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, 2021

or

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

Commission file number: 000-51237

FREIGHTCAR AMERICA, INC.
(Exact name of registrant as specified in its charter)

Delaware	**25-1837219**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
125 S. Wacker Drive, Suite 1500, Chicago, Illinois	**60606**
(Address of principal executive offices)	**(Zip Code)**

(800) 458-2235
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common stock, par value $0.01 per share	RAIL	Nasdaq Global Market

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 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 (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). YES ☒ NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment of this Form 10-K.

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 a check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant 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.

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant as of June 30, 2021 was $72.8 million, based on the closing price of $5.93 per share on the Nasdaq Global Market.

As of March 11, 2022, there were 16,475,266 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Documents	Part of Form 10-K
Portions of the registrant's definitive Proxy Statement for the 2022 annual meeting of stockholders to be filed pursuant to Regulation 14A within 120 days of the end of the registrant's fiscal year ended December 31	Part III

FREIGHTCAR AMERICA, INC.

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PART I
Item 1. Business.

OVERVIEW

We are a diversified manufacturer of railcars and railcar components. We design and manufacture a broad variety of railcar types for transportation of bulk commodities and containerized freight products primarily in North America, including open top hoppers, covered hoppers, and gondolas along with intermodal and non-intermodal flat cars. We and our predecessors have been manufacturing railcars since 1901. Over the last several years, we have introduced a number of new or redesigned railcar types as we continue to diversify our product portfolio.

During 2019, we entered into a joint venture arrangement with Fabricaciones y Servicios de México, S.A. de C.V. ("Fasemex"), a Mexican company with operations in both Mexico and the United States, to manufacture railcars in Castaños, Coahuila, Mexico ("Castaños"), in exchange for a 50% interest in the operation. Production of railcars at the facility began during the third quarter of 2020. On October 16, 2020, we acquired Fasemex's 50% ownership in the joint venture. As of March 2021, we moved all of our production to the Castaños facility.

We ceased operations at our Roanoke, Virginia manufacturing facility ("the Roanoke Facility") and vacated the facility as of March 31, 2020. On September 10, 2020, we announced our plan to permanently close our manufacturing facility in Cherokee, Alabama (the "Shoals Facility") in light of the cyclical industry downturn, which was magnified by the COVID-19 pandemic. The closure will reduce costs and align our manufacturing capacity with the current rail car market. We ceased production at the Shoals Facility in February 2021.

We lease freight cars through our JAIX Leasing Company and FCA Leasing subsidiaries. Although we continually look for opportunities to package our leased assets for sale to our leasing company partners, these leased assets may not be converted to sales, and may remain revenue producing assets into the foreseeable future. We also rebuild and convert railcars and sell forged, cast and fabricated parts for all of the railcars we produce, as well as those manufactured by others.

Our primary customers are financial institutions, railroads, and shippers, which represented 66%, 22% and 6%, respectively, of our total sales attributable to each type of customer for the year ended December 31, 2021. In the year ended December 31, 2021, we delivered 1,731 railcars, including 1,354 new railcars and 377 rebuilt railcars, compared to 751 railcars, including 600 new railcars and 151 rebuilt railcars delivered in the year ended December 31, 2020. Our total backlog of firm orders for railcars increased from 1,389 railcars as of December 31, 2020 to 2,323 railcars as of December 31, 2021. Our backlog as of December 31, 2021 includes a variety of railcar types and the estimated sales value of our backlog is $240 million.

Our Internet website is www.freightcaramerica.com. We make available, free of charge, on or through our website items related to Corporate governance, including, among other things, our Corporate governance guidelines, charters of various committees of the Board of Directors and our code of business conduct and ethics. Our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, and amendments thereto, are available on our website and on the SEC's website at www.sec.gov. Any stockholder of our company may also obtain copies of these documents, free of charge, by sending a request in writing to Investor Relations at FreightCar America, Inc., 125 S. Wacker Drive, Suite 1500, Chicago, Illinois 60606.

OUR PRODUCTS AND SERVICES

We design and manufacture a broad variety of freight cars including covered hoppers, open top hoppers, gondolas, intermodal and non-intermodal flat cars that transport numerous types of dry bulk and containerized freight products.

In the last six years, we have added 20 new or redesigned products to our portfolio, including various covered hopper car products with cubic capacities from 3,282 cubic foot to 6,250 cubic foot; 52' and 66' mill gondolas; coil gondolas; triple hoppers and hybrid aluminum/stainless steel railcars; ore hopper and gondola railcars; ballast hopper cars; aggregate hopper cars (with manual, independent or fully automatic transverse or longitudinal door systems); intermodal flats (including the 3-unit, 53-foot well cars) and non-intermodal flat cars (including slab, hot slab and bulkhead flats). Focused product development activity continues in areas where we can leverage our technical knowledge base and capabilities to realize market opportunities.

The types of railcars listed below include the major types of railcars that we are capable of manufacturing; however, some of the types of railcars listed below have not been ordered by any of our customers or manufactured by us in a number of years. We rebuild and convert railcars and sell forged, cast and fabricated parts for all of the railcars we produce, as well as those manufactured by others. Many of our railcars are produced using a patented one-piece center sill, the main longitudinal structural component of the railcar. In addition to railcars designed for use in North America, we have manufactured railcars for export to Latin America and the Middle

East. Railroads outside of North America are constructed with a variety of track gauges that are sized differently than in North America, which requires us, in some cases, to alter our manufacturing specifications accordingly.

Any of the railcar types listed below may be further developed to meet the characteristics of the materials being transported and customer specifications.

- *VersaFlood Hopper Cars*. The VersaFlood™ product series offers versatile design options for transportation of aggregates, sand or minerals. Our VersaFlood™ series open-top hopper railcars include steel, stainless steel or hybrid steel and aluminum-bodied designs equipped with three-pocket (transverse gate) or two-pocket (longitudinal gate) discharge door systems with manual, independent or fully automatic door operation.

- *Covered Hopper Cars*. Our covered hopper railcar product offerings encompass a wide range of cubic foot (cf) capacity designs for shipping dry bulk commodities of varying densities including: 3,282 cf covered hopper cars for cement, sand and roofing granules; 4,300 cf covered hopper cars for potash or similar commodities; 5,200 cf, 5,400 cf and 5700 cf covered hopper cars for grain and other agricultural products; and 5,800 cf and 6,250 cf covered hopper cars for plastic pellets.

- *DynaStack Series*. Our intermodal doublestack railcar product offering includes the DynaStack® articulated 3-unit, 53' well cars for transportation of international and domestic containers.

- *Steel Products Cars*. Our portfolio of railcar types also includes 52' and 66' mill gondola railcars used to transport steel products and scrap; slab, hot slab and coil steel railcars designed specifically for transportation of steel slabs and coil steel products, respectively.

- *Boxcars*. Our high capacity boxcar railcar product offerings, featuring inside length of 50', single plug door and 60'9", double plug doors, galvanized steel roof panels and nailable steel floors, primarily designed for transporting paper products, paper rolls, lumber and wood products and foodstuffs.

- *Aluminum Coal Cars*. The BethGon® is the leader in the aluminum-bodied coal gondola railcar segment. Since we introduced the steel BethGon railcar in the late 1970s and the aluminum BethGon railcar in 1986, the BethGon railcar has become the most widely used coal car in North America. Our current BethGon II features lighter weight, higher capacity and increased durability suitable for long-haul coal carrying railcar service. We have received several patents on the features of the BethGon II and continue to explore ways to increase the BethGon II's capacity and reliability.

  Our aluminum bodied open-top hopper railcar, the AutoFlood™, is a five-pocket coal car equipped with a bottom discharge gate mechanism. We began manufacturing AutoFlood railcars in 1984, and introduced the AutoFlood II and AutoFlood III designs in 1996 and 2002, respectively. Both the AutoFlood II and AutoFlood III designs incorporate the automatic rapid discharge system, the MegaFlo™ door system, a patented mechanism that uses an over-center locking design, enabling the cargo door to close with tension rather than by compression. Further, AutoFlood railcars can be equipped with rotary couplers to permit rotary unloading.

- *Stainless Steel and Hybrid Stainless Steel/Aluminum Coal Cars*. We manufacture a series of stainless steel and hybrid stainless steel and aluminum AutoFlood and BethGon coal cars designed to serve the Eastern railroads. These coal cars are designed to withstand the rigors of Eastern coal transportation service. They offer a unique balance of maximized payload, light weight, efficient unloading and long service life. Our coal car product offerings include aluminum-bodied flat-bottom gondola railcars and steel or stainless steel-bodied triple hopper railcars for coal, metallurgical coke and petroleum coke service.

- *Other Railcar Types*. Our other railcar types include non-intermodal flat railcars and bulkhead flat railcars designed to transport a variety of products, including machinery and equipment, steel and structural steel components (including pipe), wood and forest products and other bulk industrial products; woodchip hopper and gondola railcars designed to haul woodchips and municipal waste or other low-density commodities; and a variety of commodity carrying open top hopper railcars designed to carry ballast, iron ore, taconite pellets and other bulk commodities; the AVC™ Aluminum Vehicle Carrier design used to transport commercial and light vehicles (automobiles and trucks) from assembly plants and ports to rail distribution centers; and the articulated bulk container railcar designed to carry dense bulk products such as waste products in 20' containers.

- *Railcar Conversions*. We are a leader in rebuilding and repurposing freight car assets. From complete car rebodies to transforming unused railcars into the latest designs, we deliver customer-focused solutions. We have completed over 14,000 total conversions and rebodies in the last decade and offer a broad portfolio of over 20 car conversion options. Our new,

purpose-built facility supports a wide variety of conversion options including small cube covered hopper conversions, aluminum body railcar conversions, sand railcar modularized lengthening modification programs and railcar modularized modification programs altering the nature of the center sill in the modified railcar.

MANUFACTURING

Our railcar production facility in Castaños is certified by the Association of American Railroads (the “AAR”), which sets railcar manufacturing industry standards for quality control. Our Castaños manufacturing facility began production during the third quarter of 2020 and provides a solid platform from which to pursue a broad range of commodity carrying railcar business including intermodal well cars, non-intermodal flat cars and various open-top hopper, covered hopper and gondola cars.

Our manufacturing process involves four basic steps: fabrication, assembly, finishing and inspection. Our facility has numerous checkpoints at which we inspect products to maintain quality control, a process that our operations management continuously monitors. In our fabrication processes, we employ standard metal working tools, many of which are computer controlled. Each assembly line typically involves 15 to 20 manufacturing positions, depending on the complexity of the particular railcar design. We use mechanical fastening in the fitting and assembly of our aluminum-bodied railcar parts, while we typically use welding for the assembly of our steel-bodied railcars. For aluminum-bodied railcars, we begin the finishing process by cleaning the railcar’s surface and then applying the decals. In the case of steel-bodied railcars, we begin the finishing process by blasting the surface area of the railcar, painting it and then applying decals. Once we have completed the finishing process, our employees, along with representatives of the customer purchasing the particular railcars, inspect all railcars for adherence to specifications.

CUSTOMERS

We have strong long-term relationships with many large purchasers of railcars. Long-term customer relationships are particularly important in the railcar industry, given the limited number of buyers of railcars.

Our customer base consists mostly of North American financial institutions, railroads and shippers. We believe that our customers’ preference for reliable, high-quality products, our engineering design expertise, technological leadership in developing and enhancing innovative products and the competitive pricing of our railcars have helped us maintain our long-standing relationships with our customers.

In 2021, revenue from three customers, TTX Company, CIT Rail and Union Pacific Railroad, accounted for approximately 46%,12% and 8%, respectively, of total revenue. In 2021, sales to our top five customers accounted for approximately 78% of total revenue. In 2020, revenue from three customers, Amtrak, TTX Company and The Boeing Company, accounted for approximately 44%, 21% and 12%, respectively, of total revenue. In 2020, sales to our top five customers accounted for approximately 94% of total revenue. Our railcar sales to customers outside the United States were $1.4 million in 2020. We did not have any railcar sales to customers outside the United States in 2021. Many of our customers do not purchase railcars every year since railcar fleets are not necessarily replenished or augmented every year. The size and frequency of railcar orders often results in a small number of customers representing a significant portion of our sales in a given year. Although we have long-standing relationships with many of our major customers, the loss of any significant portion of our sales to any major customer, the loss of a single major customer or a material adverse change in the financial condition of any one of our major customers could have a material adverse effect on our business, financial condition and results of operations.

SALES AND MARKETING

Our direct sales group is organized by customer and geography and consists of vice presidents of sales, (“VP’s”) contract administrators, a manager of customer service, a director of field support, and support staff. The VP’s are responsible for developing and closing new business and managing customer relationships. Our contract administrators are responsible for preparing proposals and other inside sales activities. Our director of field support is responsible for after-sale follow-up, technical support, training, and in-field product performance reviews.

RESEARCH AND DEVELOPMENT

We utilize the latest engineering methods, tools and processes to ensure that new products and processes meet our customers’ requirements and are delivered in a timely manner. We develop and introduce new railcar designs as a result of a combination of customer feedback and close observation of developing market trends. We work closely with our customers to understand their expectations and design railcars that meet their needs. New product designs are tested and validated for compliance with AAR standards prior to introduction. This comprehensive approach provides the criteria and direction that ensure we are developing

products that our customers desire and perform as expected. Costs associated with research and development are expensed as incurred.

BACKLOG

We define backlog as the value of those products or services which our customers have committed in writing to purchase from us or lease from us when built, but which have not yet been recognized as sales. Our contracts may include cancellation clauses under which customers are required, upon cancellation of the contract, to reimburse us for costs incurred in reliance on an order and in some cases, to compensate us for lost profits. However, customer orders may be subject to customer requests for delays in railcar deliveries, inspection rights and other customary industry terms and conditions, which could prevent or delay backlog from being converted into sales.

The following table depicts our reported railcar backlog in number of railcars and estimated future sales value attributable to such backlog, for the periods shown.

	Year Ended December 31,	
	2021	2020
Railcar backlog at start of period	1,389	1,650
Railcars delivered	(1,731)	(751)
Net railcar orders received	2,665	490
Railcar backlog at end of period (1)	2,323	1,389
Estimated revenue from backlog at end of period (in thousands) (2)	$ 240,160	$ 146,006

(1) Railcar backlog includes 605 and 149 rebuilt railcars as of December 31, 2021 and 2020, respectively.
(2) Estimated revenue from backlog reflects the total revenue attributable to the backlog reported at the end of the period as if such backlog were converted to actual sales. Estimated revenue from backlog as of December 31, 2021 includes $14.9 million that is not expected to be converted to sales within one year. Estimated revenue from backlog does not reflect potential price increases and decreases under customer contracts that provide for variable pricing based on changes in the cost of raw materials. Although we continually look for opportunities to package our leased assets for sale to our leasing company partners, these leased assets may not be converted to sales.

Although our reported backlog is typically converted to sales within two years, our reported backlog may not be converted to sales in any particular period, if at all, and the actual sales from these contracts may not equal our reported backlog estimates. In addition, due to the large size of railcar orders and variations in the mix of railcars, the size of our reported backlog at the end of any given period may fluctuate significantly.

SUPPLIERS AND MATERIALS

The cost of raw materials and components represents a substantial majority of the manufacturing costs of most of our railcar product lines. As a result, the management of raw materials and components purchasing is critical to our profitability. We enjoy generally strong relationships with our suppliers, which helps to ensure access to supplies when railcar demand is high.

Our primary aluminum suppliers are Mandel Metals and Hydro Extrusions. Aluminum prices generally are not fixed at the time a railcar order is accepted due to our infrequent usage and subsequent low volume purchases of aluminum. In 2021 we primarily bought fabrications from local suppliers, with Fasemex being the largest of the local suppliers. In 2022, we have returned to buying steel directly. Currently our steel is converted to fabrications by Fasemex or by other local suppliers. With the anticipated opening of our Fabrication Shop in Q2 2022, we will again be producing our own fabricated parts.

Our primary component suppliers include Wabtec, Standard Steel, SKF, Amsted, and Metalex, who supply us with truck components, brake components, couplers, wheels & axles, bearings, and running boards, respectively. Roll Form Group is the sole supplier of our roll-formed center sills, which were used in 20% and 44% of our new railcars produced in 2021 and 2020, respectively. A center sill is the primary longitudinal structural component of a railcar, which helps the railcar withstand the weight of the cargo and the force of being pulled during transport. Our center sill is formed into its final shape without heating by passing steel plate through a series of rollers.

Other suppliers provide brake systems, castings, bearings, fabrications and various other components. The railcar industry is periodically subject to supply constraints for some of the key railcar components.

Except as described above, there are usually at least two suppliers for each of our raw materials and specialty components. Our top ten suppliers accounted for 80% and 69% of our total purchases in 2021 and 2020, respectively.

COMPETITION

We operate in a highly competitive marketplace especially in periods of low market demand resulting in excess manufacturing capacity and face substantial competition from established competitors in the railcar industry in North America. In addition to price, competition is based on delivery timing, product performance and technological innovation, reputation for product quality and customer service and support.

We have three principal competitors in the North American railcar market that primarily manufacture railcars for third-party customers, which are Trinity Industries, Inc., The Greenbrier Companies, Inc. and National Steel Car Limited.

Competition in the North American market from railcar manufacturers located outside of North America is limited by, among other factors, high shipping costs and familiarity with the North American market.

INTELLECTUAL PROPERTY

We have several U.S. and international patents and pending applications, registered trademarks, copyrights and trade names. Key patents include our one-piece center sill, our hopper railcar with automatic individual door system and our railroad car tub. The protection of our intellectual property is important to our business.

HUMAN CAPITAL

Employees

As of December 31, 2021, we had 997 employees, of whom 223 were salaried and 774 were hourly wage earners. As of December 31, 2021, 941 of our employees were based in Mexico while 54 were based in the US and 2 were based in China. As of December 31, 2020, we had 669 employees, of whom 170 were salaried and 499 were hourly wage earners. As of December 31, 2020, 316 of our employees were based in Mexico while 351 were based in the US and 2 were based in China.

Workforce Talent and Diversity

The success and growth of our business depend in large part on our ability to attract, develop, and retain a diverse population of talented, qualified, and highly skilled employees at all levels of our organization, including the individuals who comprise our global workforce, our executive officers and other key personnel.

Our compensation programs are designed to ensure that we attract and retain the right talent. We generally review and consider median market pay levels when assessing total compensation, but pay decisions are based on a more comprehensive set of considerations such as company performance, individual performance, experience, and internal equity. We continually monitor key talent metrics including employee engagement and employee turnover. Our employee benefits programs strive to deliver competitive benefits that are effective in attracting and retaining talent, that create a culture of well-being and inclusiveness, and that meet the diverse needs of our employees. Our total package of benefits is designed to support the physical, mental, and financial health of our employees, and we currently provide access to medical, dental, vision, life insurance and retirement benefits, as well as disability benefits.

Safety

We are committed to providing a safe and healthy work environment for all employees. We seek to protect the well-being of our employees through comprehensive health and safety policies and procedures that include the identification and mitigation of health and safety risks, operations management, health and safety training, emergency preparedness, performance auditing, program certification, and improvement targets.

Human Rights

We are committed to respecting human rights throughout all our operations, and seek to provide respect, dignity, and all basic needs to employees and contractors. We are committed to promoting human rights and strive to ensure that the products and services provided by the Company and our third-party business partners are ethically sourced and do not breach human rights laws in countries in which they originate.

COMMITMENT TO SUSTAINABILITY

Consistent with our vision, we are committed to growing our business in a sustainable and socially responsible manner. In March 2021, our Nominating and Corporate Governance Committee made a determination to undertake a comprehensive review of our governance policies in light of recent trends relating to environmental, social and governance ("ESG") topics and disclosure. Throughout 2021, the Nominating and Corporate Governance Committee met periodically to develop, assess and prioritize ESG topics that are important to our business and all of our stockholders and to improve both the measurement and transparency of our ESG disclosures and practices. The Nominating and Corporate Governance Committee has primary oversight responsibility for our developing ESG efforts.

Environmental Stewardship

We are committed to contributing to a more resource-efficient economy and embedding climate change mitigation into our business strategy to help confront challenges such as energy management, fuel economy and efficiency, and materials sourcing. We aim to operate our business in a manner that minimizes the impact on natural resources and the environment. For decades, FCA has been a leader in introducing lighter weight freight car designs that require less energy to manufacture and offer higher capacity than the freight cars they replace. Our offering of "conversion" railcars, eliminates underutilized and older inefficient railcar assets by scraping the car body and reusing key steel and cast components. The scrap materials are used to support a more environmentally friendly steel manufacturing process and the reuse of key components including wheels and castings results in reduced energy consumption and greenhouse gas emissions. We believe railcars are a more environmentally-friendly way to fuel the North American supply chain. U.S. freight railroads are among the most fuel efficient modes to transport goods, moving 1 ton of freight 435 miles on a single gallon of fuel. Railroads produce far fewer greenhouse gas emissions than certain other modes of commercial transportation, such as trucks. We strive to responsibly support customers' products at each stage of the product lifecycle, including recycling the railcar through scrap and salvage at the end of its useful life.

Social Responsibility

We actively engage stakeholders across our environmental, health and safety initiatives to continually improve processes and performance as we operate our businesses with a goal of zero injuries and incidents. We strive to attract and retain a diverse and empowered workforce. Our priorities include fostering an inclusive and collaborative workplace, promoting opportunities for professional development, improving the well-being of our employees and other stakeholders, and contributing to the communities in which we operate.

Governance

Our goal is to promote the long-term interests of stakeholders, strengthen accountability, and inspire trust. We have focused our governance practices to promote best-in-class leadership, diversity, independence and stockholder-aligned incentive practices at the most senior levels. Our Board of Directors includes an independent Chairman and diverse and independent Board members who help ensure that our business strategies and programs, including our compensation program, are aligned with stakeholder interests. Our Board of Directors and senior management teams are also committed to the Company's continued respect for human rights throughout all our operations.

GOVERNMENTAL REGULATION

Railcar Industry

The Federal Railroad Administration, or FRA, administers and enforces U.S. federal laws and regulations relating to railroad safety. These regulations govern equipment and safety compliance standards for freight railcars and other rail equipment used in interstate commerce. The AAR promulgates a wide variety of rules and regulations governing safety and design of equipment, relationships among railroads with respect to freight railcars in interchange and other matters. The AAR also certifies freight railcar manufacturers and component manufacturers that provide equipment for use on railroads in the United States as well as providers of railcar repair and maintenance services. New products must generally undergo AAR testing and approval processes. As a result of these regulations, we must maintain certifications with the AAR as a freight railcar manufacturer and products that we sell must meet AAR and FRA standards.

We are also subject to oversight in other jurisdictions by foreign regulatory agencies and to the extent that we expand our business internationally, we will increasingly be subject to the regulations of other non-U.S. jurisdictions.

Environmental Matters

We are subject to comprehensive federal, state, local and international environmental laws and regulations relating to the release or discharge of materials into the environment, the management, use, processing, handling, storage, transport or disposal of hazardous materials, or otherwise relating to the protection of human health and the environment. These laws and regulations not only expose us to liability for our own negligent acts, but also may expose us to liability for the conduct of others or for our actions that were in compliance with all applicable laws at the time these actions were taken. In addition, these laws may require significant expenditures to achieve compliance, and are frequently modified or revised to impose new obligations. Civil and criminal fines and penalties may be imposed for non-compliance with these environmental laws and regulations. Our operations that involve hazardous materials also raise potential risks of liability under the common law.

Environmental operating permits are, or may be, required for our operations under these laws and regulations. These operating permits are subject to modification, renewal and revocation. We regularly monitor and review our operations, procedures and policies for compliance with these laws and regulations. Despite these compliance efforts, risk of environmental liability is inherent in the operation of our businesses, as it is with other companies engaged in similar businesses. We believe that our operations and facilities are in substantial compliance with applicable laws and regulations and that any noncompliance is not likely to have a material adverse effect on our operations or financial condition.

Future events, such as changes in or modified interpretations of existing laws and regulations or enforcement policies, or further investigation or evaluation of the potential health hazards of products or business activities, may give rise to additional compliance and other costs that could have a material adverse effect on our financial condition and operations. In addition, we have in the past conducted investigation and remediation activities at properties that we own to address historic contamination. To date, such costs have not been material. Although we believe we have satisfactorily addressed all known material contamination through our remediation activities, there can be no assurance that these activities have addressed all historic contamination. The discovery of historic contamination or the release of hazardous substances into the environment could require us in the future to incur investigative or remedial costs or other liabilities that could be material or that could interfere with the operation of our business.

In addition to environmental laws, the transportation of commodities by railcar raises potential risks in the event of a derailment or other accident. Generally, liability under existing law in the United States for a derailment or other accident depends on the negligence of the party, such as the railroad, the shipper or the manufacturer of the railcar or its components. However, for the shipment of certain hazardous commodities, strict liability concepts may apply.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

The following table presents information on our primary leased and owned operating properties as of December 31, 2021:

Use	Location	Size	Leased or Owned	Lease Expiration Date
Corporate headquarters	Chicago, Illinois	8,800 square feet	Leased	November 30, 2031
Railcar assembly and component manufacturing	Castaños, Mexico	302,037 square feet on 40.7 acres of land	Leased	September 30, 2040
Administrative and parts warehouse	Johnstown, Pennsylvania	86,000 square feet	Leased	December 31, 2023
Sourcing office	Qingdao, China	1,485 square feet	Leased	October 31, 2023

Item 3. Legal Proceedings.

The information in response to this item is included in Note 17, Risks and Contingencies, to our Consolidated Financial Statements included in Part II, Item 8 of this Form 10-K.

Item 4. Mine Safety Disclosures.

Not applicable

PART II

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

Our common stock has been quoted on the Nasdaq Global Market under the symbol “RAIL” since April 6, 2005. As of March 22, 2022, there were approximately 63 holders of record of our common stock, which does not include persons whose shares of common stock are held by a bank, brokerage house or clearing agency.

Dividend Policy

The declaration and payment of future dividends will be at the discretion of our board of directors and will depend on, among other things, general economic and business conditions, our strategic plans, our financial results, contractual and legal restrictions on the payment of dividends by us and our subsidiaries and such other factors as our board of directors considers to be relevant. The ability of our board of directors to declare a dividend on our common stock is limited by Delaware law.

Item 6. Reserved

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

OVERVIEW

You should read the following discussion in conjunction with our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements that are based on management's current expectations, estimates and projections about our business and operations. Our actual results may differ materially from those currently anticipated and expressed in such forward-looking statements. See "Forward-Looking Statements."

We are a diversified manufacturer of railcars and railcar components. We design and manufacture a broad variety of railcar types for transportation of bulk commodities and containerized freight products primarily in North America, including open top hoppers, covered hoppers, and gondolas along with intermodal and non-intermodal flat cars. We and our predecessors have been manufacturing railcars since 1901. Over the last several years, we have introduced a number of new or redesigned railcar types as we continue to diversify our product portfolio.

During 2019, we entered into a joint venture arrangement with Fabricaciones y Servicios de México, S.A. de C.V. ("Fasemex"), a Mexican company with operations in both Mexico and the United States, to manufacture railcars in Castaños, Coahuila, Mexico ("Castaños"), in exchange for a 50% interest in the operation. Production of railcars at the facility began during the third quarter of 2020. On October 16, 2020, we acquired Fasemex's 50% ownership in the joint venture in exchange for $0.2 million in cash and 2,257,234 shares of the Company's common stock. As of March 2021, we moved all of our production to the Castaños facility.

We ceased operations at the Roanoke Facility and vacated the facility as of March 31, 2020. On September 10, 2020, we announced our plan to permanently close the Shoals Facility in light of the cyclical industry downturn, which was magnified by the COVID-19 pandemic. The closure will reduce costs and align our manufacturing capacity with the current rail car market. We ceased production at the Shoals Facility in February 2021.

Restructuring and impairment charges of $6.5 million related to these actions were incurred during the year ended December 31, 2021. Restructuring and impairment charges for the year ended December 31, 2020 of $18.3 million primarily included a $17.5 million non-cash impairment charge recorded to reduce the right of use asset for the Shoals Facility lease to its fair value, non-cash impairment charges for property, plant and equipment of $9.5 million and employee severance and retention charges of $3.3 million which were offset by a $15.2 million lease termination gain for the Shoals Facility.

Railcar deliveries totaled 1,731 units, consisting of 1,354 new railcars and 377 rebuilt railcars, for the year ended December 31, 2021, compared to 751 railcars delivered in the year ended December 31, 2020, including 600 new railcars and 151 rebuilt railcars. Our total backlog of firm orders for railcars increased from 1,389 railcars as of December 31, 2020 to 2,323 railcars as of December 31, 2021.

Since first being reported in December 2019, the COVID-19 pandemic continues to present risks to our business. We are closely monitoring and managing the impacts of the COVID-19 pandemic on our business, as well as the impact on the global economy, and governmental reactions to the pandemic. The United States government and the Mexico Federal Ministry of Health and Federal Ministry of Communications and Transportation cited the railcar industry as critical to the United States and Mexico's response efforts to the pandemic. The railcar industry is susceptible to a reduction in demand associated with the overall economic slowdown caused by the virus. In addition, public health organizations and national, state and local governments have implemented measures to combat the spread of COVID-19, including restrictions on movement such as quarantines, "stay-at-home" orders and social distancing ordinances and restricting or prohibiting some forms of business activity. Accordingly, our ability to predict industry demand and establish forecasts for sales, operating results and cash flows may be impacted. Furthermore, our plant operations and supply chain are potentially susceptible to large-scale outbreaks of the virus within our workforce or that of any of our suppliers.

