laws and regulations related to workers' health and safety, wage and hour practices, immigration, and federal vaccine mandates. A labor shortage or increased turnover rates within our employee base could lead to increased costs, such as increased overtime to meet demand and increased wage rates to attract and retain employees and could negatively affect our ability to efficiently operate our business or otherwise operate at full capacity. An overall labor shortage, lack of skilled labor, increased turnover or labor inflation could have a material adverse impact on the company's operations, results of operations, liquidity or cash flows.

***Changes to our compensation and benefits could adversely affect our ability to attract and retain qualified employees.***

The compensation we offer our employees is subject to market conditions that may require increases in employee compensation, which become more likely as economic conditions improve or as inflation increases. If we are unable to attract and retain a sufficient number of qualified employees, we could be required to increase our compensation and benefits packages, or reduce our operations and face difficulty meeting customer demands, any of which could adversely affect our financial condition, results of operations, liquidity and cash flows.

***We could be required to record a material non-cash charge to income if our recorded intangible assets or goodwill are determined to be impaired.***

We have \$154,801 of net definite-lived intangible assets on our consolidated balance sheet at December 31, 2022. Our definite-lived intangible assets primarily represent the value of customer relationships and non-compete agreements that were recorded in conjunction with our various acquisitions. We review our long-lived assets, such as our definite-lived intangible assets, for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. Impairment is recognized on these assets when the estimated fair value is less than the carrying value. If such measurement indicates impairment, we would be required to record a non-cash impairment charge to our consolidated statement of comprehensive income in the amount that the carrying value of these assets exceeds the estimated fair value of the assets.

We also have \$306,184 of goodwill on our consolidated balance sheet at December 31, 2022. Goodwill is assessed for impairment annually (or more frequently if circumstances indicate possible impairment) for each of our reporting units. This assessment includes comparing the estimated fair value of each reporting unit to the carrying value of the net assets assigned to the respective reporting unit. If the carrying value of the reporting unit exceeded the estimated fair value of the reporting unit, we would be required to record a non-cash impairment charge calculated as the amount by which the carrying value exceeds the reporting units estimated fair value. A non-cash impairment charge to our consolidated statement of comprehensive income could have a material adverse effect on our financial results.

***We operate in highly competitive and fragmented segments of our industry, and our business will suffer if we are unable to adequately address downward pricing pressures and other factors that may adversely affect our results of operations, growth prospects and profitability.***

The segments of the freight transportation industry in which we participate are highly competitive, very fragmented and historically have few barriers to entry. We compete with a large number of other asset-light logistics companies, asset-based carriers, integrated logistics companies, and third-party freight brokers. To a lesser extent, we also compete with integrated air cargo carriers and passenger airlines. Our competition ranges from small operators that compete within a limited geographic area to companies with substantially greater financial and other resources, including greater freight capacity. We also face competition from freight forwarders who decide to establish their own networks to transport expedited ground freight, as well as from logistics companies, Internet matching services and Internet and third-party freight brokers, and new entrants to the market. In addition, customers can bring in-house some of the services we provide. We believe competition is based primarily on quality service, price, available capacity, damage-free handling, on-time delivery, flexibility, reliability and security and transportation rates as well as the ability to acquire and maintain terminal facilities in desirable locations at reasonable rates. Many of our competitors periodically reduce their rates to gain business, especially during times of economic decline. In an effort to reduce costs, we have seen our customers solicit bids from multiple transportation providers and develop or expand internal capabilities for some of the services that we provide.

In addition, competitors may pursue other strategies to gain a competitive advantage such as developing superior information technology systems or establishing cooperative relationships to increase their ability to address customer needs. The development of new information technology systems or business models could result in our disintermediation in certain businesses, such as freight brokerage. Furthermore, the transportation industry continues to consolidate. As a result of consolidation, our competitors may increase their market share and improve their financial capacity, and may strengthen their competitive positions relative to ours. Business combinations could also result in competitors providing a wider variety of services at competitive prices, which could adversely affect our financial performance. These competitive pressures may cause a decrease in our volume of freight, require us to lower the prices we charge for our services and adversely affect our results of operations, growth prospects and profitability.

***Our increased direct sales efforts to direct shippers and beneficial cargo owners could be viewed as a competitive threat by our current domestic forwarder customers.***

We are increasing our sales to direct shippers and beneficial cargo owners, which as a group are the primary customers of freight forwarders, 3PLs and other transportation intermediaries. These intermediaries are significant customers of our business in the United States. Our activities related to our increased direct sales efforts to direct shippers and beneficial cargo owners, as well as the potential acquisition of other businesses that may be perceived as competing with our customers, could harm relationships with our current customers, employees or suppliers, and could adversely affect our expenses, pricing, third-party relationships and revenues. Further, a loss of a significant customer could have a material adverse effect on our business, results of operations, financial condition and cash flows.

***Reductions in the available supply or increases in the cost of new equipment may adversely impact our profitability and cash flows.***

We and our Leased Capacity Providers and ISPs may face difficulty in purchasing new equipment due to decreased supply or increased costs. Investment in new equipment is a significant part of our annual capital expenditures and we require an available supply of tractors, trailers, and other freight handling equipment from manufacturers to operate and grow our business. We may also be subject to shortages in raw materials that are required for the production of critical operating equipment and supplies, such as shortages in rubber or steel. Currently, tractor and trailer manufacturers are experiencing significant shortages of various component parts and supplies, forcing many manufacturers to reduce or suspend their production, which has led to a lower supply of tractors, trailers, and other equipment, higher prices, and lengthened trade cycles.

In addition, the availability and price of our equipment may also be adversely affected in the future by regulations on newly manufactured equipment and engines. We are subject to regulations issued by the EPA and various state agencies, particularly the California Air Resources Board (“CARB”), that have required progressive reductions in exhaust emissions. We may become subject to new or more restrictive regulations, or differing interpretations of existing regulations, which may increase the cost of providing transportation services or adversely affect our results of operations. We are also unable to predict how any future changes in United States government policy will affect EPA and CARB regulation and enforcement.

These regulations, the limited equipment availability, and other supply chain factors have resulted and could continue to result in higher prices for new equipment, which could have a material adverse effect on our business, financial condition, and results of operations, particularly our maintenance expense, mileage productivity, and driver retention.

**Risks Relating to Information Technology and Systems**

***If we fail to maintain our information technology systems, or if we fail to successfully implement new technology or enhancements, we may be at a competitive disadvantage and experience a decrease in revenues.***

We rely heavily on our information technology systems to efficiently run our business, and they are a key component of our growth strategy and competitive advantage. We, our customers and third parties increasingly store and transmit data by means of connected information technology systems. We expect our customers to continue to demand more sophisticated, fully integrated information systems from their transportation providers. To keep pace with changing technologies and customer demands, we must correctly interpret and address market trends and enhance the features and functionality of our information technology systems in response to these trends, which may lead to significant ongoing software development costs. We may be unable to accurately determine the needs of our customers and the trends in the transportation services industry or to design and implement the appropriate features and functionality of our information technology systems in a timely and cost-effective manner, which could put us at a competitive disadvantage and result in a decline in our efficiency, decreased demand for our services and a corresponding decrease in our revenues. In addition, we could incur software development costs for technology that is ultimately not deployed, and thus would require us to write-off these costs, which would negatively impact our financial results. Furthermore, as technology improves, our customers may be able to find alternatives to our services for matching shipments with available freight hauling capacity.

Our information technology systems can also play an integral role in managing our internal freight and transportation information and creating additional revenue opportunities, including assessing available backhaul capacity. A failure to capture and utilize our internal freight and transportation information may impair our ability to service our existing customers or grow revenue.

Our information technology systems are dependent upon cloud infrastructure providers, software as a service, global communications providers, web browsers, telephone systems and other aspects of the Internet infrastructure that have experienced significant system failures and outages in the past. While we take measures to ensure our major systems have redundant capabilities, our systems are susceptible to outages from fire, floods, power loss, telecommunications failures, data leakage, human error, break-ins, cyber-attacks and similar events. The occurrence of any of these events could disrupt or damage our information technology systems and hamper our internal operations, impede our customers’ access to our information technology systems and adversely impact our customer service, volumes, and revenues and result in increased cost. In addition, we may be required to incur significant costs to protect against damage caused by these disruptions or security breaches in the future.

***Our business is subject to cybersecurity risks.***

On December 15, 2020, we detected a ransomware incident (the “Ransomware Incident”) impacting our operational and information technology systems, which caused service delays for our customers. We suffered unexpected costs and impacts from the Ransomware Incident, and may in the future incur costs in connection with any future cybersecurity incidents, including infrastructure investments, remediation efforts and legal claims resulting from the above.

Our operations depend on effective and secure information technology systems. Threats to information technology systems, including as a result of cyber-attacks and cyber incidents, such as the Ransomware Incident on December 15, 2020, continue to grow. Cybersecurity risks could include, but are not limited to, malicious software, attempts to gain unauthorized access to our data and the unauthorized release, corruption or loss of our data and personal information, interruptions in communication, loss of our intellectual property or theft of our sensitive or proprietary technology, loss or damage to our data delivery systems, or other electronic security, including with our property and equipment.

These cybersecurity risks could:

- Disrupt our operations and damage our information technology systems;
- Subject us to various penalties and fees by third parties;
- Negatively impact our ability to compete;
- Enable the theft or misappropriation of funds;
- Cause the loss, corruption or misappropriation of proprietary or confidential information, expose us to litigation; and
- Result in injury to our reputation, downtime, loss of revenue, and increased costs to prevent, respond to or mitigate cybersecurity events.

If another cybersecurity event occurs, such as the Ransomware Incident, it could harm our business and reputation and could result in a loss of customers. Likewise, data privacy breaches by employees and others who access our systems may pose a risk that sensitive customer or vendor data may be exposed to unauthorized persons or to the public, adversely impacting our customer service, employee relationships and our reputation. Furthermore, any failure to comply with data privacy, security or other laws and regulations, such as the California Privacy Rights Act, which took effect as the California Consumer Privacy Act in January 2020 and was amended effective January 1, 2023, could result in claims, legal or regulatory proceedings, inquiries or investigations.

While we continue to make efforts to evaluate and improve our systems and particularly the effectiveness of our security program, procedures and systems, it is possible that our business, financial and other systems could be compromised, which could go unnoticed for a prolonged period of time, and there can be no assurance that the actions and controls that we implement, or we cause third-party service providers to implement, will be sufficient to protect our systems, information or other property. Additionally, customers or third parties upon whom we rely on face similar threats, which could directly or indirectly impact our business and operations. The occurrence of a cyber-incident or attack could have a material adverse effect on our business, financial condition and results of operations.

**Risks Relating to Regulatory Environment**

***Claims for property damage, personal injuries or workers’ compensation and related expenses could significantly reduce our earnings.***

Under DOT regulations, we are liable for bodily injury and property damage caused by Leased Capacity Providers and employee drivers while they are operating equipment under our various motor carrier authorities. The potential liability associated with any accident can be severe and occurrences are unpredictable.

For vehicle liability, we retain a portion of the risk. Below is a summary of our risk retention on vehicle liability insurance coverage maintained by us up to \$10,000 (in thousands):

		<b>Risk Retention</b>	<b>Frequency</b>	<b>Layer</b>	<b>Policy Term</b>
<b>Expedited Freight<sup>1</sup></b>					
	LTL business	\$ 5,000	Occurrence/Accident <sup>2</sup>	\$0 to \$5,000	10/1/2022 to 10/1/2023
	Truckload business	\$ 2,000	Occurrence/Accident <sup>2</sup>	\$0 to \$2,000	10/1/2022 to 10/1/2023
	LTL, Truckload and Intermodal businesses	\$ 5,000	Policy Term Aggregate <sup>3</sup>	\$5,000 to \$10,000	10/1/2022 to 10/1/2023
<b>Intermodal</b>					
		\$ 1,000	Occurrence/Accident <sup>2</sup>	\$0 to \$1,000	10/1/2022 to 10/1/2023

<sup>1</sup> Excluding the Final Mile business, which is primarily a brokered service.

<sup>2</sup> For each and every accident/incident, we are responsible for damages and defense up to these amounts, regardless of the number of claims associated with any accident/incident.

<sup>3</sup> During the Policy Term, we are responsible for damages and defense within the stated Layer up to the stated, aggregate amount of Risk Retention before insurance will contribute.

Also, from time to time, when brokering freight, we may face claims for the “negligent selection” of outside, contracted carriers that are involved in accidents, and we maintain third-party liability insurance coverage with a \$100 deductible per occurrence for our brokered services. Additionally, we maintain workers’ compensation insurance with a self-insured retention of \$500 per occurrence. We cannot guarantee that our self-insurance retention levels will not increase and/or that we may have to agree to more unfavorable policy terms as a result of market conditions, poor claims experience or other factors. We could incur claims in excess of our policy limits or incur claims not covered by our insurance. Any claims beyond the limits or scope of our insurance coverage may have a material adverse effect on us. Because we do not carry “stop loss” insurance, a significant increase in the number of claims that we must cover under our self-insurance retainage could adversely affect our profitability. In addition, we may be unable to maintain insurance coverage at a reasonable cost or in sufficient amounts or scope to protect us against losses.

Further, as we focus on growing our final mile solutions business that includes in-home installation of appliances and other over-the-threshold services, we may become increasingly subject to inherent risks associated with delivery and installation of products. These risks include incidents that can cause personal injury or loss of life, damage to or destruction of property, equipment or the environment, or the suspension of our operations.

***Our residential final mile delivery service exposes us to risks associated with delivering to residential customers.***

We contract with third-party motor carriers to provide our final mile delivery services that include in-home installation of appliances and other over-the-threshold services. The operation of these trucks and drivers in residential environments exposes such third-party motor carriers (and potentially us) to the risk of property damage, personal injury, loss of life and other claims. If any of these third-party motor carriers do not reliably and safely perform their obligations, they and we could be exposed to liability or reputational harm.

***We face risks related to self-insurance and third-party insurance that can be volatile to our earnings.***

We self-insure a significant portion of our claims exposure and related expenses for cargo loss, employee medical expense, bodily injury, workers’ compensation and property damage, and maintain insurance with insurance companies above our limits of self-insurance. Self-insurance retention and other limitations are detailed in Part II, Item 7, under “Self-Insurance Loss Reserves.” Because of these significant self-insured exposures, insurance and claims expense may fluctuate significantly from period to period. Additionally, our ability to obtain and maintain adequate insurance and the cost of such insurance may be affected by significant claims and conditions in the insurance market over which we have no control. In recent years the trucking industry has experienced significant increases in the cost of liability insurance and in the median verdict of trucking accidents. If the cost of insurance increases, we may decide to discontinue certain insurance coverage, reduce our level of coverage or increase our deductibles/retentions to offset the cost increase. In addition, our existing types and levels of insurance coverage could become difficult or impossible to obtain in the future. The occurrence of an event that is not fully covered by insurance, the loss of insurance coverage or a material increase in the cost of insurance could have a material adverse effect on our business, financial condition, results of operations and cash flows.

We accrue for the costs of the uninsured portion of pending claims, based on the nature and severity of individual claims and historical claims development trends. Estimating the number and severity of claims, as well as related judgment or settlement amounts is inherently difficult. We may fail to establish sufficient insurance reserves and adequately estimate for future insurance claims. This, along with legal expenses, incurred but not reported claims, and other uncertainties can cause unfavorable differences between actual self-insurance costs and our reserve estimates.

***Our failure to comply with various applicable federal and state employment and labor laws and regulations could have a material, adverse impact on our business, financial condition and results of operations.***

Various federal and state employment and labor laws and regulations govern our relationships with our employees. These laws and regulations relate to matters such as employment discrimination, wage and hour laws, requirements to provide meal and rest periods or other benefits, family leave mandates, employee and independent contractor classification rules, requirements regarding working conditions and accommodations to certain employees, citizenship or work authorization and related requirements, insurance and workers' compensation rules, healthcare laws, scheduling notification requirements and anti-discrimination and anti-harassment laws. While the scope of these laws and regulations are subject to change in all jurisdictions, California routinely makes changes to the scope of such laws and regulations, many of which may be strictly enforced, and some of which have been in the past, and may be in the future, implemented on a retrospective basis (meaning we may not have an opportunity to change our employment practices in advance to avoid non-compliance). Complying with these laws and regulations, including ongoing changes thereto, subjects us to substantial expense and non-compliance could expose us to significant liabilities. In particular, we have been subject to employment litigation with respect to classification and wage and hour issues in the past and have wage and hour litigation currently pending. While we have not incurred material losses with respect to this litigation in the past, we may be subject to material claims in the future.

***We operate in a regulated industry, and increased costs of compliance with, or liability for violation of, existing or future regulations and enforcement could have a material adverse effect on our business.***

The DOT and various state and federal agencies have been granted broad regulatory powers over our business in the United States, and we are licensed by the DOT and U.S. Customs. Additionally, our Canada business activities are subject to the similar laws and regulations of Canada and its provinces, including the effects of the United States-Mexico-Canada Agreement ("USMCA"), a trade agreement between the United States, Mexico and Canada to replace NAFTA, which took effect on July 1, 2020. There can be no assurance that the ongoing transition from NAFTA to the USMCA will not adversely impact our business or disrupt our operations. If we are found to be out of compliance with any applicable regulations, our licenses may be revoked, or we could be subject to substantial fines or penalties and to civil and criminal liability. The transportation industry is subject to legislative and regulatory changes that can affect the economics of our business by requiring changes in operating practices or influencing the demand for, and the cost of providing, transportation services.

In December 2010, the FMCSA established the CSA motor carrier oversight program under which drivers and fleets are evaluated based on certain safety-related standards. Carriers' safety and fitness ratings under CSA include the on-road safety performance of the carriers' drivers. The FMCSA has also implemented changes to the hours of service ("HOS") regulations which govern the work hours of commercial drivers and adopted a rule that requires commercial drivers to maintain hours-of-service records with electronic logging devices ("ELDs"). At any given time, there are also other proposals for safety-related standards that are pending legislative or administrative approval or adoption. If additional or more stringent standards are adopted, such may result in a reduction of the pool of qualified drivers available to us and to other motor carriers in our industry. If we experience safety and fitness violations, our safety and fitness scores could be adversely impacted, and our fleets could be ranked poorly as compared to our peers. A reduction in our safety and fitness scores or those of our contracted drivers could also reduce our competitiveness in relation to other companies that have higher scores. Additionally, competition for qualified drivers and motor carriers with favorable safety ratings may increase and thus result in increases in driver-related compensation costs.

In addition, there may be changes in applicable federal or state tax or other laws or interpretations of those laws. If this happens, we may incur additional taxes, as well as higher workers' compensation and employee benefit costs, and possibly penalties and interest for prior periods. This could have an adverse effect on our results of operations.

***We are subject to various environmental laws and regulations, including legislative and regulatory responses to climate change; and costs of compliance with, or liabilities for violations of, existing or future laws and regulations could significantly increase our costs of doing business.***

Our operations are subject to environmental laws and regulations dealing with, among other things, the handling of hazardous materials, discharge and retention of storm water, and emissions from our vehicles. We operate in industrial areas, where truck terminals and other industrial activities are located, and where groundwater or other forms of environmental contamination may have occurred. Our operations involve the risks of fuel spillage, environmental damage, and hazardous



waste disposal, among others. If we are involved in a spill or other accident involving hazardous substances, or if we are found to be in violation of applicable environmental laws or regulations, it could significantly increase our cost of doing business. Under specific environmental laws and regulations, we could be held responsible for all of the costs relating to any contamination at our past or present terminals and at third-party waste disposal sites. If we fail to comply with applicable environmental laws and regulations, we could be subject to substantial fines or penalties and to civil and criminal liability.

In addition, as societal concerns regarding climate change and carbon emissions become more prevalent, federal and local governments and our customers are taking action in response. This increased focus on sustainability may result in new regulations and customer requirements that could negatively affect our financial results. This could cause us to incur additional direct costs or to make changes to our operations in order to comply with any new regulations and customer requirements, as well as increased indirect costs or loss of revenue resulting from, among other things, our customers incurring additional compliance costs that affect our costs and revenues. We could also lose revenue if our customers divert business from us because we have not complied with their sustainability requirements or accommodated related requests. These costs, changes and loss of revenue could have a material adverse effect on our business, financial condition and results of operations. Even without any new legislation or regulation, increased public concern regarding greenhouse gases emitted by transportation carriers could harm the reputations of companies operating in the transportation logistics industries and shift consumer demand toward more locally sourced products and away from our services.

***The FMCSA's CSA and SMS initiatives could adversely impact our ability to hire qualified drivers or contract with qualified Leased Capacity Providers or third-party motor carriers, meet our growth projections and maintain our customer relationships, each of which could adversely impact our results of operations.***

The FMCSA's CSA is an enforcement and compliance program designed to monitor and improve commercial motor vehicle safety by measuring the safety record of both the motor carrier and the driver. These measurements are scored and used by the FMCSA to identify potential safety risks and to direct enforcement action. CSA scores are dependent upon safety and compliance experience, which could change at any time. In addition, the safety standards prescribed in CSA could change and our ability as well as third-party motor carriers' ability to maintain an acceptable score could be adversely impacted. Public disclosure of certain CSA scores was restricted through the enactment of the Fixing America's Surface Transportation Act of 2015 (the "FAST Act") on December 4, 2015; however, the FAST Act does not restrict public disclosure of all data collected by the FMCSA. The FMCSA is currently reviewing CSA methodology to address deficiencies identified by the National Academy of Sciences, including the possibility of weak or negative correlation between current safety improvement categories and vehicle crash risk. Nevertheless, if we receive unacceptable CSA scores, and this data is made available to the public, our relationships with our customers could be damaged, which could result in a loss of business.

Likewise, the requirements of SMS could also shrink the industry's pool of drivers as those with unfavorable scores could leave the industry. As a result, the costs to attract, train and retain qualified drivers, Leased Capacity Providers or third-party carriers could increase. In addition, a shortage of qualified drivers could increase driver turnover, decrease asset utilization, limit growth and adversely impact our results of operations.

***If our employees were to unionize, our operating costs would likely increase.***

None of our employees is currently represented by a collective bargaining agreement. However, we have no assurance that our employees will not unionize in the future, which could increase our operating costs and force us to alter our operating methods. This could have a material adverse effect on our operating results.

***Our charter and bylaws and provisions of Tennessee law could discourage or prevent a takeover that may be considered favorable.***

Our charter and bylaws and provisions of Tennessee law may discourage, delay or prevent a merger, acquisition or change in control that may be considered favorable. These provisions could also discourage proxy contests and make it more difficult for shareholders to elect directors and take other corporate actions. Among other things, these provisions:

- authorize us to issue preferred stock, the terms of which may be determined at the sole discretion of our Board of Directors and may adversely affect the voting or economic rights of our shareholders; and
- establish advance notice requirements for nominations for election to the Board of Directors and for proposing matters that can be acted on by shareholders at a meeting.

Our charter and bylaws and provisions of Tennessee law may discourage transactions that otherwise could provide for the payment of a premium over prevailing market prices for our Common Stock and also could limit the price that investors are willing to pay in the future for shares of our Common Stock.

*Because our Intermodal business depends heavily on freight transiting seaports and railheads, our operating results and financial condition are likely to be adversely affected by any reduction or deterioration in service at seaports or railheads.*

Our Intermodal business provides first- and last-mile high value container drayage services to and from seaports and railheads. Consequently, our ability to continue to expand our Intermodal transportation business is dependent upon the seaports and railheads' capacity to handle Intermodal freight. Our business has, at times, been adversely affected by situations impacting one or more railheads or seaports, including congestion, labor shortages, slowdowns or stoppages, adverse weather conditions, changes to rail operations, or other factors that hinder the railheads and seaports to efficiently handle freight transiting their operations, and these situations may occur again in the future, which could have a material adverse effect on our results of operations and financial condition.

#### **Item 1B. Unresolved Staff Comments**

None.

#### **Item 2. Properties**

Our headquarters are in Greenville, Tennessee and we have additional general offices in Atlanta, Georgia and Columbus, Ohio. As of December 31, 2022, we owned six facilities, including the Columbus, Ohio general office and lease 174 facilities, including the general office in Atlanta, Georgia and our corporate headquarters in Greenville, Tennessee. We consider each of our facilities to be in good condition and adequate for its present use. We believe in the event that we need additional facilities, we will be able to purchase or lease facilities on terms and costs similar to those of competitors within the transportation industry.

Our principal facilities as of December 31, 2022 were as follows:

<b>Location</b>	<b>Segment</b>	<b>Leased (square feet)</b>	<b>Owned (square feet)</b>	<b>Number of Doors</b>
Atlanta, Georgia	Expedited Freight		154,000	118
Chicago, Illinois	Expedited Freight		135,000	110
Columbus, Ohio	Expedited Freight		125,000	168
Columbus, Ohio	Corporate		240,000	
Dallas, Texas	Expedited Freight		244,000	134
Los Angeles, California	Expedited Freight	254,000		56
Miami, Florida	Expedited Freight	111,000		39
Newark, New Jersey	Expedited Freight	133,000		36
Phoenix, Arizona	Expedited Freight	103,000		24
San Francisco, California	Expedited Freight	136,000		22

In addition to our owned and leased facilities, we partner with independent agents in 29 cities where the agents handle the freight for us on a commission basis.

#### **Item 3. Legal Proceedings**

From time to time, we are a party to ordinary, routine litigation incidental to and arising in the normal course of our business, most of which involve claims for personal injury, property damage related to the transportation and handling of freight, or workers' compensation. For more information about our insurance program and legal proceedings, see Item 1A, Risk Factors - "Claims for property damage, personal injuries or workers' compensation and related expenses could significantly reduce our earnings." and "We face risks related to self-insurance and third-party insurance that can be volatile to our earnings.", and "Our failure to comply with various applicable federal and state employment and labor laws and regulations could have a material, adverse impact on our business, financial condition and results of operations.", Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations - Critical Accounting Estimates, and Item 8, Financial Statements and Supplementary Data - Commitments and Contingencies.

#### **Item 4. Mine Safety Disclosures**

Not applicable.

## Part II

### Item 5. Market for Registrant's Common Equity, Related Shareholder Matters and Issuer Purchases of Equity Securities

Our Common Stock trades on The Nasdaq Global Select Stock Market™ under the symbol "FWRD."

There were approximately 243 shareholders of record of our Common Stock as of February 27, 2023.

Subsequent to December 31, 2022, our Board of Directors declared a cash dividend of \$0.24 per share that will be paid in the first quarter of 2023 to the shareholders of record on March 2, 2023. The Company expects to continue to pay regular quarterly cash dividends, though each subsequent quarterly dividend is subject to review and approval by the Board of Directors.

There are no material restrictions on our ability to declare dividends.

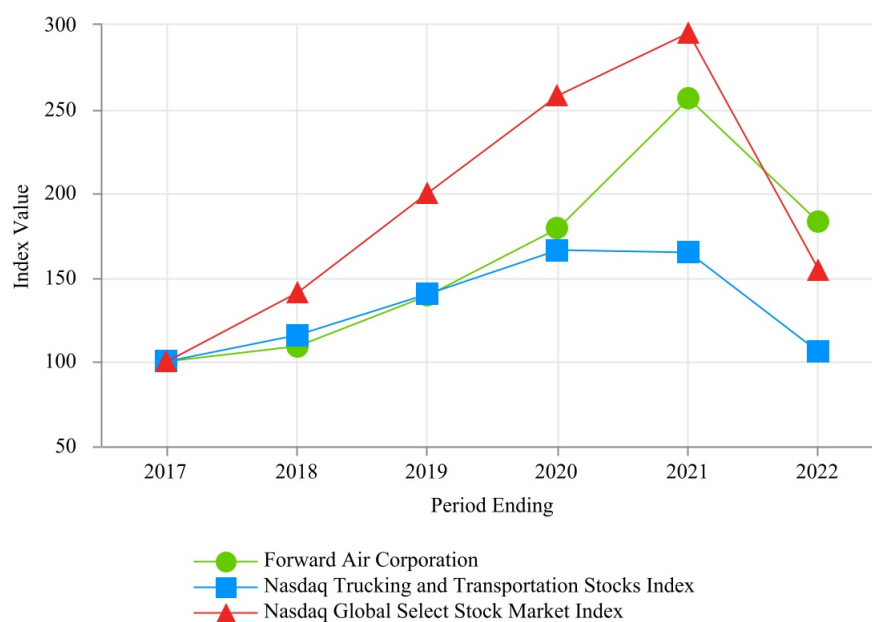
None of our securities were sold during fiscal year 2022 without registration under the Securities Act.

#### Stock Performance Graph

The following graph compares the percentage change in the cumulative shareholder return on our Common Stock with The Nasdaq Trucking and Transportation Stocks Index and The Nasdaq Global Select Stock Market™ Index commencing on the last trading day of December 2017 and ending on the last trading day of December 2022. The graph assumes a base investment of \$100 made on December 31, 2017 and the respective returns assume reinvestment of all dividends. The comparisons in this graph are required by the SEC and, therefore, are not intended to forecast or necessarily be indicative of any future return on our Common Stock.

The performance graph and related information shall not be deemed "soliciting material" or be "filed" with the Securities and Exchange Commission, nor shall such information be incorporated by reference into any future filing under the Securities Act or the Exchange Act, except to the extent that the Company specifically incorporates it by reference into such filing.

### Stock Performance



	2017	2018	2019	2020	2021	2022
Forward Air Corporation	\$ 100	\$ 109	\$ 139	\$ 179	\$ 256	\$ 183
Nasdaq Trucking and Transportation Stocks Index	100	116	140	166	165	106
Nasdaq Global Select Stock Market Index	100	141	200	258	295	155

### Issuer Purchases of Equity Securities

The table below sets forth information with respect to purchases of our common stock made by or on behalf of us during the three months ended December 31, 2022.

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs <sup>1</sup>	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs <sup>1</sup>
October 1, 2022 through October 31, 2022	—	\$ —	—	2,366,496
November 1, 2022 through November 30, 2022	134,159	111.79	134,159	2,232,337
December 1, 2022 through December 31, 2022	—	—	—	2,232,337
<b>Total</b>	<b>134,159</b>	<b>\$ 111.79</b>	<b>134,159</b>	<b>2,232,337</b>

<sup>1</sup>On February 5, 2019, our Board approved the 2019 Repurchase Plan authorizing up to 5.0 million shares of our common stock. The 2019 Share Repurchase Plan expires when the shares authorized for repurchase are exhausted or the 2019 Repurchase Plan is canceled.

Item 6. [Reserved]

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

*This section of this Form 10-K generally discusses our results of operations and financial condition for the year ended December 31, 2022. For a discussion of similar topics for the years ended December 31, 2021 and December 31, 2020, please refer to "Item 7 - Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Form 10-K, filed on March 1, 2022, which is incorporated herein by reference.*

### Overview

We are a leading asset-light freight provider of transportation services, including LTL, truckload, final mile and intermodal drayage services across the United States and in Canada and Mexico. We offer premium services that typically require precision execution, such as expedited transit, delivery during tight time windows and special handling. We utilize an asset-light strategy to minimize our investments in equipment and facilities and to reduce our capital expenditures.

Our services are classified into two reportable segments: Expedited Freight and Intermodal.

Our Expedited Freight segment provides expedited regional, inter-regional and national LTL services. Expedited Freight also offers customers local pick-up and delivery and other services including final mile, truckload, shipment consolidation and deconsolidation, warehousing, customs brokerage and other handling. We plan to grow our LTL and final mile geographic footprints through greenfield start-ups as well as through acquisitions.

Our Intermodal segment provides first- and last-mile high value intermodal container drayage services both to and from seaports and railheads. Intermodal also offers dedicated contract and CFS warehouse and handling services, and in select locations, linehaul and LTL services. We plan to grow our Intermodal geographic footprint through acquisitions as well as through greenfield start-ups where no suitable acquisition is available.