Our management is focused on mitigating the impact of COVID-19 on our business and the risk to our employees. We have taken a number of precautionary measures including implementing detailed cleaning and disinfecting processes at our facilities, adhering to social distancing protocols, encouraging employees to work remotely, when possible, and scheduling vaccination clinics for our employees.

The Company recognized an increase in revenue compared to the corresponding prior year which we attribute primarily to improvement in the railcar market in the latter half of 2021.

FINANCIAL STATEMENT PRESENTATION

Revenues

Our Manufacturing segment revenues are generated primarily from sales of the railcars that we manufacture. Our Manufacturing segment sales depend on industry demand for new railcars, which is driven by overall economic conditions and the demand for railcar transportation of various products, such as coal, steel products, minerals, cement, motor vehicles, forest products and agricultural commodities. Our Manufacturing segment sales are also affected by competitive market pressures that impact our market share, the prices for our railcars and by the types of railcars sold. Our Manufacturing segment revenues also include revenues from major railcar rebuilds and lease rental payments received with respect to railcars under operating leases. Our Corporate and other revenue sources include parts sales.

We generally recognize revenue at a point in time as we satisfy a performance obligation by transferring control over a product or service to a customer. Revenue is measured at the transaction price, which is based on the amount of consideration that we expect to receive in exchange for transferring the promised goods or services to the customer. Performance obligations are typically completed and revenue is recognized for the sale of new and rebuilt railcars when the finished railcar is transferred to a specified railroad connection point. In certain sales contracts, revenue is recognized when a certificate of acceptance has been issued by the customer and control has been transferred to the customer. At that time, the customer directs the use of, and obtains substantially all of the remaining benefits from the asset. When a railcar sales contract contains multiple performance obligations, we allocate the transaction price to the performance obligations based on the relative stand-alone selling price of the performance obligation determined at the inception of the contract based on an observable market price, expected cost plus margin or market price of similar items. The variable purchase patterns of our customers and the timing of completion, delivery and customer acceptance of railcars may cause our revenues and income from operations to vary substantially each quarter, which will result in significant fluctuations in our quarterly results.

Cost of sales

Our cost of sales includes the cost of raw materials such as aluminum and steel, as well as the cost of finished railcar components, such as castings, wheels, truck components and couplers, and other specialty components. Our cost of sales also includes labor, utilities, freight, manufacturing depreciation and other operating costs. A portion of the contracts covering our backlog at December 31, 2021 are fixed-rate contracts. Therefore, if material costs were to increase, we will likely not be able to pass on these increased costs to those customers. We manage material price increases by locking in prices where possible.

Operating loss

Operating loss represents revenues less cost of sales, loss on sale of railcars available for lease, impairment on leased railcars, gain on termination of postretirement benefit plan, selling, general and administrative expenses, and restructuring and impairment charges.

RESULTS OF OPERATIONS

Year Ended December 31, 2021 compared to Year Ended December 31, 2020

Revenues

Our consolidated revenues for the year ended December 31, 2021 were $203.1 million compared to $108.4 million for the year ended December 31, 2020. Manufacturing segment revenues for the year ended December 31, 2021 were $192.8 million compared to $98.7 million for the year ended December 31, 2020. The increase in Manufacturing segment revenues for 2021 compared to 2020 reflects an increase in the number of railcars delivered from 751 railcars in 2020 to 1,731 railcars in 2021, which was partially offset by a lower average selling price for new railcars. Corporate and Other revenues for the year ended December 31, 2021 were $10.2 million compared to $9.7 million for the year ended December 31, 2020 reflecting higher parts sales.

Gross Profit (Loss)

Our consolidated gross profit for the year ended December 31, 2021 was $11.5 million compared to a gross loss of $13.5 million for the year ended December 31, 2020. Our consolidated gross margin was 5.6% for the year ended December 31, 2021 compared to (12.5)% for the year ended December 31, 2020. Manufacturing segment gross profit for the year ended December 31, 2021 was $8.5 million compared to a gross loss of $15.2 million for the year ended December 31, 2020. The $25.0 million increase in consolidated gross profit and $23.8 million increase in Manufacturing segment gross profit reflect a favorable volume variance of $8.7 million a favorable price/mix variance of $15.1 million which primarily consisted of a reduction in overhead costs due to the restructuring of our manufacturing footprint.

Selling, General and Administrative Expenses

Consolidated selling, general and administrative expenses for the year ended December 31, 2021 were $27.5 million compared to $29.8 million for the year ended December 31, 2020. Consolidated selling, general and administrative expenses for the year ended December 31, 2021 included decreases in bad debt expense of $1.8 million, salaries and wages of $1.3 million and executive retention bonuses of $1.1 million which were partially offset by increases in stock-based compensation of $1.9 million. Consolidated selling, general and administrative expenses for the year ended December 31, 2021 were 13.6% of revenue, compared to 27.5% of revenue for the year ended December 31, 2020. Manufacturing segment selling, general and administrative expenses for the year ended December 31, 2021 were $2.6 million compared to $7.1 million for the year ended December 31, 2020 and the decrease was primarily due to decreases in allocated costs of $3.6 million and bad debt expense of $1.7 million which were partially offset by increases in consulting costs. Manufacturing segment selling, general and administrative expenses for the year ended December 31, 2021 were 1.3% of revenue compared to 7.2% of revenue for the year ended December 31, 2020. Corporate and Other selling, general and administrative expenses were $24.9 million for the year ended December 31, 2021 compared to $22.8 million for the year ended December 31, 2020. Corporate and Other selling, general and administrative expenses for the year ended December 31, 2021 included increases in stock-based compensation expenses of $1.9 million and allocated costs of $4.0 million, which were partially offset by decreases in consulting costs of $1.2 million and executive retention bonuses of $1.1 million. Corporate and Other selling, general and administrative expenses for the year ended December 31, 2021 also included decreases in salaries and wages of $0.9 million and medical insurance costs of $0.7 million due to lower headcount.

Impairment on Leased Railcars

During the year ended December 31, 2021, we recorded a pre-tax non-cash impairment charge of $0.2 million related to our small cube covered hopper railcars due to renegotiation of certain leases and our settlement agreement with the lender for our leasing companies. During the year ended December 31, 2020, we recorded a pre-tax non-cash impairment charge of $19.0 million related to our small cube covered hopper railcars of which $17.0 million related to the railcars which we own and $2.0 million related to the right-of-use asset associated with our leased railcar portfolio See Note 7 – Leased Railcars to our consolidated financial statements.

Restructuring and Impairment Charges

Restructuring and impairment charges for the year ended December 31, 2021 were $6.5 million compared to $18.3 million for the year ended December 31, 2020. On September 10, 2020, we announced our plan to permanently close our Shoals facility in light of the cyclical industry downturn, which had been magnified by the COVID-19 pandemic. On October 8, 2020, we reached an agreement with the Shoals facility owner and landlord to shorten the Shoals lease term by amending the expiration date to the end of February 2021. In addition, the landlord agreed to waive the base rent payable under the original lease for the months of October 2020 through February 2021. Property, plant and equipment with an estimated fair value of $10.1 million was sold or transferred to the Shoals landlord during 2021 as consideration for the landlord's entry into the lease amendment and the aforementioned rent waiver. Restructuring and impairment charges of $6.5 million for the year ended December 31, 2021 related to relocating some of the facility's equipment to Castaños as well as shutting down the Shoals facility.

Restructuring and impairment charges of $18.3 million for the year ended December 31, 2020 primarily included a $17.5 million non-cash impairment charge recorded to reduce the right of use asset for the Shoals Facility lease to its fair value, non-cash impairment charges for property, plant and equipment of $9.5 million and employee severance and retention charges of $3.3 million which were offset by a $15.2 million lease termination gain for the Shoals Facility.

Operating Loss

Our consolidated operating loss for the year ended December 31, 2021 was $22.8 million compared to $80.6 million for the year ended December 31, 2020. Operating loss for the Manufacturing segment was $0.8 million for the year ended December 31, 2021 compared to $59.0 million for the year ended December 31, 2020. Corporate and Other operating loss was $22.0 million for the year ended December 31, 2021 compared to $21.6 million for the year ended December 31, 2020.

Interest Expense

Interest expense was $13.3 million for the year ended December 31, 2021 compared to $2.2 million for the year ended December 31, 2020 reflecting increased borrowings on our revolving line of credit, increased costs related to eligible collateral, an additional term loan advance during 2021 and an increase in amortization of deferred financing costs.

Loss on Change in Fair Market Value of Warrant Liability

Loss on change in fair market value of warrant liability was $14.9 million for the year ended December 31, 2021 compared to $3.7 million for the year ended December 31, 2020. The increase in the loss is primarily driven by appreciation in the Company's stock price during the year ended December 31, 2021 which is the primary driver in the valuation of the warrants.

Gain on Extinguishment of Debt

Gain on extinguishment of debt of $10.1 million for the year ended December 31, 2021 primarily represents PPP Loan forgiveness of all outstanding PPP loan principal and accrued interest.

Income Taxes

Our income tax provision was $1.4 million for the year ended December 31, 2021 compared to $0.2 million for the year ended December 31, 2020. Our income tax provision for the year ended December 31, 2021 reflects pre-tax income for our Mexico subsidiary. Our effective tax rate for the year ended December 31, 2021was (3.5)% compared to (0.4)% for the year ended December 31, 2020.

Net Loss

As a result of the foregoing, our net loss was $41.4 million for the year ended December 31, 2021, compared to a net loss of $84.4 million for the year ended December 31, 2020. For the year ended December 31, 2021 our net loss per share was $2.00 compared to net loss per share of $6.29 for the year ended December 31, 2020.

LIQUIDITY AND CAPITAL RESOURCES

Our primary sources of liquidity are our cash and cash equivalent balances on hand and our credit and debt facilities outlined below.

The Company manufactures and provides essential products and services to a variety of critical infrastructure customers, and it intends to continue providing its products and services to these customers. The extent of the impact of the COVID-19 pandemic on the Company's operational and financial performance will depend on future developments, including the duration and spread of the pandemic and related actions taken by the U.S. and Mexico governments, state and local government officials, and other international governments to prevent disease spread, all of which are uncertain and cannot be predicted. Accordingly, our ability to predict industry demand and establish forecasts for sales, operating results and cash flows may be impacted.

Term Loan Credit Agreement

On October 13, 2020, the Company entered into a Credit Agreement (the "Term Loan Credit Agreement") by and among the Company, as guarantor, FreightCar North America ("Borrower" and together with the Company and certain other subsidiary guarantors, collectively, the "Loan Parties"), CO Finance LVS VI LLC, as lender (the "Lender"), and U.S. Bank National Association, as disbursing agent and collateral agent ("Agent"). Pursuant to the Term Loan Credit Agreement, the Lender committed to the extension of a term loan credit facility in the principal amount of $40.0 million, consisting of a single term loan to be funded upon the satisfaction of certain conditions precedent set forth in the Term Loan Credit Agreement, including stockholder approval of the issuance of the common stock underlying the Warrant described below (the funding date of such term loan, the "Closing Date"). FreightCar America, Inc. stockholders approved the issuance of the common stock underlying the Warrant at a special stockholders' meeting on November 24, 2020. The $40.0 million term loan closed and was funded on November 24, 2020. The Company incurred $2.9 million in deferred financing costs related to the Term Loan Agreement. The deferred financing costs are presented as a reduction of the long-term debt balance and amortized to interest expense over the term of the Term Loan Agreement.

The Term Loan Credit Agreement has a term ending five years following the Closing Date. The term loan outstanding under the Term Loan Credit Agreement bears interest, at Borrower's option and subject to the provisions of the Term Loan Credit Agreement, at Base Rate (as defined in the Term Loan Credit Agreement) or Eurodollar Rate (as defined in the Term Loan Credit Agreement) plus the Applicable Margin (as defined in the Term Loan Credit Agreement) for each such interest rate set forth in the Term Loan Credit Agreement. As of December 31, 2021, the interest rate on the original advance of $40.0 million under the Term Loan Credit Agreement was 14.0%.

The Term Loan Credit Agreement has both affirmative and negative covenants, including, without limitation, minimum liquidity, limitations on indebtedness, liens and investments. The Term Loan Credit Agreement also provides for customary events of default. Pursuant to the terms and conditions set forth in the Term Loan Credit Agreement and the related loan documents, each of the Loan Parties granted to Agent a continuing lien upon all of such Loan Parties' assets to secure the obligations of the Loan Parties under the Term Loan Credit Agreement.

On May 14, 2021, FreightCar North America ("Borrower" and together with the Company and certain other subsidiary guarantors, collectively, the "Loan Parties") entered into an Amendment No. 2 to the Term Loan Credit Agreement (the "Second Amendment" and together with the Term Loan Credit Agreement, the "Term Loan Credit Agreement") with CO Finance LVS VI LLC, as lender (the "Lender"), an affiliate of a corporate credit fund, and U.S. Bank National Association, as disbursing agent and collateral agent ("Agent"), pursuant to which the principal amount of the term loan credit facility was increased by $16.0 million to a total of $56.0 million, with such additional $16.0 million (the "Additional Loan") to be funded upon the satisfaction of certain conditions precedent set forth in the Second Amendment. The Additional Loan closed and was funded on May 17, 2021. The Company incurred $0.5 million in deferred financing costs related to the Second Amendment which are presented as a reduction of the long-term debt balance and amortized on a straight-line basis to interest expense over the term of the Second Amendment.

The Additional Loan bears interest, at Borrower's option and subject to the provisions of the Term Loan Credit Agreement, at the Base Rate (as defined in the Term Loan Credit Agreement) or Eurodollar Rate (as defined in the Term Loan Credit Agreement) plus the Applicable Margin (as defined in the Term Loan Credit Agreement) for each such interest rate set forth in the Term Loan Credit Agreement. As of December 31, 2021, the interest rate on the Additional Loan was 14.0%.

Pursuant to the Second Amendment, in the event that the Additional Loan is not repaid in full by March 31, 2022, the Company shall issue to the Lender and/or an affiliate of the Lender a warrant (the "March 2022 Warrant") to purchase a number of shares of the Company's common stock, par value $0.01 per share, equal to 5% of the Company's outstanding common stock on a fully-diluted basis at the time the March 2022 Warrant is exercised (after giving effect to such issuance). The March 2022 Warrant, if issued, will have an exercise price of $0.01 and a term of ten years.

Pursuant to the Second Amendment, the Company was required to among other things, i) obtain a term sheet for additional financing of no less than $15.0 million by July 31, 2021 and ii) file a registration statement on Form S-3 registering Company securities, including the shares of Company common stock issuable upon exercise of the March 2022 Warrant, by no later than August 31, 2021. The Company has met each of the aforementioned obligations. The Form S-3 registering Company securities, including the shares of Company stock issuable upon exercise of the March 2022 Warrant was filed with the Securities and Exchange Commission on August 27, 2021 and became effective on September 9, 2021.

On July 30, 2021, the Loan Parties entered into an Amendment No. 3 to Credit Agreement (the "Third Amendment" and together with the Credit Agreement, as amended, the "Term Loan Credit Agreement") with Lender and the Agent, pursuant to which, among other things, Lender obtained a standby letter of credit (as may be amended from time to time, the "Third Amendment Letter of Credit") from Wells Fargo Bank, N.A., in the principal amount of $25,000 for the account of the Company and for the benefit of Siena Lending Group LLC (the "Revolving Loan Lender").

Pursuant to the Third Amendment, on July 30, 2021, the Company, the Lender, Alter Domus (US) LLC, as calculation agent, and the Agent entered into a reimbursement agreement (the "Reimbursement Agreement"), pursuant to which, among other things, the Company agreed to reimburse the Agent, for the account of the Lender, in the event of any drawings under the Third Amendment Letter of Credit by the Revolving Loan Lender.

On December 30, 2021, the Loan Parties entered into an Amendment No. 4 to Credit Agreement (the "Fourth Amendment" and together with the Credit Agreement, the "Term Loan Credit Agreement") with Lender and the Agent, pursuant to which the principal amount of the term loan credit facility was increased by $15.0 million to a total of $71.0 million, with such additional $15.0 million (the "Delayed Draw Loan") to be funded, at the Borrower's option, upon the satisfaction of certain conditions precedent set forth in the Fourth Amendment. The Borrower has the option to draw on the Delayed Draw Loan through January 31, 2023 and may choose not to do so.

The Delayed Draw Loan, if funded, will bear interest, at Borrower's option and subject to the provisions of the Term Loan Credit Agreement, at the Base Rate (as defined in the Term Loan Credit Agreement) or Eurodollar Rate (as defined in the Term Loan Credit Agreement) plus the Applicable Margin (as defined in the Term Loan Credit Agreement) for each such interest rate set forth in the Term Loan Credit Agreement.

Pursuant to the Reimbursement Agreement, the Company shall make certain other payments as set forth below, so long as the Third Amendment Letter of Credit remains outstanding:

Letter of Credit Fee

The Company shall pay to Agent, for the account of Lender, an annual fee of $0.5 million, which shall be due and payable quarterly beginning on August 2, 2021, and every three months thereafter.

Equity Fee

Every three months (the “Measurement Period”), commencing on August 6, 2021, the Company shall pay to the Lender (or, so long as Lender is the sole provider of the Third Amendment Letter of Credit, to OC III LVS XII LP, if Lender has timely notified the Company in writing of such designation) a fee (the “Equity Fee”) payable in shares of common stock, par value $0.01 per share, of the Company (the “Common Stock”). The Equity Fee shall be calculated by dividing $1.0 million by the volume weighted average price of the Company’s Common Stock on the Nasdaq Capital Market for the ten (10) trading days ending on the last business day of the applicable Measurement Period. The Company can opt to pay the Equity Fee in cash, in the amount of $1.0 million, if, and only if, (x) the Company has already issued as Equity Fees a number of shares of its Common Stock equal to (I) 5.0% multiplied by (II) the total number of shares of Common Stock outstanding as of July 30, 2021, rounded down to the nearest whole share of Common Stock, and (y) the Company has at least $15.0 million of Repayment Liquidity after giving effect to such payment. The term Repayment Liquidity, as defined in the Term Loan Credit Agreement, means (a) all unrestricted and unencumbered cash and cash equivalents of the Loan Parties, plus (b) the undrawn and available portion of the commitments under that certain Amended and Restated Loan and Security Agreement by and among the Loan Parties and the Revolving Loan Lender (as described below), minus (c) all accounts payable of the Loan Parties that are more than 30 days past due.

The Equity Fee shall no longer be paid once the Company has issued to Lender and/or OC III LVS XII LP Equity Fees in an amount of Common Stock equal to 9.99% multiplied by the total number of shares of Common Stock outstanding as of July 30, 2021, rounded down to the nearest whole share of Common Stock (the “Maximum Equity”).

The issuance of each Equity Fee under the Reimbursement Agreement will be made in reliance on the exemption from registration contained in Section 4(a)(2) of the Securities Act for offers and sales of securities that do not involve a “public offering.”

Cash Fee

The Company shall pay to the Agent, for the account of the Lender (or, so long as the Lender is the sole provider of the Third Amendment Letter of Credit, to OC III LVS XII LP, if the Lender has timely notified the Company in writing of such designation) a cash fee (the “Cash Fee”) which shall be due and payable in cash quarterly beginning on the date that the Maximum Equity has been issued and thereafter on the business day immediately succeeding the last business day of the applicable Measurement Period. The Cash Fee shall be equal to $1.0 million, provided that, in the quarter in which the Maximum Equity is issued, such fee shall be equitably reduced by the value of any Equity Fee issued by the Company that quarter.

Warrant

In connection with the entry into the Term Loan Credit Agreement, the Company issued to an affiliate of the Lender (the “Warrantholder”) a warrant (the “Warrant”), pursuant to that certain warrant acquisition agreement, dated as of October 13, 2020 (the “Warrant Acquisition Agreement”), by and between the Company and the Lender to purchase a number of shares of the Company’s common stock, par value $0.01 per share, equal to 23% of the outstanding common stock on a fully-diluted basis at the time the Warrant is exercised (after giving effect to such issuance). The Warrant is exercisable for a term of ten years from the date of the issuance of the Warrant. The Warrant was issued on November 24, 2020 after the Company received stockholder approval of the issuance of the common stock issuable upon exercise of the Warrant by the Warrantholder. In connection with the issuance of the Warrant, the Company and the Lender entered into a registration rights agreement (the “Registration Rights Agreement”) as of the Closing Date of November 24, 2020. As of December 31, 2021 and December 31, 2020, the Warrant was exercisable for an aggregate of 6,098,217 and 5,307,539 shares, respectively, of common stock of the Company with a per share exercise price of $0.01. The Company determined that the Warrant should be accounted for as a derivative instrument and classified as a liability on its Consolidated Balance Sheets primarily due to the instrument obligating the Company to settle the Warrant in a variable number of shares of common stock. The Warrant was recorded at fair value and is treated as a discount on the term loan. The discount on the associated debt is amortized over the life of the Term Loan Credit Agreement and included in interest expense.

Pursuant to the Second Amendment, in the event that the Additional Loan is not repaid in full by March 31, 2022, the Company shall issue to the Lender and/or an affiliate of the Lender the March 2022 Warrant to purchase a number of shares of the Company’s common stock, par value $0.01 per share, equal to 5% of the Company’s outstanding common stock on a fully-diluted basis at the time the March 2022 Warrant is exercised (after giving effect to such issuance). The March 2022 Warrant, if issued, will have an exercise price of $0.01 and a term of ten years. The Company believes that it is probable that the March 2022 Warrant will be issued and as such has recorded an additional warrant liability of $7.4 million during the third quarter of 2021.

Pursuant to the Fourth Amendment and a warrant acquisition agreement, dated as of December 30, 2021 (the “Warrant Acquisition Agreement”), the Company issued to the Lender a warrant (the “December 2021 Warrant”) to purchase a number of shares of the

Company’s common stock, par value $0.01 per share, equal to 5% of the Company’s outstanding common stock on a fully-diluted basis at the time the December 2021 Warrant is exercised (after giving effect to such issuance). The December 2021 Warrant has an exercise price of $0.01 and a term of ten years. As of December 31, 2021, the December 2021 Warrant was exercisable for an aggregate of 1,325,699 shares of common stock of the Company with a per share exercise price of $0.01

In addition, to the extent the Delayed Draw Loan is funded, the Company has agreed to issue to the Lender a warrant (the “3% Additional Warrant”) to purchase up to a number of shares of the Company’s common stock, par value $0.01 per share, equal to 3% of the Company’s outstanding common stock on a fully-diluted basis at the time the 3% Additional Warrant is exercised (after giving effect to such issuance). The 3% Additional Warrant, if issued, will have an exercise price of $0.01 and a term of ten years.

Siena Loan and Security Agreement

On October 8, 2020, the Company entered into a Loan and Security Agreement (the “Siena Loan Agreement”) by and among the Company, as guarantor, and certain of its subsidiaries, as borrowers (together with the Company, the “Loan Parties”), and Siena Lending Group LLC, as lender (“Siena”). Pursuant to the Siena Loan Agreement, Siena provided an asset backed credit facility, in the maximum aggregate principal amount of up to $20.0 million, (the "Maximum Revolving Facility Amount") consisting of revolving loans (the Revolving Loans").

The Siena Loan Agreement replaced the Company’s prior revolving credit facility under the Credit and Security Agreement (the “BMO Credit Agreement”) dated as of April 12, 2019, among the Company and certain of its subsidiaries, as borrowers and guarantors, and BMO Harris Bank N.A., as lender, as amended from time to time, which was terminated effective October 8, 2020 and otherwise would have matured on April 12, 2024.

The Siena Loan Agreement provided for a revolving credit facility with maximum availability of $20.0 million, subject to borrowing base requirements set forth in the Siena Loan Agreement, which generally limited availability under the revolving credit facility to (a) 85% of the value of eligible accounts and (b) up to the lesser of (i) 50% of the lower of cost or market value of eligible inventory and (ii) 85% of the net orderly liquidation value of eligible inventory, and as reduced by reserves established by Siena from time to time in accordance with the Siena Loan Agreement.

On July 30, 2021, the Loan Parties and Siena entered into an Amended and Restated Loan and Security Agreement (the “Amended and Restated Loan and Security Agreement”), which amended and restated the terms and conditions of the Siena Loan Agreement in its entirety.

Pursuant to the Amended and Restated Loan and Security Agreement, the Maximum Revolving Facility Amount was increased to $25.0 million, provided, however, that the outstanding balance of all Revolving Loans may not exceed the lesser of (A) the Maximum Revolving Facility Amount minus the Availability Block and (B) an amount equal to the issued and undrawn portion of the Third Amendment Letter of Credit (as defined above) minus the Availability Block. The term “Availability Block”, as defined in the Amended and Restated Loan and Security Agreement, means 3.0% of the issued and undrawn amount under the Third Amendment Letter of Credit.

The Amended and Restated Loan and Security Agreement has a term ending on October 8, 2023. Revolving Loans outstanding under the Amended and Restated Loan and Security Agreement bear interest, subject to the provisions of the Amended and Restated Loan and Security Agreement, at an interest rate of 2% per annum in excess of the Base Rate (as defined in the Siena Loan Agreement). As of December 31, 2021, the interest rate on outstanding debt under the Amended and Restated Loan and Security Agreement was 5.26%.

The Amended and Restated Loan and Security Agreement contains affirmative and negative covenants, including, without limitation, limitations on future indebtedness, liens and investments. The Amended and Restated Loan and Security Agreement also provides for customary events of default. Pursuant to the terms and conditions set forth in the Amended and Restated Loan and Security Agreement, each of the Loan Parties granted Siena a continuing lien upon certain assets of the Loan Parties to secure the obligations of the Loan Parties under the Amended and Restated Loan and Security Agreement.

As of December 31, 2021, the Company had $24.0 million in outstanding debt under the Siena Loan Agreement and remaining borrowing availability of $0.1 million. As of December 31, 2020, the Company had $6.9 million in outstanding debt under the Siena Loan Agreement and remaining borrowing availability of $9.7 million. The Company incurred $1.1 million in deferred financing costs related to the Siena Loan Agreement and incurred $1.0 million in additional deferred financing costs related to the Amended and Restated Loan and Security Agreement. The deferred financing costs are presented as an asset and amortized to interest expense on a straight-line basis over the term of the Siena Loan Agreement.

On February 23, 2022 we entered into an amendment to the Siena Loan Agreement which, among other things, increased the Maximum Revolving Facility Amount to $35.0 million. See Note 23 Subsequent Events.

SBA Paycheck Protection Program Loan

In March 2020, Congress passed the Paycheck Protection Program ("PPP"), authorizing loans to small businesses for use in paying employees that they continue to employ throughout the COVID=19 pandemic and for rent, utilities and interest on mortgages. In June 2020, Congress enacted the Paycheck Protection Program Flexibility Act ("PPPFA"), amending the PPP.

Loans obtained through the PPP, as amended, are eligible to be forgiven as long as the proceeds are used for qualifying purposes and certain other conditions are met. On April 16, 2020, the Company received a loan from BMO Harris Bank N.A. in the amount of $10.0 million (the "PPP Loan"). Since the entire PPP Loan was used for payroll, utilities and interest, management anticipated that the majority of the PPP Loan would be forgiven. The Company filed an application for PPP Loan forgiveness on October 28, 2020 along with a request for extension of the term of the PPP Loan to five years. On July 14, 2021, the Company received a notification from BMO Harris Bank N.A. that the Small Business Administration approved the Company's PPP Loan forgiveness application for the entire $10.0 million balance, together with interest accrued thereon, of the PPP Loan and that the remaining balance of the PPP Loan was zero. The Company recognized a gain on extinguishment of debt of $10.1 million related to PPP Loan forgiveness during 2021.

M&T Credit Agreement

On April 16, 2019, FreightCar America Leasing 1, LLC, an indirect wholly-owned subsidiary of the Company ("Freightcar Leasing Borrower"), entered into a Credit Agreement (the "M&T Credit Agreement") with M & T Bank, N.A., as lender ("M&T"). Pursuant to the M&T Credit Agreement, M&T extended a revolving credit facility to Freightcar Leasing Borrower in an aggregate amount of up to $40.0 million for the purpose of financing railcars which will be leased to third parties.

On April 16, 2019, Freightcar Leasing Borrower also entered into a Security Agreement with M&T (the "M&T Security Agreement") pursuant to which it granted a security interest in all of its assets to M&T to secure its obligations under the M&T Credit Agreement.

On April 16, 2019, FreightCar America Leasing, LLC, a wholly-owned subsidiary of the Company and parent of Freightcar Leasing Borrower ("Freightcar Leasing Guarantor"), entered into (i) a Guaranty Agreement with M&T (the "M&T Guaranty Agreement") pursuant to which Freightcar Leasing Guarantor guarantees the repayment and performance of certain obligations of Freightcar Leasing Borrower and (ii) a Pledge Agreement with M&T (the "M&T Pledge Agreement") pursuant to which Freightcar Leasing Guarantor pledged all of the equity of Freightcar Leasing Borrower held by Freightcar Leasing Guarantor.