Our operations, particularly our network of hubs and terminals, represent substantial fixed costs. Consequently, our ability to increase our earnings depends in significant part on our ability to increase the amount of freight and the revenue per pound or shipment for the freight shipped or moved through our network. Additionally, our earnings depend on the growth of other services, such as LTL pickup and delivery, which will allow us to maintain revenue growth in a challenging freight environment. We continue to create synergies across our services, particularly with services offered in our Expedited Freight reportable segment. Synergistic opportunities include the ability to share resources, in particular our fleet resources.

We monitor and analyze a number of key operating statistics in order to manage our business and evaluate our financial and operating performance. These key operating statistics are defined below and are referred to throughout the discussion of the financial results of our Expedited Freight and Intermodal reportable segments. Our key operating statistics should not be interpreted as better measurements of our results than income from operations as determined under U.S. generally accepted accounting principles.

Within our Expedited Freight reportable segment, our primary revenue focus is to increase density, which is shipment and tonnage growth within our existing LTL network. Increases in density allow us to maximize our asset utilization and labor productivity, which we measure over many different functional areas of our operations including linehaul load factor, pickup and delivery ("P&D") stops per hour, P&D shipments per hour and door pounds handled per hour. In addition to our focus on density and operating efficiencies, it is critical for us to obtain an appropriate yield, which is measured as revenue per hundredweight, on the shipments we handle to offset our cost inflation and support our ongoing investments in capacity and technology. Revenue per hundredweight is also a commonly-used indicator for general pricing trends in the LTL industry and can be influenced by many other factors, such as changes in fuel surcharges, weight per shipment and length of haul. Therefore, changes in revenue per hundredweight may not necessarily indicate actual changes in underlying base rates. We regularly monitor the components of our pricing, including base freight rates, accessorial charges and fuel surcharges. The fuel surcharge is generally designed to offset fluctuations in the cost of the petroleum-based products used in our operations and is indexed to diesel fuel prices published by the U.S. Department of Energy. The impact of fuel on our results of operations depends on the relationship between the applicable surcharge, the fuel efficiency of our Company drivers, and the load factor achieved by our operation. Fluctuations in fuel prices in either direction could have a positive or negative impact on our margins, particularly in our LTL business where the weight of a shipment subject to the fuel surcharge on a given trailer can vary materially. We believe our yield management process focused on account level profitability, and ongoing improvements in operating efficiencies, are both key components of our ability to grow profitably.

The key operating statistics necessary to understand the operating results of our Expedited Freight reportable segment are described below in more detail:

**Tonnage** - Total weight of shipments in pounds. The level of freight tonnage is affected by economic cycles and conditions, customers' business cycles, changes in customers' business practices and capacity in the truckload market.

**Weight Per Shipment** - Total pounds divided by the number of shipments. Fluctuations in weight per shipment can indicate changes in the mix of freight we receive from our customers, as well as changes in the number of units included in a shipment. Generally, increases in weight per shipment indicate higher demand and overall increased economic activity. Changes in weight per shipment can also be influenced by shifts between LTL and other modes of transportation, such as truckload, in response to capacity, service and pricing issues. Fluctuations in weight per shipment generally have an inverse effect on our revenue per hundredweight, as a decrease in weight per shipment will typically cause an increase in revenue per hundredweight.

**Revenue Per Hundredweight** - Network revenue per every 100 pounds of shipment weight. Our LTL transportation services are generally priced based on weight, commodity, and distance. Our pricing policies are reflective of the services we provide, and can be influenced by competitive market conditions. Changes in the freight profile factors such as average shipment size, average length of haul, freight density, and customer and geographic mix can impact the revenue per hundredweight. Fuel surcharges and intercompany revenue between Network and Truckload are included in this measurement.

**Revenue Per Shipment** - Network revenue divided by the number of shipments. Fuel surcharges and intercompany revenue between Network and Truckload are included in this measurement.

**Average Length of Haul** - Total miles between origin and destination service centers for all shipments, with miles based on the size of shipments. Length of haul is used to analyze our tonnage and pricing trends for shipments with similar characteristics. Changes in length of haul generally have a direct effect on our revenue per hundredweight, as an increase in length of haul will typically cause an increase in revenue per hundredweight.

Within our Intermodal reportable segment, our primary revenue focus is to increase the number of shipments. The key operating statistic necessary to understand the operating results of our Intermodal reportable segment is described below in more detail:

**Drayage Revenue Per Shipment** - Intermodal revenue divided by the number of drayage shipments. Revenue derived from container freight station warehouse and handling, and linehaul and LTL services is excluded from this measurement. Fuel surcharges and accessorials charges are included in this measurement.

## ***Trends and Developments***

### *Intermodal Acquisitions*

In February 2021, we acquired certain assets and liabilities of Proficient Transport Incorporated and Proficient Trucking, Inc. (together "Proficient Transport") for \$16,339 and a potential earn-out up to \$2,000. In 2022, the earn-out period ended and the Company paid \$91 based on the terms of the purchase agreement. Proficient Transport is an intermodal drayage company headquartered in Chicago, Illinois. The acquisition of Proficient Transport expands our intermodal footprint in Georgia, Illinois, North Carolina, and Texas, and introduces a new location in Ohio. The acquisition was funded using cash flows from operations. The results of Proficient Transport have been included in our consolidated financial statements as of and from the date of acquisition.

In November 2021, we acquired certain assets and liabilities of BarOle Trucking, Inc. ("BarOle") for \$35,436. BarOle is an intermodal drayage company headquartered in Roseville, Minnesota. The acquisition of BarOle provides additional capacity and resources to meet customer demands in the intermodal market, and extends the service footprint to the Minneapolis-Saint Paul, Minnesota area. In addition, BarOle has a larger terminal location, which allows for further expansion in the future. The acquisition was funded using cash flows from operations. The results of BarOle have been included in our consolidated financial statements as of and from the date of acquisition.

In May 2022, we acquired certain assets and liabilities of Edgmon Trucking, LLC (“Edgmon”) for \$40,993 and a potential earn-out of up to \$5,000, based on the achievement of certain profit contribution milestones over a nineteen month period, beginning May 31, 2022. Edgmon, headquartered in Kent, Washington, operates a terminal in Kent and a yard in Seattle, servicing both the Port of Seattle and the Port of Tacoma. The acquisition of Edgmon marks our first Intermodal location on the West Coast, a key area of expansion in the Intermodal strategic growth plan. The acquisition was funded using cash flows from operations. The results of Edgmon have been included in our consolidated financial statements as of and from the date of acquisition.

#### *Expedited Freight Acquisition*

In May 2021, we acquired certain assets and liabilities of J&P Hall Express Delivery (“J&P”) for \$7,670. J&P is headquartered in Atlanta, Georgia with a second terminal in Albany, Georgia. The acquisition of J&P supports our strategic growth plan by expanding pickup and delivery, less-than-truckload, truckload, less than container load, container freight station warehousing, and airport transfer services across the Southeastern United States. The acquisition was funded using cash flows from operations. The results of J&P have been included in our consolidated financial statements as of and from the date of acquisition.

See Note 3, *Acquisitions*, to our Consolidated Financial Statements for more information about our acquisitions.

#### *COVID-19*

Our business is highly susceptible to changes in economic conditions. Our products and services are directly tied to the production and sale of goods and, more generally, to the North American economy. The COVID-19 pandemic adversely impacted economic activity and conditions worldwide and created significant volatility and disruption to the financial markets and supply chains worldwide.

Although our operations have returned to pre-COVID levels, should we experience another COVID-19-like virus outbreak in the future with similar restrictions, we would anticipate a similar impact on our business.

#### *Fuel*

We depend heavily upon the availability of adequate diesel fuel supplies, and recently, fuel availability and prices have fluctuated significantly. Fuel availability and prices can be impacted by factors beyond our control, such as natural or man-made disasters, adverse weather conditions, political events, economic sanctions imposed against oil-producing countries or specific industry participants, disruptions or failure of technology or information systems, price and supply decisions by oil producing countries and cartels, terrorist activities, armed conflict, tariffs, sanctions, other changes to trade agreements and world supply and demand imbalance. Through our fuel surcharge programs, we have been able to mitigate the impact of fluctuations in fuel prices. Our fuel surcharge rates are set weekly based on the national average for fuel prices as published by the U.S. Department of Energy and our fuel surcharge table. In periods of changing fuel prices, our fuel surcharges vary by different degrees and may not fully offset fuel price fluctuations or may result in higher than expected increases in revenue. Fuel shortages, changes in fuel prices, and the potential volatility in fuel surcharge revenue may impact our results of operations and overall profitability. Fuel surcharge revenue as a percentage of operating revenues increased to 17.1% for the year ended December 31, 2022 compared to 11.5% for the year ended December 31, 2021, as a result of changes in fuel prices.

#### *Economy*

Participants in the transportation industry have historically experienced cyclical fluctuations in financial results due to economic recessions, downturns in the business cycles of customers, volatility in the prices charged by third-party carriers, interest rate fluctuations and other U.S. and global macroeconomic developments. During economic downturns, reductions in overall demand for transportation services will likely reduce demand for our services and exert downward pressures on our rates and margins. In periods of strong economic growth, overall demand may exceed the available supply of transportation resources. While this may present an opportunity to increase economies of scale in our network and enhanced pricing and margins, these benefits may be *lessened* by increased network congestion and operating inefficiencies.



Like other providers of freight transportation services, our business has been impacted by the macroeconomic conditions of the past year. Industry freight volumes as measured by the Cass Freight Index were flat in 2022 compared to the prior year. As global demand slowed, the peak shipping season that generally drives higher volumes in the second half of the year was atypically soft. Shippers in the United States continue to struggle with elevated inventory levels as consumer demand has been negatively impacted by inflation and macroeconomic uncertainty. In response to this slowing demand, steamship lines continue to rationalize services by reducing capacity where possible, which has allowed port congestion to ease. The slowdown of consumer demand has also had a significant impact on the air freight market. Air freight volumes have significantly declined, also as a consequence of higher inventory levels and declining consumer demand. These trends, in combination with elevated volume growth in our network in the first half of 2022, drove a decline in the volume of freight shipped by our customers in the second half of 2022. These trends have continued through the early months of 2023.

## Results from Operations

The following table sets forth our consolidated financial data for the years ended December 31, 2022 and 2021 (in thousands):

	Year Ended			
	December 31, 2022	December 31, 2021	Change	Percent Change
Operating revenue:				
Expedited Freight	\$ 1,553,890	\$ 1,374,270	\$ 179,620	13.1 %
Intermodal	419,718	289,214	130,504	45.1
Eliminations and other operations	(205)	(1,057)	852	80.6
Operating revenue	1,973,403	1,662,427	310,976	18.7
Operating expenses:				
Purchased transportation	906,549	833,075	73,474	8.8
Salaries, wages, and employee benefits	347,970	327,814	20,156	6.1
Operating leases	97,094	79,633	17,461	21.9
Depreciation and amortization	47,386	39,552	7,834	19.8
Insurance and claims	49,759	42,186	7,573	18.0
Fuel expense	27,583	17,027	10,556	62.0
Other operating expenses	231,086	163,839	67,247	41.0
Total operating expenses	1,707,427	1,503,126	204,301	13.6
Income (loss) from continuing operations:				
Expedited Freight	210,968	139,321	71,647	51.4
Intermodal	56,874	30,117	26,757	88.8
Other operations	(1,866)	(10,137)	8,271	81.6
Income from continuing operations	265,976	159,301	106,675	67.0
Other expense:				
Interest expense, net	(5,138)	(4,338)	(800)	(18.4)
Other, net	—	—	—	—
Total other expense	(5,138)	(4,338)	(800)	18.4
Income from continuing operations before income taxes	260,838	154,963	105,875	68.3
Income tax expense	67,647	38,872	28,775	74.0
Net income from continuing operations	193,191	116,091	77,100	66.4
Loss from discontinued operation, net of tax	—	(10,232)	10,232	(100.0)
Net income and comprehensive income	\$ 193,191	\$ 105,859	\$ 87,332	82.5 %

### ***Operating Revenues***

Operating revenues increased \$310,976, or 18.7% to \$1,973,403 for the year ended December 31, 2022 compared to \$1,662,427 for the year ended December 31, 2021. The revenue increase was primarily driven by increased revenue from our Expedited Freight segment of \$179,620 due to increased Network and Final Mile revenue, and from our Intermodal segment of \$130,504 driven by increased drayage and accessorial revenues. The results for our two reportable segments are discussed in detail in the following sections.

### ***Operating Expenses***

Operating expenses increased \$204,301, or 13.6%, to \$1,707,427 for the year ended December 31, 2022 compared to \$1,503,126 for the same period in 2021. The increase was primarily driven by an increase in purchased transportation of \$73,474, other operating expenses of \$67,247, salaries, wages and employee benefits of \$20,156, and operating leases of \$17,461. Purchased transportation expense includes our Leased Capacity Providers, third-party motor carriers and capacity secured by transportation intermediaries, while expenses for Company-employed drivers are included in salaries, wages and employee benefits. Purchased transportation expense increased due to higher rates for Leased Capacity Providers, third-party motor carriers, and transportation intermediaries. Other operating expenses increased due to contract labor, professional fees, software license fees, recruiting costs, travel and entertainment expenses and accessorial storage costs incurred in support of the increased accessorial revenues. Salaries, wages and employee benefits increased primarily due to the additional employees hired in 2022, higher salaries and wages, and an increase in the reserve for incentive compensation. Operating leases increased primarily due to higher facility and equipment lease expense.

### ***Income from Continuing Operations and Segment Operations***

Income from continuing operations increased \$106,675, or 67.0%, to \$265,976 for the year ended December 31, 2022, compared to \$159,301 for the same period in 2021. The increase was primarily driven by an increase in income from continuing operations in our Expedited Freight segment and Intermodal segment of \$71,647 and \$26,757, respectively.

### ***Interest Expense, net***

Interest expense, net was \$5,138 for the year ended December 31, 2022 compared to \$4,338 for the same period in 2021. The increase in interest expense was primarily due to a higher weighted-average interest rate during the year ended December 31, 2022. The weighted-average interest rate on the outstanding borrowings under our credit facility were 2.77% and 1.43% during the years ended December 31, 2022 and 2021, respectively.

### ***Income Taxes on a Continuing Basis***

The effective tax rate on a continuing basis for the year ended December 31, 2022 was 25.9%, compared to a rate of 25.1% for the same period in 2021. The higher effective tax rate for the year ended December 31, 2022 was primarily due to an increase in the non-deductible compensation in 2022 compared to the same period in 2021.

### ***Loss from Discontinued Operation, net of tax***

There was no loss from discontinued operation, net of tax for the year ended December 31, 2022 compared to a loss from discontinued operation, net of tax of \$10,232 for the year ended December 31, 2021. Loss from discontinued operation includes our Pool business, which, as discussed above, was sold on February 12, 2021.

### ***Net Income***

As a result of the foregoing factors, net income increased by \$87,332, or 82.5%, to \$193,191 for the year ended December 31, 2022 compared to \$105,859 for the same period in 2021.

*Expedited Freight - Year Ended December 31, 2022 compared to Year Ended December 31, 2021*

The following table sets forth our financial data of the Expedited Freight segment for the years ended December 31, 2022 and 2021 (unaudited and in thousands):

	Year Ended					
	December 31, 2022	Percent of Revenue	December 31, 2021	Percent of Revenue	Change	Percent Change
Operating revenue:						
Network <sup>1</sup>	\$ 947,817	61.1 %	\$ 805,015	58.6 %	\$ 142,802	17.7 %
Truckload	221,979	14.3	223,026	16.2	(1,047)	(0.5)
Final Mile	293,769	18.9	275,201	20.0	18,568	6.7
Other	90,325	5.8	71,028	5.2	19,297	27.2
Total operating revenue	1,553,890	100.0	1,374,270	100.0	179,620	13.1
Operating expenses:						
Purchased transportation	801,131	51.7	743,418	54.1	57,713	7.8
Salaries, wages and employee benefits	279,087	18.0	261,405	19.0	17,682	6.8
Operating leases	65,143	4.2	57,309	4.2	7,834	13.7
Depreciation and amortization	31,892	2.1	28,842	2.1	3,050	10.6
Insurance and claims	36,205	2.3	32,243	2.3	3,962	12.3
Fuel expense	11,589	0.7	8,752	0.6	2,837	32.4
Other operating expenses	117,875	7.6	102,980	7.5	14,895	14.5
Total operating expenses	1,342,922	86.4	1,234,949	89.9	107,973	8.7
Income from operations	\$ 210,968	13.6 %	\$ 139,321	10.1 %	\$ 71,647	51.4 %

<sup>1</sup> Network revenue is comprised of all revenue, including linehaul, pickup and/or delivery, and fuel surcharge revenue, excluding accessorial, Truckload and Final Mile revenue.

<b>Expedited Freight Operating Statistics</b>
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	Year Ended		
	December 31, 2022	December 31, 2021	Percent Change
Business days	255	254	0.4 %
<b>Tonnage <sup>1,2</sup></b>			
Total pounds	2,793,756	2,812,071	(0.7)
Pounds per day	10,956	11,071	(1.0)
<b>Shipments <sup>1,2</sup></b>			
Total shipments	3,654	3,856	(5.2)
Shipments per day	14.3	15.2	(5.9)
Weight per shipment	764	729	4.8
Revenue per hundredweight <sup>3</sup>	\$ 34.23	\$ 28.96	18.2
Revenue per hundredweight, ex fuel <sup>3</sup>	\$ 25.98	\$ 24.06	8.0
Revenue per shipment <sup>3</sup>	\$ 261.68	\$ 211.19	23.9
Revenue per shipment, ex fuel <sup>3</sup>	\$ 198.62	\$ 175.48	13.2

<sup>1</sup> In thousands

<sup>2</sup> Excludes accessorial, Truckload and Final Mile products

<sup>3</sup> Includes intercompany revenue between the Network and Truckload revenue streams

### ***Operating Revenues***

Expedited Freight operating revenue increased \$179,620, or 13.1%, to \$1,553,890 for the year ended December 31, 2022 from \$1,374,270 for the same period in 2021. The increase was driven by increased Network and Final Mile revenue. Network revenue increased due to an 8.0% increase revenue per hundredweight, partially offset by a 0.7% decrease in tonnage as compared to the prior year. Revenue per hundredweight excluding fuel increased to \$25.98 in 2022 as compared to \$24.06 in 2021. The increase in the revenue per hundredweight excluding fuel was driven by the execution of our revenue growth strategies, measured pricing initiatives, including our general rate increase, and strong demand for our services in the first half of 2022. The slight decrease in tonnage reflects an increase in weight per shipment of 4.8% on 5.2% fewer number of shipments. The increase in the weight per shipment was the result of more dense freight in our network primarily driven by our freight rationalization actions in the second half of 2021 to capture higher quality freight. Network fuel surcharge revenue increased \$92,744, or 67.3%, as a result of the rise in the average price of fuel. Final Mile revenue increased \$18,568 primarily due to strong demand for our services and new market expansions, while Truckload decreased \$1,047 due to softening in the spot market in the second half of 2022. Other revenue, which includes warehousing and terminal handling, increased \$19,297 due to targeted pricing initiatives, partially offset by the fewer number of shipments.

### ***Purchased Transportation***

Expedited Freight purchased transportation expense increased by \$57,713, or 7.8%, to \$801,131 for the year ended December 31, 2022 from \$743,418 for the same period in 2021. As a percentage of segment operating revenue, Expedited Freight purchased transportation was 51.7% during the year ended December 31, 2022 compared to 54.1% for the same period in 2021. Expedited Freight purchased transportation includes Leased Capacity Providers, third-party motor carriers and transportation intermediaries, while expenses for Company-employed drivers are included in salaries, wages and employee benefits. The increase in purchased transportation expense was primarily due to higher rates for purchased miles in 2022 from Leased Capacity Providers, third-party motor carriers, and transportation intermediaries, partially offset by the change in the mix of freight capacity purchased from Leased Capacity Providers, third-party motor carriers, and transportation intermediaries for Network and Truckload. For the year ended December 31, 2022, 67.2%, 29.3% and 3.4% of our freight capacity was purchased from Leased Capacity Providers, third-party motor carriers, transportation intermediaries and Company-employed drivers, respectively for Network and Truckload. This compares to 62.3%, 34.0% and 3.7% in the same period in 2021.

### ***Salaries, Wages, and Employee Benefits***

Expedited Freight salaries, wages and employee benefits increased by \$17,682, or 6.8%, to \$279,087 for the year ended December 31, 2022 from \$261,405 for the same period in 2021. Salaries, wages and employee benefits were 18.0% of Expedited Freight operating revenue for the year ended December 31, 2022 compared to 19.0% for the same period in 2021. The increase in salaries, wages and employee benefits expense was primarily due to the additional employees hired in response to the increased volumes in the first half of 2022, higher salaries and wages, and an increase in the reserve for incentive compensation as compared to the same period in 2021.

### ***Operating Leases***

Expedited Freight operating leases increased \$7,834, or 13.7%, to \$65,143 for the year ended December 31, 2022 from \$57,309 for the same period in 2021. Operating leases were 4.2% of Expedited Freight operating revenue for both years ended December 31, 2022 and 2021. The increase in operating lease expense was primarily due to higher facility expense for the year ended December 31, 2022 as compared to the same period in 2021.

### ***Depreciation and Amortization***

Expedited Freight depreciation and amortization increased \$3,050, or 10.6%, to \$31,892 for the year ended December 31, 2022 from \$28,842 for the same period in 2021. Depreciation and amortization expense as a percentage of Expedited Freight operating revenue was 2.1% for both the year ended December 31, 2022 and 2021. The increase in depreciation and amortization expense was primarily due to an increase in equipment depreciation for the year ended December 31, 2022 as compared to the same period in 2021.

### ***Insurance and Claims***

Expedited Freight insurance and claims expense increased \$3,962, or 12.3%, to \$36,205 for the year ended December 31, 2022 from \$32,243 for the same period in 2021. Insurance and claims as a percentage of Expedited Freight operating revenue was 2.3% for both years ended December 31, 2022 and 2021. The increase in insurance and claims expense was primarily due to an increase in insurance premiums, vehicle liability claims and equipment repairs, partially offset by a decrease in cargo claims for the year ended December 31, 2022 as compared to the same period in 2021. See additional discussion over the consolidated change in self-insurance reserves in the "Other Operations" section below.

***Fuel Expense***

Expedited Freight fuel expense increased \$2,837, or 32.4%, to \$11,589 for the year ended December 31, 2022 from \$8,752 for the same period in 2021. Fuel expense was 0.7% of Expedited Freight operating revenue for the year ended December 31, 2022 compared to 0.6% for the same period in 2021. Expedited Freight fuel expense increased primarily due to the rise in the average price of fuel during the year ended December 31, 2022.

***Other Operating Expenses***

Expedited Freight other operating expenses increased \$14,895, or 14.5%, to \$117,875 for the year ended December 31, 2022 from \$102,980 for the same period in 2021. Other operating expenses were 7.6% of Expedited Freight operating revenue for the year ended December 31, 2022 compared to 7.5% for the same period in 2021. Other operating expenses include equipment maintenance, facility expenses, legal and professional fees, and other over-the-road costs. The increase in other operating expenses was primarily due to an increase in contract labor, professional fees, software license fees, recruiting costs, and travel and entertainment expenses for the year ended December 31, 2022 as compared to the same period in 2021.

***Income from Operations***

Expedited Freight income from operations increased by \$71,647, or 51.4%, to \$210,968 for the year ended December 31, 2022 compared to \$139,321 for the same period in 2021. Expedited Freight income from operations was 13.6% of operating revenue for the year ended December 31, 2022, compared to 10.1% for the same period in 2021. The increase in income from operations as a percentage of operating revenue was driven by increased revenue per hundredweight excluding fuel combined with higher fuel surcharge revenue, partially offset by higher rates for purchased miles in 2022 from Leased Capacity Providers, third-party motor carriers, and transportation intermediaries for Network and Truckload.

*Intermodal - Year Ended December 31, 2022 compared to Year Ended December 31, 2021*

The following table sets forth our financial data of the Intermodal segment for the years ended December 31, 2022 and 2021 (unaudited and in thousands):

	Year Ended					
	December 31, 2022	Percent of Revenue	December 31, 2021	Percent of Revenue	Change	Percent Change
Operating revenue	\$ 419,718	100.0 %	\$ 289,214	100.0 %	\$ 130,504	45.1 %
Operating expenses:						
Purchased transportation	105,656	25.1	90,575	31.3	15,081	16.7
Salaries, wages and employee benefits	73,406	17.5	65,599	22.7	7,807	11.9
Operating leases	31,950	7.6	22,218	7.7	9,732	43.8
Depreciation and amortization	15,393	3.7	10,647	3.7	4,746	44.6
Insurance and claims	9,087	2.2	9,850	3.4	(763)	(7.7)
Fuel expense	15,993	3.8	8,275	2.9	7,718	93.3
Other operating expenses	111,359	26.5	51,933	18.0	59,426	114.4
Total operating expenses	362,844	86.4	259,097	89.6	103,747	40.0
Income from operations	\$ 56,874	13.6 %	\$ 30,117	10.4 %	\$ 26,757	88.8 %

**Intermodal Operating Statistics**

	Year Ended		
	December 31, 2022	December 31, 2021	Percent Change
Drayage shipments	347,066	369,601	(6.1) %
Drayage revenue per shipment	\$ 1,064	\$ 667	59.5 %



### ***Operating Revenues***

Intermodal operating revenue increased \$130,504, or 45.1%, to \$419,718 for the year ended December 31, 2022, from \$289,214 for the same period in 2021. The increase in operating revenues was primarily attributable to a 59.5% increase in drayage revenue per shipment over the same period in 2021 and an increase in accessorial revenues, partially offset by a 6.1% decrease in drayage shipments as compared to the prior year. The increase in drayage revenue per shipment was driven by execution of our revenue growth strategies, measured pricing initiatives, and the contribution from the BarOle acquisition in November 2021 and the Edgmon acquisition in May 2022. Our accessorial revenue was elevated in 2022 as compared to the same period in 2021 in support of our customers and continued strong demand for our services. Fuel surcharge revenue increased \$26,335 or 97.1%, as a result of the rise in the average price of fuel.

### ***Purchased Transportation***

Intermodal purchased transportation increased \$15,081, or 16.7%, to \$105,656 for the year ended December 31, 2022 from \$90,575 for the same period in 2021. As a percentage of segment operating revenue, Intermodal purchased transportation was 25.1% for the year ended December 31, 2022, compared to 31.3% for the same period in 2021. Intermodal purchased transportation includes Leased Capacity Providers, third-party motor carriers, and transportation intermediaries, while expenses for Company-employed drivers are included in salaries, wages and employee benefits. The increase in purchased transportation expense was primarily due to higher rates in 2022 for Leased Capacity Providers, third-party motor carriers, and transportation intermediaries, partially offset by the change in the mix of freight capacity purchased from Leased Capacity Providers, third-party motor carriers, transportation intermediaries and Company-employed drivers.

### ***Salaries, Wages, and Employee Benefits***

Intermodal salaries, wages and employee benefits increased \$7,807, or 11.9%, to \$73,406 for the year ended December 31, 2022 from \$65,599 for the same period in 2021. Salaries, wages and employee benefits were 17.5% of Intermodal operating revenue for the year ended December 31, 2022 compared to 22.7% for the same period in 2021. The increase in salaries, wages and employee benefits expense was primarily due to additional employees hired in connection with the BarOle and Edgmon acquisitions, higher salaries and wages, and an increase in the reserve for incentive compensation as compared to the same period in 2021.

### ***Operating Leases***

Intermodal operating leases increased \$9,732, or 43.8%, to \$31,950 for the year ended December 31, 2022, from \$22,218 for the same period in 2021. Operating leases were 7.6% of Intermodal operating revenue for the year ended December 31, 2022, compared to 7.7% in the same period in 2021. The increase in operating leases expense was due to higher facility and equipment lease expense during the year ended December 31, 2022 as compared to the same period in 2021.

### ***Depreciation and Amortization***

Intermodal depreciation and amortization increased \$4,746, or 44.6%, to \$15,393 for the year ended December 31, 2022, from \$10,647 for the same period in 2021. Depreciation and amortization expense as a percentage of Intermodal operating revenue was 3.7% for the year ended December 31, 2022, compared to 3.7% for the same period in 2021. The increase in depreciation and amortization expense was primarily due to the equipment and intangible assets acquired in connection with the BarOle and Edgmon acquisitions for year ended December 31, 2022 as compared to the same period in 2021.

### ***Insurance and Claims***

Intermodal insurance and claims expense decreased \$763, or 7.7%, to \$9,087 for the year ended December 31, 2022 from \$9,850 for the same period in 2021. Insurance and claims were 2.2% of Intermodal operating revenue for the year ended December 31, 2022, compared to 3.4% for the same period in 2021. The decrease in insurance and claims expense was primarily due to the decrease in insurance premiums for the year ended December 31, 2022, as compared to the same period in 2021. See additional discussion over the consolidated change in self-insurance reserves in the "Other Operations" section below.

### ***Fuel Expense***

Intermodal fuel expense increased \$7,718, or 93.3%, to \$15,993 for the year ended December 31, 2022, from \$8,275 for the same period in 2021. Fuel expense was 3.8% of Intermodal operating revenue for the year ended December 31, 2022, compared to 2.9% for the same period in 2021. Intermodal fuel expense increased due to the additional Company-employed drivers and the rise in the average price of fuel during the year ended December 31, 2022.

### ***Other Operating Expenses***

Intermodal other operating expenses increased \$59,426, or 114.4%, to \$111,359 for the year ended December 31, 2022, from \$51,933 for the same period in 2021. Other operating expenses as a percentage of Intermodal revenue for the year ended December 31, 2022 were 26.5%, compared to 18.0% for the same period in 2021. Other operating expense include equipment maintenance, facility expenses, legal and professional fees, and accessorial storage costs. The increase in other operating expenses was primarily due to contract labor and accessorial storage costs incurred in support of the increased accessorial revenues for the year ended December 31, 2022 as compared to the same period in 2021.

### ***Income from Operations***

Intermodal income from operations increased by \$26,757, or 88.8%, to \$56,874 for the year ended December 31, 2022, compared to \$30,117 for the same period in 2021. Income from operations as a percentage of Intermodal operating revenue was 13.6% for the year ended December 31, 2022, compared to 10.4% in the same period in 2021. The increase in income from operations as a percentage of operating revenue was primarily due to increased drayage revenue per shipment and accessorial revenues, partially offset by higher rates in 2022 for Leased Capacity Providers, third-party motor carriers, and transportation intermediaries.

### ***Other operations - Year Ended December 31, 2022 compared to Year Ended December 31, 2021***

Other operating activity included a \$1,866 operating loss for the year ended December 31, 2022 compared to a \$10,137 operating loss for the same period in 2021. The change in the operating loss was primarily due to a decrease in the reserves for group health insurance claims and professional fees, offset by an increase in self-insurance reserves for vehicle liability claims, a legal reserve, and a reserve for an incentive program established for certain employees in 2021. The increase in the self-insurance reserves for vehicle liability claims was due to the unfavorable loss development factor of historical claims. Professional fees related to cybersecurity and shareholder engagement activities in the amount of \$6,955 were incurred during the year ended December 31, 2021. Similar professional fees were not incurred during the year ended December 31, 2022.

### ***Critical Accounting Policies and Estimates***

Our consolidated financial statements have been prepared in accordance with United States generally accepted accounting principles (“GAAP”). The preparation of financial statements in accordance with GAAP requires management to make judgments, estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Our estimates and assumptions are based on historical experience and changes in the business environment. However, actual results may differ from estimates under different conditions, sometimes materially. The significant accounting policies followed in the preparation of the financial statements are detailed in Note 1 of our Consolidated Financial Statements included in this Form 10-K.

Critical accounting policies and estimates are defined as those that are both most important to the portrayal of our financial condition and results and require management’s most subjective judgments. We believe that our application of the policies discussed below involves significant levels of judgment, estimates and complexity. Due to the levels of judgment, complexity and period of time over which many of these items are resolved, actual results could differ from those estimated at the time of preparation of the financial statements. Adjustments to these estimates would impact our financial position and future results of operations.

### **Self-Insurance Loss Reserves**

We provide for the estimated costs of self-insurance loss reserves, which includes vehicle liability, and workers’ compensation claims; for both reported and for claims incurred but not reported. The amount of self-insurance loss reserves and loss adjustment expenses is determined based on an estimation process that requires us to make significant judgments and use information obtained from both our specific and industry data, as well as general economic information. We estimate our self-insurance loss exposure by evaluating the merits and circumstances surrounding individual known claims and through actuarial analysis to determine an estimate of probable losses on claims incurred but not reported. If the events underlying the claims have occurred as of the balance sheet date, then losses are recognized immediately. Historically, we have experienced both favorable and unfavorable development of claim estimates.

The estimation process for self-insurance loss exposure requires management to make significant judgments and continuously monitor and evaluate the life cycle of claims. Using data obtained from this monitoring and our assumptions about the emerging trends, management develops an estimate of ultimate claims based on its historical experience and other available market information. The most significant assumptions used in the estimation process include determining the trend in loss costs, the expected consistency in the frequency and severity of claims incurred but not yet reported, changes in the timing of the reporting of losses from the loss date to the notification date, and expected costs to settle unpaid claims. We utilize quarterly actuarial analyses to evaluate open claims and estimate the ongoing development exposure. The actual cost to settle our self-funded claim liabilities can differ from our reserve estimates because of a number of uncertainties, including the inherent difficulty in estimating the severity of a claim and the potential amount to defend and settle a claim.

As of December 31, 2022 and 2021, we recorded self-insurance loss reserves of \$68,654 and \$65,649, respectively, inclusive of reserves in excess of the self-insured retention limit that are expected to be reimbursed from insurance carriers. Additionally, we recognized a receivable for insurance proceeds and a corresponding claims payable for vehicle liability and workers’ compensation claims in excess of the self-insured retention limit in the amount of \$29,087 and \$28,667 as of December 31, 2022 and 2021, respectively.

## **Business Combinations and Goodwill**

Acquisitions are accounted for using the purchase method. Upon the acquisition of a business, the fair value of the assets acquired and liabilities assumed are estimated. This requires judgments regarding the identification of acquired assets and liabilities assumed, some of which may not have been previously recorded by the acquired business, as well as judgments regarding the valuation of all identified acquired assets and assumed liabilities. The assets acquired and liabilities assumed are determined by understanding the operations, interviewing management and reviewing the financial and contractual information of the acquired business. Consideration is typically paid in the form of cash paid at closing while contingent consideration is paid upon the satisfaction of a future obligation. If contingent consideration is included in the purchase price, then the consideration is valued as of the acquisition date.

Once the acquired assets and assumed liabilities are identified, the fair value of the assets and liabilities are estimated using a variety of approaches that require significant judgments. For example, intangible assets are typically valued using a discounted cash flow (“DCF”) analysis, which requires estimates of the future cash flows attributable to the intangible asset. A DCF analysis also requires judgments regarding the selection of discount rates to reflect the risks inherent in the projected cash flows, the determination of terminal growth rates, and the useful life and pattern of use of the underlying intangible asset. The valuation of acquired property, and equipment requires judgments about current market values, replacement costs, the physical and functional obsolescence of the assets and their remaining useful lives. A failure to appropriately assign a fair value to acquired assets and assumed liabilities could significantly impact the amount and timing of future depreciation and amortization expense, as well as significantly overstate or understate assets or liabilities.

Goodwill is recorded at cost based on the excess of purchase price over the estimated fair value of net assets acquired. Goodwill is not amortized but rather evaluated annually or more frequently if circumstances indicate possible impairment, as of June 30 for impairment using a qualitative assessment or quantitative one-step assessment. Examples of such events or circumstance that could indicate a possible impairment may include a significant change in business climate or a loss of significant customers. Intangible assets are amortized over their estimated useful lives.

## ***Liquidity and Capital Resources***

For discussion of our Liquidity and Capital Resources for the fiscal year ended December 31, 2021 compared to the fiscal year ended December 31, 2020, refer to Part I, Item 7 of our annual report on form 10-K filed with SEC on March 1, 2022.

We have historically financed our working capital needs, including capital expenditures, with available cash, cash flows from operations and borrowings under our credit facility. We believe that borrowings under our credit facility, together with available cash and internally generated funds, will be sufficient to support our working capital, capital expenditures and debt service requirements for the foreseeable future. In 2022, we completed multiple business acquisitions. See Note 3, *Acquisitions*, in the Notes to Consolidated Financial Statements for further discussion on this topic. We used cash from operations to finance these transactions and to provide any necessary liquidity for current and future operations. In addition, we frequently utilize operating leases to acquire revenue equipment.

To further support liquidity and cash reserves, in December 2021, we entered into a third amendment to our credit facility, which increased the amount available for borrowing to \$450,000, consisting of a \$300,000 revolving line of credit and a term loan of \$150,000. The amendment establishes annual mandatory repayment of the principal amount of the term loan of: 1.0% per annum in 2022 and 2023; 2.5% per annum in 2024 and 2025; 5.0% per annum in 2026; with the remaining unpaid principal being due on July 20, 2026. As of December 31, 2022, we were in compliance with our financial covenants contained in the credit facility and expect to maintain such compliance. In the event that we encounter difficulties, our historical relationships with our lenders has been strong and we anticipate their continued long-term support of our business. Refer to Note 4, *Indebtedness*, to our Consolidated Financial Statements for additional information regarding our credit facility.

## **Cash Flows**

### *Year Ended December 31, 2022 Cash Flows compared to December 31, 2021 Cash Flows*

#### Continuing Operations

Net cash provided by operating activities of continuing operations was \$259,090 for the year ended December 31, 2022 compared to \$124,896 for the year ended December 31, 2021. The increase in net cash provided by operating activities of continuing operations was primarily due to the increase in net income from continuing operations after consideration of non-cash items, and the change in accounts receivable. The accounts receivable balance changed due to the increase in operating revenues in 2022, partially offset by a higher amount of cash collected in 2022.

Net cash used in investing activities of continuing operations was \$104,462 for the year ended December 31, 2022 compared to \$96,332 during the year ended December 31, 2021. Capital expenditures for the year ended December 31, 2022 were \$40,729, which primarily related to the purchase of technology and operating equipment, and the investment in the expansion of our national hub in Columbus, Ohio. Capital expenditures for the year ended December 31, 2021 were \$39,109, which primarily related to the investment in the expansion of our national hub in Columbus, Ohio and the purchase of equipment. Investing activities of continuing operations for the year ended December 31, 2022 included the acquisition of Edgmon for a preliminary purchase price of \$40,433 and Chickasaw Container Services, Inc. for a preliminary purchase price of \$25,733, while investing activities for the year ended December 31, 2021 included the acquisition of Proficient Transport for \$16,339, J&P for \$7,669 and BarOle for \$35,436.

Net cash used in financing activities of continuing operations was \$146,122 for the year ended December 31, 2022 compared to \$31,502 for the year ended December 31, 2021. The change in the net cash used in financing activities of continuing operations was primarily due to the net proceeds received from credit facility in 2021 and the payments made on the credit facility in 2022. For the year ended December 31, 2021, net proceeds from the credit facility were \$45,000 as compared to the year ended December 31, 2022 payments on the credit facility of \$49,000. In addition, the change in the net cash used in financing activities of operations was due to increased repurchases and retirement of common stock.

#### Discontinued Operation

Net cash used in discontinued operating activities was \$— for the year ended December 31, 2022 compared to \$4,635 for the year ended December 31, 2021. The change in net cash used in operating activities of discontinued operation was primarily related to a decrease in net income of discontinued operation after consideration of non-cash items. The sale of Pool was completed on February 12, 2021.

Net cash provided by discontinued investing activities was \$— for the year ended December 31, 2022 compared to net cash used in discontinued investing activities was \$8,020 during the year ended December 31, 2021. The change in net cash provided by discontinued investing activities was due to the proceeds received from the sale of the Pool business in 2021. The sale of Pool was completed on February 12, 2021.

Net cash used in financing activities of discontinued operation was \$— for the year ended December 31, 2022 compared to \$3,385 for the year ended December 31, 2021. The change in the net cash used in financing activities of discontinued operation was due to decreased contributions to the parent. The sale of Pool was completed on February 12, 2021.

#### **Share Repurchase Program**

During the year ended December 31, 2022 and 2021, we repurchased 600 and 535 shares of our common stock, respectively, for approximately \$62,771 and \$48,989, respectively, through open market transactions. All shares received were retired upon receipt, and the excess of the purchase price over par value per share was recorded to “Retained Earnings” in our Consolidated Balance Sheets.

**Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

Our exposure to market risk relates principally to changes in interest rates and fuel prices. Our interest expense is, in part, sensitive to the general level of interest rates. Borrowings outstanding under our credit facility was approximately \$108,500 as of December 31, 2022 and bears interest at variable rates. A hypothetical increase in our credit facility borrowing rate of 150 basis points would increase our annual interest expense by approximately \$2,157 and would have decreased our annual cash flow from operations by approximately \$2,157.

Our finance lease obligations were \$23,794 as of December 31, 2022. These finance lease obligations bear interest at a fixed rate. Accordingly, there is no exposure to market risk related to these obligations.

We are exposed to the effects of changes in the price and availability of fuel, as more fully discussed in Item 1A, "Risk Factors" - under the title "*Volatility in fuel prices, shortages of fuel or the ineffectiveness of our fuel surcharge program could have a material adverse effect on our results of operations and profitability.*"

**Item 8. Financial Statements and Supplementary Data**

The response to this item is submitted as a separate section of this report.

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

**Item 9A. Controls and Procedures***Disclosure Controls and Procedures*

Our management, including our principal executive and principal financial officers, has evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2022. Our disclosure controls and procedures are designed to provide reasonable assurance that the information required to be disclosed in this annual report on Form 10-K has been appropriately recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive and principal financial officers, to allow timely decisions regarding required disclosure. Based on that evaluation, our principal executive and principal financial officers have concluded that our disclosure controls and procedures are effective at the reasonable assurance level.

*Management's Report on Internal Control over Financial Reporting*

Management is responsible for establishing and maintaining effective internal control over financial reporting as defined in Rules 13a-15(f) under the Exchange Act. Our internal control over financial reporting is designed to provide reasonable assurance to management and the Board of Directors regarding the preparation and fair presentation of financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect all misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we assessed the effectiveness of our internal control over financial reporting as of December 31, 2022. In making this assessment, management used the framework set forth by the Committee on Sponsoring Organizations of the Treadway Commission in *Internal Control — Integrated Framework* ("2013 Framework"). Based on our assessment, we have concluded, as of December 31, 2022, that our internal control over financial reporting was effective based on those criteria.

Ernst & Young LLP, the independent registered public accounting firm that audited the Company's consolidated financial statements for the year ended December 31, 2022, has issued an attestation report on the Company's internal control over financial reporting.

*Changes in Internal Control over Financial Reporting*

During the year ended December 31, 2022, we implemented a new enterprise resource planning (“ERP”) system that replaced legacy systems in which our financial transactions were processed and recorded. The new ERP system is a significant component of our disclosure controls and procedures. As a result of this implementation, we modified certain existing internal controls over financial reporting and will continue to evaluate the operating effectiveness of related controls in subsequent periods. Except for the implementation of the new ERP system, there were no changes in our internal control over financial reporting identified in connection with the evaluation described above that occurred during the year ended December 31, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.



## Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Forward Air Corporation

### Opinion on Internal Control over Financial Reporting

We have audited Forward Air Corporation's internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, Forward Air Corporation (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets as of December 31, 2022 and 2021, the related consolidated statements of comprehensive income, shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule listed in the Index at Item 15(a) (collectively referred to as the "financial statements") and our report dated March 1, 2023 expressed an unqualified opinion thereon.

### Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

### Definition and Limitations of Internal Control over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

Atlanta, GA  
March 1, 2023

**Item 9B. Other Information**

Not applicable.

**Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections**

Not applicable

**Part III**

**Item 10. Directors, Executive Officers and Corporate Governance**

Information required by this item is incorporated herein by reference to our proxy statement for the 2023 Annual Meeting of Shareholders (the “2023 Proxy Statement”). The 2023 Proxy Statement will be filed with the SEC not later than 120 days subsequent to December 31, 2022.

**Item 11. Executive Compensation**

The information required by this item is incorporated herein by reference to the 2023 Proxy Statement.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Shareholder Matters**

The information required by this item is incorporated herein by reference to the 2023 Proxy Statement.

**Item 13. Certain Relationships and Related Transactions, and Director Independence**

The information required by this item is incorporated herein by reference to the 2023 Proxy Statement.

**Item 14. Principal Accounting Fees and Services**

The information required by this item is incorporated herein by reference to the 2023 Proxy Statement.

**Part IV**

**Item 15. Exhibits, Financial Statement Schedules**

(a)(1) and (2) List of Financial Statements and Financial Statement Schedules.

The response to this portion of Item 15 is submitted as a separate section of this report.

(a)(3) List of Exhibits.

The response to this portion of Item 15 is submitted as a separate section of this report.

(b) Exhibits.

The response to this portion of Item 15 is submitted as a separate section of this report.

(c) Financial Statement Schedules.

The response to this portion of Item 15 is submitted as a separate section of this report.

## EXHIBIT INDEX

No.	Exhibit
3.1	<a href="#">Restated Charter of the registrant (incorporated herein by reference to Exhibit 3 to the registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 28, 1999 (File No. 0-22490))</a>
3.2	<a href="#">Amended and Restated Bylaws of the registrant</a>
4.1	<a href="#">Form of Forward Air Corporation Common Stock Certificate (incorporated herein by reference to Exhibit 4.1 to the registrant's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 1998 filed with the Securities and Exchange Commission on November 16, 1998 (File No. 0-22490))</a>
4.2	<a href="#">Description of Capital Stock</a>
10.1	* <a href="#">Forward Air Corporation 2005 Employee Stock Purchase Plan (incorporated herein by reference to the registrant's Proxy Statement filed with the Securities and Exchange Commission on April 20, 2005 (File No. 0-22490))</a>
10.2	<a href="#">Air Carrier Certificate, effective August 28, 2003 (incorporated herein by reference to Exhibit 10.5 to the registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2003 filed with the Securities and Exchange Commission on March 11, 2004 (File No. 0-22490))</a>
10.3	<a href="#">Form of Director Indemnification Agreement (incorporated herein by reference to Exhibit 10.4 to the registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2017 filed with the Securities and Exchange Commission on February 23, 2018 (File No. 0-22490))</a>
10.4	* <a href="#">Form of Non-Qualified Stock Option Agreement under the registrant's Amended and Restated Stock Option and Incentive Plan (incorporated herein by reference to Exhibit 10.16 to the registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2010 filed with the Securities and Exchange Commission on February 24, 2011 (File No. 0-22490))</a>
10.5	* <a href="#">Forward Air Corporation Amended and Restated Stock Option and Incentive Plan, as further amended and restated on February 7, 2013 (incorporated herein by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 13, 2013 (File No. 0-22490))</a>
10.6	<a href="#">First Amendment to the Forward Air Corporation Amended and Restated Stock Option and Incentive Plan (incorporated herein by reference to Exhibit 10.1 to the registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2016, filed with the Securities and Exchange Commission on April 27, 2016 (File No. 0-22490))</a>
10.7	* <a href="#">Form of Nonqualified Stock Option Agreement under the registrant's Amended and Restated Stock Option and Incentive Plan (incorporated herein by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 12, 2016 (File No. 0-22490))</a>
10.8	* <a href="#">Form of CEO Nonqualified Stock Option Agreement under the registrant's Amended and Restated Stock Option and Incentive Plan (incorporated herein by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 12, 2016 (File No. 0-22490))</a>
10.9	* <a href="#">Form of Non-Employee Director Restricted Stock Units Agreement under the registrant's Amended and Restated Non-Employee Director Stock Plan (incorporated herein by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 10, 2016 (File No. 0-22490))</a>
10.10	* <a href="#">Form of Non-Employee Director Restricted Stock Agreement under the registrant's Amended and Restated Non-Employee Director Stock Plan (incorporated herein by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 10, 2016 (File No. 0-22490))</a>
10.11	* <a href="#">Form of Employee Restricted Share Agreement under the registrant's 2016 Omnibus Incentive Compensation Plan (incorporated herein by reference to Exhibit 10.2 to the registrant's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2016 filed with the Securities and Exchange Commission on July 27, 2016))</a>
10.12	* <a href="#">Form of CEO Nonqualified Stock Option Agreement under the registrant's 2016 Omnibus Incentive Compensation Plan (incorporated herein by reference to Exhibit 10.41 to the registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 22, 2017)</a>
10.13	* <a href="#">Form of Nonqualified Stock Option Agreement under the registrant's 2016 Omnibus Incentive Compensation Plan (incorporated herein by reference to Exhibit 10.44 to the registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 22, 2017)</a>
10.14	* <a href="#">Form of Performance Share Agreement under the registrant's 2016 Omnibus Compensation Plan (incorporated herein by reference to Exhibit 10.45 to the registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 22, 2017)</a>
10.15	* <a href="#">Form of Notice of Grant of Performance Shares under the registrant's 2016 Omnibus Compensation Plan (incorporated herein by reference to Exhibit 10.1 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on April 27, 2017)</a>
10.16	* <a href="#">Forward Air Corporation 2016 Omnibus Incentive Compensation Plan (incorporated herein by reference to Exhibit 10.1 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on July 27, 2017 (File No. 0-22490))</a>

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10.17	*	<a href="#">Amended and Restated Non-Employee Director Stock Plan (incorporated herein by reference to Exhibit 10.2 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on July 27, 2017 (File No. 02-22490))</a>
10.18		<a href="#">Credit Agreement dated September 29, 2017 among Forward Air Corporation and Forward Air, Inc., as the borrowers, the subsidiaries of the borrowers, identified therein as the guarantors, Bank of America, N.A., U.S. Bank National Association and the other lenders party thereto (incorporated herein by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 3, 2017)</a>
10.18A		<a href="#">First Amendment dated April 16, 2020 to Credit Agreement dated September 29, 2017 by and among Forward Air Corporation and Forward Air, Inc., as borrowers, certain subsidiaries of the borrowers as guarantors, Bank of America, N.A., as administrative agent and lender, U.S. Bank National Association, as lender, and the other lenders party thereto (incorporated herein by reference to Exhibit 10.1 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 1, 2020)</a>
10.18B		<a href="#">Second Amendment dated July 20, 2021 to Credit Agreement dated September 29, 2017 by and among Forward Air Corporation and Forward Air, Inc., as borrowers, certain subsidiaries of the borrowers as guarantors, Bank of America, N.A., as administrative agent and lender, U.S. Bank National Association, as lender and the other lenders part thereto (incorporated herein by reference to Exhibit 10.3 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 10, 2021)</a>
10.18C		<a href="#">Third Amendment, dated December 29, 2021, to the Credit Agreement dated September 29, 2017 by and among Forward Air Corporation and Forward Air, Inc., as borrowers, certain subsidiaries of the borrowers as guarantors, Bank of America, N.A., as administrative agent and lender, U.S. Bank National Association, as lender and the other lenders part thereto (incorporated herein by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on January 5, 2022)</a>
10.19	*	<a href="#">Form of CEO Nonqualified Stock Option Agreement under the registrant's 2016 Omnibus Incentive Compensation Plan (incorporated herein by reference to Exhibit 10.4 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on April 26, 2018)</a>
10.20	*	<a href="#">Form of CEO Performance Share Agreement under the registrant's 2016 Omnibus Incentive Compensation Plan (incorporated herein by reference to Exhibit 10.5 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on April 26, 2018)</a>
10.21	*	<a href="#">Form of CEO Restricted Stock Agreement under the registrant's 2016 Omnibus Incentive Compensation Plan (incorporated herein by reference to Exhibit 10.6 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on April 26, 2018)</a>
10.22	*	<a href="#">Employment Agreement, dated June 6, 2018, between Forward Air Corporation and Thomas Schmitt (incorporated herein by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 12, 2018)</a>
10.23	*	<a href="#">Restrictive Covenants Agreement, dated June 6, 2018, between Forward Air Corporation and Thomas Schmitt (incorporated herein by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 12, 2018)</a>
10.24	*	<a href="#">Waiver and Acknowledgment, dated June 11, 2018 between Forward Air Corporation and Bruce Campbell (incorporated herein by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 12, 2018)</a>
10.25		<a href="#">Consulting Agreement effective May 7, 2019, between Forward Air Corporation and Bruce A. Campbell (incorporated herein by reference to Exhibit 10.2 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on April 25, 2019)</a>
10.26		<a href="#">Form of Performance Share Agreement (Total Shareholder Return) under the registrant's 2016 Omnibus Incentive Compensation Plan (incorporated herein by reference to Exhibit 10.3 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on April 25, 2019)</a>
10.27		<a href="#">Form of Performance Share Agreement (EBITDA per Share) under the registrant's 2016 Omnibus Incentive Compensation Plan (incorporated herein by reference to Exhibit 10.4 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on April 25, 2019)</a>
10.28	*	<a href="#">Scott E. Schara Offer Letter, dated as of July 23, 2020 (incorporated herein by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 27, 2020)</a>
10.29	*	<a href="#">Amended and Restated Consulting Agreement effective July 28, 2020, between Forward Air Corporation and Matthew J. Jewell (incorporated herein by reference to Exhibit 10.2 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on July 31, 2020)</a>
10.3		<a href="#">Advisory Agreement effective April 5, 2021, between Forward Air Corporation and Michael J. Morris (incorporated herein by reference to Exhibit 10.1 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 4, 2021)</a>
10.31		<a href="#">Amendment No. 1 dated October 29, 2021 to Advisory Agreement, dated October 29, 2021, between Forward Air Corporation and Michael J. Morris (incorporated herein by reference to Exhibit 10.4 to the registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 8, 2021)</a>

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10.32	<a href="#">Rebecca J. Garbrick Offer Letter dated as of June 21, 2021 (incorporated herein by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 25, 2021 (File No. 0-22490))</a>
10.33	<a href="#">Form of CEO Nonqualified Stock Option Agreement under the registrant's 2016 Omnibus Incentive Compensation Plan (incorporated herein by reference to Exhibit 10.35 to the registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 1, 2022)</a>
10.34	<a href="#">Form of Non-Qualified Stock Option Agreement under the registrant's 2016 Omnibus Incentive Compensation Plan (incorporated herein by reference to Exhibit 10.36 to the registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 1, 2022)</a>
10.35	<a href="#">Form of Performance Share Agreement (Total Shareholder Return) under the registrant's 2016 Omnibus Incentive Compensation Plan (incorporated herein by reference to Exhibit 10.37 to the registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 1, 2022)</a>
10.36	* <a href="#">Forward Air Corporation Executive Severance and Change in Control Plan Amended and Restated, effective as of October 25, 2021 (incorporated herein by reference to Exhibit 10.38 to the registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 1, 2022)</a>
10.37	<a href="#">Separation and General Release Agreement between Scott E. Schara and Forward Air Corporation (incorporated herein by reference to Exhibit 10.1 to the registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2022 filed with the Securities and Exchange Commission on May 09, 2022)</a>
21.1	<a href="#">Subsidiaries of the registrant</a>
23.1	<a href="#">Consent of Ernst &amp; Young LLP, Independent Registered Public Accounting Firm</a>
31.1	<a href="#">Certification of Chief Executive Officer Pursuant to Exchange Act Rule 13a-14(a) (17 CFR 240.13a-14(a))</a>
31.2	<a href="#">Certification of Chief Financial Officer Pursuant to Exchange Act Rule 13a-14(a) (17 CFR 240.13a-14(a))</a>
32.1	<a href="#">Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
32.2	<a href="#">Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
101.INS	The instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document.
101.SCH	XBRL Taxonomy Extension Schema
101.CAL	XBRL Taxonomy Extension Calculation Linkbase
101.DEF	XBRL Taxonomy Extension Definition Linkbase
101.LAB	XBRL Taxonomy Extension Label Linkbase
101.PRE	XBRL Taxonomy Extension Presentation Linkbase
104	Cover Page Interactive File (formatted in Inline XBRL and contained in Exhibit 101).

\*Denotes a management contract or compensatory plan or arrangement.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) 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.

Date: March 1, 2023

By: Forward Air Corporation  
/s/ Rebecca J. Garbrick  
\_\_\_\_\_  
Rebecca J. Garbrick  
Chief Financial Officer and Treasurer  
(Principal Financial Officer and Duly Authorized Officer)

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Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Thomas Schmitt</u> Thomas Schmitt	Chairman, President and Chief Executive Officer (Principal Executive Officer)	March 1, 2023
<u>/s/ Rebecca J. Garbrick</u> Rebecca J. Garbrick	Chief Financial Officer and Treasurer (Principal Financial Officer)	March 1, 2023
<u>/s/ R. Craig Carlock</u> R. Craig Carlock	Lead Director	March 1, 2023
<u>/s/ Ronald W. Allen</u> Ronald W. Allen	Director	March 1, 2023
<u>/s/ Ana B. Amicarella</u> Ana B. Amicarella	Director	March 1, 2023
<u>/s/ Valerie A. Bonebrake</u> Valerie A. Bonebrake	Director	March 1, 2023
<u>/s/ C. Robert Campbell</u> C. Robert Campbell	Director	March 1, 2023
<u>/s/ George Mayes</u> George Mayes	Director	March 1, 2023
<u>/s/ G. Michael Lynch</u> G. Michael Lynch	Director	March 1, 2023
<u>/s/ Laurie A. Tucker</u> Laurie A. Tucker	Director	March 1, 2023
<u>/s/ Chitra Nayak</u> Chitra Nayak	Director	March 1, 2023
<u>/s/ Scott Niswonger</u> Scott Niswonger	Director	March 1, 2023
<u>/s/ Javier Polit</u> Javier Polit	Director	March 1, 2023
<u>/s/ Richard Roberts</u> Richard Roberts	Director	March 1, 2023

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**Annual Report on Form 10-K**

**Item 8, Item 15(a)(1) and (2), (a)(3), (b) and (c)**

**List of Financial Statements and Financial Statement Schedule**

**Financial Statements and Supplementary Data**

**Certain Exhibits**

**Financial Statement Schedule**

**Year Ended December 31, 2022**

**Forward Air Corporation**

**Greeneville, Tennessee**



Forward Air Corporation

Form 10-K — Item 8 and Item 15(a)(1) and (2)

Index to Financial Statements and Financial Statement Schedule

The following consolidated financial statements of Forward Air Corporation are included as a separate section of this report:

	<u>Page No.</u>
<a href="#">Report of Ernst &amp; Young LLP, Independent Registered Public Accounting Firm (PCAOB ID: 42)</a>	<a href="#">F-3</a>
<a href="#">Consolidated Balance Sheets — December 31, 2022 and 2021</a>	<a href="#">F-5</a>
<a href="#">Consolidated Statements of Comprehensive Income — Years Ended December 31, 2022, 2021 and 2020</a>	<a href="#">F-6</a>
<a href="#">Consolidated Statements of Shareholders' Equity — Years Ended December 31, 2022, 2021 and 2020</a>	<a href="#">F-7</a>
<a href="#">Consolidated Statements of Cash Flows — Years Ended December 31, 2022, 2021 and 2020</a>	<a href="#">F-8</a>
<a href="#">Notes to Consolidated Financial Statements — December 31, 2022</a>	<a href="#">F-9</a>

The following financial statement schedule of Forward Air Corporation is included as a separate section of this report.

<a href="#">Schedule II - Valuation and Qualifying Accounts</a>	<a href="#">S-1</a>
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All other schedules for which provision is made in the applicable accounting regulation of the Securities and Exchange Commission are not required under the related instructions or are inapplicable and, therefore, have been omitted.

## Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Forward Air Corporation

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Forward Air Corporation (the Company) as of December 31, 2022 and 2021, the related consolidated statements of comprehensive income, shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule listed in the Index at Item 15(a) (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated March 1, 2023 expressed an unqualified opinion thereon.

### Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

### *Self-Insurance Loss Reserves*

*Description of the Matter*

The liability for self-insurance loss reserves totaled \$68.7 million at December 31, 2022 which includes self-insurance reserves for vehicle liability claims. The long-term portion of this liability was included in "Other long-term liabilities," and the remainder was included in "Insurance and claims accruals" on the Company's Consolidated Balance Sheet. As more fully described in Note 1 to the consolidated financial statements, the self-insurance reserves include estimates for both known claims and future claims development and are based on company-specific and industry data, as well as general economic information.

Auditing the Company's self-insurance reserves for vehicle liability claims was complex, highly subjective and required significant judgment due to the actuarial techniques and significant assumptions used. The Company utilizes actuarial analyses to evaluate open claims and estimate the ongoing development exposure. The most significant assumptions used in the estimation process include determining the trend in loss costs, the expected consistency in the frequency and severity of claims incurred but not yet reported, changes in the timing of the reporting of losses from the loss date to the notification date, and the expected costs to settle unpaid claims.

*How We Addressed the Matter in Our Audit*

We tested internal controls over management's review of the completeness and accuracy of data inputs used in the actuarial analysis and review of the actuarial assumptions and reserve calculations.

To test the self-insurance loss reserves for vehicle liability claims, our audit procedures included, among others, evaluating the methodologies used and the significant actuarial assumptions discussed above, as well as performing substantive procedures over underlying data and calculations used in the analyses. We tested claims data by agreeing the data to supporting source documentation and payment information. We evaluated whether changes to the reserves for known claims were being recognized timely based on the underlying available data and current estimates. We involved actuarial specialists to assist in our evaluation of the actuarial methodologies used as well as to independently calculate a range of reserve estimates for comparison to the recorded reserves.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 1991

Atlanta, GA  
March 1, 2023

**Forward Air Corporation**  
**Consolidated Balance Sheets**  
(In thousands, except share data)

	December 31, 2022	December 31, 2021
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 45,822	\$ 37,316
Accounts receivable, less allowance of \$3,158 in 2022 and \$3,260 in 2021	221,028	208,085
Other receivables, less allowance of \$— in 2022 and \$— in 2021	—	8,097
Prepaid expenses	24,774	22,283
Other current assets	12,691	7,026
Total current assets	304,315	282,807
Property and equipment, net of accumulated depreciation and amortization of \$220,669 in 2022 and \$200,867 in 2021	249,080	219,095
Operating lease right-of-use assets	141,865	148,198
Goodwill	306,184	266,752
Other acquired intangibles, net of accumulated amortization of \$123,325 in 2022 and \$107,337 in 2021	154,801	154,717
Other assets	51,831	46,254
Total assets	\$ 1,208,076	\$ 1,117,823
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 54,601	\$ 44,837
Accrued expenses	54,291	61,621
Other current liabilities	3,956	4,614
Current portion of debt and finance lease obligations	9,444	6,088
Current portion of operating lease liabilities	47,106	47,532
Total current liabilities	169,398	164,692
Finance lease obligations, less current portion	15,844	9,571
Long-term debt, less current portion and debt issuance costs	106,588	155,466
Operating lease liabilities, less current portion	98,865	101,409
Other long-term liabilities	59,044	49,624
Deferred income taxes	51,093	43,407
Shareholders' equity:		
Preferred stock, \$0.01 par value: Authorized shares - 5,000,000; no shares issued or outstanding in 2022 and 2021	—	—
Common stock, \$0.01 par value: Authorized shares - 50,000,000; issued and outstanding shares - 26,461,293 in 2022 and 26,968,788 in 2021	265	270
Additional paid-in capital	270,855	258,474
Retained earnings	436,124	334,910
Total shareholders' equity	707,244	593,654
Total liabilities and shareholders' equity	\$ 1,208,076	\$ 1,117,823

*The accompanying notes are an integral part of the consolidated financial statements.*

**Forward Air Corporation**  
**Consolidated Statements of Comprehensive Income**  
(In thousands, except per share data)

	Year Ended		
	December 31, 2022	December 31, 2021	December 31, 2020
<b>Operating revenue</b>	\$ 1,973,403	\$ 1,662,427	\$ 1,269,573
<b>Operating expenses:</b>			
Purchased transportation	906,549	833,075	650,664
Salaries, wages and employee benefits	347,970	327,814	270,785
Operating leases	97,094	79,633	69,720
Depreciation and amortization	47,386	39,552	37,125
Insurance and claims	49,759	42,186	34,912
Fuel expense	27,583	17,027	12,166
Other operating expenses	231,086	163,839	120,277
Total operating expenses	<u>1,707,427</u>	<u>1,503,126</u>	<u>1,195,649</u>
Income from continuing operations	265,976	159,301	73,924
<b>Other expense:</b>			
Interest expense, net	(5,138)	(4,338)	(4,561)
Other, net	—	—	(3)
Total other expense	<u>(5,138)</u>	<u>(4,338)</u>	<u>(4,564)</u>
Income before income taxes	260,838	154,963	69,360
Income tax expense	67,647	38,872	16,593
Net income from continuing operations	193,191	116,091	52,767
(Loss) income from discontinued operation, net of tax	—	(10,232)	(29,034)
Net income and comprehensive income	<u>\$ 193,191</u>	<u>\$ 105,859</u>	<u>\$ 23,733</u>
<b>Basic net income per share:</b>			
Continuing operations	\$ 7.17	\$ 4.25	\$ 1.90
Discontinued operation	—	(0.37)	(1.05)
Net income per basic share <sup>1</sup>	<u>\$ 7.17</u>	<u>\$ 3.87</u>	<u>\$ 0.84</u>
<b>Diluted net income per share:</b>			
Continuing operations	\$ 7.14	\$ 4.22	\$ 1.89
Discontinued operation	—	(0.37)	(1.05)
Net income per diluted share	<u>\$ 7.14</u>	<u>\$ 3.85</u>	<u>\$ 0.84</u>
<b>Dividends per share:</b>	<u>\$ 0.96</u>	<u>\$ 0.84</u>	<u>\$ 0.75</u>

<sup>1</sup> Rounding may impact summation of amounts.