The loans under the M&T Credit Agreement are non-recourse to the assets of the Company or its subsidiaries other than the assets of Freightcar Leasing Borrower and Freightcar Leasing Guarantor.

The M&T Credit Agreement had a term ending on April 16, 2021 (the "Term End"). Loans outstanding thereunder will bear interest, accrued daily, at the Adjusted LIBOR Rate (as defined in the M&T Credit Agreement) or the Adjusted Base Rate (as defined in the M&T Credit Agreement). The M&T Credit Agreement has both affirmative and negative covenants, including, without limitation, maintaining an Interest Coverage Ratio (as defined in the M&T Credit Agreement) of not less than 1.25:1.00, measured quarterly, and limitations on indebtedness, loans, liens and investments. The M&T Credit Agreement also provides for customary events of default.

On August 7, 2020, FreightCar Leasing Borrower received notice (the "First Notice") from M&T that, based on an appraisal (the "Appraisal") conducted by a third party at the request of M&T with respect to the railcars in FreightCar Leasing Borrower's Borrowing Base (as defined in the M&T Credit Agreement) under the M&T Credit Agreement, the unpaid principal balance under the M&T Credit Agreement exceeded the availability under the M&T Credit Agreement as of the date of the Appraisal by $5.1 million (the "Payment Demand Amount"). In the First Notice, M&T Bank: (a) asserted that an Event of Default under the M&T Credit Agreement has occurred because FreightCar Leasing Borrower did not pay the Payment Demand Amount to M&T within five days of the asserted change in availability; (b) demanded payment of the amount within five days of the date of the First Notice; and (c) terminated the commitment to advance additional loans under the M&T Credit Agreement.

On December 18, 2020, FreightCar Leasing Borrower received a revised notice (the "Second Notice," and together with the First Notice, the "Notices") from M&T asserting that: (a) as a result of the continuing Event of Default that M&T alleged to have occurred under the M&T Credit Agreement, M&T has declared a default and accelerated and demands immediate payment by FreightCar Leasing Borrower of $10.1 million (the "Outstanding Amount"); (b) FreightCar Leasing Borrower is liable for all interest that continues to accrue on the Outstanding Amount; and (c) FreightCar Leasing Borrower is liable for all attorneys' fees, costs and expenses as set forth in the M&T Credit Agreement.

On April 20, 2021, FreightCar Leasing Borrower received a notice from M&T that an Event of Default had occurred due to all amounts outstanding under the M&T Credit Agreement having not be paid by the Term End.

On December 28, 2021 (the "Execution Date"), FreightCar Leasing Borrower, FreightCar Leasing Guarantor (together with the FreightCar Leasing Borrower, the "Obligors"), the Company, FreightCar America Railcar Management, LLC, a Delaware limited liability company ("FCA Management"), and M&T, entered into a Forbearance and Settlement Agreement (the "Forbearance Agreement") with respect to the M&T Credit Agreement and its related Credit Documents (as defined in the M&T Credit Agreement), as well as certain intercompany services agreements related thereto.

Pursuant to the Forbearance Agreement, the Obligors will continue to perform and comply with all of their performance obligations (as opposed to payment obligations) under certain provisions of the M&T Credit Agreement (primarily related to information obligations and the preservation of the collateral pledged by the Borrower to M&T pursuant to the M&T Security Agreement, between the Borrower and M&T (the "Collateral")) and all the provisions of the M&T Security Agreement. During the period from Execution Date until the termination of the Forbearance Agreement, M&T may not take any action against the Obligors or exercise or enforce any rights or remedies provided for in the Credit Documents or otherwise available to it. The M&T Credit Agreement is not being amended.

On December 1, 2023, or sooner if requested by M&T (the "Turnover Date"), the Borrower shall execute and deliver to M&T documents required to deliver and assign to M&T all the leased railcars and related leases serving as Collateral for the M&T Credit Agreement.

Upon the Turnover Date and the Obligors' performance of their respective obligations under the Forbearance Agreement, including the delivery of certain Collateral to M&T upon the Turnover Date, all Obligations (as defined in the M&T Credit Agreement) shall be deemed satisfied in full, M&T shall no longer have any further claims against the Obligors under the M&T Credit Documents and the Credit Documents shall automatically terminate and be of no further force or effect except for the provisions thereof that expressly survive termination.

The Forbearance Agreement contains customary releases at execution for all affiliates of the Company (other than the Obligors) and agreements to deliver final releases with respect to the Obligors upon their performance under the Forbearance Agreement. The Company also agreed to turn over to M&T on the Effective Date certain rents in the amount of $0.7 million that it had previously collected as servicing agent for the Borrower, and to continue to provide such services through the Turnover Date without a service fee, and after the Turnover Date through the return of the railcars serving as Collateral, for a service fee.

As of December 31, 2021 and December 31, 2020, FreightCar Leasing Borrower had $7.9 million and $10.1 million, respectively, in outstanding debt under the M&T Credit Agreement, which was collateralized by leased railcars with a carrying value of $6.6 million and $7.0 million, respectively. As of December 31, 2021, the interest rate on outstanding debt under the M&T Credit Agreement was 4.25%.

Additional Liquidity Factors

Our restricted cash, restricted cash equivalents and restricted certificates of deposit balances were $5.0 million and $10.6 million as of December 31, 2021 and 2020, respectively. Restricted deposits of $0.3 million and $3.2 million as of December 31, 2021 and 2020, respectively, relate to a customer deposit for purchase of railcars. Restricted deposits of $4.7 million and $7.4 million as of December 31, 2021 and 2020, respectively, are used to collateralize standby letters of credit with respect to performance guarantees. The standby letters of credit outstanding as of December 31, 2021 are scheduled to expire at various dates through December 10, 2022.

Based on our current level of operations and known changes in planned volume based on our backlog, we believe that our cash balances will be sufficient to meet our expected liquidity needs for at least the next twelve months. Our long-term liquidity is contingent upon future operating performance and our ability to continue to meet financial covenants under our revolving credit facilities, our Term Loan Credit Agreement and any other indebtedness and the availability of additional financing if needed. We may also require additional capital in the future to fund working capital as demand for railcars increases, payments for contractual obligations, organic growth opportunities, including new plant and equipment and development of railcars, joint ventures, international expansion and acquisitions, and these capital requirements could be substantial. Additionally, our Value Added Tax ("VAT") receivable has grown over the past year and has become a significant part of the Company's working capital structure. We continue to work through the return process and have made progress during 2021 in recovering VAT refunds.

Based upon our operating performance and capital requirements, we may, from time to time, be required to raise additional funds through additional offerings of our common stock and through long-term borrowings such as the $40.0 million term loan under the Term Loan Credit Agreement. There can be no assurance that long-term debt, if needed, will be available on terms attractive to us, or at all. Furthermore, any additional equity financing may be dilutive to stockholders and debt financing, if available, may involve

restrictive covenants. Our failure to raise capital if and when needed could have a material adverse effect on our results of operations and financial condition.

Benefits under our pension plan are now frozen and will not be impacted by increases due to future service and compensation increases. The most significant assumptions used in determining our net periodic benefit costs are the discount rate used on our pension obligations and expected return on pension plan assets. As of December 31, 2021, our benefit obligation under our defined benefit pension plan was $50.9 million, which exceeded the fair value of plan assets by $0.04 million. We made no contributions to our defined benefit pension plan during 2021 and are not required to make any contributions to our defined benefit pension plan in 2022. Funding levels will be affected by future contributions, investment returns on plan assets, growth in plan liabilities and interest rates.

Cash Flows

The following table summarizes our net cash provided by or used in operating activities, investing activities and financing activities for the years ended December 31, 2021 and 2020:

	2021	2020
	(In thousands)	
Net cash (used in) provided by:		
Operating activities	$ (55,397)	$ (58,905)
Investing activities	(1,675)	(6,092)
Financing activities	29,265	52,787
Total	$ (27,807)	$ (12,210)

Operating Activities. Our net cash provided by or used in operating activities reflects net loss adjusted for non-cash charges and changes in operating assets and liabilities. Cash flows from operating activities are affected by several factors, including fluctuations in business volume, contract terms for billings and collections, the timing of collections on our contract receivables, processing of bi-weekly payroll and associated taxes, payments to our suppliers and other operating activities. As some of our customers accept delivery of new railcars in train-set quantities, variations in our sales lead to significant fluctuations in our operating profits and cash from operating activities. We do not usually experience business credit issues, although a payment may be delayed pending completion of closing documentation.

Our net cash used in operating activities for the year ended December 31, 2021 was $55.4 million compared to $58.9 million for the year ended December 31, 2020. Our net cash used in operating activities for the year ended December 31, 2021 reflects changes in working capital, including increases in VAT receivable of $24.7 million due to production increases and delays in receiving VAT refunds and inventory of $12.4 million to meet current production needs for the start-up of several new railcar orders. Our net cash used in operating activities for the year ended December 31, 2020 reflects changes in working capital, including increases in inventory of $17.9 million and increases in accounts receivable of $6.9 million. Our net cash used in operating activities for the year ended December 31, 2020 includes non-cash restructuring and impairment charges of $11.7 million related to the closure of the Shoals Facility and the Roanoke Facility and a non-cash impairment charge of $19.0 million for leased railcars.

Investing Activities. Net cash used in investing activities for the year ended December 31, 2021 was $1.7 million and primarily represented capital expenditures of $2.3 million which were partially offset by the $0.2 million maturity of restricted certificates of deposit and $0.4 million proceeds from sale of property, plant and equipment. Net cash used in investing activities for the year ended December 31, 2020 was $6.1 million and primarily represented capital expenditures of $9.8 million which were partially offset by the $3.6 million maturity of restricted certificates of deposit (net of purchases).

Financing Activities. Net cash provided by financing activities for the year ended December 31, 2021 was $29.3 million and included proceeds from issuance of long-term debt of $16.0 million and net borrowings on revolving line of credit of $15.0 million which were partially offset by deferred financing costs of $1.7 million. Net cash provided by financing activities for the year ended December 31, 2020 was $52.8 million and primarily represented proceeds from issuance of long-term debt of $50.0 million and net borrowings on revolving line of credit of $6.8 million which were partially offset by deferred financing costs of $3.8 million.

Capital Expenditures

Our capital expenditures were $2.3 million for the year ended December 31, 2021 compared to $9.8 million for the year ended December 31, 2020 and primarily related to our new Castaños, Mexico facility. We anticipate capital expenditures during 2022 to be approximately $7.0 million to $8.0 million.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States. The preparation of our financial statements requires us 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 the reported amounts of sales and expenses during the reporting period. Significant estimates include, useful lives of long-lived assets, warranty accruals, pension benefit assumptions, evaluation of property, plant and equipment for impairment and the valuation of deferred taxes. Actual results could differ from those estimates.

Our critical accounting policies include the following:

Impairment of long-lived assets and right-of-use assets

We monitor the carrying value of long-lived assets and right-of-use assets for potential impairment. The carrying value of long-lived assets and right-of-use assets is considered impaired when the asset's carrying value is not recoverable through undiscounted future cash flows and the asset's carrying value exceeds its fair value. For assets to be held or used, we group a long-lived asset or assets with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. An impairment loss for an asset group reduces only the carrying amounts of a long-lived asset or assets of the group being evaluated. Our estimates of future cash flows used to test the recoverability of a long-lived asset group include only the future cash flows that are directly associated with and that are expected to arise as a direct result of the use and eventual disposition of the asset group. Our future cash flow estimates exclude interest charges.

We test long-lived assets for recoverability whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. These changes in circumstances may include a significant decrease in the market price of an asset group, a significant adverse change in the manner in or extent to which an asset group is used, a current year operating loss combined with a history of operating losses or a current expectation that, more likely than not, a long-lived asset group will be sold or otherwise disposed of significantly before the end of its previously estimated useful life. If indicators of impairment are present, we then determine if the carrying value of the asset group is recoverable by comparing the carrying value of the asset group to total undiscounted future cash flows of the asset group. If the carrying value of the asset group is not recoverable, an impairment loss is measured based on the excess of the carrying amount of asset group over the estimated fair value of the asset group.

During the fourth quarter of 2021, we performed a cash flow recoverability test of our small cube covered hopper railcars because we believed our renegotiation of certain leases and our settlement agreement with the lender for our leasing companies constituted an impairment triggering event. This analysis indicated that the carrying value exceeded the estimated undiscounted cash flows, and therefore, we were required to measure the fair value of our fleet of small cube covered hopper railcars and determine the amount of an impairment loss, if any. The results of our analysis indicated an estimated fair value of the asset group of approximately $6.6 million, in comparison to the asset group's carrying amount of $6.8 million. As a result of this analysis we recorded a pre-tax non-cash impairment charge of $0.2 million related to our small cube covered hopper railcars during the fourth quarter of 2021.

During the fourth quarter of 2020, the oil and gas proppants (or “frac sand”) industry continued to experience economic pressure created by low oil prices, reduced fracking activity, and the ongoing economic impact of COVID-19. In particular, small cube covered hopper railcars are primarily used in North America to serve the frac sand industry. Given the decline in global oil prices, reduced fracking activity, and pressure on the oil and gas industry to maintain a low-cost structure, fracking operations, have increasingly shifted away from the use of Northern White sand and towards the use of in-basin sand, which can be sourced locally rather than transporting by rail. Consequently, the cash flows and profitability of the frac sand industry continued to decline during the fourth quarter. As a result, certain small cube covered hopper customers requested rent relief that were renegotiated.

We believe that the events and circumstances that arose during the fourth quarter of 2020 constituted an impairment triggering event related to the small cube covered hopper car type in our leased railcar portfolio.

We performed a cash flow recoverability test of our small cube covered hopper railcars and compared the undiscounted cash flows to the carrying value of the assets. This analysis indicated that the carrying value exceeded the estimated undiscounted cash flows, and therefore, we were required to measure the fair value of our fleet of small cube covered hopper railcars and determine the amount of an impairment loss, if any.

The fair value of the asset group was determined using both a market and cost approach, which we believe most accurately reflects a market participant's viewpoint in valuing these railcars. The results of our analysis indicated an estimated fair value of the asset group of approximately $13.2 million, in comparison to the asset group's carrying amount of $30.1 million. As a result, during the fourth

quarter of 2020, we recorded a pre-tax non-cash impairment charge of $17.0 related to our small cube covered hopper railcars. Additionally, we evaluated the right-of-use asset associated with our leased railcar portfolio of small cube covered hopper railcars and determined that these assets were impaired based on consideration of an expected decline in future cash flows over the remaining lease term, which resulted in an additional pre-tax non-cash impairment charge of approximately $2.0 million. The aggregate impairment charge of $19.0 million is reflected in the impairment of leased railcars line of our Consolidated Statements of Operations for the year ended December 31, 2020.

Significant management judgment was used to determine the key assumptions utilized in our impairment analysis, the substantial majority of which represent unobservable (Level 3) inputs. These assumptions include, but are not limited to: estimates regarding the remaining useful life over which the railcars are expected to generate cash flows; average lease rates; and discount rate. Management selected these estimates and assumptions based on our railcar industry expertise. Although we believe the estimates utilized in our analysis were reasonable, any change in these estimates could materially affect the amount of the impairment charge.

Due to the closure of our Shoals Facility, we tested the long-lived assets and right-of-use assets at our Shoals Facility for impairment during the third quarter of 2020. In connection with the announcement, we estimated the fair value of the related asset group because it determined that an impairment trigger had occurred due to the shortened asset recoverability timeframe. Non-cash restructuring and impairment charges totaling $26.6 million were allocated to the asset group and recognized during 2020. These non-cash charges for 2020 related to the right of use (“ROU”) asset were $17.5 million and non-cash impairment charges for property, plant and equipment at the Shoals Facility were $9.0 million. In connection with the impairment the Company reassessed the estimated useful lives of equipment that will continue to be used by the Company (primarily in Castaños) and are depreciating it over their useful lives in accordance with the Company’s policies.

The fair value of the ROU asset for our Shoals Facility was estimated using an income valuation approach known as the “sublease” discounted cash flow (“DCF”) model in which the cash flows were based on current market-based lease pricing over the remaining term of the Shoals Facility lease. The cash flows were discounted to present value using a market-derived rate of return of 6.50%.

The Shoals Facility personal property was abandoned in place at the facility, sold, transferred to another FCA facility (primarily Castaños), or scrapped. The assets abandoned in place represent property, plant and equipment to be transferred to the Shoals landlord as consideration for the landlord’s entry into the lease amendment. The premise of fair value differs for each type of asset disposition. The fair value of the personal property assets to be abandoned in place at the Shoals Facility were analyzed under a fair value in continued use (“In-Use”) premise. This premise assumes that the assets will continue to be used in the ongoing operation of the facility and therefore includes installation, other assembly, freight, engineering, electrical set-up and process piping costs that would be required to make the assets fully operational. Assets to be sold or transferred were analyzed under the In-Exchange (“In-Exchange”) premise of fair value. Under this premise, we considered the value of the assets assuming an orderly sale on a stand-alone basis. It is assumed the assets will be sold on an as-is, where-is basis and alternative uses for the assets from the originally designed purpose are considered. Any remaining personal property assets that will neither be abandoned in place nor sold/transferred were considered unmarketable and were valued under a scrap value premise.

For both the aforementioned In-Use and In Exchange premises, in instances where an asset was found to have no active secondary market, we utilized the cost approach. For assets in which there was an active secondary market where recent comparable sales exist, the market approach was utilized. In instances where market data was available but deemed too incomplete to apply a complete market approach, we used the market relationship data available to influence, confirm, or adjust the cost approach results.

Pensions and postretirement benefits

We historically provided pension and retiree welfare benefits to certain salaried and hourly employees upon their retirement. Benefits under our pension plan are now frozen and will not be impacted by increases due to future service. The most significant assumptions used in determining our net periodic benefit costs are the discount rate used on our pension and postretirement welfare obligations and expected return on pension plan assets.

In 2021, we assumed that the expected long-term rate of return on pension plan assets would be 5.00%. As permitted under ASC 715, the assumed long-term rate of return on assets is applied to a calculated value of plan assets, which recognizes changes in the fair value of plan assets in a systematic manner over five years. This produces the expected return on plan assets that is included in our net periodic benefit cost. The difference between this expected return and the actual return on plan assets is deferred. The net deferral of past asset gains (losses) affects the calculated value of plan assets and, ultimately, future net periodic benefit cost. We review the expected return on plan assets annually and would revise it if conditions should warrant. A change of one hundred basis points in the expected long-term rate of return on plan assets would have the following effect for the year ended December 31, 2021:

	1% Increase	1% Decrease
	(in thousands)	
Effect on net periodic benefit cost	$ (467)	$ 467

At the end of each year, we determine the discount rate to be used to calculate the present value of our pension plan liability. The discount rate is an estimate of the current interest rate at which our pension liabilities could be effectively settled at the end of the year. In estimating this rate, we look to rates of return on high-quality, fixed-income investments that receive one of the two highest ratings given by a recognized ratings agency. At December 31, 2021, we determined this rate on our pension plan to be 2.84% an increase of 0.36% from the 2.48% rate used at December 31, 2020. A change of one hundred basis points in the discount rate would have the following effect:

	1% Increase	1% Decrease
	(in thousands)	
Effect on net periodic benefit cost	$ 102	$ (150)

In October 2021, the Society of Actuaries issued base mortality table Pri-2012 which is split by retiree and contingent survivor tables and includes mortality improvement assumptions for U.S. plans, scale (MP-2021with COVID adjustment), which reflects additional data that the Social Security Administration has released since prior assumptions (MP-2020) were developed. The Company has historically utilized the Society of Actuaries' published mortality data in its plan assumptions. Accordingly, the Company adopted Pri-2012 with MP-2021 for purposes of measuring its pension obligations at December 31, 2021.

For the years ended December 31, 2021 and 2020, we recognized consolidated pre-tax pension benefit cost (income) of $(0.8) million and $(0.4) million, respectively. We are not required to make any contributions to our pension plan during 2022. However, we may elect to adjust the level of contributions based on a number of factors, including performance of pension investments and changes in interest rates. The Pension Protection Act of 2006 provided for changes to the method of valuing pension plan assets and liabilities for funding purposes as well as requiring minimum funding levels. Our defined benefit pension plan is in compliance with minimum funding levels established in the Pension Protection Act. Funding levels will be affected by future contributions, investment returns on plan assets, growth in plan liabilities and interest rates. Once the plan is Fully Funded as that term is defined within the Pension Protection Act, we will be required to fund the ongoing growth in plan liabilities on an annual basis. We anticipate funding pension contributions with cash from operations.

Income taxes

We account for income taxes under the asset and liability method prescribed by ASC 740, *Income Taxes.* We provide for deferred income taxes based on differences between the book and tax bases of our assets and liabilities and for items that are reported for financial statement purposes in periods different from those for income tax reporting purposes. The deferred tax liability or asset amounts are based upon the enacted tax rates expected to apply to taxable income in the periods in which the deferred tax liability or asset is expected to be settled or realized.

Our income tax expense, deferred tax assets and liabilities and reserves for unrecognized tax benefits reflect our best assessment of estimated future taxes to be paid. Management judgment is required in developing our provision for income taxes, including the determination of deferred tax assets, liabilities and any valuation allowances recorded against the deferred tax assets. We record net deferred tax assets to the extent we believe these assets will more likely than not be realized. In evaluating whether it is more likely than not that our net deferred tax assets will be realized, we consider both positive and negative evidence including the reversal of existing taxable temporary differences, taxable income in prior carryback years if carryback is permitted under the tax law and such taxable income has not previously been used for carryback, future taxable income exclusive of reversing temporary differences and carryforwards based on near-term and longer-term projections of operating results and the length of the carryforward period. We evaluate the realizability of our net deferred tax assets and assess the valuation allowance on a quarterly basis, adjusting the amount of such allowance, if necessary. Failure to achieve forecasted taxable income might affect the ultimate realization of the net deferred tax assets. Factors that may affect our ability to achieve sufficient forecasted taxable income include, but are not limited to, increased competition, a decline in sales or margins and loss of market share.

As of December 31, 2021 and 2020, we concluded that, based on evaluation of the positive and negative evidence, primarily our history of operating losses, it is not more likely than not that we will realize the benefit of our deferred tax assets. As of December 31, 2021, we had deferred tax assets of $72.0 million for which there was a valuation allowance of $67.2 million and we had total net deferred tax liabilities of $0.05 million.

Product warranties

Warranty terms are based on the negotiated railcar sales contracts. We generally warrant that new railcars will be free from defects in material and workmanship under normal use and service identified for a period of up to five years from the time of sale. We also provide limited warranties with respect to certain rebuilt railcars. The warranty costs are estimated using a two-step approach. First, an engineering estimate is made for the cost of all claims that have been asserted by customers. Second, based on historical claims experience, a cost is accrued for all products still within a warranty period for which no claims have been filed. We provide for the estimated cost of product warranties at the time revenue is recognized related to products covered by warranties and assess the adequacy of the resulting reserves on a quarterly basis.

Revenue recognition

We generally recognize revenue at a point in time as we satisfy a performance obligation by transferring control over a product or service to a customer. Revenue is measured at the transaction price, which is based on the amount of consideration that we expect to receive in exchange for transferring the promised goods or services to the customer. Performance obligations are typically completed and revenue is recognized for the sale of new and rebuilt railcars when the finished railcar is transferred to a specified railroad connection point. In certain sales contracts, revenue is recognized when a certificate of acceptance has been issued by the customer and control has been transferred to the customer. At that time, the customer directs the use of, and obtains substantially all of the remaining benefits from, the asset. When a railcar sales contract contains multiple performance obligations, we allocate the transaction price to the performance obligations based on the relative stand-alone selling price of the performance obligation determined at the inception of the contract based on an observable market price, expected cost plus margin or market price of similar items. We treat shipping costs that occur after control is transferred as fulfillment costs. Accordingly, gross revenue is recognized, and shipping cost is accrued, when control transfers to the customer. We generally do not provide discounts or rebates in the normal course of business. As a practical expedient, we recognize the incremental costs of obtaining contracts, such as sales commissions, as an expense when incurred since the amortization period of the asset that we otherwise would have recognized is one year or less. Performance obligations are satisfied and we recognize revenue from most parts sales when the parts are shipped to customers. We recognize operating lease revenue on Railcars Available for Lease on a straight-line basis over the contract term. We recognize revenue from the sale of Railcars Available for Lease on a net basis as Gain (Loss) on Sale of Railcars Available for Lease since the sale represents the disposal of a long-term operating asset.

We recognize a loss against related inventory when we have a contractual commitment to manufacture railcars at an estimated cost in excess of the contractual selling price.

RECENT ACCOUNTING PRONOUNCEMENTS (See Note 2, Summary of Significant Accounting Policies, to our Consolidated Financial Statements)

FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains certain forward-looking statements including, in particular, statements about our plans, strategies and prospects. We have used the words “may,” “will,” “expect,” “anticipate,” “believe,” “estimate,” “plan,” “likely,” “unlikely,” “intend” and similar expressions in this Annual Report on Form 10-K to identify forward-looking statements. We have based these forward-looking statements on our current views with respect to future events and financial performance. However, forward-looking statements inherently involve risks and uncertainties that could cause actual results to differ materially from those projected in the forward-looking statements. These risks and uncertainties relate to, among other things, the potential financial and operational impacts of the COVID-19 pandemic; the cyclical nature of our business, the competitive nature of our industry, our reliance upon a small number of customers that represent a large percentage of our sales, the variable purchase patterns of our customers and the timing of completion, delivery and customer acceptance of orders, fluctuating costs of raw materials, including steel and aluminum, and delays in the delivery of raw materials, the risk of lack of acceptance of our new railcar offerings by our customers and other competitive factors. The factors listed above are not exhaustive. Other sections of this Form 10-K include additional factors that could materially and adversely affect our business, financial condition and results of operations. New factors emerge from time to time and it is not possible for management to predict the impact of all of these factors on our business, financial condition or results of operations or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Given these risks and uncertainties, investors should not rely on forward-looking statements as a prediction of actual results. We expressly disclaim any duty to provide updates to forward-looking statements, and the estimates and assumptions associated with them, in order to reflect changes in circumstances or expectations or the occurrence of unanticipated events except to the extent required by applicable securities laws.

Item 8. Financial Statements and Supplementary Data.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
FreightCar America, Inc.

Opinion on the financial statements
We have audited the accompanying consolidated balance sheet of FreightCar America, Inc. (a Delaware corporation) and subsidiaries (the "Company") as of December 31, 2021, the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows for the year ended December 31, 2021, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and the results of its operations and its cash flows for the year ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

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 Public Company Accounting Oversight Board (United States) ("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 the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit 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 audit 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 audit provides a reasonable basis for our opinion.

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

CO Finance LVS VI LLC Common Stock Warrant

As described further in note 12 to the financial statements, on November 24, 2020, the Company's stockholders approved the issuance of a warrant (the "Warrant") under its October 13, 2020 Credit Agreement with financing partner CO Finance LVS VI LLC. The Warrant provides the holder the option to purchase a number of shares of the Company's common stock, par value $0.01 per share, equal to 36% of the outstanding common stock on a fully-diluted basis at the time the Warrant is exercised (after giving effect to such issuance). The Company determined that the Warrant should be accounted for as a derivative instrument and classified as a liability on its consolidated balance sheet primarily due to the instrument obligating the Company to settle the Warrant in a variable number of shares of common stock. As of December 31, 2021, the Company estimated the fair value of the Warrant liability to be approximately $32.5 million. We identified the assessment of the accounting classification for the common stock warrant as a critical audit matter.

The principal considerations for our determination that accounting for warrants is a critical audit matter are the complex provisions affecting classification that require significant audit effort including evaluating each feature of these warrants and the impact of these features on the classification.

Our audit procedures related to the common stock warrant included the following, among others:

- We obtained an understanding of and evaluated the design of controls over management's technical accounting assessment of the balance sheet classification of the Warrant.

- We read the applicable agreements and compared the key terms from the agreements to management's analysis of the transaction.
- With the assistance of professionals in our firm having specialized skill and knowledge in accounting for debt and equity instruments, we evaluated management's conclusions regarding the balance sheet classifications of the Warrant through evaluation of the terms within the applicable agreements and considering the applicable generally accepted accounting standards.
- We evaluated the Company's disclosures related to the financial statement impacts of the transaction.

/s/ GRANT THORNTON LLP

We have served as the Company's auditor since 2021.

Chicago, Illinois
March 21, 2022

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of FreightCar America, Inc:

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of FreightCar America, Inc and subsidiaries (the "Company") as of December 31, 2020, the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows for the year ended December 31, 2020, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020, and the result of its operations and its cash flows for the year ended December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

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 audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (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 the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit 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 audit 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 audit provide a reasonable basis for our opinion.

/s/ Deloitte & Touche LLP

Chicago, Illinois

March 24, 2021

We began serving as the Company's auditor in 1999. In 2021, we became the predecessor auditor.