*The accompanying notes are an integral part of the consolidated financial statements.*

**Forward Air Corporation**  
**Consolidated Statements of Shareholders' Equity**  
(In thousands)

	Common Stock		Additional Paid-in Capital	Retained Earnings	Total Shareholders' Equity
	Shares	Amount			
Balance at December 31, 2019	27,850	\$ 279	\$ 226,869	\$ 350,034	\$ 577,182
Net income	—	—	—	23,733	23,733
Stock options exercised	89	1	4,236	—	4,237
Common stock issued under employee stock purchase plan	15	—	664	—	664
Share-based compensation expense	—	—	11,138	—	11,138
Payment of dividends to shareholders	—	—	10	(20,879)	(20,869)
Payment of minimum tax withholdings on share-based awards	(59)	—	—	(3,508)	(3,508)
Repurchases and retirement of common stock	(787)	(8)	—	(45,240)	(45,248)
Issuance of share-based awards	208	1	(1)	—	—
Balance at December 31, 2020	27,316	\$ 273	\$ 242,916	\$ 304,140	\$ 547,329
Net income	—	—	—	105,859	105,859
Stock options exercised	69	1	3,705	—	3,706
Common stock issued under employee stock purchase plan	12	—	911	—	911
Share-based compensation expense	—	—	10,929	—	10,929
Payment of dividends to shareholders	—	—	14	(22,990)	(22,976)
Payment of minimum tax withholdings on share-based awards	(39)	—	—	(3,115)	(3,115)
Repurchases and retirement of common stock	(535)	(5)	—	(48,984)	(48,989)
Issuance of share-based awards	146	1	(1)	—	—
Balance at December 31, 2021	26,969	\$ 270	\$ 258,474	\$ 334,910	\$ 593,654
Net income	—	—	—	193,191	193,191
Stock options exercised	3	—	206	—	206
Common stock issued under employee stock purchase plan	10	—	783	—	783
Share-based compensation expense	—	—	11,376	—	11,376
Payment of dividends to shareholders	—	—	17	(25,882)	(25,865)
Payment of minimum tax withholdings on share-based awards	(31)	—	—	(3,330)	(3,330)
Repurchases and retirement of common stock	(600)	(6)	—	(62,765)	(62,771)
Issuance of share-based awards	111	1	(1)	—	—
Balance at December 31, 2022	26,462	\$ 265	\$ 270,855	\$ 436,124	\$ 707,244

*The accompanying notes are an integral part of the consolidated financial statements.*

**Forward Air Corporation**  
**Consolidated Statements of Cash Flows**  
(In thousands)

	Year Ended		
	December 31, 2022	December 31, 2021	December 31, 2020
<b>Operating activities:</b>			
Net income from continuing operations	\$ 193,191	\$ 116,091	\$ 52,767
Adjustments to reconcile net income of continuing operations to net cash provided by operating activities of continuing operations:			
Depreciation and amortization	47,386	39,552	37,125
Change in fair value of earn-out liability	(294)	(496)	379
Share-based compensation expense	11,376	10,913	11,033
Provision for revenue adjustments	11,347	7,943	4,751
Deferred income tax expense	7,686	1,421	772
Other	(202)	1,076	587
Changes in operating assets and liabilities, net of effects from the purchase of acquired companies:			
Accounts receivable	(19,128)	(52,684)	(25,739)
Other receivables	8,097	(8,097)	—
Other current and noncurrent assets	(12,943)	(8,002)	(9,424)
Accounts payable, accrued expenses and other long-term liabilities	12,574	17,179	23,854
Net cash provided by operating activities of continuing operations	259,090	124,896	96,105
<b>Investing activities:</b>			
Proceeds from sale of property and equipment	2,372	2,643	2,413
Purchases of property and equipment	(40,729)	(39,109)	(20,268)
Purchase of businesses, net of cash acquired	(66,105)	(59,866)	(63,651)
Net cash used in investing activities of continuing operations	(104,462)	(96,332)	(81,506)
<b>Financing activities:</b>			
Proceeds from credit facility	—	195,000	65,000
Payments on credit facility	(49,000)	(150,000)	(20,000)
Repayments of finance lease obligations	(6,054)	(2,423)	(1,446)
Payment of debt issuance costs	—	(482)	—
Proceeds from issuance of common stock upon stock option exercises	206	3,706	4,237
Payment of earn-out liability	(91)	(6,519)	(5,284)
Payments of dividends to shareholders	(25,865)	(22,976)	(20,869)
Repurchases and retirement of common stock	(62,771)	(48,989)	(45,248)
Proceeds from common stock issued under employee stock purchase plan	783	911	664
Payment of minimum tax withholdings on share-based awards	(3,330)	(3,115)	(3,508)
Contributions from subsidiary held for sale	—	3,385	(12,640)
Net cash used in financing activities of continuing operations	(146,122)	(31,502)	(39,094)
Net increase (decrease) in cash and cash equivalents of continuing operations	8,506	(2,938)	(24,495)
<b>Cash from discontinued operation:</b>			
Net cash used in operating activities of discontinued operation	—	(4,635)	(11,439)
Net cash provided by (used in) investing activities of discontinued operation	—	8,020	(1,201)
Net cash (used in) provided by financing activities of discontinued operation	—	(3,385)	12,640
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>8,506</b>	<b>(2,938)</b>	<b>(24,495)</b>
Cash and cash equivalents at beginning of period of continuing operations	37,316	40,254	64,749
Cash at beginning of period of discontinued operation	—	—	—
Net increase (decrease) in cash and cash equivalents	8,506	(2,938)	(24,495)
Less: cash at end of period of discontinued operation	—	—	—
<b>Cash and cash equivalents at end of period of continuing operations</b>	<b>\$ 45,822</b>	<b>\$ 37,316</b>	<b>\$ 40,254</b>

*The accompanying notes are an integral part of the consolidated financial statements*

**Forward Air Corporation**  
**Notes To Consolidated Financial Statements**  
**December 31, 2022**  
**(In thousands, except per share data)**

**1. Operations and Summary of Significant Accounting Policies**

***Basis of Presentation and Principles of Consolidation***

Forward Air Corporation and its subsidiaries (“Forward Air” or the “Company”) is a leading asset-light freight and logistics company. The Company has two reportable segments: Expedited Freight and Intermodal. The Company conducts business in the United States, Canada, and Mexico.

The Expedited Freight segment provides expedited regional, inter-regional and national less-than-truckload (“LTL”), truckload and final mile services. Expedited Freight also offers customers local pick-up and delivery and other services including shipment consolidation and deconsolidation, warehousing, customs brokerage and other handling services.

The Intermodal segment provides first- and last-mile high value intermodal container drayage services both to and from seaports and railheads. Intermodal also offers dedicated contract and container freight station (“CFS”) warehouse and handling services.

The Company’s consolidated financial statements include Forward Air Corporation and its wholly-owned subsidiaries. Intercompany accounts and transactions have been eliminated in consolidation.

On April 23, 2020, the Board of Directors (the “Board”) of the Company approved a strategy to divest of the Pool Distribution business (“Pool”), and the sale of Pool was completed on February 12, 2021. Pool provided high-frequency handling and distribution of time sensitive products to numerous destinations within a specific geographic region. As a result of the strategy to divest of Pool, the results of operations for Pool were presented as a discontinued operation in the Consolidated Statements of Comprehensive Income for the prior periods. Unless otherwise noted, amounts, percentages and discussion for all periods reflect the results of operations, financial condition and cash flows from the Company’s continuing operations. Refer to Note 2, *Discontinued Operation and Held for Sale*, for further discussion.

***Use of Estimates***

The preparation of the consolidated financial statements in conformity with U.S. generally accepted accounting principles (“GAAP”) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and expenses during the reporting period. Actual results could differ from those estimates. Certain prior period amounts have been reclassified to conform to the current period presentation.

***Cash and Cash Equivalents***

Cash as of December 31, 2022 and 2021 of \$30,743 and \$22,308, respectively, consisted of cash on hand and bank deposits. Cash equivalents as of December 31, 2022 and 2021 of \$15,079 and \$15,008, respectively, consisted of money market deposits. The Company considers all investments with an original maturity of three months or less to be cash and cash equivalents.

***Allowance for Doubtful Accounts and Revenue Adjustments***

The Company has a broad range of customers, including freight forwarders, third-party logistics (“3PL”) companies, passenger and cargo airlines, steamship lines, and retailers, located across a diverse geography. In circumstances in which the Company is aware of a specific customer’s inability to meet its financial obligations to the Company, the Company records a specific reserve in order to reduce the net recognized accounts receivable to the amount the Company reasonably believes will be collected. For all other customers, the Company recognizes a general reserve based on a percentage of revenue to ensure accounts receivables are properly recorded at the net amount expected to be collected. The Company sets the general reserve based on historical collection experience combined with forecasts about any expected changes to the collection experience. If circumstances change, expected recoverability of amounts due to the Company may change by a material amount. Accounts are written off after all means of collection, including legal action, have been exhausted.



**Forward Air Corporation**  
**Notes to Consolidated Financial Statements (Continued)**  
**December 31, 2022**  
(In thousands, except per share data)

The Company records an allowance for revenue adjustments as result of future billing rate changes. Adjustments arise: (a) when small rate changes (“spot quotes”) are granted to customers that differ from the standard rates in the billing system; (b) when freight requires dimensionalization or is reweighed which results in a different rate; (3) when billing errors occur; and (4) when data entry errors occur. In 2022, average revenue adjustments per month were approximately \$946 on average revenue per month of approximately \$164,450 (0.6% of monthly revenue). The Company estimates an allowance for revenue adjustments based on historical experience, trends and current information. The average amount of revenue adjustments per month can vary in relation to the level of revenue or as a result of other factors. Both the average monthly revenue adjustments and the average lag assumptions are continually evaluated for appropriateness.

***Inventories***

Inventories are valued at the lower of cost or net realizable value, using first-in, first-out method. Net realizable value is the estimated selling price in the ordinary course of business. Replacement parts are expensed when placed in service, while tires are capitalized and amortized over their estimated useful life. Expenses related to the utilization of inventories are recorded in “Other operating expenses” in the Consolidated Statements of Comprehensive Income.

***Property and Equipment***

Property and equipment are recorded at cost, less accumulated depreciation and amortization. Depreciation is provided on a straight-line basis over the estimated useful lives of 30 to 40 years for building and improvements, three to ten years for equipment, the lesser of the estimated useful life or the initial lease term for leasehold improvements and five years for computer software. Land is not depreciated and construction in progress is not depreciated until ready for service. Expenditures for maintenance and repairs are charged to expense as incurred.

For internally developed software, all costs incurred during planning and evaluation are expensed. Costs incurred during the application development stage are capitalized and included in property and equipment. Capitalized software also includes software acquired for internal use.

Property and equipment as of December 31, 2022 and 2021 consisted of the following:

	December 31, 2022	December 31, 2021
Land	\$ 26,479	\$ 26,479
Buildings and improvements	94,277	67,269
Equipment	287,872	259,030
Leasehold improvements	17,510	13,780
Computer software	29,511	26,333
Construction in progress	14,100	27,071
Total property and equipment	469,749	419,962
Less accumulated depreciation and amortization	220,669	200,867
Total property and equipment, net	\$ 249,080	\$ 219,095

As of December 31, 2022 and 2021, the net book value of computer software included in property and equipment, net was \$8,737 and \$8,140, respectively. For the years ended December 31, 2022, 2021 and 2020, amortization expense of computer software was \$2,558, \$2,394 and \$2,053, respectively.

***Cloud Computing Costs***

The Company capitalizes the costs incurred during the implementation stage for cloud computing or hosting arrangements. Costs incurred in the preliminary project stage and post-implementation stage, which includes maintenance and training costs, are expensed as incurred. Capitalized software costs are amortized over the straight-line method over three to five years and are recorded in “Prepaid expenses” and “Other assets” in the Consolidated Balance Sheets.

**Forward Air Corporation**  
**Notes to Consolidated Financial Statements (Continued)**  
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***Goodwill, Intangible Assets and Other Long-Lived Assets***

The Company tests goodwill for impairment, at the reporting unit level, annually and when events or circumstances indicate that fair value of a reporting unit may be below its carrying value. A reporting unit is an operating segment or one level below an operating segment, for example, a component. The Company's reporting units are not its reportable segments.

Goodwill is evaluated annually as of June 30 for impairment using a qualitative assessment or a quantitative one-step assessment. If the Company elects to perform a qualitative assessment and determines the fair value of its reporting units more likely than not exceed the carrying value of their net assets, no further evaluation is necessary. For reporting units where the Company performs a one-step quantitative assessment, the Company compares the estimated fair value of each reporting unit, which is determined based on a combination of an income approach using a discounted cash flow model, and a market approach, which considers comparable companies, to its respective carrying value of net assets, including goodwill. If the estimated fair value of the reporting unit exceeds its carrying value of net assets, the goodwill is not considered impaired. If the carrying value of net assets is higher than the estimated fair value of the reporting unit, the impairment charge is the amount by which the carrying value exceeds the reporting unit's estimated fair value.

The Company reviews its long-lived assets, which include intangible assets subject to amortization, for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The evaluation for recoverability is performed at a level where independent cash flows may be attributed to either an asset or asset group. If the Company determines that the carrying amount of an asset or asset group is not recoverable based on the expected undiscounted future cash flows of the asset or asset group, an impairment loss is recorded equal to the excess of the carrying amounts over the estimated fair value of the long-lived assets. Estimates of future cash flows are based on various factors, including current operating results, expected market trends and competitive influences. The Company also evaluates the amortization periods assigned to its intangible assets to determine whether events or changes in circumstances warrant revised estimates of useful lives. Assets to be disposed of by sale are reported at the lower of the carrying amount or estimated fair value, less estimated costs to sell.

The results of the Company's goodwill impairment analyses conducted as of June 30, 2022, 2021 and 2020 indicated that no reduction in the carrying amount of the Company's goodwill was required.

Changes in the carrying amount of goodwill during the years ended December 31, 2022, 2021 and 2020 are summarized as follows:

	<b>Expedited Freight</b>	<b>Intermodal</b>	<b>Consolidated</b>
Balance as of December 31, 2020	\$ 165,268	\$ 79,714	\$ 244,982
Acquisitions	4,020	17,750	21,770
Balance as of December 31, 2021	\$ 169,288	\$ 97,464	\$ 266,752
Acquisitions	—	34,754	34,754
Acquisition adjustment	—	4,678	4,678
Balance as of December 31, 2022	<u>\$ 169,288</u>	<u>\$ 136,896</u>	<u>\$ 306,184</u>

The Company's accumulated goodwill impairment is \$25,686 related to impairment charges the Company recorded during 2016 pertaining to its TLS reporting unit. The TLS reporting unit operates within the Expedited Freight reportable segment. As of December 31, 2022, approximately \$227,041 of goodwill is deductible for tax purposes.

**Forward Air Corporation**  
**Notes to Consolidated Financial Statements (Continued)**  
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The Company amortizes certain acquired identifiable intangible assets on a straight-line basis over their estimated useful lives, which range from one year to 20 years. The acquired intangible assets have a weighted-average useful life as follows:

<b>Intangible Assets</b>	<b>Weighted-Average Useful Life</b>
Customer relationships	14 years
Non-compete agreements	4 years
Trade names	4 years

For the years ended December 31, 2022, 2021 and 2020, acquired intangible asset amortization was \$5,988, \$14,328 and \$13,489, respectively. The Company estimates amortization of existing intangible assets will be \$17,480 in 2023, \$17,356 in 2024, \$17,257 in 2025, \$17,078 in 2026, and \$16,961 in 2027.

Changes in the carrying amount of acquired intangible assets during 2022 and 2021 are summarized as follows:

	<b>Gross Carrying Amount</b>			
	<b>Customer Relationships<sup>1</sup></b>	<b>Non-Compete Agreements</b>	<b>Trade Names</b>	<b>Total</b>
Balance as of December 31, 2020	\$ 228,416	\$ 8,125	\$ 1,500	\$ 238,041
Acquisitions	22,961	1,051	—	24,012
Balance as of December 31, 2021	\$ 251,377	\$ 9,176	\$ 1,500	\$ 262,053
Acquisitions	21,655	272	—	21,927
Acquisition adjustment	(5,162)	(692)	—	(5,854)
Balance as of December 31, 2022	<u>\$ 267,870</u>	<u>\$ 8,756</u>	<u>\$ 1,500</u>	<u>\$ 278,126</u>

	<b>Accumulated Amortization</b>			
	<b>Customer Relationships<sup>1</sup></b>	<b>Non-Compete Agreements</b>	<b>Trade Names</b>	<b>Total</b>
Balance as of December 31, 2020	\$ 85,930	\$ 5,579	\$ 1,500	\$ 93,009
Amortization expense	13,164	1,164	—	14,328
Balance as of December 31, 2021	\$ 99,094	\$ 6,743	\$ 1,500	\$ 107,337
Amortization expense	15,286	702	—	15,988
Balance as of December 31, 2022	<u>\$ 114,380</u>	<u>\$ 7,445</u>	<u>\$ 1,500</u>	<u>\$ 123,325</u>

<sup>1</sup> Carrying value as of December 31, 2022, 2021 and 2020 is inclusive of \$ 16,501 of accumulated impairment.

**Accrued Expenses**

Accrued expenses as of December 31, 2022 and 2021 consisted of the following:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Accrued payroll and related items	\$ 23,804	\$ 29,364
Insurance and claims accruals	19,961	21,172
Payables to Leased Capacity Providers	10,526	11,085
Accrued expenses	<u>\$ 54,291</u>	<u>\$ 61,621</u>

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**Notes to Consolidated Financial Statements (Continued)**  
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**Self-Insurance Loss Reserves**

The Company's licensed motor carrier contracts with independent contractor fleets, owner-operators and other third-party transportation capacity providers for most of the transportation services. The Company's independent contractor fleet owners and owner-operators lease their equipment to the Company ("Leased Capacity Providers") and own, operate and maintain their own tractors and employ their own drivers. Under U.S. Department of Transportation ("DOT") regulations, the Company is liable for bodily injury and property damage caused by the Leased Capacity Providers and employee drivers while they are operating equipment under the Company's various motor carrier authorities. The potential liability associated with any accident can be severe and occurrences are unpredictable.

For vehicle liability, the Company retains a portion of the risk. Below is a summary of the Company's risk retention on vehicle liability insurance coverage maintained by the Company through \$10,000 (in thousands):

	<b>Company Risk Retention</b>	<b>Frequency</b>	<b>Layer</b>	<b>Policy Term</b>
<b>Expedited Freight<sup>1</sup></b>				
LTL business	\$ 5,000	Occurrence/Accident <sup>2</sup>	\$0 to \$5,000	10/1/2022 to 10/1/2023
Truckload business	\$ 2,000	Occurrence/Accident <sup>2</sup>	\$0 to \$2,000	10/1/2022 to 10/1/2023
LTL, Truckload and Intermodal businesses	\$ 5,000	Policy Term Aggregate <sup>3</sup>	\$5,000 to \$10,000	10/1/2022 to 10/1/2023
<b>Intermodal</b>	\$ 1,000	Occurrence/Accident <sup>2</sup>	\$0 to \$1,000	10/1/2022 to 10/1/2023

<sup>1</sup> Excluding the Final Mile business, which is primarily a brokered service.

<sup>2</sup> For each and every accident/incident, the Company is responsible for damages and defense up to these amounts, regardless of the number of claims associated with any accident/incident.

<sup>3</sup> During the Policy Term, the Company is responsible for damages and defense within the stated Layer up to the stated, aggregate amount of Company Risk Retention before insurance will contribute.

Also, from time to time, when brokering freight, the Company may face claims for the "negligent selection" of outside, contracted carriers that are involved in accidents, and the Company maintains third-party liability insurance coverage with a \$100 deductible per occurrence for most of its brokered services. Additionally, the Company maintains workers' compensation insurance with a self-insured retention of \$500 per occurrence.

The Company provides for the estimated costs of vehicle liability and workers' compensation claims both reported and for claims incurred but not reported. The amount of self-insurance loss reserves and loss adjustment expenses is determined based on an estimation process that uses information obtained from both Company-specific and industry data, as well as general economic information. The most significant assumptions used in the estimation process include determining the trend in loss costs, the expected consistency in the frequency and severity of claims incurred but not yet reported, changes in the timing of the reporting of losses from the loss date to the notification date, and expected costs to settle unpaid claims. The Company estimates its self-insurance loss exposure by evaluating the merits and circumstances surrounding individual known claims and through actuarial analysis to determine an estimate of probable losses on claims incurred but not reported. The Company accrues for the costs of the uninsured portion of pending claims, based on the nature and severity of individual claims and historical claims development trends. Estimating the number and severity of claims, as well as related judgment or settlement amounts is inherently difficult. Failure to establish sufficient insurance reserves and adequately estimate for future insurance claims may cause unfavorable differences between actual self-insurance costs and the reserve estimates.

As of December 31, 2022 and 2021, the Company recorded self-insurance loss reserves of \$68,654 and \$65,649, respectively, inclusive of reserves in excess of the self-insured retention limit that are expected to be reimbursed from insurance carriers. As of December 31, 2022, \$19,961 was recorded in "Insurance and claims accruals" and \$48,693 was recorded in "Other long-term liabilities" in the Consolidated Balance Sheets. As of December 31, 2021, \$1,172 was recorded in "Insurance and claims accruals" and \$44,477 was recorded in "Other long-term liabilities" in the Consolidated Balance Sheets.

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**Notes to Consolidated Financial Statements (Continued)**  
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As of December 31, 2022 and 2021, the Company recognized a receivable for insurance proceeds and a corresponding claims payable for vehicle liability and workers' compensation claims in excess of the self-insured retention limit. As of December 31, 2022 and 2021, the Company recorded \$29,087 and \$28,667, respectively, in "Other assets" and "Other long-term liabilities" in the Consolidated Balance Sheets.

***Revenue Recognition***

Revenue is recognized when the Company satisfies the performance obligation by the delivery of a shipment in accordance with contractual agreements, bills of lading ("BOLs") and general tariff provisions. The amount of revenue recognized is measured as the consideration the Company expects to receive in exchange for those services pursuant to a contract with a customer. A contract exists once the Company enters into a contractual agreement with a customer. The Company does not recognize revenue in cases where collectibility is not probable, and defers recognition until collection is probable or payment is received.

The Company generates revenue from the delivery of a shipment and the completion of related services. Revenue for the delivery of a shipment is recorded over time to coincide with when customers simultaneously receive and consume the benefits of the delivery services. Accordingly, revenue billed to a customer for the transportation of freight are recognized over the transit period as the performance obligation to the customer is satisfied. The Company determines the transit period for a shipment based on the pick-up date and the delivery date, which may be estimated if delivery has not occurred as of a reporting period. The determination of the transit period and how much of it has been completed as of a given reporting date may require the Company to make judgments that impact the timing of revenue recognized. For delivery of shipments with a pick-up date in one reporting period and a delivery date in another reporting period, the Company recognizes revenue based on relative transit time in each reporting period. A portion of the total revenue to be billed to the customer after completion of a delivery is recognized in each reporting period based on the percentage of total transit time that has been completed at the end of the applicable reporting period. Upon delivery of a shipment or related service, customers are billed according to the applicable payment terms. Related services are a separate performance obligation and include accessorial charges such as terminal handling, storage, equipment rentals and customs brokerage.

Revenue is classified based on the line of business as the Company believes that best depicts the nature, timing and amount of revenue and cash flows. For all lines of business, the Company records revenue on a gross basis as it is the principal in the transaction as the Company has discretion to determine the amount of consideration. Additionally, the Company has the discretion to select drivers and other vendors for the services provided to customers. These factors, discretion in the amount of consideration and the selection of drivers and other vendors, support revenue recognized on a gross basis.

***Leases***

The Company accounts for leases under Accounting Standards Codification 842, *Leases*, ("ASC 842"), where lessees are required to record an asset (right-of-use asset or finance lease asset) and a lease liability. ASC 842 allows for two types of leases for recognition purposes: operating leases and finance leases. Operating leases result in the recognition of a single lease expense on a straight-line basis over the lease term, while finance leases result in an accelerated expense. The Company determines if an arrangement contains a lease at inception based on whether or not the Company has the right to control the asset during the contract period. All leases greater than 12 months result in the recognition of a right-of-use asset and liability at the lease commencement date based on the present value of the lease payments over the lease term. The present value of the lease payments is calculated using the applicable weighted-average discount rate. The weighted-average discount rate is based on the discount rate implicit in the lease, or if the implicit rate is not readily determinable from the lease, then the Company estimates an applicable incremental borrowing rate. The incremental borrowing rate is estimated based on the contractual lease term and the Company's applicable borrowing rate.

**Forward Air Corporation**  
**Notes to Consolidated Financial Statements (Continued)**  
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***Business Combinations***

Upon the acquisition of a business, the fair value of the assets acquired and liabilities assumed are estimated, which may require judgment regarding the identification of acquired assets and liabilities assumed. Once the acquired assets and assumed liabilities are identified, the fair value of the assets and liabilities are estimated using a variety of approaches that require significant judgments. For intangible assets, significant judgments include, but are not limited to, future cash flows, selection of discount rates, determination of terminal growth rates, and estimated useful life and pattern of use of the underlying intangible assets. For tangible assets, significant judgments, include, but are not limited to, current market values, physical and functional obsolescence of the assets, and remaining useful lives. Consideration is typically paid in the form of cash paid upon closing while contingent consideration is paid upon the satisfaction of a future obligation. If contingent consideration is included as a component of the consideration, the Company values the consideration as of the acquisition date.

***Income Taxes***

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. Refer to Note 7, *Income Taxes*, for further discussion.

***Net Income (Loss) Per Common Share***

Basic net income (loss) per common share is computed by dividing net income (loss) by the weighted-average number of common shares outstanding during each period. Restricted shares have non-forfeitable rights to dividends and as a result, are considered participating securities for purposes of computing net income (loss) per common share pursuant to the two-class method. Net income allocated to participating securities was \$1,070 in 2022, \$737 in 2021 and \$385 in 2020. Diluted net income (loss) per common share assumes the exercise of outstanding stock options and the vesting of performance share awards using the treasury stock method when the effects of such assumptions are dilutive.

**Forward Air Corporation**  
**Notes to Consolidated Financial Statements (Continued)**  
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A reconciliation of net income (loss) attributable to Forward Air and weighted-average common shares outstanding for purposes of calculating basic and diluted net income (loss) per share during the years ended December 31, 2022, 2021 and 2020 is as follows:

	<u>2022</u>	<u>2021</u>	<u>2020</u>
<b>Numerator:</b>			
Net income and comprehensive income from continuing operations	\$ 193,191	\$ 116,091	\$ 52,767
Net (loss) income and comprehensive (loss) income from discontinued operation	—	(10,232)	(29,034)
Net income attributable to Forward Air	<u>\$ 193,191</u>	<u>\$ 105,859</u>	<u>\$ 23,733</u>
Income allocated to participating securities from continuing operations	(1,070)	(807)	(385)
Loss allocated to participating securities from discontinued operation	—	70	—
Income allocated to participating securities	<u>(1,070)</u>	<u>(737)</u>	<u>(385)</u>
Numerator for basic and diluted net income per share for continuing operations	<u>\$ 192,121</u>	<u>\$ 115,284</u>	<u>\$ 52,382</u>
Numerator for basic and diluted net (loss) income per share for discontinued operation	<u>\$ —</u>	<u>\$ (10,162)</u>	<u>\$ (29,034)</u>
<b>Denominator:</b>			
Denominator for basic net income per share - weighted-average number of common shares outstanding	26,783	27,155	27,631
Dilutive stock options and performance share awards	143	137	66
Denominator for diluted net income per share - weighted-average number of common shares and common share equivalents outstanding	<u>26,926</u>	<u>27,292</u>	<u>27,697</u>
<b>Basic net income (loss) per share:</b>			
Continuing operations	\$ 7.17	\$ 4.25	\$ 1.90
Discontinued operation	—	(0.37)	(1.05)
Net income per basic share <sup>1</sup>	<u>\$ 7.17</u>	<u>\$ 3.87</u>	<u>\$ 0.84</u>
<b>Diluted net income (loss) per share:</b>			
Continuing operations	\$ 7.14	\$ 4.22	\$ 1.89
Discontinued operation	—	(0.37)	(1.05)
Net income per diluted share	<u>\$ 7.14</u>	<u>\$ 3.85</u>	<u>\$ 0.84</u>

<sup>1</sup> Rounding may impact summation of amounts.

**Forward Air Corporation**  
**Notes to Consolidated Financial Statements (Continued)**  
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The number of shares that were not included in the calculation of net income (loss) per diluted share because to do so would have been anti-dilutive for the years ended December 31, 2022, 2021 and 2020 are as follows:

	2022	2021	2020
Anti-dilutive stock options	57	—	206
Anti-dilutive performance shares	13	—	15
Anti-dilutive restricted shares and deferred stock units	2	—	3
Total anti-dilutive shares	<u>72</u>	<u>—</u>	<u>224</u>

***Share-Based Compensation***

The Company grants awards under the stock-based compensation plans to certain employees of the Company. The awards include stock options, restricted shares and performance shares. The fair value of the stock options is estimated on the grant date using the Black-Scholes option pricing model, and share-based compensation expense is recognized on a straight-line basis over the three-year vesting period. The fair value of the restricted shares is the quoted market value of the Company's common stock on the grant date, and the share-based compensation expense is recognized on a straight-line basis over the vesting period. For certain performance shares, the fair value is the quoted market value of the Company's common stock on the grant date less the present value of the expected dividends not received during the relevant period. For these performance shares, the share-based compensation expense is recognized on a straight-line basis over the three-year vesting period based on the projected assessment of the level of performance that will be achieved. The fair value of other performance shares that have a financial target of the Company's total shareholder return as compared to the total shareholder return of a selected peer group, is estimated on the grant date using a Monte Carlo simulation model. The share-based compensation expense is recognized on a straight-line basis over the three-year vesting period. All share-based compensation expense is recognized in salaries, wages and employee benefits in the Consolidated Statements of Comprehensive Income. Refer to Note 6, *Stock Incentive Plan*, for further discussion.

***Ransomware Incident***

In December 2020, the Company detected a ransomware incident impacting its operational and information technology systems, which caused service delays for many of its customers ("Ransomware Incident"). Promptly upon its detection of the incident, the Company initiated response protocols, launched an investigation and engaged the services of cybersecurity and forensics professionals. The Company also engaged with the appropriate law enforcement authorities. The Company continued to cooperate with law enforcement in connection with the criminal investigation into those responsible for the Ransomware Incident.