FreightCar America, Inc. and Subsidiaries

CONSOLIDATED BALANCE SHEETS
(in thousands, except for share and per share data)

	December 31, 2021		December 31, 2020	
Assets				
Current assets				
Cash, cash equivalents and restricted cash equivalents	$	26,240	$	54,047
Restricted certificates of deposit		-		182
Accounts receivable, net of allowance for doubtful accounts of $323 and $1,235 respectively		9,571		9,421
VAT receivable		31,136		4,462
Inventories, net		56,012		38,831
Assets held for sale		-		10,383
Related party asset		8,680		-
Prepaid expenses		5,087		3,652
Total current assets		136,726		120,978
Property, plant and equipment, net		18,236		19,642
Railcars available for lease, net		20,160		20,933
Right of use asset		16,669		18,152
Other long-term assets		8,873		3,037
Total assets	$	200,664	$	182,742
Liabilities and Stockholders' Equity				
Current liabilities				
Accounts and contractual payables	$	41,185	$	17,840
Related party accounts payable		8,870		814
Accrued payroll and other employee costs		2,912		2,505
Reserve for workers' compensation		1,563		2,645
Accrued warranty		2,533		5,216
Customer deposits		3,300		4,351
Deferred income state and local incentives, current		1,291		2,219
Lease liability, current		1,955		11,635
Current portion of long-term debt		—		17,605
Other current liabilities		5,711		6,319
Total current liabilities		69,320		71,149
Long-term debt, net of current portion		79,484		37,668
Warrant liability		32,514		12,730
Accrued pension costs		35		7,046
Deferred income state and local incentives, long-term		1,216		2,503
Lease liability, long-term		16,617		18,549
Other long-term liabilities		3,134		2,600
Total liabilities		202,320		152,245
Stockholders' (deficit) equity				
Preferred stock, $0.01 par value, 2,500,000 shares authorized (100,000 shares each designated as Series A voting and Series B non-voting, 0 shares issued and outstanding at December 31, 2021 and December 31, 2020)		-		-
Common stock, $0.01 par value, 50,000,000 shares authorized, 15,947,228 and 15,861,406 shares issued at December 31, 2021 and December 31, 2020, respectively		190		159
Additional paid in capital		83,742		82,064
Treasury stock, at cost, 0 and 327,577 shares at December 31, 2021 and December 31, 2020, respectively		—		(1,344)
Accumulated other comprehensive loss		(5,522)		(11,763)
Accumulated deficit		(80,066)		(38,619)
Total stockholders' (deficit) equity		(1,656)		30,497
Total liabilities and stockholders' (deficit) equity	$	200,664	$	182,742

See notes to consolidated financial statements

FreightCar America, Inc. and Subsidiaries

CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except for share and per share data)

	Year Ended December 31,	
	2021	**2020**
Revenues	$ 203,050	$ 108,447
Cost of sales	191,592	121,949
Gross profit (loss)	11,458	(13,502)
Selling, general and administrative expenses	27,532	29,815
Impairment on leased railcars	158	18,951
Restructuring and impairment charges	6,530	18,325
Operating loss	(22,762)	(80,593)
Interest expense	(13,317)	(2,225)
Loss on change in fair market value of warrant liability	(14,894)	(3,657)
Gain on extinguishment of debt	10,122	-
Other income	817	576
Loss before income taxes	(40,034)	(85,899)
Income tax provision	1,413	199
Net loss	(41,447)	(86,098)
Less: Net loss attributable to noncontrolling interest in JV	-	(1,655)
Net loss attributable to FreightCar America	$ (41,447)	$ (84,443)
Net loss per common share attributable to FreightCar America- basic	$ (2.00)	$ (6.29)
Net loss per common share attributable to FreightCar America- diluted	$ (2.00)	$ (6.29)
Weighted average common shares outstanding – basic	20,766,398	13,432,428
Weighted average common shares outstanding – diluted	20,766,398	13,432,428

See notes to the consolidated financial statements

FreightCar America, Inc. and Subsidiaries

CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS

(in thousands)

	Year Ended December 31,	
	2021	**2020**
Net loss	$ (41,447)	$ (86,098)
Other comprehensive loss net of tax:		
Pension and postretirement liability adjustments, net of tax	6,241	(983)
Comprehensive loss	$ (35,206)	$ (87,081)

See notes to the consolidated financial statements

FreightCar America, Inc. and Subsidiaries

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' (DEFICIT) EQUITY

(in thousands, except for share data)

	FreightCar America Shareholders								
	Common Stock		Additional Paid In Capital	Treasury Stock		Accumulated Other Comprehensive Loss	Retained Earnings (Deficit)	Noncontrolling Interest in JV	Total Stockholders' Equity (Deficit)
	Shares	Amount		Shares	Amount				
Balance, December 31, 2019	12,731,678	$ 127	$ 83,027	(44,855)	$ (989)	$ (10,780)	$ 45,824	$ (55)	$ 117,154
Net loss	-	-	-	-	-	-	(84,443)	(1,655)	(86,098)
Acquisition of JV non-controlling interest	2,257,234	23	(1,904)	-	-	-	-	1,710	(171)
Other comprehensive income	-	-	-	-	-	(983)	-	-	(983)
Restricted stock awards	872,494	9	(9)	-	-	-	-	-	-
Employee stock settlement	-	-	-	(5,717)	(9)	-	-	-	(9)
Forfeiture of restricted stock awards	-	-	346	(277,005)	(346)	-	-	-	-
Stock-based compensation recognized	-	-	604	-	-	-	-	-	604
Balance, December 31, 2020	15,861,406	$ 159	$ 82,064	(327,577)	$ (1,344)	$ (11,763)	$ (38,619)	$ —	$ 30,497
Net loss	-	-	-	-	-	-	(41,447)	-	(41,447)
Other comprehensive income	-	-	-	-	-	6,241	-	-	6,241
Restricted stock awards	213,465	2	(2)	-	-	-	-	-	-
Employee stock settlement	(1,638)	-	(5)	(2,215)	(7)	-	-	-	(12)
Forfeiture of restricted stock awards	(144,026)	(2)	432	(116,795)	(431)	-	-	-	(1)
Exercise of stock appreciation rights	10,237	-	54	-	-	-	-	-	54
Stock-based compensation recognized	-	-	762	-	-	-	-	-	762
Equity fees	7,784	31	437	446,587	1,782	-	-	-	2,250
Balance, December 31, 2021	15,947,228	$ 190	$ 83,742	-	$ —	$ (5,522)	$ (80,066)	$ -	$ (1,656)

See notes to the consolidated financial statements

FreightCar America, Inc. and Subsidiaries

CONSOLIDATED STATEMENTS OF CASH FLOWS

	Year Ended December 31,	
	2021	2020
Cash flows from operating activities	(in thousands)	
Net loss	$ (41,447)	$ (86,098)
Adjustments to reconcile net loss to net cash flows used in operating activities:		
Restructuring and impairment charges	6,530	18,325
Depreciation and amortization	4,304	9,202
Non-cash lease expense on right-of-use assets	1,483	7,063
Recognition of deferred income from state and local incentives	(2,215)	(2,219)
Loss on change in fair market value for warrant liability	14,894	3,657
Impairment on leased railcars	158	18,951
Stock-based compensation recognized	2,977	1,034
Non-cash interest expense	5,502	1,023
Gain on extinguishment of debt	(10,122)	-
Other non-cash items, net	529	4,192
Changes in operating assets and liabilities, net of acquisitions:		
Accounts receivable	(150)	(2,430)
VAT receivable	(24,675)	(4,462)
Inventories	(12,369)	(17,942)
Other assets	(674)	1,763
Related party asset, net	(624)	813
Accounts and contractual payables	7,878	3,162
Accrued payroll and employee benefits	487	(2,027)
Income taxes payable	349	1,127
Accrued warranty	(2,683)	(3,172)
Lease liability	(2,106)	(11,553)
Customer deposits	(1,051)	(772)
Other liabilities	(1,571)	1,812
Accrued pension costs and accrued postretirement benefits	(801)	(354)
Net cash flows used in operating activities	(55,397)	(58,905)
Cash flows from investing activities		
Purchase of restricted certificates of deposit	-	(4,219)
Maturity of restricted certificates of deposit	182	7,806
Purchase of property, plant and equipment	(2,290)	(9,849)
Proceeds from sale of property, plant and equipment and railcars available for lease	433	170
Net cash flows used in investing activities	(1,675)	(6,092)
Cash flows from financing activities		
Proceeds from issuance of long-term debt	16,000	50,000
Deferred financing costs	(1,688)	(3,811)
Borrowings on revolving line of credit	48,400	6,874
Repayments on revolving line of credit	(33,378)	(95)
Cash paid to acquire JV non-controlling interest	—	(172)
Employee stock settlement	(12)	(9)
Payment for stock appreciation rights exercised	(57)	-
Net cash flows provided by financing activities	29,265	52,787
Net decrease in cash and cash equivalents	(27,807)	(12,210)
Cash, cash equivalents and restricted cash equivalents at beginning of year	54,047	66,257
Cash, cash equivalents and restricted cash equivalents at end of year	$ 26,240	$ 54,047
Supplemental cash flow information		
Interest paid	$ 6,537	$ 421
Income tax refunds received, net of payments	$ 5	$ 938
Stock issued for acquisition	$ —	$ 3,237
Non-cash transactions		
Change in unpaid construction in process	$ 122	$ (489)
Accrued PIK interest paid through issuance of PIK Note	$ 1,278	$ -
Issuance of warrants	$ 4,891	$ 9,073

See notes to the consolidated financial statements

Note 1 – Description of the Business

FreightCar America, Inc. ("FreightCar") operates primarily in North America through its direct and indirect subsidiaries, and manufactures a wide range of railroad freight cars, supplies railcar parts and leases freight cars. The Company designs and builds high-quality railcars, including coal cars, bulk commodity cars, covered hopper cars, intermodal and non-intermodal flat cars, mill gondola cars, coil steel cars and boxcars, and also specializes in the conversion of railcars for re-purposed use. The Company is headquartered in Chicago, Illinois and has facilities in the following locations: Johnstown, Pennsylvania; Shanghai, People's Republic of China, and Castaños, Coahuila, Mexico ("Castaños").

During 2019, the Company entered into a joint venture arrangement with Fabricaciones y Servicios de México, S.A. de C.V. ("Fasemex"), a Mexican company with operations in both Mexico and the United States, to manufacture railcars in Castaños, in exchange for a 50% interest in the operation. Production of railcars at the Castaños facility began during the third quarter of 2020. On October 16, 2020, the Company acquired Fasemex's 50% ownership in the joint venture. As of March 2021, the Company moved all of its production to the Castaños facility.

The Company ceased operations at its Roanoke, Virginia manufacturing facility (the "Roanoke Facility") and vacated the facility as of March 31, 2020. On September 10, 2020, the Company announced its plan to permanently close its manufacturing facility in Cherokee, Alabama (the "Shoals Facility") in light of the ongoing cyclical industry downturn, which has been magnified by the COVID-19 pandemic. The closure will reduce costs and align the Company's manufacturing capacity with the current rail car market. The Company ceased production at the Shoals Facility in February 2021. See Note 8–Restructuring and Impairment Charges.

The Company is closely monitoring the spread and impact of the COVID-19 pandemic and is continually assessing its potential effects on the Company's business and its financial performance as well as the businesses of its customers and vendors. The Company cannot predict the duration or severity of the COVID-19 pandemic, and it cannot reasonably estimate the financial impact the COVID-19 outbreak will have on the Company's results and significant estimates going forward.

Note 2 – Summary of Significant Accounting Policies

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of FreightCar America, Inc. and all of its direct and indirect subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States ("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 the reported amounts of revenues and expenses during the reporting period. Significant estimates include, useful lives of long-lived assets, warranty accruals, workers' compensation accruals, pension benefit assumptions, stock compensation, evaluation of property, plant and equipment for impairment and the valuation of deferred taxes. Actual results could differ from those estimates.

Reclassifications

Certain prior year amounts have been reclassified, where necessary, to conform to the current year presentation.

Cash and Cash Equivalents

On a daily basis, cash in excess of current operating requirements is invested in various highly liquid investments. The Company considers all unrestricted short-term investments with maturities of three months or less when

acquired to be cash equivalents. The amortized cost of cash equivalents approximate fair value because of the short maturity of these instruments.

The Company's cash and cash equivalents are primarily deposited with one U.S. financial institution. Such deposits are in excess of federally insured limits.

Restricted Cash and Restricted Certificates of Deposit

The Company establishes restricted cash balances and restricted certificates of deposit to collateralize certain standby letters of credit with respect to purchase price payment guarantees and performance guarantees. The restrictions expire upon completing the Company's related obligation.

Financial Instruments

Management estimates that all financial instruments (including cash equivalents, restricted cash and restricted certificates of deposit, accounts receivable, accounts payable and long-term debt) as of December 31, 2021 and 2020, have fair values that approximate their carrying values.

Fair Value Measurements

Financial assets and liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. The Company's assessment of the significance of a particular input to the fair value measurement requires judgment, and may affect the valuation of assets and liabilities and the placement within the fair value hierarchy levels.

The Company classifies the inputs to valuation techniques used to measure fair value as follows:

Level 1 — Quoted prices (unadjusted) in active markets for identical assets and liabilities.

Level 2 — Inputs other than quoted prices for Level 1 inputs that are either directly or indirectly observable for the asset or liability including quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in inactive markets, inputs other than quoted prices that are observable for the asset or liability, and inputs that are derived from observable market data by correlation or other means.

Level 3 — Unobservable inputs for the asset or liability, including situations where there is little, if any, market activity for the asset or liability.

Inventories

Inventories are stated at the lower of cost or market value. Cost is determined on a first-in, first-out basis and includes material, labor and manufacturing overhead. The Company's inventory consists of work in progress and finished goods for individual customer contracts, used railcars acquired upon trade-in and railcar parts retained for sale to external parties.

Property, Plant and Equipment

Property, plant and equipment are stated at acquisition cost less accumulated depreciation. Depreciation is provided using the straight-line method over the original estimated useful lives of the assets or lease term if shorter, which are as follows:

Description of Assets	Life
Buildings and improvements	15-40 years
Leasehold improvements	6-19 years
Machinery and equipment	3-7 years
Software	3-7 years

Long-Lived Assets

The Company tests long-lived assets for recoverability whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. These changes in circumstances may include a significant decrease in the market price of an asset group, a significant adverse change in the manner or extent in which an asset group is used, a current year operating loss combined with history of operating losses, or a current expectation that, more likely than not, a long-lived asset group will be sold or otherwise disposed of significantly before the end of its previously estimated useful life.

For assets to be held and used, the Company groups a long-lived asset or assets with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. Estimates of future cash flows used to test the recoverability of a long-lived asset group include only the future cash flows that are directly associated with and that are expected to arise as a direct result of the use and eventual disposition of the asset group. Recoverability of the carrying value of the asset group is determined by comparing the carrying value of the asset group to total undiscounted future cash flows of the asset group. If the carrying value of the asset group is not recoverable, an impairment loss is measured based on the excess of the carrying amount of asset group over the estimated fair value of the asset group. An impairment loss for an asset group reduces only the carrying amounts of a long-lived asset or assets of the group being evaluated.

Income Taxes

For federal income tax purposes, the Company files a consolidated federal tax return. The Company also files state tax returns in states where the Company has operations. In conformity with ASC 740, *Income Taxes*, the Company provides for deferred income taxes on differences between the book and tax bases of its assets and liabilities and for items that are reported for financial statement purposes in periods different from those for income tax reporting purposes. The Company’s deferred tax liability or asset amounts are based upon the enacted tax rates expected to apply to taxable income in the periods in which the deferred tax liability or asset is expected to be settled or realized.

Management evaluates net deferred tax assets and provides a valuation allowance when it believes that it is more likely than not that some portion of these assets will not be realized. In making this determination, management evaluates both positive evidence, such as cumulative pre-tax income for previous years, the projection of future taxable income, the reversals of existing taxable temporary differences and tax planning strategies, and negative evidence, such as any recent history of losses and any projected losses. Management also considers the expiration dates of net operating loss carryforwards in the evaluation of net deferred tax assets. Management evaluates the realizability of the Company’s net deferred tax assets and assesses the valuation allowance on a quarterly basis, adjusting the amount of such allowance as necessary.

Tax benefits related to uncertain tax positions taken or expected to be taken on a tax return are recorded when such benefits meet a more likely than not threshold. Otherwise, these tax benefits are recorded when a tax position has been effectively settled, which means that the appropriate taxing authority has completed its examination even though the statute of limitations remains open, or the statute of limitation expires. Interest and penalties related to uncertain tax positions are recognized as part of the provision for income taxes and are accrued beginning in the period that such interest and penalties would be applicable under relevant tax law until such time that the related tax benefits are recognized.

Product Warranties

Warranty terms are based on the negotiated railcar sales contracts. The Company generally warrants that new railcars will be free from defects in material and workmanship under normal use and service identified for a period of up to five years from the time of sale. The Company also provides limited warranties with respect to certain rebuilt railcars. The warranty costs are estimated using a two-step approach. First, an engineering estimate is made for the cost of all claims that have been asserted by customers. Second, based on historical claims experience, a cost is accrued for all products still within a warranty period for which no claims have been filed. We provide for the estimated cost of product warranties at the time revenue is recognized related to products covered by warranties and assess the adequacy of the resulting reserves on a quarterly basis.

State and Local Incentives

The Company records state and local incentives when there is reasonable assurance that the incentive will be received. State and local incentives related to assets are recorded as deferred income and recognized on a straight-line basis over the useful life of the related long-lived assets of seven to sixteen years.

Revenue Recognition

The following table disaggregates the Company's revenues by major source:

	Year Ended December 31,	
	2021	2020
Railcar sales	$ 189,579	$ 94,455
Parts sales	10,228	9,597
Revenues from contracts with customers	199,807	104,052
Leasing revenues	3,243	4,395
Total revenues	$ 203,050	$ 108,447

The Company generally recognizes revenue at a point in time as it satisfies a performance obligation by transferring control over a product or service to a customer. Revenue is measured at the transaction price, which is based on the amount of consideration that the Company expects to receive in exchange for transferring the promised goods or services to the customer.

Railcar Sales

Performance obligations are typically completed and revenue is recognized for the sale of new and rebuilt railcars when the finished railcar is transferred to a specified railroad connection point. In certain sales contracts, revenue is recognized when a certificate of acceptance has been issued by the customer and control has been transferred to the customer. At that time, the customer directs the use of, and obtains substantially all of the remaining benefits from, the asset. When a railcar sales contract contains multiple performance obligations, the Company allocates the transaction price to the performance obligations based on the relative stand-alone selling price of the performance obligation determined at the inception of the contract based on an observable market price, expected cost plus margin or market price of similar items. The Company treats shipping costs that occur after control is transferred as fulfillment costs. Accordingly, gross revenue is recognized, and shipping cost is accrued, when control transfers to the customer. The Company does not provide discounts or rebates in the normal course of business.

As a practical expedient, the Company recognizes the incremental costs of obtaining contracts, such as sales commissions, as an expense when incurred since the amortization period of the asset that the Company otherwise would have recognized is generally one year or less.

Parts Sales

The Company sells forged, cast and fabricated parts for all of the railcars it produces, as well as those manufactured by others. Performance obligations are satisfied and the Company recognizes revenue from most parts sales when the parts are shipped to customers.

Leasing Revenue

The Company recognizes operating lease revenue on Railcars Available for Lease on a straight-line basis over the contract term. The Company recognizes revenue from the sale of Railcars Available for Lease on a net basis as Gain (Loss) on Sale of Railcars Available for Lease since the sale represents the disposal of a long-term operating asset.

Contract Balances and Accounts Receivable

Accounts receivable payments for railcar sales are typically due within 5 to 10 business days of invoicing while payments from parts sales are typically due within 30 to 45 business days of invoicing. The Company has not experienced significant historical credit losses.

Contract assets represent the Company's rights to consideration for performance obligations that have been satisfied but for which the terms of the contract do not permit billing at the reporting date. The Company has no contract assets as of December 31, 2021. The Company has approximately $445 in contract assets as of December 31, 2020. The Company may receive cash payments from customers in advance of the Company satisfying performance obligations under its sales contracts resulting in deferred revenue or customer deposits, which are considered contract liabilities. Deferred revenue and customer deposits are classified as either current or long-term in the Consolidated Balance Sheet based on the timing of when the Company expects to recognize the related revenue. Deferred revenue and customer deposits included in customer deposits, other current liabilities and other long-term liabilities in the Company's Consolidated Balance Sheet as of December 31, 2021 and 2020 were $4,807 and $6,930, respectively.

Performance Obligations

The Company is electing not to disclose the value of the remaining unsatisfied performance obligation with a duration of one year or less as permitted by the practical expedient in ASU 2014-09, *Revenue from Contracts with Customers.* The Company had remaining unsatisfied performance obligations as of December 31, 2021 with expected duration of greater than one year of $14,850.

Loss Per Share

The Company computes loss per share using the two-class method, which is a loss allocation formula that determines loss per share for common stock and participating securities. The Company's participating securities are its grants of restricted stock which contain non-forfeitable rights to dividends. The Company allocates earnings between both classes however, in periods of undistributed losses, they are only allocated to common shares as the unvested restricted stockholders do not contractually participate in losses of the Company. Basic loss per share attributable to common shareholders is computed by dividing net income loss attributable to common shareholders by the weighted average common shares outstanding. Warrants issued in connection with the Company's long-term debt were issued at a nominal exercise price and are considered outstanding at the date of issuance. The calculation of diluted earnings per share includes the effect of any dilutive equity incentive instruments. The Company uses the treasury stock method to calculate the effect of outstanding dilutive equity incentive instruments, which requires the Company to compute total proceeds as the sum of (1) the amount the employee must pay upon exercise of the award and (2) the amount of unearned stock-based compensation costs attributed to future services. Equity incentive instruments for which the total employee proceeds from exercise exceed the average fair value of the same equity incentive instrument over the period have an anti-dilutive effect on earnings per share during periods with net income from continuing operations, and accordingly, the Company excludes them from the calculation.

Recent Accounting Pronouncements

Accounting Pronouncements Recently Adopted

In August 2018, the FASB issued ASU 2018-14, *Compensation – Retirement Benefits – Defined Benefit Plans – General*, which modifies the disclosure requirements for defined benefit and other postretirement plans. ASU 2018-14 eliminates certain disclosures related to accumulated other comprehensive income, plan assets, related parties and the effects of interest rate basis point changes on assumed health care costs, and adds disclosures to address significant gains and losses related to changes in benefit obligations. ASU 2018-14 also clarifies disclosure requirements for projected benefit and accumulated benefit obligations. ASU 2018-14 is effective for fiscal years ending after December 15, 2020. Adoption on a retrospective basis for all periods presented is required. Adoption of this standard did not have a material impact on the Company's consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, *Simplifying the Accounting for Income Taxes*, as part of its simplification initiative to reduce the cost and complexity in accounting for income taxes. ASU 2019-12 removes certain exceptions related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period, and the recognition of deferred tax liabilities for outside basis differences. ASU 2019-12 also amends other aspects of the guidance to help simplify and promote consistent application of GAAP. The guidance is effective for interim and annual periods beginning after December 15, 2020, with early adoption permitted. Adoption of this standard did not have a material impact on the Company's consolidated financial statements.

Recently Issued Accounting Pronouncements

In August 2020, the FASB issued ASU 2020-06, *Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815-40)*. This ASU simplifies the accounting for convertible debt instruments by removing certain accounting separation models as well as the accounting for debt instruments with embedded conversion features that are not required to be accounted for as derivative instruments. The ASU also updates and improves the consistency of earnings per share calculations for convertible instruments. The amendments in this ASU are effective for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. Adoption of the new standard is not expected to have a material impact on our consolidated financial statements.

Note 3 – Leases

The Company determines if an arrangement is a lease at inception of a contract. Substantially all of the Company's leases are operating leases. A significant portion of the Company's operating lease portfolio includes manufacturing sites, component warehouses and corporate offices. The remaining lease terms on the majority of the Company's leases are between 1.5 and 19 years, some of which include options to extend the lease terms. Leases with initial term of 12 months or less are not recorded on the consolidated balance sheet. Operating lease ROU assets are presented within long term assets, the current portion of operating lease liabilities are presented within current liabilities and the non-current portion of operating lease liabilities are presented within long term liabilities on the consolidated balance sheet.

ROU assets represent the Company's right to use an underlying asset during the lease term and the lease liabilities represent the Company's obligation to make the lease payments arising during the lease. ROU assets and liabilities are recognized at commencement date based on the net present value of fixed lease payments over the lease term. The Company's lease term includes options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. As most of the Company's operating leases do not provide an implicit rate, the Company uses its incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. Operating lease expense is recognized on a straight-line basis over the lease term. The components of the lease costs were as follows:

	Year Ended December 31, 2021	Year Ended December 31, 2020
Operating lease costs:		
Fixed	$ 3,710	$ 9,719
Short-term	761	843
Total lease cost	$ 4,471	$ 10,562

Supplemental balance sheet information related to leases were as follows:

	December 31, 2021	December 31, 2020
Operating leases:		
Right of use assets	$ 16,669	$ 18,152
Lease liabilities:		
Lease liability, current	$ 1,955	$ 11,635
Lease liability, long-term	16,617	18,549
Total operating lease liabilities	$ 18,572	$ 30,184

Supplemental cash flow information is as follows:

	Year Ended December 31, 2021	Year Ended December 31, 2020
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$ 4,315	$ 14,209
Total	$ 4,315	$ 14,209
Right of use assets obtained in exchange for new lease obligations:		
Operating leases	$ -	$ 15,939
Total	$ -	$ 15,939

The aggregate future lease payments for operating leases as of December 31, 2021 are as follows:

	Operating leases
2022	$ 4,050
2023	2,920
2024	2,177
2025	2,221
2026	2,432
Thereafter	33,278
Total lease payments	47,078
Less: interest	(28,506)
Total	$ 18,572

Weighted-average remaining lease term (years)	
Operating leases	17.5
Weighted-average discount rate	
Operating leases	12.9%

On October 8, 2020, the Company reached an agreement with the Shoals Facility owner and Landlord, to shorten the Shoals lease term by amending the expiration date to the end of February 2021, with a single one-month extension of the new February 28, 2021 expiration date at the option of the Company. The lease termination resulted in a lease termination gain of $15,234 during 2020.

Note 4 – Fair Value Measurements

The following table sets forth by level within the ASC 820 *Fair Value Measurement* fair value hierarchy the Company's financial assets that were recorded at fair value on a recurring basis and the Company's non-financial assets that were recorded at fair value on a non-recurring basis.

Recurring Fair Value Measurements	As of December 31, 2021			
	Level 1	Level 2	Level 3	Total
Liabilities:				
Warrant liability	$ -	$ 32,514	$ -	$ 32,514

Non-recurring Fair Value Measurements	During the Year Ended December 31, 2021			
	Level 1	Level 2	Level 3	Total
Assets:				
Railcars available for lease, net	$ -	$ -	$ 6,638	$ 6,638

Recurring Fair Value Measurements	As of December 31, 2020			
	Level 1	Level 2	Level 3	Total
Liabilities:				
Warrant liability	$ -	$ 12,730	$ -	$ 12,730

Non-recurring Fair Value Measurements	During the Year Ended December 31, 2020			
	Level 1	Level 2	Level 3	Total
Assets:				
Assets held for sale	$ -	$ -	$ 10,383	$ 10,383
Right of use assets	$ -	$ -	$ 28,960	$ 28,960
Property, plant and equipment, net	$ -	$ -	$ 11,515	$ 11,515
Railcars available for lease, net	$ -	$ -	$ 13,175	$ 13,175

The fair value of the Company's warrant liability recorded in the Company's financial statements, determined using the quoted price of the Company's common stock in an active market, exercise price ($0.01/share) and number of shares exercisable at December 31, 2021 and 2020, is a Level 2 measurement.

On September 10, 2020 the Company announced its plan to permanently close its Shoals Facility. In connection with the announcement, the Company estimated the fair value of the related asset group because it determined that an impairment trigger had occurred due to the shortened asset recoverability timeframe. Non-cash impairment charges of $8,978 for property, plant and equipment at the Shoals Facility and $17,540 for the right of use asset were recognized during 2020. Assets held for sale represents property, plant and equipment to be sold or transferred to the Shoals landlord as consideration for the landlord's entry into the lease amendment. See Note 8 –Restructuring and Impairment Charges for more information regarding the non-recurring fair value measurement considerations during the year ended December 31, 2020 for the impairment charge related to the Shoals Facility.

See Note 7 for more information regarding the non-recurring fair value measurement considerations during the years ended December 31, 2021 and 2020, for the impairment charge related to our leased small cube covered hopper railcars.

Note 5 – Restricted Cash and Restricted Cash Equivalents

The Company establishes restricted cash balances when required by customer contracts and to collateralize standby letters of credit. The carrying value of restricted cash and restricted cash equivalents approximates fair value.

The Company's restricted cash balances are as follows:

	December 31, 2021	December 31, 2020
Restricted cash from customer deposit	$ 282	$ 3,204
Restricted cash to collateralize standby letters of credit	1,133	3,396
Restricted cash equivalents to collateralize standby letters of credit	3,542	3,855
Total restricted cash and restricted cash equivalents	$ 4,957	$ 10,455

Note 6 – Inventories

Inventories, net of reserve for excess and obsolete items, consist of the following:

	December 31, 2021	December 31, 2020
Work in process	$ 50,887	$ 34,355
Parts inventory	5,125	4,476
Total inventories, net	$ 56,012	$ 38,831

Inventory on the Company's consolidated balance sheets includes reserves of $1,621 and $9,836 relating to excess or slow-moving inventory for parts and work in process at December 31, 2021 and 2020, respectively.

Note 7 – Leased Railcars

Railcars available for lease at December 31, 2021 were $20,160 (cost of $23,717 and accumulated depreciation of $3,557) and at December 31, 2020 were $20,933 (cost of $24,054 and accumulated depreciation of $3,121). Depreciation expense on railcars available for lease was $646 and $1,015 for the years ended December 31, 2021 and 2020, respectively.

Leased railcars are subject to lease agreements with external customers with remaining terms of up to three and a half years and are accounted for as operating leases.

Future minimum rental revenues on leases at December 31, 2021 are as follows:

Year ending December 31, 2022	$	2,769
Year ending December 31, 2023		1,385
Year ending December 31, 2024		334
Year ending December 31, 2025		100
Year ending December 31, 2026		-
Thereafter		-
	$	4,588

During the fourth quarter of 2020, the oil and gas proppants (or “frac sand”) industry continued to experience economic pressure created by low oil prices, reduced fracking activity, and the ongoing economic impact of COVID-19. In particular, small cube covered hopper railcars are primarily used in North America to serve the frac sand industry. Given the decline in global oil prices, reduced fracking activity, and pressure on the oil and gas industry to maintain a low-cost structure, fracking operations, have increasingly shifted away from the use of Northern White sand and towards the use of in-basin sand, which can be sourced locally rather than transporting by rail. Consequently, the cash flows and profitability of the frac sand industry continued to decline during the fourth quarter. As a result, certain small cube covered hopper customers requested rent relief that were renegotiated.

We believe that the events and circumstances that arose during the fourth quarter of 2020 constituted an impairment triggering event related to the small cube covered hopper car type in our leased railcar portfolio.

We performed a cash flow recoverability test of our small cube covered hopper railcars and compared the undiscounted cash flows to the carrying value of the assets. This analysis indicated that the carrying value exceeded the estimated undiscounted cash flows, and therefore, we were required to measure the fair value of our fleet of small cube covered hopper railcars and determine the amount of an impairment loss, if any.

The fair value of the asset group, which is part of the Company’s Manufacturing segment, was determined using both a market and cost approach, which we believe most accurately reflects a market participant's viewpoint in valuing these railcars. The results of our analysis indicated an estimated fair value of the asset group of approximately $13,175, in comparison to the asset group's carrying amount of $30,127. As a result, during the fourth quarter, we recorded a pre-tax non-cash impairment charge of $16,952 related to our small cube covered hopper railcars. Additionally, we evaluated the right-of-use asset associated with our leased railcar portfolio of small cube covered hopper railcars and determined that these assets were impaired based on consideration of an expected decline in future cash flows over the remaining lease term, which resulted in an additional pre-tax non-cash impairment charge of approximately $1,999. The aggregate impairment charge of $18,951 is reflected in the impairment of leased railcars line of our Consolidated Statements of Operations for the year ended December 31, 2020.

Significant management judgment was used to determine the key assumptions utilized in our impairment analysis, the substantial majority of which represent unobservable (Level 3) inputs. These assumptions include, but are not limited to: estimates regarding the remaining useful life over which the railcars are expected to generate cash flows (37 years); average contractual lease rates; and discount rate (5.8%). Management selected these estimates and assumptions based on our railcar industry expertise. Although we believe the estimates utilized in our analysis were reasonable, any change in these estimates could materially affect the amount of the impairment charge.

Note 8 – Restructuring and Impairment Charges

On September 10, 2020, the Company announced its plan to permanently close its Shoals Facility in light of the ongoing cyclical industry downturn, which has been magnified by the COVID-19 pandemic. The Company ceased production at the Shoals Facility in February 2021. In connection with the announcement, the Company estimated the fair value of the related asset group because it determined that an impairment trigger had occurred due to the shortened asset recoverability timeframe. Non-cash restructuring and impairment charges totaling $26,576 were recognized during 2020. These non-cash charges for 2020 related to the ROU asset ($17,540) and property, plant and equipment at the Shoals Facility ($9,036). In connection with the impairment the Company reassessed the estimated useful lives of equipment that continues to be used by the Company (primarily in Castaños) and is depreciating it over their remaining useful lives. Restructuring and impairment charges for 2020 included cash charges of $6,578 which included employee severance and retention charges and other costs to close the facility and transfer equipment to Castaños.

The fair value of the ROU asset was estimated using an income valuation approach known as the "sublease" discounted cash flow ("DCF") model in which the cash flows were based on current market-based lease pricing ($3.5 per square foot) over the remaining term of the Shoals Facility lease (75 months). The cash flows were discounted to present value using a market-derived rate of return of 6.50%.

The Shoals Facility personal property was abandoned in place at the facility, sold, transferred to another FCA facility (primarily Castaños), or scrapped. The assets abandoned in place represent property, plant and equipment transferred to the Shoals landlord as consideration for the landlord's entry into the lease amendment described below. The premise of fair value differs for each type of asset disposition. The fair value of the personal property assets abandoned in place at the Shoals Facility were analyzed under a fair value in continued use ("In-Use") premise. This premise assumes that the assets will continue to be used in the ongoing operation of the facility and therefore includes installation, other assembly, freight, engineering, electrical set-up and process piping costs that would be required to make the assets fully operational. Assets sold or transferred were analyzed under the In-Exchange ("In-Exchange") premise of fair value. Under this premise, we considered the value of the assets assuming an orderly sale on a stand-alone basis. It is assumed the assets were sold on an as-is, where-is basis and alternative uses for the assets from the originally designed purpose are considered. Any remaining personal property assets that were neither abandoned in place nor sold/transferred were considered unmarketable and were valued under a scrap value premise.

For both the aforementioned In-Use and In Exchange premises, in instances where an asset was found to have no used market resale exposure, we utilized the cost approach. For assets in which there was an active secondary market where recent sales comparables exist, the market approach was utilized. In instances where market data was available but deemed too incomplete to apply a complete market approach, we used the market relationship data available to influence, confirm, or adjust the cost approach results.

On October 8, 2020, the Company reached an agreement with the Shoals facility owner and landlord, to shorten the Shoals lease term by amending the expiration date to the end of February 2021. In addition, the landlord agreed to waive the base rent payable under the original lease for the months of October 2020 through February 2021. The lease termination resulted in a lease termination gain of $15,234 during 2020. Property, plant and equipment reported as Assets Held for Sale on the balance sheet as of December 31, 2020 with an estimated fair value of $10,148 was sold or transferred to the Shoals landlord during the 2021 as consideration for the landlord's entry into the lease amendment and the aforementioned rent waiver. Restructuring and impairment charges related to the plant closure for 2021 primarily represented costs related to relocating some of the facility's equipment to Castaños.

Restructuring and impairment charges are reported as a separate line item on the Company's consolidated statements of operations for the years ended December 31, 2021 and 2020, and are detailed below:

	Year Ended December 31, 2021	Year Ended December 31, 2020
Impairment and loss on right of use asset	$ -	$ 17,540
Lease termination gain	-	(15,200)
Impairment and loss on disposal of machinery and equipment	1,591	9,527
Employee severance and retention	(5)	3,285
Other charges related to facility closure	4,944	3,173
Total restructuring and impairment costs	$ 6,530	$ 18,325

Accrued restructuring and impairment charges primarily related to the Manufacturing segment and are detailed below:

	Accrued as of December 31, 2020	Cash Charges	Non-cash charges	Cash payments	Accrued as of December 31, 2021
Impairment and loss on disposal of machinery and equipment	$ -	$ -	$ 269	$ -	$ -
Employee severance and retention	1,596	-	(80)	(1,353)	163
Other charges related to facility closure	251	6,437	(96)	(6,688)	-
Total restructuring and impairment costs	$ 1,847	$ 6,437	$ 93	$ (8,041)	$ 163

	Accrued as of December 31, 2019	Cash Charges	Non-cash charges	Cash payments	Accrued as of December 31, 2020
Impairment and loss on right of use asset	$ -	$ -	$ 17,540	$ -	$ -
Impairment and loss on disposal of machinery and equipment	-	-	9,527	-	-
Lease termination gain			(15,200)		
Employee severance and retention	647	3,285	-	(2,336)	1,596
Other charges related to facility closure	359	3,293	(120)	(3,401)	251
Total restructuring and impairment costs	$ 1,006	$ 6,578	$ 11,747	$ (5,737)	$ 1,847

Note 9 – Property, Plant and Equipment

Property, plant and equipment consists of the following:

	December 31, 2021	December 31, 2020
Buildings and improvements	$ 162	$ 162
Leasehold improvements	3,954	3,341
Machinery and equipment	33,808	33,243
Software	8,560	8,560
Construction in process	401	85
Total cost	46,885	45,391
Less: Accumulated depreciation and amortization	(28,649)	(25,749)
Total property, plant and equipment, net	$ 18,236	$ 19,642

Depreciation expense for the years ended December 31, 2021 and 2020, was $3,658 and $8,187, respectively.

Note 10 – Product Warranties

Warranty terms are based on the negotiated railcar sales contracts. The Company generally warrants that new railcars produced by it will be free from defects in material and workmanship under normal use and service identified for a period of up to five years from the time of sale. The changes in the warranty reserve for the years ended December 31, 2021 and 2020, are as follows:

	December 31,	
	2021	2020
Balance at the beginning of the year	$ 5,216	$ 8,388
Current year provision	200	451
Reductions for payments, costs of repairs and other	(1,358)	(1,756)
Adjustments to prior warranties	(1,525)	(1,867)
Balance at the end of the year	$ 2,533	$ 5,216

Adjustments to prior warranties includes changes in the warranty reserve for warranties issued in prior periods due to expiration of the warranty period, revised warranty cost estimates and other factors.

Note 11 – State and Local Incentives

During the year ended December 31, 2015, the Company received cash payments of $15,733 for Alabama state and local incentives related to the Company's capital investment and employment levels at the Shoals Facility. In December 2016, the Company also qualified for an additional $1,410 in incentives at the Shoals Facility. This amount was received in January 2017. Under the incentive agreements, a certain portion of the incentives may be repayable by the Company if targeted levels of employment are not maintained for a period of six years from the date of the incentive. In the event that employment levels drop below the minimum targeted levels of employment and any portion of the incentives is required to be paid back, the amount is unlikely to exceed the deferred liability balance at December 31, 2021.

The changes in deferred income from these incentives for the years ended December 31, 2021 and 2020, are as follows:

	December 31,	
	2021	2020
Balance at the beginning of the year	$ 4,722	$ 6,941
Recognition of state and local incentives as a reduction of cost of sales	(2,215)	(2,219)
Balance at the end of the year, including current portion	$ 2,507	$ 4,722

Note 12 – Debt Financing and Revolving Credit Facilities

Term Loan Credit Agreement

On October 13, 2020, the Company entered into a Credit Agreement (the "Term Loan Credit Agreement") by and among the Company, as guarantor, FreightCar North America ("Borrower" and together with the Company and certain other subsidiary guarantors, collectively, the "Loan Parties"), CO Finance LVS VI LLC, as lender (the "Lender"), and U.S. Bank National Association, as disbursing agent and collateral agent ("Agent"). Pursuant to the Term Loan Credit Agreement, the Lender committed to the extension of a term loan credit facility in the principal amount of $40,000, consisting of a single term loan to be funded upon the satisfaction of certain conditions precedent set forth in the Term Loan Credit Agreement, including stockholder approval of the issuance of the

common stock underlying the Warrant described below (the funding date of such term loan, the "Closing Date"). FreightCar America, Inc. stockholders approved the issuance of the common stock underlying the Warrant at a special stockholders' meeting on November 24, 2020. The $40,000 term loan closed and was funded on November 24, 2020. The Company incurred $2,872 in deferred financing costs related to the Term Loan Agreement. The deferred financing costs are presented as a reduction of the long-term debt balance and amortized to interest expense over the term of the Term Loan Agreement.

The Term Loan Credit Agreement has a term ending five years following the Closing Date. The term loan outstanding under the Term Loan Credit Agreement bears interest, at Borrower's option and subject to the provisions of the Term Loan Credit Agreement, at Base Rate (as defined in the Term Loan Credit Agreement) or Eurodollar Rate (as defined in the Term Loan Credit Agreement) plus the Applicable Margin (as defined in the Term Loan Credit Agreement) for each such interest rate set forth in the Term Loan Credit Agreement. As of December 31, 2021, the interest rate on the original advance under the Term Loan Credit Agreement was 14.0%.

The Term Loan Credit Agreement has both affirmative and negative covenants, including, without limitation, minimum liquidity, limitations on indebtedness, liens and investments. The Term Loan Credit Agreement also provides for customary events of default. Pursuant to the terms and conditions set forth in the Term Loan Credit Agreement and the related loan documents, each of the Loan Parties granted to Agent a continuing lien upon all of such Loan Parties' assets to secure the obligations of the Loan Parties under the Term Loan Credit Agreement.

On May 14, 2021, the Loan Parties entered into an Amendment No. 2 to the Term Loan Credit Agreement (the "Second Amendment" and together with the Term Loan Credit Agreement, the "Term Loan Credit Agreement") with Lender and the Agent, pursuant to which the principal amount of the term loan credit facility was increased by $16,000 to a total of $56,000, with such additional $16,000 (the "Additional Loan") to be funded upon the satisfaction of certain conditions precedent set forth in the Second Amendment. The Additional Loan closed and was funded on May 17, 2021. The Company incurred $480 in deferred financing costs related to the Second Amendment which are presented as a reduction of the long-term debt balance and amortized on a straight-line basis to interest expense over the term of the Second Amendment.

The Additional Loan bears interest, at Borrower's option and subject to the provisions of the Term Loan Credit Agreement, at the Base Rate (as defined in the Term Loan Credit Agreement) or Eurodollar Rate (as defined in the Term Loan Credit Agreement) plus the Applicable Margin (as defined in the Term Loan Credit Agreement) for each such interest rate set forth in the Term Loan Credit Agreement. As of December 31, 2021, the interest rate on the Additional Loan was 14.0%.

Pursuant to the Second Amendment, in the event that the Additional Loan is not repaid in full by March 31, 2022, the Company shall issue to the Lender and/or an affiliate of the Lender a warrant (the "March 2022 Warrant") to purchase a number of shares of the Company's common stock, par value $0.01 per share, equal to 5% of the Company's outstanding common stock on a fully-diluted basis at the time the March 2022 Warrant is exercised (after giving effect to such issuance). The March 2022 Warrant, if issued, will have an exercise price of $0.01 and a term of ten years.

Pursuant to the Second Amendment, the Company was required to, among other things, i) obtain a term sheet for additional financing of no less than $15,000 by July 31, 2021 and ii) file a registration statement on Form S-3 registering Company securities, including the shares of Company common stock issuable upon exercise of the March 2022 Warrant, by no later than August 31, 2021. The Company has met each of the aforementioned obligations. The Form S-3 registering Company securities, including the shares of Company stock issuable upon exercise of the March 2022 Warrant was filed with the Securities and Exchange Commission on August 27, 2021 and became effective on September 9, 2021.

On July 30, 2021, the Loan Parties entered into an Amendment No. 3 to Credit Agreement (the "Third Amendment" and together with the Credit Agreement, as amended, the "Term Loan Credit Agreement") with the Lender and the Agent, pursuant to which, among other things, Lender obtained a standby letter of credit (as may be amended from time to time, the "Third Amendment Letter of Credit") from Wells Fargo Bank, N.A., in the principal amount of

$25,000 for the account of the Company and for the benefit of Siena Lending Group LLC (the "Revolving Loan Lender").

On December 30, 2021, the Loan Parties entered into an Amendment No. 4 to Credit Agreement (the "Fourth Amendment" and together with the Credit Agreement, the "Term Loan Credit Agreement") with the Lender and the Agent, pursuant to which the principal amount of the term loan credit facility was increased by $15,000 to a total of $71,000, with such additional $15,000 (the "Delayed Draw Loan") to be funded, at the Borrower's option, upon the satisfaction of certain conditions precedent set forth in the Fourth Amendment. The Borrower has the option to draw on the Delayed Draw Loan through January 31, 2023 and may choose not to do so.

The Delayed Draw Loan, if funded, will bear interest, at Borrower's option and subject to the provisions of the Term Loan Credit Agreement, at the Base Rate (as defined in the Term Loan Credit Agreement) or Eurodollar Rate (as defined in the Term Loan Credit Agreement) plus the Applicable Margin (as defined in the Term Loan Credit Agreement) for each such interest rate set forth in the Term Loan Credit Agreement.

Reimbursement Agreement

Pursuant to the Third Amendment, on July 30, 2021, the Company, the Lender, Alter Domus (US) LLC, as calculation agent, and the Agent entered into a reimbursement agreement (the "Reimbursement Agreement"), pursuant to which, among other things, the Company agreed to reimburse the Agent, for the account of the Lender, in the event of any drawings under the Third Amendment Letter of Credit by the Revolving Loan Lender.

In addition, pursuant to the Reimbursement Agreement, the Company shall make certain other payments as set forth below, so long as the Third Amendment Letter of Credit remains outstanding:

Letter of Credit Fee

The Company shall pay to Agent, for the account of Lender, an annual fee of $500, which shall be due and payable quarterly beginning on August 2, 2021, and every three months thereafter.

Equity Fee

Every three months (the "Measurement Period"), commencing on August 6, 2021, the Company shall pay to the Lender (or, so long as Lender is the sole provider of the Third Amendment Letter of Credit, to OC III LVS XII LP, if Lender has timely notified the Company in writing of such designation) a fee (the "Equity Fee") payable in shares of common stock, par value $0.01 per share, of the Company (the "Common Stock"). The Equity Fee shall be calculated by dividing $1,000 by the volume weighted average price of the Company's Common Stock on the Nasdaq Capital Market for the ten (10) trading days ending on the last business day of the applicable Measurement Period. The Company can opt to pay the Equity Fee in cash, in the amount of $1,000, if, and only if, (x) the Company has already issued as Equity Fees a number of shares of its Common Stock equal to (I) 5.0% multiplied by (II) the total number of shares of Common Stock outstanding as of July 30, 2021, rounded down to the nearest whole share of Common Stock, and (y) the Company has at least $15,000 of Repayment Liquidity after giving effect to such payment. The term Repayment Liquidity, as defined in the Term Loan Credit Agreement, means (a) all unrestricted and unencumbered cash and cash equivalents of the Loan Parties, plus (b) the undrawn and available portion of the commitments under that certain Amended and Restated Loan and Security Agreement by and among the Loan Parties and the Revolving Loan Lender (as described below), minus (c) all accounts payable of the Loan Parties that are more than 30 days past due.

The Equity Fee shall no longer be paid once the Company has issued to Lender and/or OC III LVS XII LP Equity Fees in an amount of Common Stock equal to 9.99% multiplied by the total number of shares of Common Stock outstanding as of July 30, 2021, rounded down to the nearest whole share of Common Stock (the "Maximum Equity").

The issuance of each Equity Fee under the Reimbursement Agreement will be made in reliance on the exemption from registration contained in Section 4(a)(2) of the Securities Act for offers and sales of securities that do not involve a "public offering."

Cash Fee

The Company shall pay to the Agent, for the account of the Lender (or, so long as the Lender is the sole provider of the Third Amendment Letter of Credit, to OC III LVS XII LP, if the Lender has timely notified the Company in writing of such designation) a cash fee (the "Cash Fee") which shall be due and payable in cash quarterly beginning on the date that the Maximum Equity has been issued and thereafter on the business day immediately succeeding the last business day of the applicable Measurement Period. The Cash Fee shall be equal to $1,000, provided that, in the quarter in which the Maximum Equity is issued, such fee shall be equitably reduced by the value of any Equity Fee issued by the Company that quarter.

Warrant

In connection with the entry into the Term Loan Credit Agreement, the Company issued to an affiliate of the Lender (the "Warrantholder") a warrant (the "Warrant"), pursuant to that certain warrant acquisition agreement, dated as of October 13, 2020 (the "Warrant Acquisition Agreement"), by and between the Company and the Lender to purchase a number of shares of the Company's common stock, par value $0.01 per share, equal to 23% of the outstanding common stock on a fully-diluted basis at the time the Warrant is exercised (after giving effect to such issuance). The Warrant is exercisable for a term of ten years from the date of the issuance of the Warrant. The Warrant was issued on November 24, 2020 after the Company received stockholder approval of the issuance of the common stock issuable upon exercise of the Warrant by the Warrantholder. In connection with the issuance of the Warrant, the Company and the Lender entered into a registration rights agreement (the "Registration Rights Agreement") as of the Closing Date of November 24, 2020. As of December 31, 2021 and December 31, 2020, the Warrant was exercisable for an aggregate of 6,098,217 and 5,307,539 shares, respectively, of common stock of the Company with a per share exercise price of $0.01. The Company determined that the Warrant should be accounted for as a derivative instrument and classified as a liability on its Consolidated Balance Sheets primarily due to the instrument obligating the Company to settle the Warrant in a variable number of shares of common stock. The Warrant was recorded at fair value and is treated as a discount on the term loan. The discount on the associated debt is amortized over the life of the Term Loan Credit Agreement and included in interest expense.

Pursuant to the Second Amendment, in the event that the Additional Loan is not repaid in full by March 31, 2022, the Company shall issue to the Lender and/or an affiliate of the Lender the March 2022 Warrant to purchase a number of shares of the Company's common stock, par value $0.01 per share, equal to 5% of the Company's outstanding common stock on a fully-diluted basis at the time the March 2022 Warrant is exercised (after giving effect to such issuance). The March 2022 Warrant, if issued, will have an exercise price of $0.01 and a term of ten years. The Company believes that it is probable that the March 2022 Warrant will be issued and as such has recorded an additional warrant liability of $7,351 during the third quarter of 2021.

Pursuant to the Fourth Amendment and a warrant acquisition agreement, dated as of December 30, 2021 (the "Warrant Acquisition Agreement"), the Company issued to the Lender a warrant (the "December 2021 Warrant") to purchase a number of shares of the Company's common stock, par value $0.01 per share, equal to 5% of the Company's outstanding common stock on a fully-diluted basis at the time the December 2021 Warrant is exercised (after giving effect to such issuance). The December 2021 Warrant has an exercise price of $0.01 and a term of ten years. As of December 31, 2021, the December 2021 Warrant was exercisable for an aggregate of 1,325,699 shares of common stock of the Company with a per share exercise price of $0.01.

In addition, to the extent the Delayed Draw Loan is funded, the Company has agreed to issue to the Lender a warrant (the "3% Additional Warrant") to purchase up to a number of shares of the Company's common stock, par value $0.01 per share, equal to 3% of the Company's outstanding common stock on a fully-diluted basis at the time the 3% Additional Warrant is exercised (after giving effect to such issuance). The 3% Additional Warrant, if issued, will have an exercise price of $0.01 and a term of ten years.

The following schedule shows the change in fair value of the Warrant as of December 31, 2021.

Warrant liability as of December 31, 2020	$	12,730
Change in fair value		14,894
Warrants issued		4,890
Warrant liability as of December 31, 2021	$	32,514

The change in fair value of the Warrant is reported on a separate line in the consolidated statement of operations. The Term Loan Credit Agreement is presented net of the unamortized discount and unamortized deferred financing costs.

Siena Loan and Security Agreement

On October 8, 2020, the Company entered into a Loan and Security Agreement (the “Siena Loan Agreement”) by and among the Company, as guarantor, and certain of its subsidiaries, as borrowers (together with the Company, the “Loan Parties”), and Siena Lending Group LLC, as lender (“Siena”). Pursuant to the Siena Loan Agreement, Siena provided an asset backed credit facility, in the maximum aggregate principal amount of up to $20,000, (the "Maximum Revolving Facility Amount") consisting of revolving loans (the Revolving Loans").

The Siena Loan Agreement replaced the Company’s prior revolving credit facility under the Credit and Security Agreement (the “BMO Credit Agreement”) dated as of April 12, 2019, among the Company and certain of its subsidiaries, as borrowers and guarantors, and BMO Harris Bank N.A., as lender, as amended from time to time, which was terminated effective October 8, 2020 and otherwise would have matured on April 12, 2024.

The Siena Loan Agreement provided for a revolving credit facility with maximum availability of $20,000, subject to borrowing base requirements set forth in the Siena Loan Agreement, which generally limited availability under the revolving credit facility to (a) 85% of the value of eligible accounts and (b) up to the lesser of (i) 50% of the lower of cost or market value of eligible inventory and (ii) 85% of the net orderly liquidation value of eligible inventory, and as reduced by reserves established by Siena from time to time in accordance with the Siena Loan Agreement.

On July 30, 2021, the Loan Parties and Siena entered into an Amended and Restated Loan and Security Agreement (the “Amended and Restated Loan and Security Agreement”), which amended and restated the terms and conditions of the Siena Loan Agreement in its entirety.

Pursuant to the Amended and Restated Loan and Security Agreement, the Maximum Revolving Facility Amount was increased to $25,000, provided, however, that the outstanding balance of all Revolving Loans may not exceed the lesser of (A) the Maximum Revolving Facility Amount minus the Availability Block and (B) an amount equal to the issued and undrawn portion of the Third Amendment Letter of Credit (as defined above) minus the Availability Block. The term “Availability Block”, as defined in the Amended and Restated Loan and Security Agreement, means 3.0% of the issued and undrawn amount under the Third Amendment Letter of Credit.

The Amended and Restated Loan and Security Agreement has a term ending on October 8, 2023. Revolving Loans outstanding under the Amended and Restated Loan and Security Agreement bear interest, subject to the provisions of the Amended and Restated Loan and Security Agreement, at an interest rate of 2% per annum in excess of the Base Rate (as defined in the Siena Loan Agreement). As of December 31, 2021, the interest rate on outstanding debt under the Amended and Restated Loan and Security Agreement was 5.26%.

The Amended and Restated Loan and Security Agreement contains affirmative and negative covenants, including, without limitation, limitations on future indebtedness, liens and investments. The Amended and Restated Loan and Security Agreement also provides for customary events of default. Pursuant to the terms and conditions set forth in the Amended and Restated Loan and Security Agreement, each of the Loan Parties granted Siena a continuing lien upon certain assets of the Loan Parties to secure the obligations of the Loan Parties under the Amended and Restated Loan and Security Agreement.

As of December 31, 2021, the Company had $24,026 in outstanding debt under the Siena Loan Agreement and remaining borrowing availability of $122. As of December 31, 2020, the Company had $6,874 in outstanding debt under the Siena Loan Agreement and remaining borrowing availability of $9,701. The Company incurred $1,101 in deferred financing costs related to the Siena Loan Agreement and incurred $1,037 in additional deferred financing costs related to the Amended and Restated Loan and Security Agreement. The deferred financing costs are presented as an asset and amortized to interest expense on a straight-line basis over the term of the Siena Loan Agreement.

SBA Paycheck Protection Program Loan

In March 2020, Congress passed the Paycheck Protection Program ("PPP"), authorizing loans to small businesses for use in paying employees that they continue to employ throughout the COVID-19 pandemic and for rent, utilities and interest on mortgages. In June 2020, Congress enacted the Paycheck Protection Program Flexibility Act ("PPPFA"), amending the PPP.

Loans obtained through the PPP, as amended, are eligible to be forgiven as long as the proceeds are used for qualifying purposes and certain other conditions are met. On April 16, 2020, the Company received a loan from BMO Harris Bank N.A. in the amount of $10,000 (the "PPP Loan"). Since the entire PPP Loan was used for payroll, utilities and interest, management anticipated that the majority of the PPP Loan would be forgiven. The Company filed an application for PPP Loan forgiveness on October 28, 2020 along with a request for extension of the term of the PPP Loan to five years. On July 14, 2021, the Company received a notification from BMO Harris Bank N.A. that the Small Business Administration approved the Company's PPP Loan forgiveness application for the entire $10,000 balance, together with interest accrued thereon, of the PPP Loan and that the remaining balance of the PPP Loan was zero. The Company recognized a gain on extinguishment of debt of $10,129 related to PPP Loan forgiveness during 2021.

M&T Credit Agreement

On April 16, 2019, FreightCar America Leasing 1, LLC, an indirect wholly-owned subsidiary of the Company ("Freightcar Leasing Borrower"), entered into a Credit Agreement (the "M&T Credit Agreement") with M & T Bank, N.A., as lender ("M&T"). Pursuant to the M&T Credit Agreement, M&T extended a revolving credit facility to Freightcar Leasing Borrower in an aggregate amount of up to $40,000 for the purpose of financing railcars which will be leased to third parties.

On April 16, 2019, Freightcar Leasing Borrower also entered into a Security Agreement (the "M&T Security Agreement") pursuant to which it granted a security interest in all of its assets to M&T to secure its obligations under the M&T Credit Agreement.

On April 16, 2019, FreightCar America Leasing, LLC, a wholly-owned subsidiary of the Company and parent of Freightcar Leasing Borrower ("Freightcar Leasing Guarantor"), entered into (i) a Guaranty Agreement (the "M&T Guaranty Agreement") pursuant to which Freightcar Leasing Guarantor guarantees the repayment and performance of certain obligations of Freightcar Leasing Borrower and (ii) a Pledge Agreement (the "M&T Pledge Agreement") pursuant to which Freightcar Leasing Guarantor pledged all of the equity of Freightcar Leasing Borrower held by Freightcar Leasing Guarantor.