For the year ended December 31, 2022 and 2021, expenses related to the Ransomware Incident were zero and \$434, respectively, which were recorded in "Other operating expenses" in the Consolidated Statements of Comprehensive Income. Expenses include costs to investigate and remediate the Ransomware Incident and legal and other professional services related to the incident.

***Recent Accounting Pronouncements***

In December 2019, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. The standard simplifies the accounting for income taxes by removing certain exceptions to the general principles of accounting for income taxes and improving consistent application of the principles. ASU 2019-12 is effective for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years, with early adoption permitted. The Company adopted this standard as of January 1, 2021. The adoption of the standard did not have a material impact on the Company's results of operations, financial condition, or cash flows.



**Forward Air Corporation**  
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*New Accounting Pronouncements to be Adopted*

In October 2021, FASB issued ASU 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*. The standard addresses the recognition of an acquired contract liability in a business combination and the recognition and measurement of contract assets and contract liabilities from revenue contracts acquired in a business combination. ASU 2021-08 is effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years, with early adoption permitted. The Company is currently evaluating the adoption of ASU 2021-08 and the impact, if any, adoption will have on its operations, financial condition, or cash flows.

**2. Discontinued Operation and Held for Sale**

As previously disclosed, on April 23, 2020, the Company made a decision to divest of Pool and the sale was completed on February 12, 2021. As a result, the results of Pool were classified to “Loss from discontinued operation, net of tax” in the Consolidated Statements of Comprehensive Income for the years ended December 31, 2021 and 2020. Certain corporate overhead and other costs previously allocated to Pool for segment reporting purposes did not qualify for classification within discontinued operation and were allocated to continuing operations. These costs were classified to the eliminations column in the segment reconciliation in Note 12, *Segment Reporting*.

*Held for Sale*

Upon meeting the criteria for held for sale classification and in each subsequent reporting period, the Company evaluated whether Pool’s estimated fair value, less costs to sell, exceeded the net carrying value. The annual goodwill impairment analysis conducted as of June 30, 2020 indicated that the fair value in excess of the carrying value related to the Pool reporting unit was approximately 5% and in the third quarter of 2020, the Company concluded the estimated fair value, less costs to sell, exceeded the net carrying value and there were no indicators of impairment for the Pool reporting unit.

However, in response to the longer than expected macroeconomic conditions caused by the COVID-19 pandemic and status of negotiations to sell the Pool business, a strategic review of the business was completed in the fourth quarter of 2020 along with revised forecasts to include updated market conditions and strategic operating decisions. The revised forecasts indicated an impairment of the entire goodwill balance of the Pool reporting unit was necessary as of December 31, 2020. A non-cash charge of approximately \$5,406 was recorded as an “Impairment charge” in the summarized discontinued operation financial information for the year ended December 31, 2020. In addition, the Company recorded a valuation allowance against the net assets held for sale to write down the carrying value to the estimated fair value less costs to sell. A non-cash valuation allowance of approximately \$22,978 was recorded as an “Impairment charge” in the summarized discontinued operation financial information for the year ended December 31, 2020.

The fair value was estimated based on a combination of an income approach using a discounted cash flow model, and a market approach, which considers comparable companies. Estimates of future cash flows are based on various factors, including current operating results, expected market trends and competitive influences. Refer to Note 1, *Operations and Summary of Significant Accounting Policies*, for further discussion about the estimation of fair value.

*Sale of Pool*

On February 12, 2021, the Company completed the sale of the Pool business for \$8,000 in cash and up to a \$12,000 earn-out based on earnings before interest, taxes, depreciation and amortization. The sale agreement for Pool included an earn-out based on the achievement of certain earnings before interest, taxes, depreciation and amortization attainment over an eleven-month period, beginning February 1, 2021. The estimated fair value of the earn-out asset on the date of sale was \$,967. The fair value was based on the estimated eleven-month period of the earnings before interest, taxes, depreciation and amortization and was calculated using a Monte Carlo simulation model.

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The weighted average assumptions under the Monte Carlo simulation model were as follows:

	<b>February 12, 2021</b>
Counterparty credit spread	1.2%
Earnings before interest, taxes, depreciation and amortization discount rate	15.0%
Asset volatility	55.0%

Subsequent to the date of sale, the Company recognized any increases in the carrying value of the earn-out asset when the change was realized and evaluated the earn-out asset for impairment at each reporting period. The financial performance of the Pool business significantly deteriorated during the third quarter of 2021. As a result, an evaluation of the earn-out asset for impairment was completed, which included a review of revised forecasts, updated strategic operating decisions and current market conditions. The revised forecasts indicated an impairment of the entire earn-out asset was necessary. A non-cash charge of \$ 6,967 was recorded as an "Impairment charge" in the summarized discontinued operation financial information for the year ended December 31, 2021.

*Transition Services Agreement*

On February 12, 2021, the Company entered into a Transition Services Agreement ("TSA") with TOG FAS Holdings LLC, the buyer of the Pool business. Under the TSA, the Company performed certain services on an interim basis in order to facilitate the orderly transition of the Pool business. The effective date of the TSA was February 12, 2021 and remained in effect until the date all services were completed, but no more than six months following the effective date. The TSA provided the right to extend the term of the TSA with no limit on the number of the mutually agreed upon extensions. In exchange for the services performed by the Company under the TSA, the Company received a monthly service charge. For the year ended December 31, 2021, the Company recognized \$747, in "Other operating expenses" in the Consolidated Statements of Comprehensive Income, for the services performed under the TSA. The TSA ended in October 2021 when all services were completed.

Additionally, under the TSA, the Company remitted payments to outside vendors on behalf of TOG FAS Holdings LLC for expenses incurred by the Pool business up to a limit of \$18,000. The Company is reimbursed by TOG FAS Holdings LLC within 60 days from the end of the month in which the payment is remitted. As of December 31, 2021, the Company recorded a receivable in the amount of \$8,097 in "Other receivables" in the Consolidated Balance Sheets for the reimbursement due to the Company. The Company evaluated the collectability of the receivable at least quarterly and if the Company was aware of the inability of TOG FAS Holdings LLC to meet its financial obligations to the Company, the Company recorded a specific reserve in order to reduce the receivable to the amount the Company reasonably believes will be collected. As of December 31, 2022, the outstanding receivable balance was collected in full.

**Forward Air Corporation**  
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*Summarized Discontinued Operation Financial Information*

A summary of the results of operations classified as a discontinued operation, net of tax, in the Consolidated Statements of Comprehensive Income for the years ended December 31, 2022, 2021 and 2020 is as follows:

	Year Ended		
	December 31, 2022	December 31, 2021	December 31, 2020
<b>Operating revenue</b>	\$ —	\$ 17,776	\$ 141,433
<b>Operating expenses:</b>			
Purchased transportation	—	3,381	33,979
Salaries, wages and employee benefits	—	9,458	65,695
Operating leases	—	2,289	21,982
Depreciation and amortization	—	—	1,657
Insurance and claims	—	929	6,205
Fuel expense	—	508	4,279
Other operating expenses	—	1,627	17,587
Impairment charge	—	6,967	28,384
Total operating expenses	—	25,159	179,768
Loss from discontinued operation	—	(7,383)	(38,335)
Loss on sale of business	—	(2,860)	—
Loss from discontinued operation before income taxes	—	(10,243)	(38,335)
Income tax (benefit) expense	—	(11)	(9,301)
Loss from discontinued operation, net of tax	\$ —	\$ (10,232)	\$ (29,034)

**3. Acquisitions**

*Expedited Freight*

In May 2021, the Company acquired certain assets and liabilities of J&P Hall Express Delivery (“J&P”) for \$7,670. J&P is headquartered in Atlanta, Georgia with a second terminal in Albany, Georgia. The acquisition of J&P supports the Company’s strategic growth plan by expanding pickup and delivery, less-than-truckload, truckload, less than container load, container freight station warehousing, and airport transfer services across the Southeastern United States. The acquisition was funded using cash flows from operations. The results of J&P have been included in the Company’s Consolidated Financial Statements as of and from the date of acquisition. The associated goodwill has been included in the Company’s Expedited Freight reportable segment.

*Intermodal*

In February 2021, the Company acquired certain assets and liabilities of Proficient Transport Incorporated and Proficient Trucking, Inc. (together “Proficient Transport”) for \$16,339 and a potential earn-out up to \$2,000. Proficient Transport is an intermodal drayage company headquartered in Chicago, Illinois. The acquisition of Proficient Transport supports the Company’s strategic growth plan by expanding the intermodal footprint in Georgia, Illinois, North Carolina, and Texas, and introduces a new location in Ohio. The acquisition was funded using cash flows from operations. The results of Proficient Transport have been included in the Company’s Consolidated Financial Statements as of and from the date of acquisition. The associated goodwill has been included in the Company’s Intermodal reportable segment.

The purchase agreement for Proficient Transport included an earn-out up to \$2,000 based on the achievement of certain revenue milestones over a one-year period, beginning March 1, 2021. The estimated fair value of the earn-out liability

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on the date of acquisition was \$829. The fair value was based on the estimated one-year performance of the acquired customer revenue and was calculated using the option pricing method. The assumptions used to calculate the estimated fair value of the earn-out under the option pricing method were as follows:

	<b>December 31, 2021</b>	<b>February 28, 2021</b>
Risk-free rate	0.1%	0.1%
Revenue discount rate	9.8%	8.3%
Revenue volatility	24.2%	27.3%

The fair value of the earn-out liability was adjusted at each reporting period based on changes in the expected cash flows and related assumptions used in the option pricing method. During the years ended December 31, 2022 and 2021, the fair value of the earn-out changed by (\$294) and (\$444), respectively, and the change in the fair value was recorded in "Other operating expenses" in the Consolidated Statements of Comprehensive Income. The one-year period ended in the first quarter of 2022 and the Company paid \$91 in the second quarter of 2022 based on the terms of the purchase agreement. As of December 31, 2021, the fair value of the earn-out liability was \$385, which was reflected in "Other current liabilities" in the Consolidated Balance Sheets.

In November 2021, the Company acquired certain assets and liabilities of BarOle Trucking, Inc. ("BarOle") for \$35,436. BarOle is an intermodal drayage company headquartered in Roseville, Minnesota. The acquisition of BarOle provides additional capacity and resources to meet customer demands in the intermodal market, and extends the service footprint to the Minneapolis-Saint Paul, Minnesota area. In addition, BarOle has a larger terminal location, which allows for further expansion in the future. The acquisition was funded using cash flows from operations. The results of BarOle have been included in the Company's Consolidated Financial Statements as of and from the date of acquisition. The associated goodwill has been included in the Company's Intermodal reportable segment.

In May 2022, the Company acquired certain assets and liabilities of Edgmon Trucking, LLC ("Edgmon") for \$40,993 and a potential earn-out of up to \$5,000, based on the achievement of certain profit contribution milestones over a nineteen month period, beginning May 31, 2022. The estimated fair value of the earn-out liability on the date of acquisition was immaterial. The fair value was based on the estimated certain profit contribution during the nineteen month period and was calculated using the option pricing method. Edgmon, headquartered in Kent, Washington, operates a terminal in Kent and a yard in Seattle, servicing both the Port of Seattle and the Port of Tacoma. The acquisition of Edgmon marks the Company's first Intermodal location on the West Coast, a key area of expansion in the Intermodal strategic growth plan. The acquisition was funded using cash flows from operations. The results of Edgmon have been included in the Company's Consolidated Financial Statements as of and from the date of acquisition. The associated goodwill has been included in the Company's Intermodal reportable segment.

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*Fair Value of Assets Acquired and Liabilities Assumed*

Assets acquired and liabilities assumed as of the acquisition date are presented in the following table:

	<b>Proficient Transport</b>	<b>J&amp;P</b>	<b>BarOle</b>	<b>Edgmon</b>
	<b>February 28, 2021</b>	<b>May 30, 2021</b>	<b>November 30, 2021</b>	<b>May 31, 2022</b>
<b>Tangible assets:</b>				
Cash	\$ —	\$ —	\$ —	\$ —
Accounts receivable	4,171	1,940	2,657	4,963
Prepaid expenses and other current assets	—	32	—	—
Property and equipment	140	1,567	6,464	613
Other assets	24	3	—	—
Operating lease right-of-use assets	—	1,355	—	—
<b>Total tangible assets</b>	<b>4,335</b>	<b>4,897</b>	<b>9,121</b>	<b>5,576</b>
<b>Intangible assets:</b>				
Customer relationships	6,060	620	11,120	13,051
Non-compete agreements	18	120	221	172
Goodwill	6,249	4,020	15,355	22,195
<b>Total intangible assets</b>	<b>12,327</b>	<b>4,760</b>	<b>26,696</b>	<b>35,418</b>
<b>Total assets acquired</b>	<b>16,662</b>	<b>9,657</b>	<b>35,817</b>	<b>40,994</b>
<b>Liabilities assumed:</b>				
Current liabilities	323	632	381	1
Other liabilities	—	—	—	—
Finance lease obligations	—	—	—	—
Operating lease liabilities	—	1,355	—	—
<b>Total liabilities assumed</b>	<b>323</b>	<b>1,987</b>	<b>381</b>	<b>1</b>
<b>Net assets acquired</b>	<b>\$ 16,339</b>	<b>\$ 7,670</b>	<b>\$ 35,436</b>	<b>\$ 40,993</b>

The preliminary purchase price for Edgmon has been allocated to assets acquired and liabilities assumed based on the Company's best estimates and assumptions using the information available as of the acquisition date through the date of this filing. The provisional measurements of identifiable assets and liabilities, and the resulting goodwill related to this acquisition, is subject to adjustments in subsequent periods as the Company finalizes its purchase price allocation, including third-party valuations. During the year ended December 31, 2022, the Company recorded measurement period adjustments to the provisional amounts initially recorded for acquired net working capital, acquired property and equipment and acquired customer relationships and non-compete agreements related to the BarOle acquisition. The measurement period adjustment resulted in a \$63 increase to net working capital, a \$1,113 increase to acquired property and equipment and a combined \$5,854 decrease to acquired customer relationships and non-compete agreements, with a corresponding net increase to goodwill. The Company expects to finalize the Edgmon valuation as soon as practicable, but no later than one year from the acquisition date.

The estimated useful life of acquired intangible assets as of the acquisition date are summarized in the following table:

	<b>Estimated Useful Lives</b>			
	<b>Proficient Transport</b>	<b>J&amp;P</b>	<b>BarOle</b>	<b>Edgmon</b>
Customer relationships	8 years	12 years	9 years	9 years
Non-compete agreements	1 year	5 years	5 years	5 years

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In November 2022, the Company acquired certain assets and liabilities of Chickasaw Container Services, Inc. (“CCS”), a privately held intermodal drayage provider. The acquisition included two operating terminals in Mobile, Alabama and Memphis, Tennessee and will allow the company to expand intermodal drayage operations in the Mobile market while bolstering an already strong presence in the Memphis market. In addition to drayage services, CCS also provides container storage and sales. The Company paid \$25,733 using cash on hand from operations. The preliminary purchase price was allocated based on the estimated fair values as of the acquisition date. The Company recorded \$21,262 related to intangible assets and \$4,471 related to tangible assets. The Company expects to finalize the valuations as soon as practicable, but no later than one year from the respective acquisition date. The results of CCS have been included in the Company's Consolidated Financial Statements as of and from the date of acquisition. The associated goodwill has been included in the Company's Intermodal reportable segment.

**4. Indebtedness**

Long-term debt consisted of the following as of December 31, 2022 and 2021:

	December 31, 2022	December 31, 2021
Credit facility, expires 2026	\$ 108,500	\$ 157,500
Debt issuance costs	(418)	(534)
	<u>108,082</u>	<u>156,966</u>
Less: Current portion of long-term debt	(1,494)	(1,500)
Total long-term debt, less current portion	<u>\$ 106,588</u>	<u>\$ 155,466</u>

As of December 31, 2022, the aggregate scheduled maturities of long-term debt, excluding the current portion of long-term debt are as follows:

2024	3,732
2025	3,732
2026	99,124
	<u>\$ 106,588</u>

In September 2017, the Company entered into a five-year senior unsecured revolving credit facility (the “Facility”) with a maximum aggregate principal amount of \$150,000, with a sublimit of \$30,000 for letters of credit and a sublimit of \$30,000 for swing line loans. The maturity date of the Facility was September 29, 2022. In April 2020, the Company entered into the first amendment to the Facility, which increased the maximum aggregate principal amount to \$225,000. The Facility could have been increased by up to \$25,000 to a maximum aggregate principal amount of \$250,000 pursuant to the terms of the amended credit agreement, subject to the lenders’ agreement to increase their commitments or the addition of new lenders extending such commitments. In July 2021, the Company entered into the second amendment to the Facility, which extended the maturity date to July 20, 2026 and changed the interest rate options available under the Facility. In December 2021, the Company entered into the third amendment to the Facility, which increased the amount available for borrowing under the Facility to \$450,000, consisting of a \$300,000 revolving line of credit and a term loan of \$150,000. In connection with the third amendment, the Company borrowed \$150,000 under the term loan and simultaneously repaid \$150,000 on the revolving line of credit from the borrowings received. Under the third amendment, the Facility may be increased by up to \$75,000 to a maximum aggregate principal amount of \$525,000 pursuant to the terms of the amended credit agreement, subject to the lenders’ agreement to increase their commitments or the addition of new lenders extending such commitments. Such increases to the Facility may be in the form of additional revolving credit loans, term loans or a combination thereof, and are contingent upon there being no events of default under the Facility. As of December 31, 2022 and December 31, 2021, the Company had \$279,966 and \$272,466 respectively, of available borrowing capacity under the Facility.

The Facility contains covenants that, among other things, restrict the ability of the Company, without the approval of the required lenders, to engage in certain mergers, consolidations, asset sales, dividends and stock repurchases, investments, and other transactions or to incur liens or indebtedness in excess of agreed thresholds, as set forth in the credit agreement. The

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Company also has to fulfill financial covenants with respect to a leverage ratio and an interest coverage ratio. As of December 31, 2022, the Company was in compliance with the aforementioned covenants.

Under the amended Facility, interest accrues on the amounts outstanding under the Facility at the Company's option, at either (1) Bloomberg Short-Term Bank Yield Index rate (the "BSBY Rate"), which cannot be less than zero, plus a margin ranging from 1.25% to 1.75% based on the Company's leverage ratio, or (2) the base rate, which cannot be less than 2.00%. The base rate is the highest of (i) the federal funds rate, which cannot be less than zero, plus 0.50%, (ii) the administrative agent's prime rate and (iii) the BSBY Rate, which cannot be less than zero, plus 1.00%, plus a margin ranging from 0.00% to 0.50% based on the Company's leverage ratio. Interest is payable in arrears for each loan that is based on the BSBY rate on the last day of the interest period applicable to each loan, and interest is payable in arrears on loans not based on the BSBY rate on the last day of each quarter. The interest rate on the outstanding borrowings under the revolving credit facility was 4.85% and 1.43% as of December 31, 2022 and 2021, respectively.

*Letters of Credit*

The Company has an arrangement under the Facility to issue letters of credit, which guarantee the Company's obligations for potential claims exposure for insurance coverage. As of both December 31, 2022 and December 31, 2021, outstanding letters of credit totaled \$20,034.

*Interest Payments*

Cash payments for interest were \$5,355, \$4,198 and \$4,580 for the years ended December 31, 2022, 2021 and 2020 respectively. No interest was capitalized during the year ended December 31, 2022, 2021 and 2020.

**5. Shareholders' Equity**

*Preferred Stock*

There are 5,000 shares of preferred stock with a par value of \$0.01 authorized, but no shares have been issued to date.

*Cash Dividends*

For each quarter of 2022, the Company's Board of Directors declared and the Company has paid a quarterly cash dividend of \$0.24 per common share. For each quarter of 2021, the Company's Board of Directors declared and the Company paid a quarterly cash dividend of \$0.21 per common share.

On February 7, 2023, the Company's Board of Directors declared a quarterly cash dividend of \$0.24 per common share that will be paid in the first quarter of 2023.

*Share Repurchase Program*

On February 5, 2019, the Board of Directors approved a stock repurchase plan authorizing the repurchase of up to 5,000 shares of the Company's common stock (the "2019 Repurchase Plan"). The 2019 Repurchase Plan expires when the shares authorized for repurchase are exhausted or the 2019 Repurchase Plan is canceled.

During the year ended December 31, 2022, the Company repurchased through open market transactions 600 shares of common stock for \$62,771, or an average of \$104.53 per share, and during the year ended December 31, 2021, the Company repurchased through open market transactions 535 shares of common stock for \$48,989, or an average of \$91.46 per share. All shares received were retired upon receipt, and the excess of the purchase price over the par value per share was recorded to "Retained Earnings" in the Consolidated Balance Sheets.

As of December 31, 2022, the remaining shares permitted to be repurchased under the 2019 Repurchase Plan were approximately 2,233 shares.

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**6. Stock Incentive Plan**

*Stock Incentive Plan*

The Company recorded share-based compensation expense as follows for the years ended December 31, 2022, 2021 and 2020:

	Year Ended		
	December 31, 2022	December 31, 2021	December 31, 2020
Salaries, wages and employee benefits - continuing operations	\$ 9,902	\$ 9,108	\$ 9,715
Salaries, wages and employee benefits - discontinued operation	—	16	85
<b>Total share-based compensation expense</b>	<b>\$ 9,902</b>	<b>\$ 9,124</b>	<b>\$ 9,800</b>

In May 2016, the Company adopted the 2016 Omnibus Incentive Compensation Plan (the "Omnibus Plan") for the issuance of up to 2,000 common shares. As of December 31, 2022, approximately 696 shares remain available for grant under the Omnibus Plan.

*Stock Options*

Certain executives are eligible to receive grants of stock options. Employees may exercise the stock options at anytime after the grant is vested but no later than seven years after the date of grant. Stock options vest over a three-year period from the date of grant. For stock option awards, under the Plan, the exercise price is equal to the price of the Company's common stock on the date of grant. Share-based compensation expense associated with these awards is amortized ratably over the vesting period. The Company estimated the fair value of the grants using the Black-Scholes option-pricing model.

The weighted average grant-date fair value of the stock option awards granted under the Plan and the weighted average assumptions under the Black-Scholes option-pricing model were as follows for the years ended December 31, 2022, 2021 and 2020.

	December 31, 2022	December 31, 2021	December 31, 2020
Weighted average grant-date fair value	\$ 28.91	\$ 18.36	\$ 14.79
Weighted average assumptions under Black-Scholes option model:			
Expected dividend yield	0.9 %	1.1 %	1.1 %
Expected stock price volatility	28.7 %	28.9 %	24.1 %
Risk-free interest rate	1.9 %	0.6 %	1.5 %
Expected life of awards (years)	5.6	5.8	5.9

Stock option transactions during the year ended December 31, 2022 on a continuing operations basis were as follows:

	Number of Shares	Weighted Average Exercise Price
Outstanding as of January 1	342	\$ 58.44
Granted	64	106.13
Exercised	(3)	60.42
Forfeited or Canceled	(27)	63.46
<b>Outstanding as of December 31</b>	<b>376</b>	<b>\$ 66.13</b>



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As of December 31, 2022, the weighted average remaining contractual life of stock options outstanding was approximately three years and exercisable was approximately two years. The total fair value of stock options vested during 2022, 2021, 2020 was \$855, \$922, and \$1,377, respectively. As of December 31, 2022, the total share-based compensation expense related to unvested stock options not yet recognized was \$1,444, and the weighted average period over which it is expected to be recognized is approximately two years.

The following table sets forth the exercise price range, number of shares, weighted average exercise price and remaining contractual lives by groups of similar price on a continuing operations basis as of December 31, 2022:

Range of Exercise Prices	Stock Options Outstanding			Stock Options Exercisable	
	Number of Shares	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price	Exercisable as of December 31, 2022	Weighted Average Exercise Price
\$ 43.67 - \$ 65.96	279	1.9	\$ 56.67	267	\$ 56.25
\$ 75.05 - \$ 106.29	97	5.7	93.51	13	75.05
	<u>376</u>		<u>\$ 66.13</u>	<u>280</u>	<u>\$ 57.13</u>

As of December 31, 2022, the total intrinsic value of outstanding and exercisable stock options was \$14,642 and \$13,390, respectively. The total intrinsic value of stock options exercised during 2022, 2021 and 2020 was \$142, \$2,137 and \$1,568, respectively.

*Restricted Shares*

The Company's primary long-term incentive plan is a restricted share award plan that entitles employees to receive a share of the Company's common stock subject to vesting requirements based on continued employment. Shares granted under the restricted share award plan are restricted from sale or transfer until vesting, and the restrictions lapse in three equal installments beginning one year after the date of grant. Dividends are paid in cash on a current basis throughout the vesting period. Share-based compensation expense associated with these awards is amortized ratably over the requisite service period. All forfeitures are recognized as incurred.

Restricted share transactions on a continuing operations basis for the year ended December 31, 2022 were as follows:

	Number of Shares	Weighted Average Grant Date Fair Value
Outstanding as of January 1	191	\$ 69.84
Granted	82	105.64
Vested	(92)	67.41
Forfeited	(30)	84.70
Outstanding as of December 31	<u>151</u>	<u>\$ 87.82</u>

The weighted average grant-date fair value of the restricted shares granted under the Plan during the years ended December 31, 2022, 2021 and 2020 were \$105.64, \$75.35 and \$65.88, respectively. The total fair value of restricted shares that vested during 2022, 2021 and 2020 was \$9,804, \$8,487, and \$9,180, respectively. As of December 31, 2022, the total share-based compensation expense related to restricted shares not yet recognized was \$7,729, and the weighted average period over which it is expected to be recognized is approximately two years.

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*Performance Shares*

Certain executives and key employees are eligible to receive grants of performance awards. The performance share agreement provides for awards based on achieving certain financial targets, such as targets for earnings before interest, taxes, depreciation and amortization, and the Company's total shareholder return as compared to the total shareholder return of a selected peer group, as determined by the Company's Board of Directors. Performance targets are set at the beginning of each three-year measurement period. The share awards are earned over the vesting period, and the number of shares earned is determined based on the cumulative results for the measurement period. The performance agreement provides for employees to earn —% to 200% of the target awards depending on the actual performance achieved, with no shares earned if performance is below the established minimum target. Performance shares do not receive dividends until the shares are vested. Awards earned are paid in shares of common stock of the Company at the end of the vesting period. Share-based compensation expense associated with these awards is amortized ratably over the vesting period. Depending on the financial target, share-based compensation expense is determined based on the projected assessment of the level of performance that will be achieved. All forfeitures are recognized as incurred.

The grant-date fair value of performance shares granted with a financial target based on the Company's total shareholder return was estimated using a Monte Carlo simulation model. The weighted average grant-date fair value of performance awards granted under the Plan and the weighted average assumptions under the Monte Carlo simulation model were as follows for the years ended December 31, 2022, 2021 and 2020:

	Year Ended		
	December 31, 2022	December 31, 2021	December 31, 2020
Weighted average grant-date fair value	\$ 127.29	\$ 87.33	\$ 69.15
Weighted average assumptions under the Monte Carlo simulation model:			
Expected stock price volatility	35.5 %	34.5 %	23.5 %
Weighted average risk-free interest rate	1.6 %	0.2 %	1.4 %

Performance award transactions for the year ended December 31, 2022 on a continuing operations basis were as follows assuming target levels of performance:

	Number of Shares	Weighted Average Grant Date Fair Value
Outstanding as of January 1	79	\$ 75.61
Granted	14	127.29
Earned	(7)	63.40
Forfeited or unearned	(16)	74.79
Outstanding as of December 31	<u>70</u>	<u>\$ 87.74</u>

As of December 31, 2022, the total share-based compensation expense related to unearned performance awards not yet recognized, assuming the Company's current projected assessment of the level of performance will be achieved, was \$2,826, and the weighted average period over which it is expected to be recognized is approximately two years.

The excess tax benefit realized for tax deductions in the United States related to the exercise of stock options, vesting of restricted stock and vesting of performance awards under the Plan was \$1,012, \$911, and \$2,340 for the years ended December 31, 2022, 2021 and 2020, respectively, on a continuing operations basis.

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*Employee Stock Purchase Plan*

Under the 2005 Employee Stock Purchase Plan (the “ESPP”), the Company is authorized to issue up to a remaining 314 shares of common stock to employees. These shares may be issued at a price equal to 90% of the lesser of the market value on the first day or the last day of each six-month purchase period. Common stock purchases are paid for through periodic payroll deductions and/or up to two lump sum contributions.

Employee stock purchase plan activity and related information was as follows on a continuing operations basis:

	Year Ended		
	December 31, 2022	December 31, 2021	December 31, 2020
Shares purchased by participants under the ESPP	9	12	14
Average purchase price	\$ 82.48	\$ 75.71	\$ 44.24
Weighted average fair value of each purchase under the ESPP granted <sup>1</sup>	\$ 9.17	\$ 30.68	\$ 20.99
Share-based compensation expense for ESPP	\$ 87	\$ 369	\$ 292

<sup>1</sup> Equal to the discount from the market value of the common stock at the end of each six month purchase period

Employee stock purchase plan activity and related information was as follows on a discontinued operation basis:

	Year Ended		
	December 31, 2022	December 31, 2021	December 31, 2020
Shares purchased by participants under the ESPP	—	—	1
Average purchase price	\$ —	\$ —	\$ 44.35
Weighted average fair value of each purchase under the ESPP granted <sup>1</sup>	\$ —	\$ —	\$ 18.11
Share-based compensation expense for ESPP	\$ —	\$ —	\$ 20

<sup>1</sup> Equal to the discount from the market value of the common stock at the end of each six month purchase period

*Director Restricted Shares*

Under the Amended and Restated Non-Employee Director Stock Plan (the “Amended Plan”), approved in May 2007 and further amended in February 2013 and January 2016, up to 360 common shares may be issued. As of December 31, 2022, approximately 60 shares remain available for grant under the Amended Plan.

Under the Amended Plan, each non-employee director receives an annual grant of restricted shares of the Company’s common stock. The restricted shares vest on the earlier of (a) the day immediately prior to the first annual shareholder meeting that occurs after the grant date or (b) one year after the grant date. Each director may elect to defer receipt of the common shares until the director departs from the Company’s Board of Directors. If a director elects to defer receipt, the Company will issue deferred stock units in which the director does not have voting rights or other incidents of ownership until the shares are issued. Each deferred stock unit is eligible for a dividend equivalent in the form of additional restricted stock units for each cash dividend paid by the Company.

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Director restricted share transactions for the year ended December 31, 2022 were as follows:

	Number of Shares	Weighted Average Grant Date Fair Value
Outstanding as of January 1	15	\$ 93.46
Granted	15	93.70
Vested	(15)	93.46
Forfeited	—	—
Outstanding as of December 31	<u>15</u>	<u>\$ 93.70</u>

	Year Ended		
	December 31, 2022	December 31, 2021	December 31, 2020
Share-based compensation expense for restricted shares	\$ 1,387	\$ 1,436	\$ 1,026
Excess tax benefit for the vesting of restricted shares	\$ 12	\$ 342	\$ 253

The total fair value of restricted shares that vested during 2022, 2021 and 2020 was \$1,436, \$2,514, and \$771, respectively. As of December 31, 2022, the total share-based compensation expense related to the restricted shares not yet recognized was \$494, and the weighted average period over which it is expected to be recognized is less than one year.

**7. Income Taxes**

The Company or one of its subsidiaries files income tax returns in the U.S. federal jurisdiction, various states and Canada. With a few exceptions, the Company is no longer subject to U.S. federal, state and local, or Canadian examinations by tax authorities for years before 2015.