The loans under the M&T Credit Agreement are non-recourse to the assets of the Company or its subsidiaries other than the assets of Freightcar Leasing Borrower and Freightcar Leasing Guarantor.

The M&T Credit Agreement had a term ending on April 16, 2021 (the "Term End"). Loans outstanding thereunder will bear interest, accrued daily, at the Adjusted LIBOR Rate (as defined in the M&T Credit Agreement) or the Adjusted Base Rate (as defined in the M&T Credit Agreement). The M&T Credit Agreement has both affirmative and negative covenants, including, without limitation, maintaining an Interest Coverage Ratio (as defined in the

M&T Credit Agreement) of not less than 1.25:1.00, measured quarterly, and limitations on indebtedness, loans, liens and investments. The M&T Credit Agreement also provides for customary events of default.

On August 7, 2020, FreightCar Leasing Borrower received notice (the "First Notice") from M&T that, based on an appraisal (the "Appraisal") conducted by a third party at the request of M&T with respect to the railcars in FreightCar Leasing Borrower's Borrowing Base (as defined in the M&T Credit Agreement) under the M&T Credit Agreement, the unpaid principal balance under the M&T Credit Agreement exceeded the availability under the M&T Credit Agreement as of the date of the Appraisal by $5,081 (the "Payment Demand Amount"). In the First Notice, M&T Bank: (a) asserted that an Event of Default under the M&T Credit Agreement has occurred because FreightCar Leasing Borrower did not pay the Payment Demand Amount to M&T within five days of the asserted change in availability; (b) demanded payment of the amount within five days of the date of the First Notice; and (c) terminated the commitment to advance additional loans under the M&T Credit Agreement.

On December 18, 2020, FreightCar Leasing Borrower received a revised notice (the "Second Notice," and together with the First Notice, the "Notices") from M&T asserting that: (a) as a result of the continuing Event of Default that M&T alleged to have occurred under the M&T Credit Agreement, M&T has declared a default and accelerated and demands immediate payment by FreightCar Leasing Borrower of $10,114 (the "Outstanding Amount"); (b) FreightCar Leasing Borrower is liable for all interest that continues to accrue on the Outstanding Amount; and (c) FreightCar Leasing Borrower is liable for all attorneys' fees, costs and expenses as set forth in the M&T Credit Agreement.

On April 20, 2021, FreightCar Leasing Borrower received a notice from M&T that an Event of Default had occurred due to all amounts outstanding under the M&T Credit Agreement having not be paid by the Term End.

On December 28, 2021 (the "Execution Date"), FreightCar Leasing Borrower, FreightCar Leasing Guarantor (together with FreightCar Leasing Borrower, the "Obligors"), the Company, FreightCar America Railcar Management, LLC, a Delaware limited liability company ("FCA Management"), and M&T, entered into a Forbearance and Settlement Agreement (the "Forbearance Agreement") with respect to M&T Credit Agreement and its related Credit Documents (as defined in the M&T Credit Agreement), as well as certain intercompany services agreements related thereto.

Pursuant to the Forbearance Agreement, the Obligors will continue to perform and comply with all of their performance obligations (as opposed to payment obligations) under certain provisions of the M&T Credit Agreement (primarily related to information obligations and the preservation of the collateral pledged by the Borrower to M&T pursuant to the M&T Security Agreement (the "Collateral")) and all the provisions of the M&T Security Agreement. During the period from Execution Date until the termination of the Forbearance Agreement, M&T may not take any action against the Obligors or exercise or enforce any rights or remedies provided for in the Credit Documents or otherwise available to it. The M&T Credit Agreement is not being amended.

On December 1, 2023, or sooner if requested by the Lender (the "Turnover Date"), the Borrower shall execute and deliver to M&T documents required to deliver and assign to the Lender all the leased railcars and related leases serving as Collateral for the M&T Credit Agreement.

Upon the Turnover Date and the Obligors' performance of their respective obligations under the Forbearance Agreement, including the delivery of certain Collateral to M&T upon the Turnover Date, all Obligations (as defined in the M&T Credit Agreement) shall be deemed satisfied in full, M&T shall no longer have any further claims against the Obligors under the Credit Documents and the Credit Documents shall automatically terminate and be of no further force or effect except for the provisions thereof that expressly survive termination.

The Forbearance Agreement contains customary releases at execution for all affiliates of the Company (other than the Obligors) and agreements to deliver final releases with respect to the Obligors upon their performance under the Forbearance Agreement. The Company also agreed to turn over to M&T on the Effective Date certain rents in the amount of $715 that it had previously collected as servicing agent for the Borrower, and to continue to provide such

services through the Turnover Date without a service fee, and after the Turnover Date through the return of the railcars serving as Collateral, for a service fee.

As of December 31, 2021 and December 31, 2020, FreightCar Leasing Borrower had $7,917 and $10,105, respectively, in outstanding debt under the M&T Credit Agreement, which was collateralized by leased railcars with a carrying value of $6,638 and $6,975, respectively. As of December 31, 2021, the interest rate on outstanding debt under the M&T Credit Agreement was 4.25%.

Long-term debt consists of the following as of December 31, 2021.

	December 31, 2021	December 31, 2020
M&T Credit Agreement outstanding	$ 7,917	$ 10,105
SBA Payroll Protection Program Loan outstanding	-	10,000
Siena Loan Agreement outstanding	24,026	6,874
Term Loan Credit Agreement outstanding	57,278	40,000
Total debt	89,221	66,979
Less Term Loan Credit Agreement discount	(7,077)	(8,892)
Less Term Loan Credit Agreement deferred financing costs	(2,660)	(2,814)
Total debt, net of discount and deferred financing costs	79,484	55,273
Less amounts due within one year	-	(17,605)
Long-term debt, net of current portion	$ 79,484	$ 37,668

The fair value of long-term debt approximates its carrying value as of December 31, 2021 and 2020.

Estimated annual maturities of long-term debt, including the current portion at December 31, 2021 are as follows based on the most recent debt agreements.

2022	$ -
2023	31,943
2024	-
2025	57,278
2026	-
Thereafter	-
	89,221

Note 13 – Accumulated Other Comprehensive Loss

The changes in accumulated other comprehensive loss consist of the following:

	Pre-Tax	Tax	After-Tax
Year ended December 31, 2021			
Pension liability activity:			
Actuarial gain	$ 5,620	$ -	$ 5,620
Reclassification adjustment for amortization of net loss (pre-tax other income)	621	-	621
	$ 6,241	$ -	$ 6,241

	Pre-Tax	Tax	After-Tax
Year ended December 31, 2020			
Pension liability activity:			
Actuarial loss	$ (1,544)	$ -	$ (1,544)
Reclassification adjustment for amortization of net loss (pre-tax other income)	561	-	561
	$ (983)	$ -	$ (983)

The components of accumulated other comprehensive loss consist of the following:

	December 31, 2021	December 31, 2020
Unrecognized pension cost, net of tax of $6,282 and $6,282, respectively	$ (5,522)	$ (11,763)

Note 14 – Employee Benefit Plans

The Company has a qualified, defined benefit pension plan that was established to provide benefits to certain employees. The plan is frozen and participants are no longer accruing benefits. Generally, contributions to the plan are not less than the minimum amounts required under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and not more than the maximum amount that can be deducted for federal income tax purposes. The plan's assets are held by independent trustees and consist primarily of equity and fixed income securities.

The Company has elected to utilize a full yield curve approach in estimating the interest component for pension benefits by applying the specific spot rates along the yield curve used in determining the benefit obligation to the relevant projected cash flows.

The changes in benefit obligation, change in plan assets and funded status as of December 31, 2021 and 2020, are as follows:

	Pension Benefits	
	2021	2020
Change in benefit obligation		
Benefit obligation – Beginning of year	$ 55,359	$ 53,294
Interest cost	944	1,430
Actuarial (gain) loss	(2,098)	3,870
Benefits paid	(3,267)	(3,235)
Benefit obligation – End of year	50,938	55,359
Change in plan assets		
Plan assets – Beginning of year	48,314	46,784
Return on plan assets	5,856	4,765
Benefits paid	(3,267)	(3,235)
Plan assets at fair value – End of year	50,903	48,314
Funded status of plans – End of year	$ (35)	$ (7,045)

	Pension Benefits	
	2021	2020
Amounts recognized in the Consolidated Balance Sheets		
Current liabilities	$ -	$ -
Noncurrent liabilities	(35)	(7,045)
Net amount recognized at December 31	$ (35)	$ (7,045)

Amounts recognized in accumulated other comprehensive loss but not yet recognized in earnings at December 31, 2021 and 2020, are as follows:

	Pension Benefits	
	2021	2020
Net actuarial loss	$ 11,803	$ 18,045
	$ 11,803	$ 18,045

Components of net periodic benefit cost for the years ended December 31, 2021 and 2020, are as follows:

	Pension Benefits	
	2021	2020
Components of net periodic benefit cost		
Interest cost	$ 944	$ 1,430
Expected return on plan assets	(2,335)	(2,438)
Amortization of unrecognized net loss (gain)	621	562
Total net periodic (income) benefit cost	$ (770)	$ (446)

The increase (decrease) in accumulated other comprehensive loss (pre-tax) for the years ended December 31, 2021 and 2020, are as follows:

	Pension Benefits	
	2021	2020
Net actuarial (gain) loss	$ (5,620)	$ 1,544
Amortization of net actuarial (gain) loss	(621)	(561)
Total recognized in accumulated other comprehensive loss	$ (6,241)	$ 983

The following benefit payments, which reflect expected future service, as appropriate, are expected to be paid as of December 31, 2021:

	Pension Benefits
2022	$ 3,206
2023	3,234
2024	3,195
2025	3,175
2026	3,139
2027 through 2031	14,897

The Company is not required to make any contributions to its pension plan in 2022 to meet its minimum funding requirements.

The assumptions used to determine end of year benefit obligations are shown in the following table:

	Pension Benefits	
	2021	2020
Discount rates	2.84%	2.48%

The discount rate is determined using a yield curve model that uses yields on high quality corporate bonds (AA rated or better) to produce a single equivalent rate. The yield curve model excludes callable bonds except those with make-whole provisions, private placements and bonds with variable rates.

In October 2021, the Society of Actuaries issued base mortality table Pri-2012 which is split by retiree and contingent survivor tables and includes mortality improvement assumptions for U.S. plans, scale (MP-2021with COVID adjustment), which reflects additional data that the Social Security Administration has released since prior assumptions (MP-2020) were developed. The Company has historically utilized the Society of Actuaries' published mortality data in its plan assumptions. Accordingly, the Company adopted Pri-2012 with MP-2021 for purposes of measuring its pension obligations at December 31, 2021.

The 2021 actuarial gain of $2,098 was largely the result of the change in the yield curve. The impact of the mortality improvement scale MP-2021also created a slight actuarial gain for 2021. The 2020 actuarial loss of $3,870 was largely the result of the change in the yield curve. The 2020 actuarial loss related to the change in the yield curve was partially offset by the impact of the mortality improvement scale MP-2020.

The assumptions used in the measurement of net periodic cost are shown in the following table:

	Pension Benefits	
	2021	2020
Discount rate for benefit obligations	2.48%	3.22%
Expected return on plan assets	5.00%	5.40%
Rate for interest on benefit obligations	1.77%	2.78%
Discount rate for service cost	N/A	N/A

The Company's pension plan's weighted average asset allocations at December 31, 2021 and 2020, and target allocations for 2022, by asset category, are as follows:

	Plan Assets at December 31,		Target Allocation
	2021	2020	2022
Asset Category			
Cash and cash equivalents	2%	0%	0% - 5%
Equity securities	54%	56%	45% - 65%
Fixed income securities	33%	35%	30% - 50%
Real estate	11%	9%	4%-6%
	100%	100%	100%

The basic goal underlying the pension plan investment policy is to ensure that the assets of the plans, along with expected plan sponsor contributions, will be invested in a prudent manner to meet the obligations of the plans as those obligations come due under a broad range of potential economic and financial scenarios, maximize the long-term investment return with an acceptable level of risk based on such obligations, and broadly diversify investments across and within the capital markets to protect asset values against adverse movements in any one market. The Company's investment strategy balances the requirement to maximize returns using potentially higher return
generating assets, such as equity securities, with the need to manage the risk of such investments with less volatile assets, such as fixed-income securities. Investment practices must comply with the requirements of ERISA and any other applicable laws and regulations. The Company, in consultation with its investment advisors, has determined a targeted allocation of invested assets by category and it works with its advisors to reasonably maintain the actual allocation of assets near the target. The long term return on assets was estimated based upon historical market

performance, expectations of future market performance for debt and equity securities and the related risks of various allocations between debt and equity securities. Numerous asset classes with differing expected rates of return, return volatility and correlations are utilized to reduce risk through diversification.

The Company's pension plan assets are invested in one mutual fund for each fund classification. The following table presents the fair value of pension plan assets classified under the appropriate level of the ASC 820 fair value hierarchy (see Note 2, Summary of Significant Accounting Policies for a description of the fair value hierarchy) as of December 31, 2021 and 2020:

Pension Plan Assets	As of December 31, 2021			
	Level 1	Level 2	Level 3	Total
Mutual funds:				
Fixed income funds	$ 16,645	$ -	$ -	$ 16,645
Large cap funds	16,238	-	-	16,238
Small cap funds	4,877	-	-	4,877
International funds	6,607	-	-	6,607
Real estate funds	5,529	-	-	5,529
Cash and equivalents	1,007	-	-	1,007
Total	$ 50,903	$ -	$ -	$ 50,903

Pension Plan Assets	As of December 31, 2020			
	Level 1	Level 2	Level 3	Total
Mutual funds:				
Fixed income funds	$ 16,670	$ -	$ -	$ 16,670
Large cap funds	16,033	-	-	16,033
Small cap funds	4,558	-	-	4,558
International funds	6,338	-	-	6,338
Real estate funds	4,576	-	-	4,576
Cash and equivalents	139	-	-	139
Total	$ 48,314	$ -	$ -	$ 48,314

The Company also maintains qualified defined contribution plans, which provide benefits to their employees based on employee contributions and employee earnings, with discretionary contributions allowed. Expenses related to these plans were $118 for the year ended December 31, 2021. The Company reinstated the employer contribution to its defined contribution plans effective April 1, 2021 after employer contributions were suspended for fifteen months.

Note 15 - Income Taxes

The provision (benefit) for income taxes for the periods indicated includes current and deferred components as follows:

	Year Ended December 31	
	2021	2020
Current Tax Expense/(Benefit)		
Federal	$ (10)	$ (92)
Foreign	1,533	137
State	26	17
	1,549	62
Deferred Tax Expense/(Benefit)		
Federal	-	1
Foreign	(136)	136
	(136)	137
Total	$ 1,413	$ 199

The (provision) benefit for income taxes for the periods indicated differs from the amounts computed by applying the federal statutory rate as follows:

	Year Ended December 31	
	2021	**2020**
Statutory U.S. federal income tax rate	21.0 %	21.0 %
State income taxes, net of federal tax benefit	0.7 %	3.9 %
Valuation allowance	(20.4) %	(23.5) %
Foreign Rate Differential	(1.0) %	(0.1) %
State rate and other changes on deferred taxes	0.4 %	(0.4) %
Federal and state tax credits	0.0 %	0.1 %
Nondeductible expenses and other	(4.2) %	(1.4) %
Effective income tax rate	(3.5) %	(0.4) %

Deferred income taxes result from temporary differences in the financial and tax basis of assets and liabilities. Components of deferred tax assets (liabilities) consisted of the following:

	December 31, 2021		December 31, 2020	
Description	**Assets**	**Liabilities**	**Assets**	**Liabilities**
Accrued post-retirement and pension benefits	$ 149	$ -	$ 1,663	$ -
Intangible assets	-	(22)	-	(17)
Accrued expenses	1,367	-	2,027	-
Deferred state and local incentive revenue	537	-	1,132	-
Inventory valuation	496	-	3,145	-
Property, plant and equipment and railcars on operating leases	103	-	-	(2,018)
Net operating loss and tax credit carryforwards	62,536	-	48,738	-
Stock-based compensation expense	1,539	-	1,127	-
Other	99	-	1,135	-
Right of use asset	-	(4,780)	-	(5,543)
Lease liability	5,175	-	8,086	-
	72,001	(4,802)	67,053	(7,578)
Valuation Allowance	(67,204)	-	(59,613)	-
Deferred tax assets (liabilities)	$ 4,797	$ (4,802)	$ 7,440	$ (7,578)
Increase (decrease) in valuation allowance	$ 7,591		$ 19,821	

A valuation allowance is provided when it is more likely than not that some portion or all of the deferred tax assets will not be realized. Management has concluded that, based on evaluation of the positive and negative evidence, primarily the history of operating losses, we will not more likely than not realize the benefit of the deferred tax assets. The Company has certain pretax state net operating loss carryforwards of $242,795 which will expire between 2022 and 2041, for which a full valuation allowance has been recorded. The Company also has federal net operating loss carryforwards, tax credits, and interest carryforwards of $202,231, $2,016, and $12,620, respectively, which will begin to expire in 2032, for which a full valuation allowance also has been recorded. The Company has foreign net operating loss carryforwards of $323 which will begin to expire in 2022 for which a full valuation allowance also has been recorded.

The Company does not have any unrecognized tax benefit that, if recognized, would affect the Company's effective tax rate as of December 31, 2021 and 2020. The Company's income tax provision included $0 of expenses related to interest and penalties for the years ended December 31, 2021 and 2020. The Company records interest and penalties

as a component of income tax expense. However, as there are no unrecognized tax benefits for the year ended 2021 and 2020, the Company has zero penalties or interest accrued at December 31, 2021 and 2020, respectively.

The Company and/or its subsidiaries file income tax returns with the U.S. federal government and in various state and foreign jurisdictions. A summary of tax years that remain subject to examination is as follows:

Jurisdiction	Earliest Year
U.S. Federal	2018
States:	
Pennsylvania	2001
Texas	2018
Illinois	2010
Virginia	2018
Colorado	2010
Indiana	2018
Nebraska	2016
Alabama	2016
Foreign:	
China	2018
Mexico	2020

Note 16 - Stock-Based Compensation

The Company's incentive compensation plans, titled "The 2005 Long Term Incentive Plan" (as restated to incorporate all amendments, the "2005 Plan") and "The FreightCar America, Inc. 2018 Long Term Incentive Plan (the "2018 Plan" and, collectively, the "Incentive Plans"), were approved by the Company's board of directors and ratified by the stockholders. The Incentive Plans provide for the grant to eligible persons of stock options, share appreciation rights ("SAR"), restricted shares, restricted share units ("RSU"), performance shares, performance units, dividend equivalents and other share-based awards, referred to collectively as the awards. Time-vested stock option awards generally vest based on one to three years of service and have 10 year contractual terms. Share awards generally vest over one to three years. Certain option and share awards provide for accelerated vesting if there is a change in control (as defined in the Incentive Plans). The Company accounts for forfeitures of stock-based awards as incurred. The 2005 Plan will terminate as to future awards on May 17, 2023 and the 2018 Plan will terminate as to future awards on May 10, 2028. Under the 2005 Plan, 2,459,616 shares of common stock have been reserved for issuance (from either authorized but unissued shares or treasury shares), of which 39,671 were available for issuance at December 31, 2021. Under the 2018 Plan, 2,800,000 shares of common stock have been reserved for issuance (from either authorized but unissued shares or treasury shares), of which 1,184,809 were available for issuance at December 31, 2021.

Stock Options

The Company recognizes stock-based compensation expense for time-vested stock option awards based on the fair value of the award on the grant date using the Black-Scholes option valuation model. Expected life in years for time-vested stock option awards was determined using the simplified method. The Company believes that it is appropriate to use the simplified method in determining the expected life for time-vested stock options because the Company does not have sufficient historical exercise data to provide a reasonable basis upon which to estimate the expected term for time-vested stock options. Expected volatility was based on the historical volatility of the Company's stock. The risk-free interest rate was based on the U.S. Treasury bond rate for the expected life of the option. The expected dividend yield was based on the latest annualized dividend rate and the current market price of the underlying common stock on the date of the grant. The Company recognizes stock-based compensation for restricted stock awards over the vesting period based on the fair market value of the stock on the date of the award, calculated as the average of the high and low trading prices for the Company's common stock on the award date.

Grant date fair values of time-vested stock option awards were estimated using the Black-Scholes option valuation model with the following assumptions:

Grant Year	Grant Date	Expected Life	Expected Volatility	Expected Dividend Yield	Risk Free Interest Rate	Grant Date Fair Value Per Award	
2021	1/28/2021	6 years	64.75%	0.00%	0.55%	$	2.21
2021	2/15/2021	6 years	64.89%	0.00%	0.64%	$	2.31
2021	4/19/2021	6 years	70.34%	0.00%	1.00%	$	3.48
2021	5/10/2021	6 years	71.78%	0.00%	0.97%	$	4.38
2021	5/24/2021	6 years	72.58%	0.00%	0.98%	$	3.55
2021	7/29/2021	6 years	74.05%	0.00%	0.84%	$	3.41
2021	8/2/2021	6 years	74.06%	0.00%	0.77%	$	3.27
2021	8/30/2021	6 years	73.90%	0.00%	0.87%	$	3.40
2021	9/29/2021	6 years	73.98%	0.00%	1.12%	$	2.93
2021	10/18/2021	6 years	73.91%	0.00%	1.25%	$	2.84
2021	11/1/2021	6 years	73.88%	0.00%	1.28%	$	2.89

A summary of the Company's time-vested stock options activity and related information at December 31, 2021 and 2020, and changes during the years then ended, is presented below:

	December 31,					
	2021			2020		
	Options Outstanding	Weighted-Average Exercise Price (per share)		Options Outstanding	Weighted-Average Exercise Price (per share)	
Outstanding at the beginning of the year	211,361	$	11.68	313,317	$	12.70
Granted	608,485		4.04	-		-
Exercised	-		-	-		-
Forfeited or expired	(85,879)		9.02	(101,956)		14.81
Outstanding at the end of the year	733,967	$	5.66	211,361	$	11.68
Exercisable at the end of the year	111,516	$	13.86	103,458	$	14.93

A summary of the Company's time vested stock options outstanding as of December 31, 2021 is presented below:

	Options Outstanding	Weighted-Average Remaining Contractual Term (in years)	Weighted-Average Exercise Price (per share)		Aggregate Intrinsic Value	
Options outstanding	733,967	8.5	$	5.66	$	-
Vested or expected to vest	733,967	8.5	$	5.66	$	-
Options exercisable	111,516	5.5	$	13.86	$	-

There were no time-vested stock options exercised during 2021 or 2020. As of December 31, 2021 , there was $1,015 of total unrecognized compensation expense related to time-vested stock options, which will be recognized over the average remaining requisite service period of 26 months.

Stock Appreciation Rights

2020 Grants of Stock Appreciation Rights

During 2020, the Company granted 1,164,464 cash settled stock appreciation rights to certain employees. Each stock appreciation right represents the right to receive a payment measured by the increase in the fair market value of one share of the Company's stock from the date of grant of the stock appreciation right to the date of exercise of the stock appreciation right. The cash settled stock appreciation rights vest ratably over three years and have a contractual life of 10 years. Cash settled stock appreciation rights are classified as liabilities. The Company measures the fair value of unvested cash settled stock appreciation rights using the Black-Scholes option valuation model and remeasures the fair value of the award each reporting period until the award is vested. Once vested the Company immediately recognizes compensation cost for any changes in fair value of cash settled stock appreciation rights until settlement. Fair value of vested cash settled stock appreciation rights represents the fair market value of one share of the Company's stock on the measurement date less the exercise price per share. Compensation cost for cash settled stock appreciation rights is trued up each reporting period for changes in fair value pro-rated for the portion of the requisite service period rendered.

2021 Grants of Stock Appreciation Rights

During 2021, the Company granted 1,735,500 cash settled stock appreciation rights to certain employees. Each of the 2021 cash settled stock appreciation rights allows the holder to receive, upon exercise, and subject to the vesting restrictions, a distribution in cash equal to the excess of the fair market value of a share of the Company's stock on the date of exercise over the exercise price. The 2021 cash settled stock appreciation rights vest ratably over three years and have a contractual life of 10 years. Vesting of the 2021 cash settled stock appreciation rights is contingent upon the achievement of a thirty-day trailing average fair market value of a share of the Company's common stock of 133.3% ($3.17) or more of the exercise price per share ($2.38). When vesting of an award of stock-based compensation is dependent upon the attainment of a target stock price, the award is considered to be subject to a market condition.

The 2021 cash settled stock appreciation rights are classified as liabilities. Because vesting of the 2021 cash settled stock appreciation rights included a market condition, the grant date fair market value of the 2021 cash settled stock appreciation rights of $1.74 was calculated using a Monte Carlo simulation model. During 2021, the market condition for the 2021 cash settled stock appreciation rights was met. Thereafter the Company measures the fair value of the 2021 cash settled stock appreciation rights using the Black-Scholes option valuation model and remeasures the fair value of the award each reporting period until the award is vested. Once vested, the Company immediately recognizes compensation cost for any changes in fair value of the 2021 cash settled stock appreciation rights until settlement. Fair value of vested 2021 cash settled stock appreciation rights represents the fair market value of one share of the Company's stock on the measurement date less the exercise price per share. Compensation cost for the 2021 cash settled stock appreciation rights is trued up each reporting period for changes in fair value pro-rated for the portion of the requisite service period rendered.

The estimated fair value of the cash settled stock appreciation rights as of December 31, 2021 was $2,409. Stock-based compensation for cash settled stock appreciation rights was $2,145 and $398 for the year ended December 31, 2021 and 2020, respectively.

The fair value of cash settled stock appreciation rights as of December 31, 2021 was estimated using the Black-Scholes option valuation model with the following assumptions:

Grant Year	Grant Date	Expected Life	Expected Volatility	Expected Dividend Yield	Risk Free Interest Rate	Fair Value Per Award
2020	1/24/2020	4.3 years	82.08%	0.00%	1.14%	$ 2.79
2020	9/14/2020	5.0 years	78.20%	0.00%	1.25%	$ 2.70
2020	11/30/2020	5.2 years	77.58%	0.00%	1.27%	$ 2.58
2021	1/5/2021	5.0 years	77.94%	0.00%	1.26%	$ 2.61

A summary of the Company's cash settled stock appreciation rights activity and related information at December 31, 2021 and 2020 and changes during the year is presented below:

	December 31,			
	2021		2020	
	SARS Outstanding	Weighted-Average Exercise Price (per share)	SARS Outstanding	Weighted-Average Exercise Price (per share)
Outstanding at the beginning of the year	853,967	$ 1.69	-	$ -
Granted	1,735,500	2.38	1,164,464	1.68
Exercised	(42,652)	1.64	-	-
Forfeited or expired	(383,476)	1.92	(310,497)	1.64
Outstanding at the end of the year	2,163,339	$ 2.20	853,967	$ 1.69
Exercisable at the end of the year	192,387	$ 1.71	-	$ -

A summary of the Company's cash settled stock appreciation rights outstanding as of December 31, 2021 is presented below:

	SARS Outstanding	Weighted-Average Remaining Contractual Term (in years)	Weighted-Average Exercise Price (per share)	Aggregate Intrinsic Value
SARS outstanding	2,163,339	8.8	$ 2.20	$ 3,214,378
Vested or expected to vest	2,163,339	8.8	$ 2.20	$ 3,214,378
SARS exercisable	192,387	8.1	$ 1.71	$ 381,366

Restricted Shares

A summary of the Company's nonvested restricted shares as of December 31, 2021 and 2020, and changes during the years then ended is presented below:

	December 31,			
	2021		2020	
	Shares	Weighted-Average Grant Date Fair Value (per share)	Shares	Weighted-Average Grant Date Fair Value (per share)
Nonvested at the beginning of the year	849,723	$ 2.86	327,345	$ 8.49
Granted	213,465	4.23	872,494	1.43
Vested	(311,128)	2.26	(73,111)	8.18
Forfeited	(260,821)	3.49	(277,005)	3.63
Nonvested at the end of the year	491,239	$ 3.50	849,723	$ 2.86
Expected to vest	491,239	$ 3.50	849,723	$ 2.86

The fair value of stock awards vested during the years ended December 31, 2021 and 2020, was $1,942 and $138, respectively, based on the value at vesting date. As of December 31, 2021, there was $690 of unrecognized compensation expense related to nonvested restricted stock awards, which will be recognized over the average remaining requisite service period of 19 months.

Stock-based compensation expense of $2,977 and $1,034 is included within selling, general and administrative expense for the years ended December 31, 2021 and 2020, respectively.

Note 17 - Risks and Contingencies

The Company is involved in various warranty and repair claims and, in certain cases, related pending and threatened legal proceedings with its customers in the normal course of business. In the opinion of management, the Company's potential losses in excess of the accrued warranty and legal provisions, if any, are not expected to be material to the Company's consolidated financial condition, results of operations or cash flows.

As part of a settlement agreement reached with one of its customers during 2019, the Company agreed to pay $7,500 to settle all claims related to a prior year's commercial dispute. During the years ended December 31, 2021 and 2020, the Company paid $2,000 and $1,000, respectively, of the settlement amount and the remaining $1,000 will be paid during the first quarter of 2022.

In addition to the foregoing, the Company is involved in certain other pending and threatened legal proceedings, including commercial disputes and workers' compensation and employee matters arising out of the conduct of its business. The Company has reserved $756 to cover probable and estimable liabilities with respect to these matters.

Note 18 – Earnings Per Share

The weighted average common shares outstanding are as follows:

	Year Ended December 31,	
	2021	2020
Weighted average common shares outstanding	15,023,853	12,881,403
Issuance of warrants	5,742,545	551,025
Weighted average common shares outstanding - basic	20,766,398	13,432,428
Weighted average common shares outstanding - diluted	20,766,398	13,432,428

The Company computes earnings per share using the two-class method, which is an earnings allocation formula that determines earnings per share for common stock and participating securities. The Company's participating securities are its grants of restricted stock which contain non-forfeitable rights to dividends. The Company allocates earnings between both classes; however, in periods of undistributed losses, they are only allocated to common shares as the unvested restricted stockholders do not contractually participate in losses of the Company. The Company computes basic earnings per share by dividing net income allocated to common shareholders by the weighted average number of shares outstanding during the year. Warrants issued in connection with the Company's long-term debt were issued at a nominal exercise price and are considered outstanding at the date of issuance. Diluted earnings per share is calculated to give effect to all potentially dilutive common shares that were outstanding during the year. Weighted average diluted common shares outstanding include the incremental shares that would be issued upon the assumed exercise of stock options and the assumed vesting of nonvested share awards. For the years ended December 31, 2021 and 2020, 1,321,396 and 1,078,409 shares, respectively, were not included in the weighted average common shares outstanding calculation as they were anti-dilutive.

Note 19 – Revenue Sources and Concentration of Sales

The following table sets forth the Company's sales resulting from various revenue sources for the periods indicated below:

	Year Ended December 31,	
	2021	2020
Railcar sales	$ 189,579	$ 94,455
Parts sales	10,228	9,597
Leasing revenues	3,243	4,395
Total revenues	$ 203,050	$ 108,447

Due to the nature of its operations, the Company is subject to significant concentration of risks related to business with a few customers. Sales to the Company's top three customers accounted for 46%, 12% and 8%, respectively, of revenues for the year ended December 31, 2021. Sales to the Company's top three customers accounted for 44%, 21% and 12%, respectively, of revenues for the year ended December 31, 2020. The Company had no sales to customers outside the United States in 2021. The Company's sales to customers outside the United States were $1,350 in 2020. As of December 31, 2021, 62% of the accounts receivable balance of $9,571 reported on the consolidated balance sheet was receivable from one customer. As of December 31, 2020, 48% of the accounts receivable balance of $9,421 reported on the consolidated balance sheet was receivable from one customer and 28% was receivable from a second customer.

Note 20 – Segment Information

The Company's operations comprise two operating segments, Manufacturing and Parts, and one reportable segment, Manufacturing. The Company's Manufacturing segment includes new railcar manufacturing, used railcar sales, railcar leasing and major railcar rebuilds. The Company's Parts operating segment is not significant for reporting purposes and has been combined with corporate and other non-operating activities as Corporate and Other.

Segment operating income is an internal performance measure used by the Company's Chief Operating Decision Maker to assess the performance of each segment in a given period. Segment operating income includes all external revenues attributable to the segments as well as operating costs and income that management believes are directly attributable to the current production of goods and services. The Company's management reporting package does not include interest revenue, interest expense or income taxes allocated to individual segments and these items are not considered as a component of segment operating income. Segment assets represent operating assets and exclude intersegment accounts, deferred tax assets and income tax receivables. The Company does not allocate cash and cash equivalents to its operating segments as the Company's treasury function is managed at the corporate level. Intersegment revenues were not material in any period presented.

	Year Ended December 31,	
	2021	2020
Revenues:		
Manufacturing	$ 192,807	$ 98,706
Corporate and Other	10,243	9,741
Consolidated revenues	$ 203,050	$ 108,447
Operating loss:		
Manufacturing (1)	$ (757)	$ (59,031)
Corporate and Other	(22,005)	(21,562)
Consolidated operating loss	(22,762)	(80,593)
Consolidated interest expense	(13,317)	(2,225)
Gain (loss) on change in fair market value of warrant liability	(14,894)	(3,657)
Gain on extinguishment of debt	10,122	-
Consolidated other income	817	576
Consolidated loss before income taxes	$ (40,034)	$ (85,899)
Depreciation and amortization:		
Manufacturing	$ 3,648	$ 8,434
Corporate and Other	656	768
Consolidated depreciation and amortization	$ 4,304	$ 9,202
Capital expenditures:		
Manufacturing	$ 1,880	$ 8,715
Corporate and Other	410	1,134
Consolidated capital expenditures	$ 2,290	$ 9,849

(1) Results for the year ended December 31, 2021 include restructuring and impairment charges of $6,530. Results for the year ended December 31, 2020 include restructuring and impairment charges of $18,325.

	December 31, 2021	December 31, 2020
Assets:		
Manufacturing	$ 154,068	$ 114,669
Corporate and Other	46,417	68,046
Total operating assets	200,485	182,715
Consolidated income taxes receivable	179	27
Consolidated assets	$ 200,664	$ 182,742

	Geographic Information Revenues		Long Lived Assets(a)	
	Year Ended December 31,			
	2021	2020	December 31, 2021	December 31, 2020
United States	$ 202,978	$ 108,447	$ 24,967	$ 48,126
Mexico	72	-	30,098	20,984
Total	$ 203,050	$ 108,447	$ 55,065	$ 69,110

(a) Long lived assets include property, plant and equipment, net, railcars available for lease, and ROU assets.

Note 21 – Acquisition

On October 16, 2020, FreightCar America, Inc. (the "Company"), through its wholly owned subsidiary, FreightCar North America, LLC (f/k/a FCAI Holdings, LLC) ("FreightCar North America"), entered into an equity purchase agreement (the "Equity Purchase Agreement") with Fasemex, Inc. (the "US Seller"), Fabricaciones y Servicios de México, S.A. de C.V. ("Fasemex Mexico") and Agben de Mexico, S.A. de C.V. ("Agben" and, together with Fasemex Mexico, the "MX Sellers", and the MX Sellers, together with the US Seller, the "Sellers"). Pursuant to the Equity Purchase Agreement, FreightCar North America acquired from Sellers 50% of the outstanding equity interests (the "Seller Interests") of FCA-Fasemex, LLC, a Delaware limited liability company (the " US JV"), FCA-Fasemex, S. de R.L. de C.V., an entity organized under the laws of Mexico ("Production JV"), and FCA-Fasemex Enterprise, S. de R.L. de C.V., an entity organized under the laws of Mexico (" Services JV," and, collectively, with the Production JV and the US JV, the " JV Companies").

The JV Companies collectively represented the Company's joint venture with the Sellers to manufacture railcars in Castaños, which was formed in September 2019. Prior to the execution of the Equity Purchase Agreement, FreightCar North America owned a 50% interest in each of the JV Companies and, as a result of the acquisition of the Seller Interests, the JV Companies are now wholly-owned by FreightCar North America.

The consideration for the Seller Interests includes $173 in cash and the issuance of an aggregate of 2,257,234 shares of the Company's common stock, par value $0.01 per share (the "EPA Shares"), to the Sellers. In addition, the Company and certain of its subsidiaries entered into several ancillary agreements including an investor rights agreement, a restated lease agreement and a royalty agreement. The fair value of the EPA Shares was determined to be $3,237 based on the share price as of the date of the transaction, less a discount for lack of marketability given the shares are unregistered.

The Equity Purchase Agreement contains certain customary representations, warranties, indemnities and covenants, including a non-competition covenant from the Sellers and their affiliates until the later of three years after closing and such time that the Sellers cease to beneficially own, in the aggregate, common stock of the Company equal to at least 5% of the issued and outstanding shares of the Company's common stock.

Note 22 – Related Parties

The following persons are owners of Fasemex: Jesus Gil, VP Operations and director of the Company; Alejandro Gil and Salvador Gil, siblings of Jesus Gil. Fasemex provides steel fabrication services to the Company and, at December 31, 2021, was the lessor for the Company's leased facility in Castaños. The Company paid $89,984 to Fasemex during the year ended December 31, 2021, related to rent payment, security deposit, fabrication services and royalty payments. Distribuciones Industriales JAS S.A. de C.V. ("Distribuciones Industriales") is owned by Alejandro Gil and Salvador Gil. The Company paid $1,735 to Distribuciones Industriales related to material and safety supplies during the year ended December 31, 2021. Maquinaria y equipo de transporte Jova S.A. de C.V is owned by Jorge Gil, sibling of Jesus Gil. The Company paid $1,163 to Maquinaria y equipo de transporte Jova S.A. de C.V related to trucking services during ,the year ended December 31, 2021. Related party asset on the condensed consolidated balance sheet of $8,680 as of December 31, 2021 includes prepaid inventory of $4,134 and other receivables of $4,546 from Fasemex. Related party accounts payable on the condensed consolidated balance sheet of $8,870 as of December 31, 2021 includes $8,291 payable to Fasemex, $291 payable to Distribuciones Industriales and $288 payable to Maquinaria y equipo de transporte Jova S.A. de C.V. Related party accounts payable on the condensed consolidated balance sheet of $814 as of December 31, 2020 represents the payable to Fasemex.

The Company paid $480 to the Warrantholder in relation to the Amendment described in Note 12 Debt Financing and Revolving Credit Facilities during the year ended December 31, 2021. The Company paid $7,533 to the Warrantholder during the year ended December 31, 2021, for term loan interest. Additionally, the Company paid $1,870 in equity fees to the Warrantholder related to the standby letter of credit described in Note 12 Debt Financing and Revolving Credit Facilities during the year ended December 31, 2021.

Note 23 – Subsequent Events

On February 23, 2022, the Loan Parties and Siena Lending Group LLC (the "Revolving Loan Lender") entered into a First Amendment to Amended and Restated Loan and Security Agreement (the “First Amendment to Amended and Restated Loan and Security Agreement”), pursuant to which, among other things, the Maximum Revolving Facility Amount was increased to $35,000; provided, however, that after giving effect to each Revolving Loan and each letter of credit made available to the Loan Parties, (A) the outstanding balance of all Revolving Loans and the Letter of Credit Balance (which is defined in the Amended and Restated Loan and Security Agreement as the sum of (a) the aggregate undrawn face amount of all outstanding Letters of Credit and (b) all interest, fees and costs due or, in Lender’s estimation, likely to become due in connection therewith) will not exceed the lesser of (x) the Maximum Revolving Facility Amount and (y) the Borrowing Base (as defined in the First Amendment to Amended and Restated Loan and Security Agreement), and (B) none of the other Loan Limits (as defined in the First Amendment to Amended and Restated Loan and Security Agreement) for Revolving Loans will be exceeded.

Revolving Loans outstanding under the First Amendment to Amended and Restated Loan and Security Agreement bear interest, subject to the provisions of the First Amendment to Amended and Restated Loan and Security Agreement, at a rate of 2% per annum in excess of the Base Rate (as defined in the Amended and Restated Loan and Security Agreement). Notwithstanding the foregoing, Revolving Loans made in respect of Excess Availability (as defined in the First Amendment to Amended and Restated Loan and Security Agreement) arising from clause (b) of the definition of “Borrowing Base” bear interest, subject to the provisions of the First Amendment to Amended and Restated Loan and Security Agreement, at a rate of 1.5% per annum in excess of the Base Rate (as defined in the Amended and Restated Loan and Security Agreement).

Item 9A. Controls and Procedures.

Remediation of Material Weakness

During the quarter ended September 30, 2021, management concluded the Company's controls were ineffective to ensure the existence of inventory at its Mexico facility. During the quarter ended December 31, 2021, we determined that we maintained effective controls over our inventory processes and the material weakness was remediated.

With oversight from the Audit Committee, we took significant steps to remediate our internal control deficiencies in our inventory processes by redesigning our controls. Our efforts consisted of implementing new policies over the operational processes supporting inventory and production reporting to ensure that inventory and cost of goods sold was recorded at the appropriate amounts in the proper periods as well as implementing a quarterly full physical inventory count. During 2021, we completed the necessary testing to conclude that the material weakness has been remediated as of December 31, 2021.

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, management evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), as of the end of the period covered by our annual report on Form 10-K for the fiscal year ended December 31, 2021 (the "Evaluation Date"). Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that, as of the Evaluation Date, our disclosure controls and procedures were effective to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's rules and forms.

MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Management, under the supervision of the Chief Executive Officer and the Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) promulgated under the Exchange Act, is a process designed by, or under the supervision of, the Chief Executive Officer and Chief Financial Officer and effected by the board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with GAAP. Internal control over financial reporting includes those policies and procedures that:

- Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP;
- Provide reasonable assurance that receipts and expenditures of the Company are being made only in accordance with appropriate authorization of management and the board of directors; and
- 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.

As of the end of the Company's 2021 fiscal year, management conducted an evaluation of the effectiveness of the Company's internal control over financial reporting based on the framework established in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's system of internal control over financial reporting is designed to provide reasonable assurance to the Company's management and board of directors regarding the reliability of financial records used in

preparation of the Company's published financial statements. As all internal control systems have inherent limitations, even systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Based on its assessment, management has concluded that the Company's internal control over financial reporting was effective as of December 31, 2021.

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING

Other than described above, there has been no change in our internal control over financial reporting during the last fiscal quarter of 2021 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Because the Company qualifies as a smaller reporting company, it is not required to obtain an attestation of their internal control over financial reporting by an outside independent registered public accounting firm.

Item 9B. Other Information.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On March 21, 2022, the Company announced that it has appointed Michael A. Riordan, the Company's current Chief Accounting Officer and Controller, to also serve as its Vice President, Finance, Chief Financial Officer, and Treasurer, effective March 21, 2022 (the "Effective Date"). Mr. Riordan will succeed Terrence R. Rogers, who served as Vice President, Finance, Chief Financial Officer, Treasurer and Corporate Secretary for the Company until the Effective Date, at which time he became a non-executive employee of the Company and will serve in an advisory role for a transition period.

Mr. Riordan, age 37, joined the Company in November 2020 and, in addition to his new positions with the Company, currently serves as the Company's Chief Accounting Officer and Controller. He has over 15 years of experience in finance, accounting and operations. Prior to joining the Company, Mr. Riordan was Controller at InnerWorkings from 2017 to 2020. Prior to joining InnerWorkings, Mr. Riordan served in several financial management positions at Wheatland Tube, LLC, a subsidiary of Zekelman Industries, from 2013 to 2017. Mr. Riordan also held various positions at PricewaterhouseCoopers. He holds a bachelor's degree in Accounting and Finance from Miami University and is a Certified Public Accountant.

There are no family relationships between Mr. Riordan and any of the directors and executive officers of the Company, nor are there transactions in which Mr. Riordan has an interest requiring disclosure under Item 404(a) of Regulation S-K. Except for Mr. Riordan's letter agreement with the Company (described below), there are no arrangements or understandings between Mr. Riordan and the Company, its officers or directors, or, to the Company's knowledge, any other person, pursuant to which Mr. Riordan was selected as an officer of the Company.

In connection with Mr. Riordan's appointment, the Company and Mr. Riordan entered into a letter agreement regarding the terms of employment (the "Agreement") dated March 18, 2022 and effective as of the Effective Date.

1. Term: Mr. Riordan's employment with the Company is not for a specified term and there is no specified term for the Agreement.
2. Base Salary: The Company will pay Mr. Riordan an initial base salary of $300,000 per year, which is subject to annual review by the Company.
3. Bonus: Mr. Riordan will be entitled to participate in the Company's annual cash incentive plan applicable to senior executives (the "Bonus Plan") and to earn a bonus ("Bonus") for each fiscal year of the Company ending during his employment. His target Bonus is 50% of his base salary with a maximum equal to 200% of the target Bonus, and a threshold of 20% of the target Bonus.

4. Sign-On Award: On the Effective Date, the Company will award Mr. Riordan: (a) 40,000 restricted shares of the Company's common stock, which will vest on the third anniversary of the grant; and (b) 100,000 stock options, vesting 1/3 per year for three consecutive years and available for exercise over a ten-year period.
5. Long-Term Incentive and Other Executive Compensation Plans: Mr. Riordan will be eligible to participate in all of the Company's equity-based and cash-based long-term incentive and other executive compensation plans on a basis no less favorable than other similarly situated executives. His initial target LTI is 75% of his base salary, of which 50% will be restricted shares of the Company's common stock and 50% will be stock options. The restricted shares will have a three-year cliff vest and the stock options will vest 1/3 per year for three consecutive years and will be available for exercise over a ten-year period.
6. Termination: Pursuant to the Agreement, Mr. Riordan's employment may be terminated at any time for any reason (or no reason), subject to the terms of the Agreement, by the Company or Mr. Riordan.
7. Executive Severance Plan: Mr. Riordan will be eligible to participate the Company's Amended and Restated Executive Severance Plan (effective January 17, 2022) (the "Severance Plan"), which, in the case of a Company-initiated termination without Cause or Mr. Riordan's resignation for "good reason", subject to Mr. Riordan's entry into an effective general release of claims in favor of the Company and provision of transition services for up to twelve months at the discretion of the board of directors, provides for (i) continuation of his base salary for twelve months following the date of termination, (ii) payment equal to the average of the Bonus paid for the last two full years and (iii) twelve months of COBRA premiums at the same health insurance cost and coverage levels as apply to active employees. In addition, the Severance Plan provides that on a "qualifying retirement", Mr. Riordan's outstanding equity awards will (i) remain exercisable until the earlier of their original expiration date or the 10-year anniversary of their grant date or (ii) continue to vest as if Mr. Riordan had remained in continuous service through each applicable vesting date or, for awards subject to performance-vesting, through the performance period, with any performance goal or metric vesting only based upon the achievement of the same. To qualify for this benefit, Mr. Riordan must meet certain age and service requirements set forth in the Severance Plan and provide timely notice of his intent to retire at least 6 months prior to his retirement date.
8. Other Amounts: Mr. Riordan will be eligible to participate in each of the Company's employee retirement, savings, welfare and fringe benefits plans, and prerequisites, offered to similarly-situated executives. He will be entitled to four weeks of paid annual vacation and ten Company-paid holidays.

A description of the material terms of the Agreement is set forth above, which is qualified in its entirety by reference to its full text, a copy of which will be filed as an exhibit to the Company's quarterly report on Form 10-Q for the fiscal quarter ended March 31, 2022.

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

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

Information required to be disclosed by this item is hereby incorporated by reference to the information under the captions “Governance of the Company,” “Stock Ownership,” “Section 16(a) Beneficial Ownership Reporting Compliance,” “Executive Officers,” “Compensation Overview” and “Executive Compensation” in our definitive Proxy Statement to be filed pursuant to Regulation 14A, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after the end of our fiscal year ended December 31, 2021.

Item 11. Executive Compensation.

Information required to be disclosed by this item is hereby incorporated by reference to the information under the captions “Executive Compensation,” “Board of Directors,” “Compensation Overview and “Director Compensation” in our definitive Proxy Statement to be filed pursuant to Regulation 14A, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after the end of our fiscal year ended December 31, 2021.

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

Information required to be disclosed by this item is hereby incorporated by reference to the information under the caption “Stock Ownership” in our definitive Proxy Statement to be filed pursuant to Regulation 14A, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after the end of our fiscal year ended December 31, 2021.

EQUITY COMPENSATION PLAN INFORMATION

This table contains information as of December 31, 2021 about the Company’s equity compensation plans, all of which have been approved by the Company’s stockholders.

	Number of common shares to be issued upon exercise of outstanding options, warrants and rights		Weighted-average exercise price of outstanding options, warrants and rights		Number of common shares remaining available for future issuance under equity compensation plans (excluding common shares reflected in the first column)	
Equity compensation plans approved by stockholders	1,575,206	(1)	$ 9.14	(2)	1,224,480	(3)
Equity compensation plans not approved by stockholders	-		N/A		-	
	1,575,206		$ 9.14		1,224,480	

(1) Includes an aggregate of 491,239 restricted shares that were not vested as of December 31, 2021.
(2) Weighted-average exercise price of outstanding options excludes restricted shares.
(3) Represents shares of common stock authorized for issuance under the LTIP in connection with awards of stock options, share appreciation rights, restricted shares, restricted share units, performance shares, performance units, dividend equivalents and other share-based awards.

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

Information required to be disclosed by this item is hereby incorporated by reference to the information under the captions “Certain Transactions” and “Board of Directors” in our definitive Proxy Statement to be filed pursuant to Regulation 14A, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after the end of our fiscal year ended December 31, 2021.

Item 14. Principal Accounting Fees and Services.

Information required to be disclosed by this item is hereby incorporated by reference to the information under the caption “Fees of Independent Registered Public Accounting Firm and Audit Committee Report” in our definitive Proxy Statement to be filed pursuant to Regulation 14A, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after the end of our fiscal year ended December 31, 2021.

PART IV

Item 15. Exhibits, Financial Statement Schedules.
Exhibits

(a) Documents filed as part of this report:

The following financial statements are included in this Form10-K:

1. Consolidated Financial Statements of FreightCar America, Inc. and Subsidiaries
   - Report of Independent Registered Public Accounting Firm, Grant Thornton LLP, Chicago, Illinois, PCAOB ID 248
   - Report of Independent Registered Public Accounting Firm, Deloitte & Touche LLP, Chicago, Illinois, PCAOB ID 34
   - Consolidated Balance Sheets as of December 31, 2021 and 2020.
   - Consolidated Statements of Operations for the years ended December 31, 2021 and 2020.
   - Consolidated Statements of Comprehensive Income (Loss) for the years ended December 31, 2021 and 2020..
   - Consolidated Statements of Stockholders’ Equity for the years ended December 31, 2021 and 2020..
   - Consolidated Statements of Cash Flows for the years ended December 31, 2021 and 2020.
   - Notes to Consolidated Financial Statements.

2. The exhibits listed on the “Exhibit Index” to this Form 10-K are filed with this Form 10-K or incorporated by reference as set forth below.

(b) The exhibits listed on the “Exhibit Index” to this Form 10-K are filed with this Form 10-K or incorporated by reference as set forth below.

(c) Additional Financial Statement Schedules

None.

Item 16. Form 10-K Summary.

None.

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.

FREIGHTCAR AMERICA, INC.

Date: March 21, 2022

By: /s/ JAMES R. MEYER
James R. Meyer
President and Chief Executive Officer

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.

Signature	Title	Date
s/ JAMES R. MEYER **James R. Meyer**	President and Chief Executive Officer (principal executive officer) and Director	March 21, 2022
/s/ MICHAEL A. RIORDAN **Michael A. Riordan**	Vice President, Chief Financial Officer and Treasurer (principal financial officer and principal accounting officer)	March 21, 2022
/s/ WILLIAM D. GEHL **William D. Gehl**	Chairman of the Board and Director	March 21, 2022
/s/ ELIZABETH K. ARNOLD **Elizabeth K. Arnold**	Director	March 21, 2022
/s/ JESUS SALVADOR GIL BENAVIDES **Jesus Salvador Gil Benavides**	Director	March 21, 2022
/s/ MALCOLM F. MOORE **Malcolm F. Moore**	Director	March 21, 2022
/s/ ANDREW B. SCHMITT **Andrew B. Schmitt**	Director	March 21, 2022

EXHIBIT INDEX

2.1	Asset Purchase Agreement, dated September 30, 2015, by and among FreightCar Rail Services, LLC, FreightCar Short Line, Inc. and ARS Nebraska, LLC. (incorporated by reference to Exhibit 2.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2015 filed with the Commission on November 3, 2015).
2.2	Asset Purchase Agreement dated February 26, 2018, by and among Navistar, Inc, International Truck and Engine Investments Corporation and FreightCar Alabama, LLC (incorporated by reference to Exhibit 2.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 filed with the Commission on May 3, 2018).
3.1	Certificate of Ownership and Merger of FreightCar America, Inc. into FCA Acquisition Corp., as amended (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on September 7, 2006).
3.2	Third Amended and Restated By-laws of FreightCar America, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report filed on Form 8-K filed with the Commission on September 28, 2007).
4.1	Form of Registration Rights Agreement, by and among FreightCar America, Inc., Hancock Mezzanine Partners, L.P., John Hancock Life Insurance Company, Caravelle Investment Fund, L.L.C., Trimaran Investments II, L.L.C., Camillo M. Santomero, III, and the investors listed on Exhibit A attached thereto (incorporated by reference to Exhibit 4.3 to Registration Statement Nos. 333-123384 and 333-123875 filed with the Commission on April 4, 2005).
4.2	Description of the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934. †
10.1	Letter agreement regarding Terms of Employment dated July 17, 2017, by and between FreightCar America, Inc. and James R. Meyer (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on July 19, 2017).
10.2	Letter agreement regarding Terms of Employment dated November 17, 2015 by and between FreightCar America, Inc. and Georgia L. Vlamis (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on December 2, 2015).
10.3	Letter agreement regarding Terms of Employment dated June 1, 2017 by and between FreightCar America, Inc. and Georgia L. Vlamis (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on June 5, 2017).
10.4	Letter agreement regarding Terms of Employment dated April 9, 2019 by and between FreightCar America, Inc. and Christopher J. Eppel (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on May 5, 2019).
10.5	Letter agreement regarding Terms of Employment dated November 5, 2020, by and between FreightCar America, Inc. and Michael A. Riordan (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on December 4, 2020).
10.6	Consulting agreement dated December 30, 2020 by and between FreightCar America, Inc. and Terence R. Rogers (incorporated by reference to Exhibit 10.6 to the Company's Annual Report on Form 10-K for the year ended December 31, 2020)
10.7	Letter agreement regarding Terms of Employment dated February 11, 2021 by and between FreightCar America, Inc. and Terence R. Rogers(incorporated by reference to Exhibit 10.7 to the Company's Annual Report on Form 10-K for the year ended December 31, 2020)
10.8	FreightCar America, Inc. 2005 Long Term Incentive Plan (Restated to incorporate all Amendments) (incorporated by reference to Appendix I to the Company's Proxy Statement for the annual meeting of stockholders held on May 17, 2013 filed with the Commission on April 12, 2013).
10.9	FreightCar America, Inc. 2018 Long Term Incentive Plan (incorporated by reference to Appendix I to the Company's Proxy Statement for the annual meeting of stockholders held on May 10, 2018 filed with the Commission on March 30, 2018).
10.10	FreightCar America, Inc. 2018 Long Term Incentive Plan (as amended and restated effective May 14, 2020) (incorporated by reference to Appendix A to the Company's Proxy Statement for the annual meeting of stockholders held on May 14, 2020 filed with the Commission on March 30, 2020).
10.11	Form of Restricted Share Award Agreement for the Company's independent directors (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 27, 2006).