The provision for income taxes by location of the taxing jurisdiction for the years ended December 31, 2022, 2021 and 2020 consisted of the following:

	2022	2021	2020
Current:			
Federal	\$ 46,999	\$ 29,533	\$ 11,914
State	12,962	7,918	3,907
	<u>59,961</u>	<u>37,451</u>	<u>15,821</u>
Deferred:			
Federal	6,317	209	922
State	1,369	1,212	(150)
	<u>7,686</u>	<u>1,421</u>	<u>772</u>
	<u>\$ 67,647</u>	<u>\$ 38,872</u>	<u>\$ 16,593</u>

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A reconciliation of income taxes computed at the U.S. federal statutory income tax rate (21.0% for 2022, 2021 and 2020) to the provision for income taxes reflected in the Company's Consolidated Statements of Comprehensive Income for the years ended December 31, 2022, 2021 and 2020 is as follows:

	2022	2021	2020
Tax expense at the statutory rate	\$ 54,776	\$ 32,542	\$ 14,566
State income taxes, net of federal income tax benefit	11,035	7,448	2,602
Share-based compensation	(840)	(933)	(298)
Other permanent differences	(30)	31	48
Non-deductible compensation	1,435	293	751
Change in income tax contingency reserves	—	(260)	(400)
Federal income tax credits	(107)	(76)	(37)
Other	1,378	(173)	(639)
	<u>\$ 67,647</u>	<u>\$ 38,872</u>	<u>\$ 16,593</u>

The significant components of the deferred tax assets and liabilities at December 31, 2022 and 2021 were as follows:

	December 31, 2022	December 31, 2021
Deferred tax assets:		
Accrued expenses	\$ 13,743	\$ 14,837
Allowance for doubtful accounts	822	839
Operating lease liabilities	37,599	37,967
Share-based compensation	4,458	3,769
Accruals for income tax contingencies	141	154
Capital loss carryforwards	4,253	4,230
Net operating loss carryforwards	645	647
Total gross deferred tax assets	61,661	62,443
Valuation allowance	(4,648)	(4,625)
Total net deferred tax assets	57,013	57,818
Deferred tax liabilities:		
Tax over book depreciation	32,888	27,880
Prepaid expenses	6,600	5,615
Operating lease right-of-use assets	36,600	38,010
Goodwill	23,681	20,502
Intangible assets	8,337	9,218
Total deferred tax liabilities	108,106	101,225
Net deferred tax liabilities	<u>\$ (51,093)</u>	<u>\$ (43,407)</u>

The Company paid income taxes, net of refunds, of \$65,388, \$35,766 and \$13,463 for the years ended December 31, 2022, 2021 and 2020, respectively.

The sale of Pool resulted in a capital loss in the amount of \$4,253, which expires in 2026. The Company concluded that it was more likely than not that the capital loss carryforward will not be realized and therefore, established a valuation allowance of \$4,253 to reserve against its capital loss carryforward. The Company also maintains a valuation allowance to reserve against its state net operating loss carryforwards of \$395. A valuation allowance is established when it is more likely than not that some portion or all of the deferred tax assets will not be realized. The Company assessed the likelihood that its deferred tax assets would be recovered from estimated future taxable income and available tax planning strategies. In making this assessment, all available evidence was considered including economic climate, as well as reasonable tax planning

**Forward Air Corporation**  
**Notes to Consolidated Financial Statements (Continued)**  
**December 31, 2022**  
(In thousands, except per share data)

strategies. The Company believes it is more likely than not that it will realize its remaining net deferred tax assets, net of the valuation allowance, in future years.

As a result of the Towne acquisition, the Company had approximately \$2,000 of federal net operating losses which the Company fully utilized in 2020.

As of December 31, 2022, 2021 and 2020 the Company had state net operating loss carryforwards of \$13,574, \$13,819 and \$16,926, respectively, that expire between 2022 and 2033. The state net operating loss carryforwards are limited to the future taxable income of separate legal entities. There was no change in the valuation allowance for the state net operating loss carryforwards in 2022, 2021 and 2020.

A reconciliation of the beginning and ending amount of unrecognized tax benefits as of and during the years ended December 31, 2022 and 2021 is as follows:

Balance at December 31, 2020	\$	544
Reductions for settlement with state taxing authorities		(326)
Additions for tax positions of current year		23
Balance at December 31, 2021		241
Reductions for settlement with state taxing authorities		(66)
Additions for tax positions of current year		23
Balance at December 31, 2022	\$	198

The Company recognizes income tax benefits from uncertain tax positions where the realization of the ultimate benefit is uncertain. At December 31, 2022 and 2021, the Company had \$198 and \$241, respectively, of unrecognized income tax benefits, all of which would affect the Company's effective tax rate if recognized. At December 31, 2022 and 2021, the Company had accrued interest and penalties related to unrecognized tax benefits of \$85 and \$88, respectively. The Company recognizes interest and penalties, if any, related to unrecognized tax benefits in "Interest expense, net" and "Other operating expenses", respectively.

#### 8. Leases

The Company leases certain land, buildings, equipment and office equipment under finance and operating leases. Equipment includes tractors, straight trucks, forklifts and trailers. Equipment under a finance lease is amortized over the shorter of the lease term or its estimated useful life.

The Company subleases certain facilities to independent third parties. Since the Company is not relieved of its obligation under these leases, a right-of-use lease asset and corresponding operating lease liability is recorded. Sublease rental income was \$2,978, \$2,050 and \$1,628 in 2022, 2021 and 2020, respectively. In 2023, the Company expects to receive aggregate future minimum rental payments under noncancelable subleases of approximately \$1,813. Noncancelable subleases expire between 2023 and 2028.

The Company does not recognize a right-of-use asset or lease liability with respect to operating leases with an initial lease term of 12 months or less, and recognizes expense on such leases on a straight-line basis over the lease term. The Company does not account for lease components separately from nonlease components. The Company has certain leases that include one or more options to renew, with renewal periods ranging from one to 25 years. The exercise of the lease renewal options is at the discretion of the Company and is included in the determination of the right-of-use asset and operating lease liability when the option is reasonably certain of being exercised. The depreciable life of right-of-use assets and leasehold improvements is limited by the expected lease term. The Company has certain lease agreements for equipment that include variable rental payments based on estimated mileage. The variable rental payments are adjusted for periodically based on actual mileage. In addition, the Company has certain lease agreements that include variable rental payments that are adjusted periodically for inflation based on the index rate as defined by the applicable government authority. The Company's lease agreements do not contain any residual value guarantees or restrictive covenants.

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**Notes to Consolidated Financial Statements (Continued)**  
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The Company has contracts with Leased Capacity Providers. Since the contracts explicitly identify the tractors operated by the Leased Capacity Providers, the Company determined the contracts contain an embedded lease. The compensation of Leased Capacity Providers, as specified in the contract, is variable based upon a rate per shipment and a rate per mile. The variable amounts are excluded from the calculation of the right-of-use lease asset and corresponding operating lease liability and are disclosed as variable lease costs. Variable lease costs related to the embedded leases were \$440,756, \$353,347 and \$325,542, for the years ended December 31, 2022, 2021, and 2020, respectively, and were recorded in "Purchased transportation" in the Consolidated Statements of Comprehensive Income.

Total lease assets and liabilities as of December 31, 2022 and 2021 were as follows:

<b>Lease Assets</b>	<b>Classification</b>	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Operating lease right-of-use assets	Operating lease right-of-use assets	\$ 141,865	\$ 148,198
Finance lease assets	Property and equipment, net <sup>1</sup>	23,209	13,797
Total leased assets		<u>\$ 165,074</u>	<u>\$ 161,995</u>
<b>Lease Liabilities</b>	<b>Classification</b>	<b>December 31, 2022</b>	<b>December 31, 2021</b>
<b>Current:</b>			
Operating	Current portion of operating lease liabilities	\$ 47,106	\$ 47,532
Finance	Current portion of debt and finance lease obligations	7,950	4,588
<b>Noncurrent:</b>			
Operating	Operating lease liabilities, less current portion	98,865	101,409
Finance	Finance lease obligations, less current portion	15,844	9,571
Total leased liabilities		<u>\$ 169,765</u>	<u>\$ 163,100</u>

<sup>1</sup> Finance lease assets are recorded net of accumulated depreciation of \$ 11,097 and \$4,822 as of December 31, 2022 and 2021, respectively.

Total lease cost for 2022 and 2021 was as follows:

	<b>Classification</b>	<b>Year Ended</b>	
		<b>December 31, 2022</b>	<b>December 31, 2021</b>
Operating lease cost	Operating leases	\$ 60,732	\$ 54,561
Short-term lease cost	Operating leases	20,413	14,773
Variable lease cost	Purchased transportation, operating leases and other operating expenses	460,368	367,779
Sublease income	Operating revenue	(2,978)	(2,050)
<b>Finance lease cost:</b>			
Amortization of leased assets	Depreciation and amortization	6,263	3,381
Interest on leased liabilities	Interest expense, net	564	301
Total lease cost		<u>\$ 545,362</u>	<u>\$ 438,745</u>

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**Notes to Consolidated Financial Statements (Continued)**  
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Future minimum lease payments under noncancelable operating and finance leases with remaining terms greater than one year as of December 31, 2022 were as follows:

	<b>Operating Leases</b>	<b>Finance Leases</b>
2023	\$ 57,015	\$ 8,796
2024	47,206	7,707
2025	32,052	4,531
2026	20,463	2,764
2027	9,351	1,993
Thereafter	9,901	197
Total minimum lease payments	175,988	25,988
Less: imputed interest	(30,017)	(2,194)
Present value of future minimum lease payments	145,971	23,794
Less: current portion of lease obligations	(47,106)	(7,950)
Long-term lease obligations	<u>\$ 98,865</u>	<u>\$ 15,844</u>

The following table summarizes the weighted-average remaining lease term and weighted average discount rate:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Weighted average remaining lease term (in years):		
Operating leases	3.8	4.1
Finance leases	3.6	3.5
Weighted average discount rate:		
Operating leases	3.2 %	2.9 %
Finance leases	4.2 %	2.6 %

The following table summarizes the supplemental cash flow information for 2022 and 2021:

	<b>Year Ended</b>	
	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 58,794	\$ 53,981
Operating cash flows from finance leases	564	301
Financing cash flows from finance leases	6,054	2,423
Right-of-use assets obtained in exchange for operating lease liabilities	\$ 50,306	\$ 74,736
Leased assets obtained in exchange for finance lease obligations	15,737	9,673

## 9. Commitments and Contingencies

### *Commitments*

As of December 31, 2022, the Company had unconditional purchase obligations of \$11,694 to purchase forklifts and other equipment during 2023.



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**Notes to Consolidated Financial Statements (Continued)**  
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*Contingencies*

The Company is party to various legal claims and actions incidental to its business, including claims related to vehicle liability, workers' compensation, property damage and employee medical benefits. The Company accrues for the uninsured portion of contingent losses from these and other pending claims when it is both probable that a liability has been incurred and the amount of loss can be reasonably estimated. Based on the knowledge of the facts, the Company believes the resolution of claims and pending litigation, taking into account existing reserves, will not have a material adverse effect on our consolidated financial statements. Moreover, the results of complex legal proceedings are difficult to predict, and the Company's view of these matters may change in the future as the litigation and related events unfold.

Insurance coverage provides the Company with primary and excess coverage for claims related to vehicle liability, workers' compensation, property damage and employee medical benefits.

For vehicle liability, the Company retains a portion of the risk. Below is a summary of the Company's risk retention on vehicle liability insurance coverage maintained by the Company up to \$10,000 (in thousands):

	<b>Company Risk Retention</b>	<b>Frequency</b>	<b>Layer</b>	<b>Policy Term</b>
<b>Expedited Freight<sup>1</sup></b>				
LTL business	\$ 5,000	Occurrence/Accident <sup>2</sup>	\$0 to \$5,000	10/1/2022 to 10/1/2023
Truckload business	\$ 2,000	Occurrence/Accident <sup>2</sup>	\$0 to \$2,000	10/1/2022 to 10/1/2023
LTL, Truckload and Intermodal businesses	\$ 5,000	Policy Term Aggregate <sup>3</sup>	\$5,000 to \$10,000	10/1/2022 to 10/1/2023
<b>Intermodal</b>	\$ 1,000	Occurrence/Accident <sup>2</sup>	\$0 to \$1,000	10/1/2022 to 10/1/2023

<sup>1</sup> Excluding the Final Mile business, which is primarily a brokered service.

<sup>2</sup> For each and every accident/incident, the Company is responsible for damages and defense up to these amounts, regardless of the number of claims associated with any accident/incident.

<sup>3</sup> During the Policy Term, the Company is responsible for damages and defense within the stated Layer up to the stated, aggregate amount of Risk Retention before insurance will contribute.

Also, from time to time, when brokering freight, the Company may face claims for the "negligent selection" of outside, contracted carriers that are involved in accidents, and the Company maintains third-party liability insurance coverage with a \$100 deductible per occurrence for most of its brokered services. Additionally, the Company maintains workers' compensation insurance with a self-insured retention of \$500 per occurrence.

Insurance coverage in excess of the self-insured retention limit is an important part of the Company's risk management process. The Company accrues for the costs of the uninsured portion of pending claims within the self-insured retention based on the nature and severity of individual claims and historical claims development trends. The Company believes the recorded reserves are sufficient for all incurred claims up to the self-insured retention limits, including an estimate for claims incurred but not reported. However, estimating the number and severity of claims, as well as related judgment or settlement amounts is inherently difficult, and the Company may fail to establish sufficient insurance reserves and adequately estimate for future insurance claims. Since the ultimate resolution of outstanding claims as well as claims incurred but not reported is uncertain, it is possible that the reserves recorded for these losses could change materially in the near term. Although, an estimate cannot be made of the range of additional loss that is at least reasonably possible.

On December 15, 2020, the Company detected a Ransomware Incident impacting the Company's operational and information technology systems, which caused service delays for the Company's customers. We incurred unexpected costs and impacts from the Ransomware Incident, and may in the future, incur costs in connection with this Ransomware Incident. Any failure to comply with data privacy, security or other laws and regulations could result in claims, legal or regulatory proceedings, inquiries or investigations.

**Forward Air Corporation**  
**Notes to Consolidated Financial Statements (Continued)**  
**December 31, 2022**  
(In thousands, except per share data)

**10. Employee Benefit Plan**

The Company sponsors a qualified defined contribution plan covering substantially all employees. Under the defined contribution plan, the Company contributes 25.0% of the employee's contribution up to a maximum of 6.0% of annual compensation, subject to certain limits. The Company contributed \$2,321, \$2,091 and \$1,683 for the years ended December 31, 2022, 2021 and 2020, respectively.

**11. Fair Value of Financial Instruments**

The Company categorizes its assets and liabilities into one of three levels based on the assumptions used in valuing the asset or liability. Estimates of fair value financial assets and liabilities are based on a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Observable inputs (highest level) reflect market data obtained from independent sources, while unobservable inputs (lowest level) reflect internally developed market assumptions. In accordance with this guidance, fair value measurements are classified under the following hierarchy:

- Level 1 - Quoted prices in active markets for identical assets or liabilities.
- Level 2 - Quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; and model-derived valuations in which all significant inputs are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3 - Model-derived valuations in which one or more significant inputs are unobservable.

As previously discussed in Note 3, *Acquisitions*, the estimated fair value of the earn-out liability was determined using the option pricing method. The significant inputs used to calculate the estimated fair value are derived from a combination of observable and unobservable market data. Observable inputs used in the option pricing method include the risk-free rate and the revenue volatility while unobservable inputs include the revenue discount rate and the estimated revenue projections.

Assets and liabilities measured at fair value on a recurring basis as of December 31, 2022 and 2021 are summarized below:

	<b>As of December 31, 2022</b>			
	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total</b>
Earn-out liability	\$ —	\$ —	\$ —	\$ —

	<b>As of December 31, 2021</b>			
	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total</b>
Earn-out liability	\$ —	\$ —	\$ 385	\$ 385

Cash and cash equivalents, accounts receivable, other receivables, and accounts payable are valued at their carrying amounts in the Company's Consolidated Balance Sheets, due to the immediate or short-term maturity of these financial instruments.

The carrying amount of long-term debt under the Company's credit facility approximates fair value based on the borrowing rates currently available to the Company for a loan with similar terms and average maturity.

As of December 31, 2022, the estimated fair value of the Company's finance lease obligation, based on current borrowing rates, was \$23,210, compared to its carrying value of \$23,794. As of December 31, 2021, the estimated fair value of the Company's finance lease obligation, based on current borrowing rates, was \$14,312, compared to its carrying value of \$14,159.

**Forward Air Corporation**  
**Notes to Consolidated Financial Statements (Continued)**  
**December 31, 2022**  
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In addition to assets and liabilities that are recorded at fair value on a recurring basis, the Company records assets and liabilities at fair value on a nonrecurring basis. Assets are recorded at fair value on a nonrecurring basis as a result of an impairment charge or assets held for sale. The losses on assets measured at fair value on a nonrecurring, discontinued operation basis are summarized below:

	2022	2021	2020
Earn-out asset impairment charge <sup>1</sup>	\$ —	\$ 6,967	\$ —
Goodwill impairment charge <sup>1</sup>	—	—	5,406
Valuation allowance on assets held for sale <sup>1</sup>	—	—	22,978

<sup>1</sup> See Note 2, *Discontinued Operation and Held for Sale*.

## 12. Segment Reporting

The Company has two reportable segments: Expedited Freight and Intermodal. The Company evaluates segment performance based on income from operations. Segment results include intersegment revenues and shared costs. Costs related to the corporate headquarters, shared services and shared assets, such as trailers, are allocated to each segment based on usage. Shared assets are not allocated to each segment, but rather the shared assets, such as trailers, are allocated to the Expedited Freight segment. Corporate includes revenues and expenses as well as assets that are not attributable to any of the Company's reportable segments.

The accounting policies applied to each segment are the same as those in Note 1, *Operations and Summary of Significant Accounting Policies*, except for certain self-insurance loss reserves related to vehicle liability and workers' compensation. Each segment is allocated an insurance premium and deductible that corresponds to the self-insured retention limit for that particular segment. Any self-insurance loss exposure beyond the deductible allocated to each segment is recorded in Corporate.

For the year ended December 31, 2020, the Company recognized revenue of approximately \$138,669 from one customer, which accounted for more than 10% of the Company's consolidated revenues from continuing operations in the Consolidated Statements of Comprehensive Income and was included in the Expedited Freight reportable segment. No single customer accounted for more than 10% of the Company's consolidated revenues from continuing operations for the years ended December 31, 2022 or December 31, 2021.

**Forward Air Corporation**  
**Notes to Consolidated Financial Statements (Continued)**  
**December 31, 2022**  
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Segment results from operations for the years ended December 31, 2022, 2021 and 2020 were as follows:

<b>Year Ended December 31, 2022</b>	<b>Expedited Freight</b>	<b>Intermodal</b>	<b>Corporate</b>	<b>Eliminations</b>	<b>Consolidated - Continuing Operations</b>
External revenues	\$ 1,553,705	\$ 419,698	\$ —	\$ —	\$ 1,973,403
Intersegment revenues	185	20	—	(205)	—
Depreciation	24,656	6,641	101	—	31,398
Amortization	7,236	8,752	—	—	15,988
Income (loss) from continuing operations	210,968	56,874	(1,866)	—	265,976
Purchases of property and equipment	39,459	1,270	—	—	40,729
<b>Year Ended December 31, 2021</b>	<b>Expedited Freight</b>	<b>Intermodal</b>	<b>Corporate</b>	<b>Eliminations</b>	<b>Consolidated - Continuing Operations</b>
External revenues	\$ 1,373,313	\$ 289,171	\$ —	\$ —	\$ 1,662,484
Intersegment revenues	957	43	—	(1,057)	(57)
Depreciation	21,623	3,538	63	—	25,224
Amortization	7,219	7,109	—	—	14,328
Income (loss) from continuing operations	139,321	30,117	(10,137)	—	159,301
Purchases of property and equipment	36,364	2,745	—	—	39,109
<b>Year Ended December 31, 2020</b>	<b>Expedited Freight</b>	<b>Intermodal</b>	<b>Corporate</b>	<b>Eliminations</b>	<b>Consolidated - Continuing Operations</b>
External revenues	\$ 1,070,106	\$ 199,567	\$ —	\$ —	\$ 1,269,673
Intersegment revenues	2,195	36	—	(2,331)	(100)
Depreciation	19,824	3,693	120	—	23,637
Amortization	7,203	6,285	—	—	13,488
Income (loss) from continuing operations	71,266	16,391	(13,733)	—	73,924
Purchases of property and equipment	19,820	448	—	—	20,268
<b>Total Assets</b>					
As of December 31, 2022	\$ 683,386	\$ 322,001	\$ 202,756	\$ (67)	\$ 1,208,076
As of December 31, 2021	777,987	249,467	90,588	(219)	1,117,823

A reconciliation from the segment information to the consolidated balances for revenues is set forth below:

	<b>Year Ended</b>		
	<b>December 31, 2022</b>	<b>December 31, 2021</b>	<b>December 31, 2020</b>
Intersegment revenues - continuing operations	\$ —	\$ (57)	\$ (100)
Intersegment revenues - discontinued operation	—	57	100
Consolidated intersegment revenues	\$ —	\$ —	\$ —

**Forward Air Corporation**  
**Notes to Consolidated Financial Statements (Continued)**  
**December 31, 2022**  
(In thousands, except per share data)

Revenue from the individual services within the Expedited Freight segment for the years ended December 31, 2022, 2021 and 2020 were as follows:

	Year Ended		
	December 31, 2022	December 31, 2021	December 31, 2020
Expedited Freight revenues:			
Network	\$ 947,817	\$ 805,015	\$ 599,097
Truckload	221,979	223,026	194,058
Final Mile	293,769	275,201	224,475
Other	90,325	71,028	54,671
Total	<u>\$ 1,553,890</u>	<u>\$ 1,374,270</u>	<u>\$ 1,072,301</u>

**Forward Air Corporation**  
**Schedule II — Valuation and Qualifying Accounts**  
(In thousands)

	Balance at Beginning of Period	Additions		Deductions	Balance at End of Period
		Charged to Costs and Expenses	Charged to Other Operating Revenue		
<b>Year ended December 31, 2022</b>					
Allowance for doubtful accounts	\$ 1,734	\$ 1,052	\$ —	\$ 1,258 <sup>2</sup>	\$ 1,528
Allowance for revenue adjustments <sup>1</sup>	1,526	—	11,347	11,243 <sup>3</sup>	1,630
Deferred tax valuation allowance	4,625	23	—	—	4,648
	<u>7,885</u>	<u>1,075</u>	<u>11,347</u>	<u>12,501</u>	<u>7,806</u>
<b>Year ended December 31, 2021</b>					
Allowance for doubtful accounts	\$ 1,268	\$ 1,670	\$ —	\$ 1,204 <sup>2</sup>	\$ 1,734
Allowance for revenue adjustments <sup>1</sup>	1,005	—	7,943	7,422 <sup>3</sup>	1,526
Deferred tax valuation allowance	395	4,230	—	—	4,625
	<u>2,668</u>	<u>5,900</u>	<u>7,943</u>	<u>8,626</u>	<u>7,885</u>
<b>Year ended December 31, 2020</b>					
Allowance for doubtful accounts	\$ 1,316	\$ 567	\$ —	\$ 615 <sup>2</sup>	\$ 1,268
Allowance for revenue adjustments <sup>1</sup>	737	—	4,751	4,483 <sup>3</sup>	1,005
Deferred tax valuation allowance	395	—	—	—	395
	<u>2,448</u>	<u>567</u>	<u>4,751</u>	<u>5,098</u>	<u>2,668</u>

<sup>1</sup> Represents an allowance for revenue adjustments resulting from future billing rate changes.

<sup>2</sup> Represents uncollectible accounts written off, net of recoveries.

<sup>3</sup> Represents adjustments to billed accounts receivable.

**AMENDED AND RESTATED BYLAWS**  
**OF FORWARD AIR CORPORATION**

February 7, 2023  
ARTICLE I

**SHAREHOLDERS**

Section 1.1 **Place of Meeting.** Meetings of the shareholders of Forward Air Corporation (the “**Corporation**”) shall be held at the principal office of the Corporation in the State of Tennessee or at such other place, if any, within or without the State of Tennessee as may be determined by the board of directors of the Corporation (the “**Board of Directors**” or the “**Board**”). The Board of Directors may, in its sole discretion, determine that a meeting of the shareholders shall not be held at any place but may instead be held by means of remote communication, as authorized by the Tennessee Business Corporation Act, as amended (the “**Business Corporation Act**”).

Section 1.2 **Annual Meeting.** The annual meeting of the shareholders of the Corporation shall be held on a date and at a time and place, if any, as may be determined by the Board and as shall be designated in the notice of such meeting. The purpose of the annual meeting shall be to elect directors and transact such other business as may properly be brought before the meeting in accordance with these Amended and Restated Bylaws (these “**Bylaws**”).

Section 1.3 **Special Meetings.**

(i) **Generally.** Special meetings of the shareholders shall be held upon call of a majority of the Board of Directors, or, subject to the provisions of these Bylaws and unless the charter of the Corporation (the “**Charter**”) otherwise provides, upon written demand(s) signed, dated and delivered to the Secretary of the Corporation by an Eligible Holder (as defined below) or group of Eligible Holders holding at least ten percent (10%) of the shares of capital stock of the Corporation issued and outstanding and entitled to vote on any issue proposed to be considered at such meeting (the “**Special Meeting Percentage**”). Only such business shall be conducted at a special meeting of shareholders as shall have been brought before such special meeting pursuant to the Corporation’s notice of meeting. “**Eligible Holder**” means any record holder of the shares of capital stock of the Corporation then entitled to vote for the election of directors that (i) is making such request on its own behalf (and not on behalf of a beneficial owner of such stock) or (ii) is making such request on behalf of a beneficial owner of such capital stock; provided that, in the case of this clause (ii), such request must be accompanied by proof of such beneficial ownership in a form that would be sufficient to prove eligibility to submit a shareholder proposal under paragraph (b) of Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended (such act, and any successor statute thereto, and the rules and regulations promulgated thereunder are collectively referred to herein as the “**Exchange Act**”), or any successor rule.

(ii) **Shareholder Requested Special Meetings.**

(a) Any Eligible Holder seeking to have shareholders request a special meeting shall, by sending written notice to the Secretary of the Corporation (the “**Record Date Request Notice**”) by registered mail, return receipt requested, request the Board of Directors to fix a record date to determine the shareholders entitled to request a special meeting (the “**Request Record Date**”). The Record Date Request Notice shall (1) set forth the purpose of the meeting and the matters proposed to be acted on at it

(including the exact text of any such proposal or business, the text of any proposed resolutions and any proposed director(s) to be nominated or removed, as applicable), (2) be signed by one or more Eligible Holders as of the date of signature (or their agents duly authorized in writing), (3) bear the date of signature of each such Eligible Holder (or such agent) and (4) contain all the information required by Section 1.14(iii) or Section 2.4(iii) of these Bylaws (as applicable) relating to the Eligible Holder, nominees for director (if applicable) or any proposal of other business to be considered at such special meeting (assuming the Eligible Holder was a shareholder making a director nomination or proposal for other business at an annual meeting of shareholders in accordance with Section 1.14(iii) or Section 2.4(iii)). Upon receiving the Record Date Request Notice, the Board of Directors may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten (10) days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board of Directors. If the Board of Directors, within ten (10) days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date and make a public announcement (as permitted by law) of such Request Record Date, the Request Record Date shall be the close of business on the tenth day after the first date on which the Record Date Request Notice is received by the Secretary of the Corporation.

(b) In order for any shareholder to request a special meeting of the shareholders, one or more written requests for a special meeting (individually or collectively, a “**Special Meeting Request**”) shall be (1) made in accordance with the requirements of this Section 1.3(ii)(b), (2) signed by Eligible Holders (or their agents duly authorized in writing) as of the Request Record Date entitled to cast at least the Special Meeting Percentage of all of the votes entitled to be cast at such meeting, (3) sent to the Secretary of the Corporation by registered mail, return receipt requested and (4) received by the Secretary of the Corporation between the Request Record Date and sixty (60) days thereafter. In determining whether Special Meeting Requests have been received from Eligible Holders of at least the Special Meeting Percentage, multiple requests to call a special meeting will not be considered together if they relate to different items of business, including any deviations in the text of such proposal, business or resolution or any deviations in the proposed director(s) to be nominated or removed. A Special Meeting Request shall be ineffective if (1) it relates to an item of business that is not a proper subject for shareholder action under applicable law, (2) it relates to an item of business that is not a proper subject for shareholder action under the Corporation’s Charter or these Bylaws, (3) such request is delivered between the 61st day and 365th day after the earliest date of signature on an effective Special Meeting Request that has been delivered to the Secretary of the Corporation relating to an item of business (other than the election of directors) that is identical or substantially similar (a “**Similar Item**”) to an item of business included in such request, (4) a Similar Item will be submitted for shareholder approval at any shareholder meeting to be held on or before the 90th day after the Secretary of the Corporation receives such Special Meeting Request or (5) a Similar Item has been presented at the most recent annual meeting or at any special meeting held within one year prior to receipt by the Secretary of the Corporation of such request. In addition, the Special Meeting Request shall (1) set forth the purpose of the meeting and the matters proposed (including the exact text of any such proposal or business, the text of any proposed resolutions and any proposed director(s) to be nominated or removed, as applicable) to be acted on at it (which shall be limited to those lawful matters set forth in the Record Date Request Notice received by the Secretary of the Corporation), (2) bear the date of signature of each such Eligible Holder (or such agent) signing the Special Meeting Request, (3) contain the information required by Section 1.14(iii) or Section 2.4(iii) of these Bylaws (as applicable) relating to the Eligible Holder, nominees for director (if applicable) or any proposal of other business to be



considered at such special meeting (assuming the Eligible Holder was a shareholder making a director nomination or proposal for other business at an annual meeting of shareholders in accordance with Section 1.14(iii) or Section 2.4(iii)) and (4) set forth the name and address, as they appear in the Corporation's books, of each Eligible Holder signing such request (or on whose behalf the Special Meeting Request is signed), the class, series and number of all shares of stock of the Corporation which are owned of record or beneficially by each such Eligible Holder, and the nominee holder for, and number of, shares owned by such Eligible Holder beneficially but not of record. The Eligible Holders shall promptly update and supplement the information provided to the Corporation in the Special Meeting Request as needed, so that such information shall be true and correct as of the Meeting Record Date (as defined below) and as of the date that is ten (10) Business Days before the Shareholder Requested Meeting (as defined below) or any adjournment or postponement thereof. Any requesting shareholder may revoke his, her or its Special Meeting Request at any time prior to the special meeting by written revocation delivered to the Secretary of the Corporation; provided that if any such revocations are received by the Secretary of the Corporation and, as a result of such revocation, there are no longer unrevoked Special Meeting Requests from Eligible Holders of at least the Special Meeting Percentage, the Board shall have the discretion to determine whether or not to revoke the notice of meeting. Any Special Meeting Request received after a revocation by the Secretary of the Corporation of a notice of a meeting shall be considered a request for a new special meeting.

(c) The Board shall determine in good faith whether a purported Special Meeting Request satisfies the requirements set forth in Section 1.3(ii)(b), and the Secretary of the Corporation shall determine in good faith whether all other requirements set forth in Section 1.3 have been satisfied; provided that the Chairman of the Board of Directors, the President or the Board of Directors may appoint regionally or nationally recognized independent inspectors of elections to act as the agent of the Corporation for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the Secretary of the Corporation. For the purpose of permitting the inspectors to perform such review, no such purported request shall be deemed to have been received by the Secretary until the earlier of (i) five (5) days after actual receipt by the Secretary of the Corporation of such purported request and (ii) such date as the independent inspectors certify to the Corporation that the valid requests received by the Secretary of the Corporation represent at least the Special Meeting Percentage of the issued and outstanding shares of stock that would be entitled to vote at such meeting. If the Board of Directors, the Secretary of the Corporation or the independent inspectors determine that the Special Meeting Request was not properly made in accordance with Section 1.3, then the Secretary of the Corporation shall not be required to call such requested special meeting and such meeting shall not be held. Any determination made pursuant to this Section 1.3(ii)(c) shall be binding on the Corporation and its shareholders.

(d) Upon the determination that a Special Meeting Request satisfies the requirements of Section 1.3(ii), the Secretary shall inform the requesting shareholders of the reasonably estimated cost of preparing and mailing the notice of meeting (including the Corporation's proxy materials). The Secretary shall not be required to call a special meeting upon a Special Meeting Request and such meeting shall not be held unless, in addition to the documents required by this Section 1.3(ii), the Secretary receives payment of such reasonably estimated cost prior to the mailing of any notice of the meeting (the date of such receipt, the "**Delivery Date**").

(e) In the case of any special meeting called by the Secretary upon the request of shareholders (a "**Shareholder Requested Meeting**"), such meeting

shall be held at such place (or in lieu of a place, by means of remote communication), date and time as may be designated by the Board of Directors; provided, however, that the date of any Shareholder Requested Meeting shall be not more than seventy (70) days nor less than ten (10) days after the record date for such meeting (the “**Meeting Record Date**”); and provided further that if the Board of Directors fails to designate, within ten days after the Delivery Date, a date and time for a Shareholder Requested Meeting, then such meeting shall be held at 2:00 p.m. local time on the 70th day after the Meeting Record Date or, if such 70th day is not a Business Day (as defined below), on the first preceding Business Day; and provided further that in the event that the Board of Directors fails to designate a place (or in lieu of a place, a means of remote communication) for a Shareholder Requested Meeting within ten (10) days after the Delivery Date, then such meeting shall be held at the principal executive office of the Corporation. In fixing a date for any special meeting, the President, Chief Executive Officer or Board of Directors may consider such factors as he, she or it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting and any plan of the Board of Directors to call an annual meeting or a special meeting. In the case of any Shareholder Requested Meeting, if the Board of Directors fails to fix a Meeting Record Date that is a date within thirty (30) days after the Delivery Date, then the close of business on the 30th day after the Delivery Date shall be the Meeting Record Date.

(f) Business transacted at the Shareholder Requested Meeting shall be limited to the proposals set forth in the notice of meeting; provided that the Board may submit its own proposal or proposals for consideration by including them in the notice of meeting. If none of the Eligible Holders who submitted a Special Meeting Request appears or sends a duly authorized agent to the Shareholder Requested Meeting, the Corporation need not present such matters for a vote.

(g) For purposes of these Bylaws, “**Business Day**” shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of Tennessee are authorized or obligated by law or executive order to close.

Section 1.4 **Notice of Meetings.** The notice of all meetings of shareholders shall be given in writing, by electronic transmission or by any other means allowed by the Business Corporation Act in accordance with the provisions thereof, shall state the date, time and place (or in lieu of a place, a means of remote communication) of the meeting, the means of remote communication, if any, by which shareholders and proxy holders may be deemed to be present in person and vote at such meeting (as authorized by the Board of Directors in its sole discretion pursuant to the Business Corporation Act), and, unless it is the annual meeting, shall indicate that it is being issued by or at the direction of the person or persons calling the meeting. The notice of an annual meeting should state that the meeting is called for the election of directors and for the transaction of such other business as may properly come before the meeting and shall state the purpose or purposes of the meeting if any other action is to be taken at such annual meeting which could be taken at a special meeting. The notice of a special meeting shall, in all instances, indicate that it is being issued by or at the direction of the person or persons calling the meeting and state the purpose or purposes for which the meeting is called. Notice of any meeting shall be given to shareholders entitled to vote at the meeting not less than ten (10) days nor more than two (2) months before the date of the meeting, to each shareholder at such shareholder’s record address or at such other address which such shareholder may have furnished in writing to the Secretary of the Corporation. If a meeting is adjourned to another time or place and if any announcement of the adjourned time or place is made at the meeting, it shall not be necessary to give notice of the adjourned meeting unless the Board of Directors, after adjournment, fixes a new record date for the adjourned meeting, which it must do if the meeting is adjourned to a date

more than four (4) months after the date fixed for the original meeting. At the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. Notice of a meeting need not be given to any shareholder who submits to the Corporation for inclusion in the minutes or filing with the corporate records a signed waiver of notice, in person or by proxy, before or after the meeting. The attendance of a shareholder at a meeting without objection at the beginning of the meeting (or promptly upon his arrival) to the lack of notice or defective notice of such meeting shall constitute a waiver of notice by such shareholder. Any previously scheduled annual meeting of the Corporation's shareholders may be postponed, and any previously scheduled special meeting of the Corporation's shareholders may be postponed or canceled, by resolution of the Board of Directors upon public notice (as permitted by law) given prior to the time previously scheduled for such meeting of shareholders.

Section 1.5 **Quorum.** The holders of record of a majority of the outstanding shares of the Corporation entitled to vote at the meeting, present in person or by proxy, shall, except as otherwise provided by law or the Charter, constitute a quorum at a meeting of shareholders, provided that when a specified item of business is required to be voted on by a class or series, voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum for the transaction of such specified item of business. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any shareholder or for adjournment of the meeting unless a new record date is or must be set for the meeting.

Section 1.6 **Conduct of Meetings.** Meetings of the shareholders shall be presided over by the Chairman of the Board, if any, or, if the Chairman of the Board is not present, by the Lead Independent Director, if any, or if the Lead Independent Director is not present, by the President, or, if the President is not present, by a Vice President, or, if neither the Chairman of the Board, the Lead Independent Director, the President nor a Vice President is present, by a chairman to be chosen at the meeting. The Secretary of the Corporation, or in the Secretary's absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the person presiding over the meeting shall choose any person present to act as secretary of the meeting.

Section 1.7 **Voting.** For each share of the capital stock of the Corporation registered in his name on the books of the Corporation the holder thereof shall have the number of votes per share specified in the Charter. Whenever under the provisions of the Charter any shareholder is entitled to more or less than one (1) vote for any share of capital stock of the Corporation held by such shareholder, every reference in these Bylaws to a plurality or other proportion of stock shall refer to such plurality or other proportion of the votes of such stock. At each meeting of the shareholders, each shareholder having the right to vote shall be entitled to vote in person or by proxy, which proxy must be authorized in accordance with the Business Corporation Act, and bearing a date not more than eleven (11) months prior to such meeting, unless such instrument provides for a longer period. Every shareholder entitled to vote at any meeting may so vote by proxy and shall be entitled to one (1) vote for each share entitled to vote and held by such shareholder. At all elections of directors the voting may, but need not, be by ballot and a plurality of the votes cast thereat shall elect, except as otherwise required by law or the Charter. Except as otherwise required by law, or the Charter, any other action shall be authorized by a majority of the votes cast. Votes cast on a matter shall include votes against such matter and shall exclude abstentions and broker non-votes with respect to such matter, but abstentions and broker non-votes will be considered for purposes of establishing a quorum.

Section 1.8 **Record Date.** Subject to Section 1.3 and Section 1.12 of these Bylaws, for the purpose of determining the shareholders entitled to notice of, to demand a special meeting, to vote or take any other action at any meeting of shareholders or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining the shareholders entitled to receive payment of any dividend or the allotment of any

rights, or for the purpose of any other action, the Board of Directors may fix, in advance, a date as the record date for any such determination of shareholders. Such date shall not be more than seventy (70) days nor less than ten (10) days before the date of such meeting, nor more than seventy (70) days prior to any other action. If no record date is fixed, the record date for the determination of shareholders entitled to notice of, to demand a special meeting, to vote or take any other action at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given or, if no notice is given, the day on which the meeting is held.

The record date for determining shareholders for any purpose other than that specified in the preceding clause shall be at the close of business on the day on which the resolution of the Board of Directors relating thereto is adopted. When a determination of shareholders of record entitled to notice of, to demand a special meeting, to vote or take any other action at any meeting of shareholders has been made as provided in this Section 1.8, such determination shall apply to any adjournment thereof, unless the Board of Directors fixes a new record date under this Section 1.8 for the adjourned meeting; provided, however, if the meeting is adjourned to a date more than four (4) months after the date fixed for the original meeting, the Board of Directors shall fix a new record date.

Section 1.9 **Shareholder Lists**. An alphabetical list by voting group, and within each voting group by class or series of shares, of each shareholder's name, address and share ownership entitled to notice of a shareholders' meeting as of the record date, certified by the Secretary or other officer responsible for its preparation, or by the transfer agent, if any, shall be available for inspection by any shareholder, beginning two (2) Business Days after notice of the meeting is given for which the list was prepared and continuing through the meeting upon the request thereat or prior thereto of any shareholder. If the right to vote at any meeting is challenged, the inspectors of election, if any, or the person presiding thereat, shall require such list of shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be shareholders entitled to vote thereat may vote at such meeting. Nothing in this Section 1.9 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list.

Section 1.10 **Proxy Representation**. Every shareholder may authorize another person or persons to act for such shareholder by proxy in all matters in which a shareholder is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be authorized in accordance with the Business Corporation Act. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided by the Business Corporation Act. A shareholder may revoke any proxy that is not irrevocable by attending the applicable meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date not later than the time designated in the order of business for so delivering such proxies. In the event the Corporation receives proxies for disqualified or withdrawn nominees for the Board of Directors, such votes for such disqualified or withdrawn nominees in the proxies will be treated as abstentions. Any shareholder directly or indirectly soliciting proxies from other shareholders must use a proxy card color other than white, which shall be reserved for the exclusive use of the Board of Directors.

Section 1.11 **Inspectors**. At all meetings of shareholders, the proxies and ballots shall be received, taken in charge and examined, and all questions concerning the qualification of voters, the validity of proxies and the acceptance or rejection of proxies and of votes shall be decided by two (2) inspectors of election. Such inspectors of election together with one alternate to serve in the event of death, inability or refusal by any of such inspectors of election to serve at

the meeting, shall be appointed by the Board of Directors, or, if no such appointment or appointments shall have been made, then by the presiding officer at the meeting. If for any reason the inspectors of election so appointed shall fail to attend, or refuse or be unable to serve, a substitute or substitutes shall be appointed to serve as inspector or inspectors of election, in their place or stead, by the presiding officer at the meeting. No director or candidate for the office of director shall be appointed as an inspector. Each inspector shall take and subscribe an oath or affirmation faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors, if any, shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. On request of the person presiding at the meeting or any shareholder, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a certificate as to any fact found by them. Each inspector shall be entitled to reasonable compensation for such inspector's services, to be paid by the Corporation.

Section 1.12 **Actions Without Meetings.** Whenever shareholders are required or permitted to take any action by vote, such action may be taken without a meeting on written consent setting forth the action so taken, signed by the holders of all outstanding shares entitled to vote thereon; unless some number less than all of the holders of all of the outstanding shares is required by applicable law or the Charter. This section shall not be construed to alter or modify any provision of law or of the Charter under which the written consent of the holders of less than all outstanding shares is sufficient for corporate action.

Section 1.13 **Meaning of Certain Terms.** As used herein in respect of the right to notice of a meeting of shareholders or a waiver thereof or to participate or vote thereat or to consent or dissent in writing in lieu of a meeting, as the case may be, the term "share" or "shareholder" or "shareholders" refers to an outstanding share or shares and to a holder or holders of record of outstanding shares, when the Corporation is authorized to issue only one (1) class of shares, and such reference is also intended to include any outstanding share or shares and any holder or holders of record of outstanding shares of any class upon which or upon whom the Charter confers such rights, where there are two (2) or more classes or series of shares, or upon which or upon whom the Business Corporation Act confers such rights, notwithstanding that the Charter may provide for more than one (1) class or series of shares, one (1) or more of which are limited or denied such rights thereunder.

Section 1.14 **Advance Notice Provisions for Business to be Transacted at Annual Meeting.**

(i) No business may be transacted at an annual meeting of shareholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the annual meeting by any shareholder of the Corporation (i) who is shareholder of record on the date of the giving of the notice provided for in this Section and on the record date for the determination of shareholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section.

(ii) A shareholder's notice must be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the first anniversary of the preceding year's

annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than thirty (30) days or delayed by more than sixty (60) days from the anniversary date of the preceding year's annual meeting, notice by the shareholder must be so delivered not earlier than the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made.

(iii) A shareholder's notice to the Secretary must be in writing and set forth as to each matter such shareholder proposes to bring before the annual meeting: (a) a brief description (including the exact text of any such proposal or business, any proposed resolutions or any proposed amendment of these Bylaws) of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting; (b) the name and address of (1) such shareholder as they appear on the Corporation's books and of (2) the beneficial owner, if any, on whose behalf the proposal is made or any person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the shareholder or such beneficial owner (each, a "**Shareholder Associated Person**"); (c) the following information regarding the shareholder, any beneficial owner and any Shareholder Associated Person, including, where applicable, a description of all economic terms, copies of all agreements and other documents and the names and details of all counterparties, which shall be promptly updated and supplemented in writing by the shareholder so that such information shall be true and correct as of the Meeting Record Date and as of the date that is ten (10) Business Days before the Shareholder Requested Meeting or any adjournment or postponement thereof: (1) the class or series and number of shares of capital stock of the Corporation which are owned, directly or indirectly, beneficially or of record by such shareholder, beneficial owner or Shareholder Associated Person; (2) any option, warrant, convertible security, stock appreciation right, other derivatives, or similar rights, agreements or arrangements with an exercise or conversion privilege or a periodic or settlement payment or payments or mechanism at a price or in an amount or amounts related to any security of the Corporation or with a value derived or calculated in whole or in part from the value of the Corporation or any security of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying security of the Corporation or otherwise, that is owned directly or indirectly, beneficially or of record by such shareholder, beneficial owner or Shareholder Associated Person, and any other direct or indirect opportunity of such shareholder, beneficial owner or Shareholder Associated Person to profit or share in any profit derived from any increase or decrease in the value of any security of the Corporation, in each case, regardless of whether (x) such interest conveys any voting rights in such security to such shareholder, beneficial owner or Shareholder Associated Person, (y) such interest is required to be, or is capable of being, settled through delivery of such security or (z) such person may have entered into other transactions that hedge the economic effect of such interest (each, a "**Derivative Instrument**"); (3) any proxy, contract, agreement, arrangement, understanding, or relationship among such shareholder, beneficial owner, Shareholder Associated Person or any other person or persons (A) for the purposes of acquiring, holding, voting (except pursuant to a revocable proxy given to such person in response to a public proxy or consent solicitation made generally by such person to all holders of shares of the Corporation) or disposing of any capital stock of the Corporation, (B) to cooperate in obtaining, changing or influencing the control of the Corporation (except independent financial, legal and other advisors acting in the ordinary course of their respective businesses), (C) with the effect or intent of increasing the voting power of, or that contemplates any person voting together with, any such shareholder, beneficial owner or Shareholder Associated Person with respect to any shares of the capital stock of the Corporation or any business proposed by the shareholder; and (D) otherwise in connection with the proposal of such business (each, a "**Voting Agreement**"); (4) any opportunity, direct or indirect, through any contract, arrangement, understanding, relationship or otherwise, for the shareholder, beneficial owner or Shareholder Associated Person to profit or share in any profit derived from any decrease in the value of any of the Corporation's securities (a "**Short Interest**"); (5) any

rights to dividends on the shares of the Corporation owned beneficially by such shareholder, beneficial owner or Shareholder Associated Person that are separated or separable from the underlying shares of the Corporation; (6) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such shareholder, beneficial owner or Shareholder Associated Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner; and (7) any performance-related fees (other than an asset-based fee) to which such shareholder, beneficial owner or Shareholder Associated Person is entitled based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including, without limitation, any such interests held by members of such shareholder's or Shareholder Associated Person's immediate family sharing the same household; (8) any material interest of such shareholder, beneficial owner or Shareholder Associated Person in such business; (9) a list of all transactions by such shareholder, beneficial owner or Shareholder Associated Person involving any securities of the Corporation or any Derivative Instruments, Voting Agreements or similar arrangements within the six-month period prior to the date of the notice; and (10) any other information relating to the shareholder, beneficial owner or Shareholder Associated Person that must be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act and the rules and regulations promulgated thereunder; and (d) a representation that such shareholder, beneficial owner or Shareholder Associated Person intends (1) to appear in person or by proxy at the annual meeting to bring such business before the meeting and (2) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt such business or otherwise solicit proxies or votes from shareholders in support of such proposal.

(iv) No business shall be conducted at the annual meeting of shareholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 1.14 or in Section 2.4; provided, however, that once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 1.14 or in Section 2.4 shall be deemed to preclude discussion by any shareholder of any such business. Except as otherwise provided by law, the Charter or these Bylaws, the chairman of the annual meeting shall declare to the meeting that business proposed by a shareholder to be brought before the meeting shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation, if:

(a) such business was not properly brought before the annual meeting in accordance with the provisions set forth herein or if the shareholder shall have failed to comply with its obligations under this Section 1.14, including, but not limited to, by breaching any of the representations, agreements or undertakings required hereunder;

(b) such shareholder shall have provided information to the Corporation in respect of such business that was untrue in any material respect or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading; or

(c) such shareholder does not appear in person or by proxy at the annual meeting to bring such business before the meeting.

(v) No adjournment or postponement of a meeting of shareholders shall commence a new period (or extend any period) for the giving of notice of a shareholder proposal hereunder with respect to such meeting.

## ARTICLE II

### DIRECTORS

Section 2.1 **Functions and Definition.** The business of the Corporation shall be managed under the direction of its Board of Directors. The use of the phrase “entire Board of Directors” herein refers to the total number of directors which the Corporation would have if there were no vacancies.

Section 2.2 **Qualification and Number.** Each director shall be at least eighteen (18) years of age. A director need not be a shareholder, a citizen of the United States, nor a resident of the State of Tennessee. Unless the Board of Directors determines otherwise, to be eligible to be a nominee for election or reelection as a director, a person must deliver (in accordance with the time periods prescribed for delivery of notice by the Board of Directors) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (A) is not and will not become a party to (i) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person will act or vote as a director on any issue or question (a “**Voting Commitment**”) that has not been disclosed to the Corporation or (ii) any Voting Commitment that could limit or interfere with such person’s ability to comply with such person’s fiduciary duties as a director under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, (C) intends to serve as a director of the Corporation for the full term for which such nominee is to stand for election and (D) in such person’s individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading and other policies and guidelines of the Corporation that are applicable to directors. The number of directors constituting the entire Board of Directors shall be not less than the number required by law; such number may be fixed from time to time by action of the Board of Directors or of the shareholders. The number of directors may be increased or decreased by action of the Board of Directors or shareholders, provided that any action of the Board of Directors to effect such increase or decrease shall require the vote of a majority of the entire Board of Directors. No decrease in the number of directors shall shorten the term of any incumbent director.

Section 2.3 **Election and Term.** Directors who are elected at an annual meeting of shareholders, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next annual meeting of shareholders or until their respective successors have been elected and qualified. In the interim between annual meetings of shareholders or special meetings of shareholders called for the election of directors, the creation of newly created directorships and to fill any vacancies in the Board of Directors, including vacancies resulting from the removal of directors for cause or without cause, may be filled by the vote of a majority of the directors then in office or, if there is only one remaining director in office, by such sole remaining director, although less than a quorum exists, or as otherwise required or permitted by applicable law. Any director elected in accordance with the preceding sentence of this Section 2.3 shall hold office until the next annual meeting of shareholders and until such director’s successor shall have been duly elected and qualified.



Section 2.4 **Advance Notice Provisions for Election of Directors.**

(i) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation. Nominations of persons for election to the Board of Directors may be made at any annual meeting of shareholders, or at any special meeting of shareholders called for the purpose of electing directors, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) by any shareholder of the Corporation (1) who is a shareholder of record on the date of the giving of the notice provided for in this Section and on the record date for the determination of shareholders entitled to vote at such meeting and (2) who complies with the notice procedures set forth in this Section. The number of nominees a shareholder may nominate at a meeting (or in the case of a shareholder giving notice on behalf of a beneficial owner, the number of nominees a shareholder may nominate for election at a meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such meeting.

(ii) A shareholder's notice must be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation (a) in the case of an annual meeting, not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than 30 days or delayed by more than 60 days from the anniversary date of the preceding year's annual meeting, notice by the shareholder must be so delivered not earlier than the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such annual meeting is first made; and (b) in the case of a special meeting of shareholders called for the purpose of electing directors, not later than the close of business on the tenth day following the day on which notice of the date of the special meeting was mailed or public announcement of the date of the special meeting was made, whichever first occurs.

(iii) A shareholder's notice to the Secretary must be in writing and set forth the following information, which shall be promptly updated and supplemented in writing by the shareholder, as needed, so that such information shall be true and correct as of the record date and as of the date that is ten (10) Business Days before the meeting or any adjournment or postponement thereof:

(a) as to each person whom the shareholder proposes to nominate for election as a director, (1) all information relating to such person that is required to be disclosed in connection with solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A of the Exchange Act and the rules and regulations promulgated thereunder; (2) the signed written consent of each proposed nominee being named as a nominee in any proxy statement and other proxy materials for the applicable meeting and to serving as a director if so elected; and (3) the completed and signed director questionnaire and representation and agreement, each as required under Section 2.2;

(b) as to the shareholder giving the notice, including, where applicable, a description of all economic terms, copies of all agreements and other documents, and the names and details of all counterparties, (1) the name and address of such shareholder as they appear on the Corporation's books, of any beneficial owner and of any Shareholder Associated Person; (2) the class or series and number of shares of capital stock of the Corporation which are owned, directly or indirectly, beneficially or of record by such shareholder, beneficial

owner or Shareholder Associated Person; (3) any Derivative Instrument that is owned, directly or indirectly, beneficially or of record by such shareholder, beneficial owner or Shareholder Associated Person; (4) any Voting Agreement in connection with proposing such nomination or nominees for election to the Board of Directors, including all arrangements or understandings among such shareholder, beneficial owner or Shareholder Associated Person, each proposed nominee, and any other party; (5) any Short Interest in any security of the Corporation; (6) any rights to dividends on the shares of the Corporation owned beneficially by such shareholder, beneficial owner or Shareholder Associated Person that are separated or separable from the underlying shares of the Corporation; (7) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such shareholder, beneficial owner or Shareholder Associated Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner; (8) any performance-related fees (other than an asset-based fee) to which such shareholder, beneficial owner or Shareholder Associated Person is entitled based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including, without limitation, any such interests held by members of such shareholder's, beneficial owner's or Shareholder Associated Person's immediate family sharing the same household; (9) any material interest of such shareholder, beneficial owner or Shareholder Associated Person in such nomination; and (10) any other information relating to the shareholder, beneficial owner or Shareholder Associated Person that must be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act and the rules and regulations promulgated thereunder;

(c) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings (whether written or oral) during the past three years, and any other material relationships, between or among such shareholder, beneficial owner or Shareholder Associated Person, any such proposed nominee or his respective affiliates and associates (each defined under Regulation 12B of the Exchange Act (or any successor provision thereto)), or others acting in concert therewith, including all information required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K (or any successor provision thereto) if the shareholder making the nomination, any beneficial owner and any Shareholder Associated Person were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(d) a representation that the shareholder, beneficial owner or Shareholder Associated Person intends (1) to appear in person or by proxy at the annual meeting to nominate the persons named in its notice and (2) to (A) solicit proxies from holders of the Corporation's outstanding capital stock representing at least 67% of the voting power of shares of capital stock entitled to vote on the election of the nominees, (B) include a statement to that effect in its proxy statement and/or the form of proxy, (C) otherwise comply with Rule 14a-19 promulgated under the Exchange Act, and (D) provide the Secretary of the Corporation not less than seven days prior to the applicable meeting or any adjournment, rescheduling or postponement thereof, with reasonable documentary evidence (as determined by the Secretary in good faith) that such shareholder, beneficial owner or Shareholder Associated Person complied with such representations.

(iv) No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section.

(v) Except as otherwise provided by law, the Charter or these Bylaws, the Board of Directors or, during the annual meeting of shareholders or a special meeting of the shareholders, as applicable, the chairman of such meeting shall declare a nomination by any shareholder to be invalid, and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation, if:

(a) such nomination was not made in accordance with the procedures set forth herein or if such shareholder shall have failed to comply with its obligations under this Section 2.4 or Section 2.2, including, but not limited to, by breaching any of the representations, agreements or undertakings required hereunder or thereunder;

(b) such nominee or the applicable shareholder shall have provided information to the Corporation in respect of such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading; or

(c) such shareholder does not appear in person or by proxy at the annual meeting or special meeting, as applicable, to present any nomination pursuant to this Section 2.4.

(vi) In the event that any information or communications provided by a nominating shareholder or a nominee to the Corporation or its shareholders ceases to be true and correct in all material respects or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, each such shareholder or nominee, as the case may be, shall promptly notify the Secretary of any defect in such previously provided information and of the information that is required to correct any such defect, it being understood that providing any such notification shall not be deemed to cure any defect or limit the rights of the Board of Directors to determine any such nomination to be invalid.

(vii) No adjournment or postponement of a meeting of shareholders shall commence a new period (or extend any period) for the giving of notice of a shareholder proposal hereunder with respect to such meeting.

(viii) If a shareholder, beneficial owner or Shareholder Associated Person that intends to solicit proxies in support of director nominees other than the Corporation's nominees no longer intends to solicit proxies in accordance with its representation pursuant to Section 2.4(iii)(d), such shareholder, beneficial owner or Shareholder Associated Person shall inform the Corporation of this change by delivering in writing to the Secretary of the Corporation no later than two (2) business days after such change.

Section 2.5 **Chairman of the Board**. The Board of Directors, after the election thereof held in each year, may elect a Chairman of the Board. The Chairman of the Board shall preside at all meetings of the shareholders and the Board of Directors at which he or she shall be present and shall furnish advice and counsel to the Board of Directors. The Chairman of the Board shall exercise the powers and perform the duties usual to a chairman of the board of a corporation, and shall have such other powers and duties as may be assigned to him by the Board of Directors. The Chairman of the Board shall be a member of the Board of Directors.

Section 2.6 **Lead Independent Director.** In the event that the Board of Directors elects a Chairman of the Board who is an employee of the Corporation, the Board will elect a Lead Independent Director to furnish advice and counsel to the Board of Directors and to perform such duties as assigned to him or her by the Board of Directors.

Section 2.7 **Quorum.** A majority of the entire Board of Directors shall constitute a quorum for the transaction of business. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place (or in lieu of a place, by means of remote communication). Except as herein otherwise provided, the vote of a majority of the directors present at the time of the vote, at a meeting duly assembled, a quorum being present at such time, shall be the act of the Board of Directors.

Section 2.8 **Meetings; Notice.** Meetings of the Board of Directors shall be held at such place (or in lieu of a place, by means of remote communication) within or without the State of Tennessee as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of the meeting. The Board of Directors may determine that a meeting of the Board shall not be held at any place but may instead be held by means of remote communication, as authorized by the Business Corporation Act. Regular meetings of the Board of Directors shall be held at such times as may from time to time be fixed by resolution of the Board of Directors. Special meetings of the Board may be held at any time upon the call of the Chairman of the Board, if any, the Lead Independent Director, if any the President, the Secretary or any two (2) directors. Notice shall be duly given to each director by (i) giving notice to such director in person or by telephone, electronic transmission or voice message system at least two (2) days in advance of the meeting, (ii) sending a facsimile to the director's last known facsimile number, or delivering written notice by hand to the director's last known business or home address, at least two (2) days in advance of the meeting, or (iii) mailing written notice to the director's last known business or home address at least two (2) days in advance of the meeting. A meeting of the Board of Directors may be held without notice immediately after the annual meeting of shareholders at the same place at which such meeting is held (or in lieu of a place, by means of remote communication). Notice need not be given of regular meetings of the Board of Directors held at times fixed by resolution of the Board of Directors. Any requirement of furnishing a notice shall be waived by any director who signs and delivers to the Corporation a waiver of notice before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to the director. The notice of any meeting need not specify the purpose of the meeting, and any and all business may be transacted at such meeting.

Section 2.9 **Conduct of Meetings.** The Chairman of the Board of Directors, if any, shall preside at all meetings of the Board of Directors, and in the Chairman's absence or inability to act, the Lead Independent Director, if any, shall preside, and in the Lead Independent Director's absence or inability to act, the President shall preside, and in the President's absence or inability to act, such person as may be chosen by a majority of the directors present shall preside.

Section 2.10 **Committees.** By resolution adopted by a majority of the entire Board of Directors, the directors may designate from their number one (1) or more directors to constitute an Executive Committee and other committees, each of which, to the extent provided in the resolution designating it, shall have the authority of the Board of Directors with the exception of any authority the delegation of which is prohibited by law. A majority of any such committee may determine its action and fix the time and place, if any, of its meetings, unless the Board of Directors shall otherwise provide. The Board of Directors shall have power at any time to fill vacancies in, to change the membership of, to designate alternate members of, or to discharge any such committee. All actions of the Executive Committee shall be recorded in the minutes of such committee and reported to the Board of Directors at its meeting next succeeding such

action. All actions of other committees shall be recorded in the minutes of each such committee and reported to the Board of Directors (or in the case of committees appointed by the Executive Committee, to the Executive Committee) at its meeting next succeeding such action. The Board of Directors may allow members of the Executive Committee or any other committee designated by the Board of Directors or the Executive Committee a fixed fee and expenses of attendance for attendance at meetings of such committee. Members of such committees may also receive stated fees for their services as committee members as determined by the Board of Directors. Nothing herein contained shall be construed to preclude any committee member from serving the Corporation in any other capacity as officer, agent or otherwise, and receiving compensation therefor.

Section 2.11 **Compensation of Directors.** The Board of Directors may, by resolution, provide for payment to directors of a fee for their services as directors, without regard for attendance at meetings of the Board, and for payment of expenses for attendance at such meetings. Nothing herein contained shall be construed as precluding any director from serving the Corporation in any other capacity as member of a committee, officer, agent or otherwise and receiving compensation therefor.

Section 2.12 **Honorary Directors.** The Board of Directors may from time to time name, in its discretion, any director who shall have resigned or shall have declined nomination for a further term, an Honorary Director for such term as the Board of Directors by resolution shall establish. An Honorary Director may, at the invitation of the Chairman of the Board, attend meetings of the Board of Directors. Honorary Directors shall not be entitled to vote on any business coming before the Board of Directors nor shall any Honorary Director be counted for the purpose of determining the number necessary to constitute a quorum, for the purpose of determining whether a quorum is present or for any other purpose whatsoever. The termination of any person's relationship with the Corporation as Honorary Director shall not be deemed to create a vacancy in the position of Honorary Director. By resolution of the Board of Directors a fixed annual fee may be allowed to an Honorary Director. Honorary Directors shall not be directors of the Corporation and shall not have rights, privileges or powers other than those specifically provided in this Section 2.11 or as may be specifically given or assigned by the Board of Directors.

Section 2.13 **Dividends.** Subject always to the provisions of law and the Charter, the Board of Directors shall have full power to determine whether any, and if any, what part of any, funds legally available for the payment of dividends shall be declared as dividends and paid to the Corporation's shareholders; the division of the whole or any part of such funds of the Corporation shall rest wholly within the lawful discretion of the Board of Directors, and neither the Board of Directors nor the Corporation shall be required at any time, against such discretion, to divide or pay any part of such funds among or to the shareholders as dividends or otherwise; and before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall deem conducive to the interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

Section 2.14 **Resignation; Removal of Directors.** A director may resign at any time upon delivery of written notice to the Board of Directors, Chairman of the Board, Lead Independent Director, President or the Corporation. Such resignation shall be effective upon delivery unless the notice specifies a later effective date. At any special meeting of the shareholders, duly called as provided in these Bylaws, any director or directors may be removed from office by the shareholders, with or without cause, and such director's successor or

directors' successors may be elected at such meeting. Any director may be removed at any time for cause by an affirmative vote of a majority of the entire Board of Directors.

Section 2.15 **Actions Without Meetings.** Any action required or permitted to be taken by the Board of Directors or by any committee thereof may be taken without a meeting if (A) each member of the Board of Directors or of any such committee signs a written consent describing the action to be taken, including each director's vote or abstention on the action and delivers such consent to the Corporation and (B) the action receives the affirmative vote of the number of directors that would be sufficient to authorize or take the action at a meeting of the board or committee. The resolution and the written consents thereto by the members of the Board of Directors or of any such committee shall be filed with the minutes of the proceedings of the Board of Directors or of any such committee.

Section 2.16 **Electronic Communication.** Any one or more members of the Board of Directors or any committee thereof may participate in a meeting of the Board of Directors or any such committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

Section 2.17 **Electronic Transmission.** "Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

### ARTICLE III

#### OFFICERS

Section 3.1 **Election.** The Board of Directors promptly after the election thereof held in each year, shall elect the officers of the Corporation, which shall include a President and a Secretary, and which may include a Chief Executive Officer, one (1) or more Vice Presidents, a Treasurer, and a Controller, and may also include Assistant Secretaries, Assistant Treasurers, Assistant Controllers and such other officers, agents and employees as the Board may from time to time deem proper, who shall hold their offices for such term and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors. The Board of Directors shall fix the salaries of the President, the Chief Executive Officer, the Vice Presidents, the Treasurer, the Controller and the Secretary. Unless fixed by the Board of Directors or a committee thereof, the salaries of all other officers, agents and employees shall be fixed by the Chief Executive Officer. Any two (2) or more offices may be held by the same person except the offices of President and Secretary.

Section 3.2 **Term.** The term of office of all officers shall be until their respective successors have been elected and qualified, but any officer may be removed from office, either with or without cause, at any time by the affirmative vote of a majority of the whole Board of Directors. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board of Directors.

Section 3.3 **Duties.** The officers of the Corporation shall each have such powers and duties as are set forth in these Bylaws and such additional powers and duties as from time to time may be conferred upon them by the Board of Directors, and, subject thereto, such powers and duties as generally pertain to their respective offices, and the Board of Directors may from time to time impose and confer any or all of the powers and duties hereinafter specifically prescribed for any officer upon any other officer or officers.

Section 3.4 **Resignation; Removal of Officers.** An officer may resign at any time upon delivery of notice to the Corporation. Such resignation shall be effective upon delivery unless the notice specifies a later effective date. In the event that an officer specifies in his notice a later effective date, and the Corporation accepts the future effective date, the Board may fill the pending vacancy prior to the effective date; provided, however, that the Board designates that the successor officer does not take office until such effective date. Any officer may be removed from office, either with or without cause, at any time by the affirmative vote of a majority of the whole Board of Directors. Further, any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer.

Section 3.5 **Chief Executive Officer.** The Chief Executive Officer shall be the chief executive officer of the Corporation and direct the business, affairs and property of the Corporation. The Chief Executive Officer shall exercise the powers and perform the duties usual to a chief executive officer and shall have such other powers and duties as may be assigned to him or her from time to time by the Board of Directors. In the absence of a Chairman of the Board or a Lead Independent Director, the Chief Executive Officer shall preside at all meetings of the shareholders and the Board of Directors.

Section 3.6 **President.** The President, in the absence of a Chairman of the Board, a Lead Independent Director or a Chief Executive Officer, shall preside at all meetings of the shareholders and the Board of Directors at which he shall be present. The President shall be the Chief Operating Officer and shall direct the operations of the business of the Corporation, and report to the Chief Executive Officer. In the absence of a Chief Executive Officer, a Chairman of the Board or a Lead Independent Director, the President shall report directly to the Board of Directors. In the absence of a Chief Executive Officer, and in the event the Board of Directors has not vested such powers in a Chairman of the Board or a Lead Independent Director, the President shall be the Chief Executive Officer. He shall have such other powers and duties as may be assigned to him from time to time by the Board of Directors.

Section 3.7 **Vice Presidents.** The Vice Presidents shall be of such number and shall have such titles of designation as may be determined from time to time by the Board of Directors. They shall perform such duties as may be assigned to them, respectively, from time to time by the Board of Directors.

Section 3.8 **Secretary.** The Secretary shall give, or cause to be given, notice of all meetings of shareholders and directors, and all other notices required by law or by these Bylaws, and in the case of his absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the Chairman of the Board, or by the directors or shareholders upon whose request the meeting is called as provided in these Bylaws. The Secretary shall record all the proceedings of the meetings of shareholders, the Board of Directors and Executive Committee in a book to be kept for that purpose, and shall perform such other duties as may be assigned to the Secretary by the Board of Directors or the Chief Executive Officer. The Secretary shall have the custody of the records and the seal, if any, of the Corporation. The Secretary shall affix the seal, if any, to any instrument requiring it, when signed by a duly authorized officer or when specifically authorized by the Board of Directors or the Chairman of the Board, and attest the same. In the absence or incapacity of the Secretary, any Assistant Secretary may affix the seal, if any, to any such instrument and attest the same.

Section 3.9 **Assistant Secretaries.** The Assistant Secretaries shall have such powers and shall perform such duties as may be assigned to them from time to time by the Board of Directors the Chief Executive Officer or the Secretary.

Section 3.10 **Treasurer.** The Treasurer shall be responsible for establishing and executing programs providing for long and short term financing needs of the Corporation. The

Treasurer shall establish policies for the receipt, custody and disbursement of the Corporation's monies and securities, and for investment of the Corporation's funds. The Treasurer shall perform such other duties as may be assigned to him or her from time to time by the Board of Directors or the Chief Executive Officer.

Section 3.11 **Assistant Treasurers**. The Assistant Treasurers shall have such powers and shall perform such duties as may be assigned to them from time to time by the Board of Directors the Chief Executive Officer or the Treasurer.

Section 3.12 **Controller**. The Controller shall be responsible for the development and maintenance of accounting policies and systems properly to record, report and interpret the financial position and the results of operations of the Corporation. The Controller shall be responsible for development and maintenance of adequate plans for the financial control of operations and the protection of the assets of the Corporation. The Controller shall perform such other duties as may be assigned to him or her from time to time by the Board of Directors or the Chief Executive Officer.

Section 3.13 **Assistant Controllers**. The Assistant Controllers shall have such powers and shall perform such duties as may be assigned to them from time to time by the Board of Directors, the Chief Executive Officer or the Controller.

Section 3.14 **Presiding Officer at Meetings of the Shareholders and Board of Directors**. The presiding officer at any meeting of the shareholders or the Board of Directors at which the Chairman of the Board, the Lead Independent Director and the Chief Executive Officer are absent shall be the President, or such other officer designated to so preside by the Chairman of the Board or Lead Independent Director, if any. If the Chairman of the Board or Lead Independent Director, for any reason, shall not have designated any officer to preside at any such meeting, then the Chief Executive Officer or President shall preside. In the event that both the Chief Executive Officer and President shall be absent, then the Executive Vice President-Finance, if there be such an officer, and he is a member of the Board, shall preside. If the Executive Vice President-Finance shall also be absent or if there be no such officer, then the most senior (in terms of time served in the office of Executive Vice President) of the other Executive Vice Presidents, if there be such an officer, and he or she is a member of the Board, shall preside.

Section 3.15 **Corporation as Security Holder**. Unless otherwise ordered by the Board of Directors, the President, or, in the event of the President's inability to act, the Vice President designated by the Board of Directors to act in the absence of the President or, in the absence of such designation, in the order of such Vice President's seniority, shall have full power and authority on behalf of the Corporation to attend and to act and to vote at any meetings of security holders of corporations in which the Corporation may hold securities, and at such meetings shall possess and may exercise any and all rights and powers incident to the ownership of such securities, and which as the owner thereof the Corporation might have possessed and exercised, if present. The Board of Directors by resolution from time to time may confer like powers upon any other person or persons.

## ARTICLE IV

### **CERTIFICATED AND UNCERTIFICATED SHARES**

Section 4.1 **Share Certificates and Uncertificated Shares**. The shares of the Corporation's stock may be certificated or uncertificated, as provided under the Business Corporation Act, and shall be entered in the books of the Corporation and registered as they are issued. Any certificates representing shares of stock shall be in such form as the Board of



Directors shall prescribe, certifying the number and class of shares of the stock of the Corporation owned by the shareholder. Any certificates issued to any shareholder of the Corporation shall bear the name of the Corporation and state that it is organized under the laws of the State of Tennessee, the name of the shareholder, and the number and class (and the designation of the series, if any) of the shares represented. Where applicable, any certificate issued to any shareholder of the Corporation shall also either summarize the designations, relative rights, preferences, and limitations applicable to each class of stock and the variations in rights, preferences, and limitations determined for each series of stock (and the authority of the Board of Directors to determine variations for future series) or conspicuously state that the Corporation will furnish such information to the shareholder upon written request. Each certificate shall be signed either manually or by facsimile, by (i) the Chairman of the Board, Chief Executive Officer, the President or a Vice President and (ii) by the Secretary or an Assistant Secretary, and shall be sealed with the seal of the Corporation or a facsimile thereof. If the person who signed a share certificate, either manually or in facsimile, no longer holds office when the certificate is issued, then the certificate is nevertheless valid.

Within a reasonable time after the issuance or transfer of un-certificated stock, the Corporation shall send to the registered owner thereof a written notice that shall set forth the name of the Corporation, that the Corporation is organized under the laws of the State of Tennessee, the name of the shareholder, the number and class (and the designation of the series, if any) of the shares represented, and any restrictions on the transfer or registration of such shares of stock imposed by the Corporation's Charter, these Bylaws, any agreement among shareholders or any agreement between shareholders and the Corporation. The written notice shall also set forth any the designations, relative rights, preferences, and limitations applicable to each class of stock and the variations in rights, preferences, and limitations determined for each series of stock (and the authority of the Board of Directors to determine variations for future series).

The Board of Directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of the Corporation.

Section 4.2 **Transfer of Shares.** Upon compliance with provisions restricting the transferability of shares, if any, transfers of shares of the Corporation shall be made only on the share record of the Corporation by the registered holder thereof, or by such holder's attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation or with a transfer agent or a registrar, if any, and upon the surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes due thereon. A certificate representing shares shall not be issued until the full amount of consideration therefor has been paid, except as the Business Corporation Act may otherwise permit. Upon the receipt of proper transfer instructions from the registered owner of un-certificated shares, such un-certificated shares shall be cancelled, issuance of new equivalent un-certificated shares or certificated shares shall be made to the shareholder entitled thereto and the transaction shall be recorded upon the books of the Corporation.

Section 4.3 **Fractional Shares.** The Corporation may issue certificated or un-certificated shares for fractions of a share where necessary to effect transactions authorized by the Business Corporation Act which shall entitle the holder, in proportion to such holder's fractional holdings, to exercise voting rights, receive dividends and participate in liquidating distributions; or the Corporation may pay in cash the value of fractions of a share as of the time when those entitled to receive such fractions is determined; or it may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the Corporation or of its agent, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a shareholder except as therein provided.

Section 4.4 **Replacement Certificates.** Any person claiming a share certificate to be lost, stolen or destroyed shall make an affidavit or affirmation of the fact in such manner as the Board of Directors may require and shall, if the Board of Directors so requires, give the Corporation a bond of indemnity in form and amount, and with one or more sureties satisfactory to the Board of Directors, as the Board of Directors may require, whereupon the Corporation may issue (i) a new certificate or certificates of stock or (ii) un-certificated shares in place of any certificate or certificates previously issued by the Corporation alleged to have been lost, stolen or destroyed.

Section 4.5 **Registered Shareholders.** The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to, or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Tennessee.

## ARTICLE V

### FISCAL YEAR

The fiscal year of the Corporation shall be fixed from time to time by resolution of the Board of Directors.

## ARTICLE VI

### CORPORATE SEAL

The Corporation may, but shall not be required to, adopt a corporate seal. The corporate seal shall have inscribed thereon the name of the Corporation and the year of its incorporation, and shall be in such form and contain such other words and/or figures as the Board of Directors shall determine. The corporate seal may be used by printing, engraving, lithographing, stamping or otherwise making, placing or affixing, or causing to be printed, engraved, lithographed, stamped or otherwise made, placed or affixed upon any paper or document, by any process whatsoever, an impression, facsimile or other reproduction of such corporate seal.

## ARTICLE VII

### INDEMNIFICATION

Section 7.1 **Right to Indemnification.** The Corporation shall indemnify to the fullest extent permitted by law any person (the “**Indemnitee**”) made or threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative (a “**Proceeding**”), by reason of the fact that such person or such person’s testator or intestate is or was a director or officer of the Corporation or serves or served at the request of the Corporation any other enterprise as a director, officer or employee. To the fullest extent permitted by applicable law, expenses incurred by any such person in defending any such action, suit or proceeding shall be paid or reimbursed by the Corporation promptly upon receipt by it of an undertaking of such person to repay such expenses if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation. The rights provided to any person by this Article VII shall be enforceable against the Corporation by such person who shall be presumed to have relied upon it in serving or continuing to serve as a director or officer as provided above. The Corporation, in its sole discretion, may (but need not) provide its non-officer employees rights to indemnification or advancement of expenses to such extent and under such circumstances as the Board of Directors may determine from time to time.

For purposes of this article, the term “Corporation” shall include any predecessor of the Corporation and any constituent corporation (including any constituent of a constituent) absorbed by the Corporation in a consolidation or merger; the term “other enterprise” shall include any corporation, partnership, joint venture, trust, employee benefit plan or other enterprise; service “at the request of the Corporation” shall include service as a director or officer of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; any excise taxes assessed on a person with respect to an employee benefit plan shall be deemed to be indemnifiable expenses; and action taken or omitted by a person with respect to an employee benefit plan which such person reasonably believes to be in the interest of the participants and beneficiaries of such plan shall be deemed to be action not opposed to the best interests of the Corporation.

Section 7.2 **Insurance, Contracts and Funding.** The Corporation may purchase and maintain insurance to protect itself and any Indemnitee against any expenses, judgments, fines and amounts paid in settlement as specified in Section 7.1 or incurred by any Indemnitee in connection with any Proceeding referred to in Section 7.1 to the fullest extent permitted by applicable law as then in effect and whether or not the Corporation would have the power to indemnify such Indemnitee against such expense, liability or loss under the Business Corporation Act. The Corporation may enter into contracts with any director or officer of the Corporation in furtherance of the provisions of this Article VII and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided or authorized in this Article VII.

Section 7.3 **Indemnification Not Exclusive Right.** The right of indemnification provided in this Article VII shall not be exclusive of any other rights to which an Indemnitee may otherwise be entitled, and the provisions of this Article VII shall inure to the benefit of the heirs and legal representatives of any Indemnitee under this Article VII and shall be applicable to Proceedings commenced or continuing after the adoption of this Article VII, whether arising from acts or omissions occurring before or after such adoption.

Section 7.4 **Severability.** If any provision or provisions of this Article VII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VII (including, without limitation, all portions of any paragraph of this Article VII containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VII (including, without limitation, all portions of any paragraph of this Article VII containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 7.5 **Amendment.** No amendment of this Article VII shall impair the rights of any person arising at any time with respect to events occurring prior to such amendment, it being understood that such person’s rights hereunder vest immediately upon such person assuming the position of director or officer of the Corporation. In no case shall any amendment of this Article VII occur without thirty days’ advance written notice to all Indemnitees.

## ARTICLE VIII

### GENERAL

Section 8.1 **Financial Reports.** The directors may appoint the Treasurer or other fiscal officer and/or the Secretary or any other officer to cause to be prepared and furnished to

shareholders entitled thereto any special financial notice and/or financial statement, as the case may be, which may be required by any provision of law.

Section 8.2 **Books and Records.** The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the shareholders, of the Board of Directors, and/or any committee which the directors may appoint, and shall keep at the office of the Corporation in the State of Tennessee or at the office of the transfer agent or registrar, if any, in such state, a record containing the names and addresses of all shareholders, the number and class of shares held by each, and the dates when such shareholders respectively became the owners of record thereof. Any of the foregoing books, minutes or records may be in written form or in any other form capable of being converted into written form within a reasonable time.

## **ARTICLE IX**

### **AMENDMENTS**

An affirmative vote of a majority of the shareholders entitled to vote in the election of directors may make, alter, amend or repeal the Bylaws and may adopt new Bylaws. Except as otherwise required by law, the Charter or by the provisions of these Bylaws, the Board of Directors may also make, alter, amend or repeal the Bylaws and adopt new Bylaws, but Bylaws adopted by the Board of Directors may be altered, amended or repealed by the Corporation's shareholders.

## DESCRIPTION OF FORWARD AIR'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

### Description of Capital Stock

The following description sets forth certain material terms and provisions Forward Air Corporation's securities that are registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). As of the date of the Annual Report on Form 10-K of which this exhibit is a part, Forward Air Corporation (the "Company") has one class of securities registered under Section 12 of the Exchange Act: Forward Air, Inc.'s common stock, par value \$0.01 per share.

### General

The following description summarizes the rights of holders of the Company's capital stock. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description of the matters set forth in this "Description of Capital Stock," you should refer to our Restated Charter (the "Restated Charter") and Amended and Restated Bylaws, ("Amended and Restated Bylaws"), which are included, or incorporated by reference, as exhibits to our Annual Report on Form 10-K, and to the applicable provisions of Tennessee law. Our authorized capital stock consists of 55,000,000 shares, of which 50,000,000 shares are designated common stock, \$0.01 par value and 5,000,000 shares are designated preferred stock, \$0.01 par value. As of December 31, 2019, 27,850,233 shares of our common stock were outstanding. We had no outstanding preferred stock. Our common stock is listed on the Nasdaq Stock Market LLC under the symbol "FWRD."

### Description of Common Stock

#### *Rights Related to Dividends and Distributions*

Subject to preferences that may apply to any shares of preferred stock that are outstanding at the time, the holders of our common stock are entitled to receive, to the extent permitted by law and to the extent the Board of Directors shall determine, such dividends as may be declared from time to time by the Board of Directors. Further, subject to preferences that may apply to any shares of preferred stock that are outstanding at the time, in the event of the voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holders of the common stock shall be entitled to receive such of the remaining assets of the Company of whatever kind available for distribution to the extent the Board of Directors shall determine.

#### *Voting Rights*

Except as may be otherwise required by law or by the Restated Charter, each holder of common stock has one vote in respect of each share of such stock held by such shareholder on all matters voted upon by the shareholders.

#### *Preemptive Rights*

No holder of our common stock has any preferential or preemptive right to subscribe for, purchase or receive any shares of stock of the Company of any class, now or hereafter authorized, or any options or warrants for such shares, or any rights to subscribe to or purchase such shares, or any securities convertible into or exchangeable for such shares, which may at any time or from time to time be issued, sold or offered for sale by the Company.

### Description of Preferred Stock

Shares of our preferred stock may be divided and issued in one or more series at such time or times and for such consideration as the Board of Directors may determine, all shares of any one series is of equal rank and identical in all respects. The Board of Directors may determine the powers, preferences, and rights of the shares of such series, and the qualifications, limitations or restrictions, thereof, to the full extent permitted by the laws of the State of Tennessee, which might include some or all of:

- the rate of dividends, if any, and whether such dividends shall be noncumulative, cumulative to the extent earned, or cumulative and, if cumulative, from which date or dates;
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- whether the shares will be redeemable and, if so, the terms and conditions of such redemption;
- whether there shall be a sinking fund for the redemption;
- the rights to which the holders of the shares shall be entitled in the event of voluntary or involuntary liquidation, dissolution or winding-up of the Company, and the priority of payment of shares in any such event;
- whether the shares shall be convertible into or exchangeable for shares of any other class or any other series and the terms thereof; and
- all other preferences of any series of preferred stock in the same manner as provided for in the issuance of preferred stock, so long as no shares of such series are outstanding at such time.

The shares of preferred stock will have no voting power or voting rights with respect to any matter whatsoever, except as may be otherwise required by law or may be provided in any amendment to our Restated Charter creating the series of which such shares are a part. The Board of Directors is authorized to make any change in the designations, terms, limitations or relative rights or preferences of any series of preferred stock in the same manner as provided for in the issuance of preferred stock, so long as no shares of such series are outstanding at such time.

#### **Election of Directors**

Our Amended and Restated Bylaws, provide that each member of our board of directors is elected annually to a one year term and shall hold office until the next annual meeting of shareholders and until such person's successor is elected and qualified.

Our Amended and Restated Bylaws also provide that the number of directors may be increased or decreased by action of the board of directors or shareholders. Vacancies on the board of directors may be filled by vote of the board of directors. The overall effect of these provisions may be to prevent a person or entity from seeking to acquire control of us through an increase in the number of directors on our board of directors and the election of designated nominees to fill newly created vacancies.

#### **Anti-Takeover Effects of our Restated Charter and Amended and Restated Bylaws**

Our Restated Charter and Amended and Restated Bylaws have provisions that could have the effect of making it more difficult for somebody who wanted to take control of us to do so. They include:

*Advance Notice Requirements.* A requirement that shareholders give advance notice of their intention to nominate candidates for election as directors (and produce the required information as set forth in our Amended and Restated Bylaws) or to bring other business before a meeting of shareholders.

*Limit on Shareholder Ability to Nominate Candidates for Election as Directors or Call a Special Meeting of Shareholders.* In order to be able to nominate a candidate for election or re-election to our Board of Directors or call a special meeting of shareholders, a person must prove eligibility to submit a shareholder proposal under paragraph (b) of Rule 14a-8 under the Securities Act of 1934, as amended, or any successor rule.

*Requirement for Calling of Special Meetings of Shareholders* Special meetings of our shareholders may be called by shareholders only upon the proper written request of the holders of at least ten percent of all the issued and outstanding shares of any class entitled to vote on the action proposed to be taken.

*Preferred Stock.* Our Board of Directors is authorized to cause us to issue, without a shareholder vote, preferred stock, which could entitle holders to voting or other rights or preferences that could impede the success of any attempt to acquire us.

*Board Authority to Amend Bylaws.* Our Board of Directors has the authority to make, alter, amend or repeal our Amended and Restated Bylaws without the approval of our shareholders, but our Amended and Restated Bylaws adopted by our Board of Directors may be altered, amended or repealed by the affirmative vote of a majority of our shareholders entitled to vote in the election of directors.

#### **Limitations on Liability and Indemnification of Officers and Directors**

The Tennessee Business Corporation Act authorizes corporations to limit or eliminate the personal liability of directors to companies and their shareholders for monetary damages for breaches of directors' fiduciary duties, under certain circumstances and subject to certain exceptions. Our Restated Charter includes a provision that eliminates the personal liability

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of directors for monetary damages to us or our shareholders for any breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the Tennessee Business Corporation Act. Our Restated Charter provides that we shall have the power to indemnify any director, officer, employee, agent or any other person who is serving at our request in that capacity for another entity to the fullest extent permitted by Tennessee law. Our Amended and Restated Bylaws generally provide that we shall indemnify and pay or reimburse certain expenses, to our directors and officers and any person that served as a director, officer or employee of any other enterprise at our request, to the fullest extent permitted by law. We also are authorized to carry insurance to protect the Company and any director, officer and employee, to the fullest extent permitted by law.

The Tennessee Business Corporation Act provides that a corporation may indemnify any of its directors and officers against liability incurred in connection with a proceeding if: (a) such person acted in good faith; (b) in the case of conduct in an official capacity with the corporation, the person reasonably believed such conduct was in the corporation's best interests; (c) in all other cases, the person reasonably believed that the person's conduct was at least not opposed to the best interests of the corporation; and (d) in connection with any criminal proceeding, such person had no reasonable cause to believe the person's conduct was unlawful.

In actions brought by or in the right of the corporation, however, the Tennessee Business Corporation Act provides that no indemnification may be made if the director or officer was adjudged to be liable to the corporation. The Tennessee Business Corporation Act also provides that in connection with any proceeding charging improper personal benefit to an officer or director, no indemnification may be made if such officer or director is adjudged liable on the basis that such personal benefit was improperly received.

#### **Tennessee Anti-Takeover Statutes**

Under the Tennessee Business Combination Act and subject to certain exceptions, corporations that have elected to be subject to the Tennessee Business Combination Act may not engage in any "business combination" with an "interested shareholder" for a period of five years after the date on which the person became an interested shareholder unless the "business combination" or the transaction which resulted in the shareholder becoming an "interested shareholder" is approved by the corporation's board of directors prior to the date the "interested shareholder" attained that status.

"Business combinations" for this purpose generally include:

- mergers, consolidations, or share exchanges;
- sales, leases, exchanges, mortgages, pledges, or other transfers of assets representing 10% or more of the aggregate market value of consolidated assets, the aggregate market value of our outstanding shares, or our consolidated net income;
- transactions which result in the issuances or transfers of shares from us to the interested shareholder;
- the adoption of plans of liquidation or dissolution proposed by the interested shareholder;
- transactions in which the interested shareholder's proportionate share of the outstanding shares of any class of securities is increased; or
- financing arrangements pursuant to which the interested shareholder, directly or indirectly, receives a benefit, except proportionately as a shareholder.

Subject to certain exceptions, an "interested shareholder" generally is a person who, together with his or her affiliates and associates, owns, or within five years did own, 10% or more of our outstanding voting stock.

After the five-year moratorium, a corporation subject to the foregoing may complete a business combination if the transaction complies with all applicable requirements of our Restated Charter and Amended and Restated Bylaws and applicable Tennessee law and:

- is approved by the holders of at least two-thirds of the outstanding voting stock not beneficially owned by the interested shareholder; or
- meets certain fair price criteria set forth in the Tennessee Business Combination Act

We have elected to not be subject to the Tennessee Business Combination Act. We can give no assurance that we will or will not elect, through a charter or bylaw amendment, to be governed by the Tennessee Business Combination Act in the future.

We also have not elected to be governed by the Tennessee Control Share Acquisition Act which prohibits certain shareholders from exercising in excess of 20% of the voting power in a corporation acquired in a "control share acquisition" unless such voting rights have been previously approved by the disinterested shareholders. We can give no assurance that we will or will not elect, through a charter or bylaw amendment, to be governed by the Tennessee Control Share Acquisition Act in the future.

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The Tennessee Greenmail Act prohibits us from purchasing or agreeing to purchase any of our securities, at a price in excess of fair market value, from a holder of 3% or more of our securities who has beneficially owned such securities for less than two years, unless the purchase has been approved by a majority of the outstanding shares of each class of our voting stock or we make an offer of at least equal value per share to all holders of shares of such class. The Tennessee Greenmail Act may make a change of control more difficult.

The Tennessee Investor Protection Act applies to tender offers directed at corporations that have "substantial assets" in Tennessee and that are either incorporated in or have a principal office in Tennessee. Pursuant to the Investor Protection Act, no offeror shall make a takeover offer for an offeree company if the offeror beneficially owns 5% or more of any class of equity securities of the offeree company, any of which was purchased within one year prior to the proposed tender offer, unless the offeror, before making such purchase: (1) makes a public announcement of his or her intention with respect to changing or influencing the management or control of the offeree company; (2) makes a full, fair and effective disclosure of such intention to the person from whom he or she intends to acquire such securities; and (3) files with the Tennessee Commissioner of Commerce and Insurance (the "Commissioner"), and the offeree company a statement signifying such intentions and containing such additional information as may be prescribed by the Commissioner. When the offeror intends to gain control of the offeree company, the registration statement must indicate any plans the offeror has for the offeree. The Commissioner may require additional information concerning the takeover offer and may call for hearings. The Investor Protection Act does not apply to an offer that the offeree company's board of directors recommends to shareholders.

In addition to requiring the offeror to file a registration statement with the Commissioner, the Tennessee Investor Protection Act requires the offeror and the offeree company to deliver to the Commissioner all solicitation materials used in connection with the tender offer. The Investor Protection Act prohibits fraudulent, deceptive, or manipulative acts or practices by either side and gives the Commissioner standing to apply for equitable relief to the Chancery Court of Davidson County, Tennessee, or to any other chancery court having jurisdiction whenever it appears to the Commissioner that the offeror, the offeree company or any of their respective affiliates has engaged in or is about to engage in a violation of the Investor Protection Act. Upon proper showing, the chancery court may grant injunctive relief. The Investor Protection Act further provides civil and criminal penalties for violations.



FORWARD AIR CORPORATION  
SUBSIDIARIES

	State of Incorporation
FAF, Inc.	Tennessee
Forward Air, Inc.	Tennessee
Forward Air Solutions, Inc.	Tennessee
Central States Trucking Co.	Delaware
Central States Logistics, Inc.	Illinois
TQI Holdings, Inc.	Delaware

FORWARD AIR, INC.  
SUBSIDIARIES

	State of Incorporation
Forward Air Royalty, LLC	Delaware
Forward Air Technology and Logistics Services, Inc.	Tennessee
FACSBI, LLC	Delaware
Towne Holdings, LLC	Delaware
Synergy Cargo Logistics, Inc.	California
TAF, LLC	Indiana
Towne Air Freight, LLC	Indiana
Forward Air Services, LLC	Delaware
Forward Air Final Mile, LLC	Tennessee

TQI HOLDINGS, INC.  
SUBSIDIARIES

	State of Incorporation
Forward Air Logistics Services, Inc.	Michigan
TQI, Inc.	Michigan

FAF, INC.  
SUBSIDIARIES

	State of Incorporation
FFM, LLC	Tennessee

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the following Registration Statements:

1. Registration Statement (Form S-8 No. 333-151198) pertaining to the Forward Air Corporation Amended and Restated Stock Option and Incentive Plan,
2. Registration Statement (Form S-8 No. 333-134294) pertaining to the Forward Air Corporation 2006 Non-Employee Director Stock Plan,
3. Registration Statement (Form S-8 No. 333-125872) pertaining to the Forward Air Corporation 2005 Employee Stock Purchase Plan,
4. Registration Statement (Form S-8 No. 333-120250) pertaining to the Forward Air Corporation 2000 Non-Employee Director Stock Option Award,
5. Registration Statement (Form S-8 No. 333-120249) pertaining to the Forward Air Corporation Non-Employee Director Stock Plan, as amended, and the Forward Air Corporation 1999 Stock Option and Incentive Plan, as amended,
6. Registration Statement (Form S-8 No. 333-94249) pertaining to the Forward Air Corporation 1999 Stock Option and Incentive Plan,
7. Registration Statement (Form S-8 No. 333-211256) pertaining to the Forward Air Corporation 2016 Omnibus Incentive Compensation Plan and the Forward Air Corporation Amended and Restated Non-Employee Director Stock Plan

of our reports dated March 1, 2023, with respect to the consolidated financial statements and schedule of Forward Air Corporation and the effectiveness of internal control over financial reporting of Forward Air Corporation included in this Annual Report (Form 10-K) of Forward Air Corporation for the year ended December 31, 2022.

/s/ Ernst & Young LLP

Atlanta, GA  
March 1, 2023

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO EXCHANGE ACT RULE 13a-14(a) (17 CFR 240.13a-14(a))**

I, Thomas Schmitt, President, Chief Executive Officer and Director of Forward Air Corporation, certify that:

1. I have reviewed this report on Form 10-K for the year ended December 31, 2022 of Forward Air Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 1, 2023

/s/ Thomas Schmitt

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Thomas Schmitt  
President and Chief Executive Officer

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO EXCHANGE ACT RULE 13a-14(a) (17 CFR 240.13a-14(a))**

I, Rebecca J. Garbrick, Chief Financial Officer and Treasurer of Forward Air Corporation, certify that:

1. I have reviewed this report on Form 10-K for the year ended December 31, 2022 of Forward Air Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 1, 2023

/s/ Rebecca J. Garbrick

Rebecca J. Garbrick  
Chief Financial Officer and Treasurer

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Forward Air Corporation (the "Company") for the year ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Thomas Schmitt, President and Chief Executive Officer of the Company, certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

Date: March 1, 2023

/s/ Thomas Schmitt

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Thomas Schmitt  
President and Chief Executive Officer

A signed original of this written statement required by Section 906 has been provided to Forward Air Corporation and will be retained by Forward Air Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Forward Air Corporation (the "Company") for the year ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Rebecca J. Garbrick, Chief Financial Officer and Treasurer of the Company, certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

Date: March 1, 2023

/s/ Rebecca J. Garbrick

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Rebecca J. Garbrick  
Chief Financial Officer and Treasurer

A signed original of this written statement required by Section 906 has been provided to Forward Air Corporation and will be retained by Forward Air Corporation and furnished to the Securities and Exchange Commission or its staff upon request.