10.12	Form of Restricted Share Award Agreement for the Company's employees (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 15, 2008).
10.13	Form of Stock Option Award Agreement for the Company's employees (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 15, 2008).
10.14	Form of Performance Share Award Agreement for the Company's employees (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 16, 2015).
10.15	Form of Stock Option Award Agreement pursuant to the FreightCar America, Inc. 2018 Long-Term Incentive Plan (as amended and restated effective May 14, 2020) (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 11, 2021).
10.16	Retention Payment and Success Bonus Agreement by and between FreightCar America, Inc. and James R. Meyer, dated November 20, 2019. (incorporated by reference to Exhibit 10.15 to the Company's Annual Report on Form 10-K for the year ended December 31, 2019)
10.17	Retention Payment and Success Bonus Agreement by and between FreightCar America, Inc. and Christopher J. Eppel, dated November 20, 2019. (incorporated by reference to Exhibit 10.16 to the Company's Annual Report on Form 10-K for the year ended December 31, 2019)
10.18	Retention Payment and Success Bonus Agreement by and between FreightCar America, Inc. and Georgia L. Vlamis, dated November 20, 2019. (incorporated by reference to Exhibit 10.17 to the Company's Annual Report on Form 10-K for the year ended December 31, 2019)
10.19	FreightCar America, Inc. Successful Transaction Severance Plan, dated November 20, 2019. (incorporated by reference to Exhibit 10.17 to the Company's Annual Report on Form 10-K for the year ended December 31, 2019)
10.20	Lease Agreement, dated as of December 20, 2004, by and between Norfolk Southern Railway Company and Johnstown America Corporation (the "Lease Agreement") (incorporated by reference to Exhibit 10.27 to Registration Statement Nos. 333-123384 and 333-123875 filed with the Commission on April 4, 2005).*
10.21	Amendment to the Lease Agreement, dated as of December 1, 2005 (incorporated by reference to Exhibit 10.11 to the Company's Annual Report on Form 10-K for the year ended December 31, 2005).*
10.22	Second Amendment to the Lease Agreement, dated as of February 1, 2008, by and between Norfolk Southern Railway Company and Johnstown America Corporation (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2008 filed with the Commission on May 12, 2008).
10.23	Amendment to Lease, dated as of October 12, 2012, by and between Norfolk Southern Railway Company and Johnstown America Corporation (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2012 filed with the Commission on November 9, 2012).*
10.24	Amendment to Lease Agreement, dated as of November 23, 2015, by and between Norfolk Southern Railway Company and Johnstown America Corporation (incorporated by reference to Exhibit 10.20 to the Company's Annual Report on Form 10-K for the year ended December 31, 2015).*
10.25	Fifth Amendment to Lease Agreement dated March 1, 2018 by and between Norfolk Southern Railway Company and Johnstown America Corporation. (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 filed with the Commission on May 3, 2018).
10.26	Sublease, dated as of February 19, 2013, by and between Navistar, Inc. and FreightCar Alabama, LLC (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013 filed with the Commission on May 10, 2013).*
10.27	Amendment to Sublease, dated as of March 11, 2013, by and among Teachers' Retirement Systems of Alabama, Employees' Retirement System of Alabama, Navistar, Inc. and FreightCar Alabama, LLC (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013 filed with the Commission on May 10, 2013).*
10.28	Second Amendment to Sublease and Consent to Sublease, dated October 27, 2014, by and among Teachers' Retirement Systems of Alabama, Employees' Retirement System of Alabama, Navistar, Inc. and FreightCar Alabama, LLC (incorporated by reference to Exhibit 10.23 to the Company's Annual Report on Form 10-K for the year ended December 31, 2015).*

10.29	Third Amendment to Sublease and Consent to Sublease, dated as of February 1, 2016, by and among Teachers' Retirement Systems of Alabama, Employees' Retirement System of Alabama, Navistar, Inc. and FreightCar Alabama, LLC. (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2016 filed with the Commission on May 3, 2016).*
10.30	Assignment and Assumption of Lease, dated as of February 28, 2018, by and between Navistar, Inc. and FreightCar Alabama, LLC (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 filed with the Commission on May 3, 2018).
10.31	Industrial Facility Lease dated as of September 29, 2011, by and between Teachers' Retirement Systems of Alabama and Employees' Retirement System of Alabama and Navistar, Inc. (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 filed with the Commission on May 3, 2018).*
10.32	Amendment to Industrial Facility Lease and Consent to Sublease, dated as of February 19, 2013, by and among Teachers' Retirement Systems of Alabama, Employees' Retirement System of Alabama, Navistar, Inc. and FreightCar Alabama, LLC (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 filed with the Commission on May 3, 2018).
10.33	Second Amendment to Industrial Facility Lease, dated as of February 26, 2019, by and among Teachers' Retirement Systems of Alabama, Employees' Retirement System of Alabama and FreightCar America, Inc. (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2019 filed with the Commission on May 2, 2019).
10.34	Third Amendment to Industrial Facility Lease, dated as of October 8, 2020, by and among Teachers' Retirement System of Alabama, Employees' Retirement System of Alabama, FreightCar Alabama, LLC and FreightCar America, Inc. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on October 13, 2020). **
10.35	Credit and Security Agreement, dated as of April 12, 2019, by and among FreightCar America, Inc. and certain subsidiaries and BMO Harris Bank N.A. (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2019 filed with the Commission on August 1, 2019).
10.36	Limited Waiver and First Amendment to Credit and Security Agreement, dated as of October 28, 2019, by and among FreightCar America, Inc. and certain subsidiaries and BMO Harris Bank N.A. (incorporated by reference to Exhibit 10.34 to the Company's Annual Report on Form 10-K for the year ended December 31, 2019)
10.37	Third Amendment to Credit and Security Agreement, dated as of April 14, 2020, by and among FreightCar America, Inc. and certain subsidiaries and BMO Harris Bank N.A. (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ending June 30, 2020 filed with the Commission on August 10, 2020)
10.38	Credit Agreement, dated as of April 16, 2019, by and between FreightCar America Leasing 1, LLC and M & T Bank (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2019 filed with the Commission on August 1, 2019).
10.39	Loan and Security Agreement, dated as of October 8, 2020, by and among the Company and certain of its subsidiaries and Siena Lending Group, LLC. (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Commission on October 13, 2020).
10.40	FreightCar America, Inc. Executive Severance Plan (As Amended and Restated Effective December 1, 2016) (and Summary Plan Description) incorporated by reference to Exhibit 10.27 to the Company's Annual Report on Form 10-K for the year ended December 31, 2016).
10.41	Equity Purchase Agreement, dated October 16, 2020, by and among the Company, FreightCar North America, LLC (f/k/a/ FCAI Holdings, LLC) and Fabricaciones y Servicios de México, S.A. de C.V., Agben de Mexico, S.A. de C.V. and Fasemex, Inc. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on October 19, 2020).
10.42	Investor Rights Agreement, dated October 16, 2020, by and between the Company and Fabricaciones y Servicios de México, S.A. de C.V., Agben de Mexico, S.A. de C.V. and Fasemex, Inc. (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Commission on October 19, 2020).

10.43	Lease Agreement, dated October 16, 2020, by and between Fabricaciones y Servicios de México, S.A. de C.V., as lessor, and FCA-Fasemex, S. de R.L. de C.V., as lessee. (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Commission on October 19, 2020).
10.44	Royalty Agreement, dated October 16, 2020, by and among the Company and Fabricaciones y Servicios de México, S.A. de C.V., Agben de Mexico, S.A. de C.V. and Fasemex, Inc. (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the Commission on October 19, 2020).
10.45	Term Loan Credit Agreement, dated October 13, 2020, by and among the Company, FreightCar North America, LLC, CO Finance LVS VI LLC and U.S. Bank National Association. (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed with the Commission on October 19, 2020). **
10.46	Warrant Acquisition Agreement, dated October 13, 2020, by and between the Company and CO Finance LCS VI LLC. (incorporated by reference to Exhibit 10.6 to the Company's Current Report on Form 8-K filed with the Commission on October 19, 2020). **
10.47	Form of Warrant issued by the Company to CO Finance LVS VI LLC. (incorporated by reference to Exhibit 10.7 to the Company's Current Report on Form 8-K filed with the Commission on October 19, 2020).
10.48	Form of Registration Rights Agreement, to be entered into as of the Closing Date, by and between the Company and CO Finance LVS VI LLC. (incorporated by reference to Exhibit 10.8 to the Company's Current Report on Form 8-K filed with the Commission on October 19, 2020).
10.49	Form of Letter of Resignation (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on December 19, 2006).
10.50	Form of Letter of Resignation (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on December 20, 2009).
10.51	Form of Indemnification Agreement between FreightCar America, Inc. and each of its current directors (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on March 24, 2010).
10.52	Amendment No. 2 to the Term Loan Credit Agreement (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed with the Commission on August 16, 2021).
10.53	Letter agreement regarding Terms of Employment dated September 11, 2019 by and between FreightCar America, Inc. and William Matthew Tonn (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed with the Commission on November 15, 2021).
10.54	Amendment No. 3 to the Term Loan Credit Agreement (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed with the Commission on November 15, 2021).
10.55	Reimbursement Agreement dated as of July 30, 2021 by and among the Company, FreightCar North America, LLC, CO Finance LVS VI LLC, U.S. Bank National Association and Alter Domus, LLC. (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed with the Commission on November 15, 2021).
10.56	Amended and Restated Loan and Security Agreement, dated as of July 30, 2021, by and among the Company and certain of its subsidiaries and Siena Lending Group, LLC. (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed with the Commission on November 15, 2021).
10.57	Amendment No. 4 to Credit Agreement dated as of December 30, 2021. †
10.58	Warrant Acquisition Agreement, dated as of December 30, 2021, by and among the Company and CO Finance LVS VI LLC. †
10.59	Warrant issued by the Company to CO Finance LVS VI LLC dated as of December 30, 2021. †
10.60	Registration Rights Agreement dated as of December 30, 2021, by and between the Company and CO Finance LVS VI LLC. †
10.61	Forbearance and Settlement Agreement dated as of December 28, 2021, by and among the Company and certain of its subsidiaries and Manufacturers and Traders Trust Company. †
10.62	First Amendment to Novation Agreement and Restatement of Lease Agreement, dated as of November 5, 2021, by and between Jesus Salvador Gil Benavides, Alejandro Gil Benavides, Salvador Gil Benavides, FCA-Fasemex, S. de R.L. de C.V. and Fabricaciones y Servicios de México, S.A. de C.V. †
21	Subsidiaries of FreightCar America, Inc. †
23.1	Consent of Independent Registered Public Accounting Firm. †

23.2	Consent of Independent Registered Public Accounting Firm. †
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. †
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. †
32	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. †
99.1	Press release of FreightCar America, Inc. dated March 21, 2022
101.INS	Inline XBRL Instance Document
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
Exhibit 104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101).

* Confidential treatment has been granted for the redacted portions of this exhibit. A complete copy of the exhibit, including the redacted portions, has been filed separately with the Securities and Exchange Commission.

** Portions of this document have been redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K.

† Filed herewith

Exhibit 4.2

**DESCRIPTION OF THE REGISTRANT'S SECURITIES
REGISTERED PURSUANT TO SECTION 12 OF THE
SECURITIES EXCHANGE ACT OF 1934**

The following summary of the common stock of FreightCar America, Inc., which is the only class of capital stock of FreightCar that is registered pursuant to Section 12 of the Securities Exchange Act of 1934, does not purport to be complete and is qualified in its entirety by reference to our certificate of ownership and merger (as amended, our "charter") and our third amended and restated bylaws (our "bylaws", and together with our charter, our "organizational documents"), each of which is incorporated by reference as an exhibit to the Annual Report on Form 10-K of which this Exhibit is a part, and certain provisions of Delaware law. Unless the context requires otherwise, all references to "we", "us," "our" and "FreightCar" in this section refer solely to FreightCar America, Inc. and not to our subsidiaries.

Under our charter, our authorized capital stock consists of 50,000,000 shares of common stock, $0.01 par value per share, and 2,500,000 shares of preferred stock, $0.01 par value per share. As of March 16, 2022, there were 16,476,302 shares of FreightCar common stock outstanding. All outstanding shares of FreightCar common stock are duly authorized, validly issued, fully paid and non-assessable. We have no shares of preferred stock issued or outstanding
.
Our common stock is listed on the Nasdaq Global Market under the symbol "RAIL."

Voting Rights. The holders of our common stock vote together with any holders of voting preferred stock as a class on all matters submitted to a vote of stockholders, with each share having one vote, except for those matters exclusively affecting the preferred stock. Holders of our common stock have voting rights in the election of directors.
Dividend Rights. Holders of our common stock are entitled to receive dividends as may be lawfully declared from time to time by our board of directors.

Liquidation Rights. In the event of liquidation, dissolution or winding-up, the holders of our common stock are entitled to share equally in our assets, if any remain after the payment of all our debts and liabilities and the liquidation preference of any outstanding preferred shares.

Other. Holders of common stock have no preemptive rights or other rights to subscribe for additional common stock and no rights of redemption, conversion or exchange.

Provisions of the Charter and Bylaws that May Have an Anti-Takeover Effect

Certain provisions in the charter and the bylaws, as well as Delaware General Corporation Law (the "DGCL"), may have the effect of discouraging transactions that involve an actual or threatened change in control of FreightCar. In addition, provisions of the charter, the bylaws and the DGCL may be deemed to have an anti-takeover effect and may delay, deter or prevent a tender offer or takeover attempt that a stockholder might consider to be in its best interests.

Classified Board. Our charter provides that our board of directors is divided into three classes of directors, with the classes as nearly equal in number as possible. As a result, approximately one-third of our board of directors is elected each year. The classification of directors has the effect of making it more difficult for stockholders to change the composition of our board. Our charter provides that the number of directors will be fixed in the manner provided in the bylaws. Our organizational documents provide that the number of directors will be fixed from time to time solely pursuant to a resolution adopted by the board, but must consist of not less than five nor more than 15 directors.

No Cumulative Voting. Delaware law provides that stockholders are not entitled to the right to cumulative voting in the election of directors unless our charter provides otherwise. Our charter does not expressly provide for cumulative voting.

Special Meetings of Stockholders. The board of directors or the chairman of the board of directors may call a special meeting of stockholders at any time and for any purpose, but no stockholder or other person may call any such special meeting.

No Written Consent of Stockholders. Any action taken by our stockholders must be effected at a duly held meeting of stockholders and may not be effected by the written consent of such stockholders.

Advance Notice of Stockholder Action at a Meeting. Stockholders seeking to nominate directors or to bring business before a stockholder meeting must comply with certain timing requirements and submit certain information to us in advance of such meeting.

Authorized but Unissued Capital Stock. Delaware law does not require stockholder approval for any issuance of authorized shares. However, the listing requirements of the Nasdaq Global Market, which would apply so long as our common stock is listed on the Nasdaq Global Market, require stockholder approval of certain issuances equal to or in excess of 20% of the voting power or the number of

shares of common stock. These additional shares may be used for a variety of corporate purposes, including future public offerings, to raise additional capital or to facilitate acquisitions.

One of the effects of the existence of unissued and unreserved common stock or preferred stock may be to enable our board of directors to issue shares to persons friendly to current management, which issuance could render more difficult or discourage an attempt to obtain control of our company by means of a merger, tender offer, proxy contest or otherwise, and thereby protect the continuity of our management and possibly deprive the stockholders of opportunities to sell their shares of common stock at prices higher than prevailing market prices.

Business Combinations. We are subject to the provisions of Section 203 of the DGCL. Subject to certain exceptions, Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years after the person becomes an interested stockholder, unless the interested stockholder attained such status with the approval of FreightCar's board of directors or the business combination is approved in a prescribed manner. A business combination includes, among other things, a merger or consolidation involving FreightCar and the interested stockholder and the sale of more than 10% of FreightCar's assets. In general, an interested stockholder is an entity or person beneficially owning 15% or more of FreightCar's outstanding voting stock and any entity or person affiliated with or controlling or controlled by such entity or person.

Elimination of Liability in Certain Circumstances

Our charter eliminates the liability of our directors to us or our stockholders for monetary damages resulting from breaches of their fiduciary duties as directors. Directors remain liable for breaches of their duty of loyalty to us or our stockholders, as well as for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, and transactions from which a director derives improper personal benefit. Our charter does not absolve directors of liability for payment of dividends or stock purchases or redemptions by us in violation of Section 174 (or any successor provision) of the DGCL.

The effect of this provision is to eliminate the personal liability of directors for monetary damages for actions involving a breach of their fiduciary duty of care, including any such actions involving gross negligence. We do not believe that this provision eliminates the liability of our directors to us or our stockholders for monetary damages under the federal securities laws. The charter and bylaws also provide indemnification for the benefit of our directors and officers to the fullest extent permitted by the DGCL as it may be amended from time to time, including most circumstances under which indemnification otherwise would be discretionary.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

Exhibit 10.57

AMENDMENT NO. 4 TO CREDIT AGREEMENT

THIS AMENDMENT NO. 4 TO CREDIT AGREEMENT (this "Amendment"), dated as of December 30, 2021, is made by and among FREIGHTCAR NORTH AMERICA, LLC, a Delaware limited liability company (the "Borrower"), FREIGHTCAR AMERICA, INC., a Delaware corporation ("Holdings"), the other Loan Parties party hereto, the Lenders and LC Provider party hereto and U.S. BANK NATIONAL ASSOCIATION, as disbursing agent for the Lenders (together with its permitted successors and assigns in such capacity, the "Disbursing Agent") and as collateral agent for the Secured Parties (together with its successors and permitted assigns in such capacity, the "Collateral Agent").

RECITALS:

WHEREAS, the Borrower, Holdings, the Lenders, the LC Provider, the Disbursing Agent and the Collateral Agent are parties to that certain Credit Agreement, dated as of October 13, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, the Borrower has requested that the Lenders (i) advance additional term loans in the aggregate principal amount of $15,000,000 (the "Fourth Amendment Loans") and (ii) agree to amend the Credit Agreement as set forth herein;

WHEREAS, subject to the terms and conditions set forth herein, the Lenders parties hereto have agreed to (i) provide the Fourth Amendment Loans and (ii) amend the Credit Agreement as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Capitalized Terms. All capitalized undefined terms used in this Amendment (including without limitation, in the Recitals hereto) shall have the meanings assigned thereto in the Credit Agreement, as hereby amended.

SECTION 2. Amendment to Credit Agreement.

2.1 In reliance upon the representations and warranties set forth in Section 6 below, and subject to the satisfaction of the conditions to effectiveness set forth in Section 3 below, as of the Fourth Amendment Effective Date, the Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the bold and double-underlined text (indicated textually in the same manner as the following example: double underlined text) as set forth in the pages of the amended Credit Agreement attached as Annex A hereto; and

2.2 Exhibit C to the Credit Agreement (Form of Assignment and Assumption) is hereby amended and restated in the form of Annex B hereto.

SECTION 3. Effectiveness. This Amendment shall become effective on the date upon which each of the following conditions is satisfied (such date, the "Fourth Amendment Effective Date"):

3.1 This Amendment. The Disbursing Agent and the Lenders shall have received this Amendment, executed and delivered by a duly authorized officer of Holdings, the Borrower, the other Loan Parties, each Agent and each Lender, in form and content acceptable to the Agents and the Lenders.

3.2 Bank Regulatory Information. The Agents and the Lenders shall have received all documentation and other information (including, without limitation, an updated Beneficial Ownership Certification if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation and there have been any changes in the prior Beneficial Ownership Certification since the Closing Date) required by bank regulatory authorities or reasonably requested by any Agent or any Lender under or in respect of applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

3.3 Schedules. The Disbursing Agent and the Lenders shall have received updated versions of: (a) Schedules 3.06, 3.07, 3.16 and 3.17 to the Credit Agreement and (b) Schedules 2 and 5 to the Guarantee and Collateral Agreement, which shall be satisfactory to the Lenders.

3.4 Third Amendment to Intercreditor Agreement. The Collateral Agent and the Lenders shall have received a duly executed and delivered Amendment No. 3 to Intercreditor Agreement, in form and content acceptable to the Collateral Agent and the Lenders.

3.5 Amended and Restated Reimbursement Agreement. The Disbursing Agent and the LC Provider shall have received a duly executed and delivered Amended and Restated Reimbursement Agreement, in form and content acceptable to the Disbursing Agent and the LC Provider.

3.6 Fees and Expenses. The Lenders and the Agents shall have received all fees and other amounts due and payable on or prior to the Fourth Amendment Effective Date, including, to the extent invoiced at least one Business Day prior to the Fourth Amendment Effective Date, reimbursement or payment of all out-of-pocket expenses (including reasonable fees, disbursements and other charges of counsel) required to be reimbursed or paid under this Amendment or any Loan Document.

3.7 Solvency Certificate. The Lenders shall have received a solvency certificate, dated as of the Fourth Amendment Effective Date and signed by the chief financial officer,

chief accounting officer or other officer with equivalent duties of Holdings acceptable to the Lenders.

3.8 Searches. The Lenders shall have received the results of a recent lien, tax lien, judgment and litigation search in each of the jurisdictions or offices in which UCC financing statement or other filings or recordations should be made to evidence or perfect security interests in all assets of the Loan Parties (or would have been made at any time during the five years immediately preceding the Fourth Amendment Effective Date to evidence or perfect Liens on any assets of the Loan Parties), and such search shall reveal no Liens or judgments on any of the assets of the Loan Parties, except for Permitted Liens.

3.9 Closing Certificate. The Lenders and the Disbursing Agent shall have received a certificate of Holdings, dated as of the Fourth Amendment Effective Date, confirming satisfaction of the conditions set forth in Section 3.13 and Section 3.14.

3.10 Secretary's Certificates. The Disbursing Agent and the Lenders shall have received with respect to the Borrower and each other Loan Party:

(a) copies of the Organizational Documents of such Loan Party (including each amendment thereto) certified as of a date reasonably near the Fourth Amendment Effective Date as being a true and complete copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized; provided, that if there have been no changes in the Organizational Documents of such Loan Party since the Third Amendment Effective Date, no such copies shall be required;

(b) a certificate of the secretary or assistant secretary of each Loan Party dated as of the Fourth Amendment Effective Date and certifying (A) (i) that attached thereto is a true and complete copy of the Organizational Documents of such Loan Party as in effect on the Fourth Amendment Effective Date or (ii) that there have been no changes in the Organizational Documents of such Loan Party since the Third Amendment Effective Date to the extent such statement is true, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors or similar governing body of such Loan Party (and, if applicable, any parent company of such Loan Party) approving and authorizing the execution, delivery and performance of this Amendment and the other Loan Documents to which it is a party and the consummation of the transactions contemplated to be entered into in connection with this Amendment, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, and (C) as to the incumbency and specimen signature of each Person authorized to execute any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party;

(c) a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate pursuant to clause (b) above; and

(d) a copy of the long-form (if available) certificate of good standing of such Loan Party from the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized (dated as of a date reasonably near the Fourth Amendment Effective Date); provided, that, the requirements of this Section 3.10(d) shall not apply to the Mexican Subsidiaries.

3.11 Legal Opinions. The Agents and the Lenders shall have received the following executed legal opinions:

(a) the legal opinion of Winston & Strawn LLP, special counsel to the Loan Parties; and

(b) the legal opinion of local counsel in each jurisdiction in which a Loan Party is organized, to the extent such Loan Party is not covered by the opinion referenced in clause (a) above, as may be required by the Required Lenders.

Each such legal opinion shall (a) be dated as of the Fourth Amendment Effective Date, (b) be addressed to the Agents and the Lenders and (c) cover such matters relating to this Amendment, the Loan Documents and the transactions contemplated to be entered into as of the Fourth Amendment Effective Date as the Required Lenders may reasonably require. Each Loan Party hereby instructs such counsel to deliver such opinions to the Agents and the Lenders.

3.12 Reserved.

3.13 Representations and Warranties. After giving effect to this Amendment, each of the representations and warranties contained in Section 6 shall be true and correct in all material respects on and as of the Fourth Amendment Effective Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date); *provided* that any representation and warranty qualified by “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects.

3.14 No Default. After giving effect to this Amendment, no Default and/or Event of Default shall exist under the Credit Agreement and the other Loan Documents.

3.15 No Litigation. There shall not exist any action, suit, investigation, litigation, proceeding, injunction, hearing or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that individually or in the aggregate materially impairs the Amendment or any of the other transactions contemplated by this Amendment and the Loan Documents.

3.16 Permits and Consents. Each Loan Party shall have obtained all Permits and all consents of other Persons, in each case that are necessary in connection with the financing contemplated by this Amendment and the Loan Documents, and each of the

foregoing shall be in full force and effect and in form and substance reasonably satisfactory to the Required Lenders.

3.17 Warrants. The Lenders holding Fourth Amendment Commitments and/or their Affiliates shall have received warrants issued by Holdings in form and substance satisfactory to the Lenders to purchase 5.0% of the Common Stock Deemed Outstanding on the date of any partial or full exercise of the warrants at the same purchase price as included in the Warrants issued to the Lenders and/or their Affiliates on the Closing Date.

3.18 Other Documents. The Agents and the Lenders shall have received any other documents or instruments reasonably requested by the Lenders in connection with the execution of this Amendment.

Each Lender party hereto, by delivering its signature page to this Amendment, shall be deemed to have consented to, approved or accepted or to be satisfied with, each Loan Document and each other document required thereunder to be consented to, approved by or acceptable or satisfactory to a Lender.

SECTION 4. Waiver. Effective as of November 15, 2021, each of the Borrower, Holdings, the Lenders, the LC Provider and the Disbursing Agent waives the requirements of Section 9.06(b)(vii) of the Credit Agreement with respect to the assignment of the Second Amendment Loans by CO Finance LVS VI LLC to OC III LVS XXVIII LP pursuant to that certain Assignment and Assumption Agreement dated as of November 15, 2021, and hereby ratifies such assignment and confirms that OC III LVS XXVIII LP is a Lender.

SECTION 5. Limited Effect. Except as expressly provided herein, the Credit Agreement and the other Loan Documents shall remain unmodified and in full force and effect. This Amendment shall not be deemed (a) to be a waiver of, or consent to, or a modification or amendment of, any other term or condition of the Credit Agreement or any other Loan Document or a waiver of any other Default or Event of Default (except as expressly provided herein), (b) to prejudice any right or rights the Agents or the Lenders may now have or may have in the future under or in connection with the Credit Agreement or the other Loan Documents or any of the instruments or agreements referred to therein, as the same may be amended, restated, supplemented or modified from time to time, or (c) to be a commitment or any other undertaking or expression of any willingness to engage in any further discussion with the Borrower or any other Person with respect to any waiver, amendment, modification or any other change to the Credit Agreement or the Loan Documents or any rights or remedies arising in favor of any of the Agents or any Lender, under or with respect to any such documents.

SECTION 6. Representations and Warranties. Each of the Borrower, Holdings and the other Loan Parties represents and warrants that (a) it has the organizational power and authority to make, deliver and perform this Amendment, (b) it has taken all necessary organizational or other action to authorize the execution, delivery and performance of this Amendment, (c) this Amendment has been duly executed and delivered on behalf of the Borrower, Holdings and each other Loan Party, (d) this Amendment constitutes a legal, valid and binding obligation of the Borrower, Holdings and each other Loan Party, enforceable against the Borrower, Holdings and each other Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency,

reorganization, moratorium or other similar laws affecting creditors' rights generally, regardless of whether considered in a proceeding in equity or at law, (e) each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents is true and correct in all material respects on and as of the date hereof with the same effect as though made on and as of the date hereof, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties are true and correct in all material respects as of such earlier date); *provided* that any representation and warranty qualified by "materiality", "Material Adverse Effect" or similar language is true and correct (after giving effect to any qualification therein) in all respects, (f) as of the date hereof, it has no defenses, setoffs, rights of recoupment, counterclaims or claims of any nature whatsoever with respect to the Loan Documents or the Obligations due thereunder, and to the extent any such defenses, setoffs, rights of recoupment, counterclaims or claims may exist on or prior to the date hereof, the same are hereby expressly waived, released and discharged, and (g) after giving effect to this Amendment, no Default or Event of Default has occurred and is continuing as of the date hereof or after giving effect hereto.

SECTION 7.Post-Closing Obligations. Promptly, and in any event no later than forty-five (45) days after the Fourth Amendment Effective Date (or such later date to which the Required Lenders consent), the Borrower shall (a) deliver or cause to be delivered to HSBC México, S.A. notices regarding the creation of the non-possessory pledge evidenced by the Non-Possessory Pledge Agreement (*Contrato de Prenda sin Transmisión de Posesión*) granted by FCA-Fasemex, S. de R.L. de C.V. (the "Non-Possessory Pledge") and (b) make reasonable efforts to obtain and deliver to the Collateral Agent and the Lenders acknowledgments from HSBC México, S.A. as to the notices provided with respect to the creation of the non-possessory pledge evidenced by the Non-Possessory Pledge.

SECTION 8.Acknowledgment and Reaffirmation.

8.1 By its execution hereof, each of the Borrower, Holdings and the other Loan Parties hereby expressly (a) acknowledges and agrees to the terms and conditions of this Amendment, (b) reaffirms all of its respective covenants, representations, warranties and other obligations set forth in the Credit Agreement and the other Loan Documents to which it is a party, (c) acknowledges that the Fourth Amendment Loans shall constitute Obligations under the Credit Agreement and Secured Obligations (as defined in the Guarantee and Collateral Agreement), and (d) acknowledges that its respective covenants, representations, warranties and other obligations set forth in the Credit Agreement and the other Loan Documents to which it is a party remain in full force and effect.

8.2 Each of the Loan Parties hereby confirms its respective guarantees and other obligations, as applicable, under the Credit Agreement and each of the Loan Documents to which it is party, and agrees that, notwithstanding the effectiveness of this Amendment and the consummation of the transactions contemplated thereby, such guarantees and other obligations shall continue to be in full force and effect and shall accrue to the benefit of the Lenders.

8.3 Each Loan Party hereby (x) confirms its grant of a security interest under the Guarantee and Collateral Agreement and each of the other Security Documents in favor of any Agent, for the benefit itself and the other Secured Parties and, (y) to the extent that the original grant of such security interest in the Collateral in which a security interest was to be granted pursuant to the Security Documents for any reason did not effect the grant of a security interest in favor of such Agent, for the benefit itself and the other Secured Parties, securing the Obligations, grants on the date hereof a security interest in all such Collateral to secure the Obligations. Each Loan Party hereby agrees, acknowledges and confirms that its grant of a security interest under the Security Documents secures all of the Obligations, direct or indirect, contingent or absolute, matured or unmatured, now or at any time and from time to time hereafter due or owing to any Agent, for the benefit itself and the other Secured Parties, arising under or in connection with the Credit Agreement and the Loan Documents.

8.4 On and after the effectiveness of this Amendment:

(a) each reference in each Loan Document (to the extent such Loan Document is not otherwise amended and restated on the date hereof) to the "Credit Agreement", "thereunder", "thereof" or words of like import shall mean and be a reference to the Credit Agreement as such agreement is amended and may be amended further, restated, modified or supplemented and in effect from time to time;

(b) the definition of any term defined in any Loan Document by reference to the terms defined in the Credit Agreement shall be amended to be defined by reference to the defined term in the Credit Agreement, as amended hereby and as may be further amended, restated, modified or supplemented and in effect from time to time; and

(c) each reference to the "Closing Date" appearing in Section 4 of the Guarantee and Collateral Agreement shall mean and be a reference to the date hereof.

SECTION 9.Costs and Expenses. The Borrower agrees to pay in accordance with Section 9.05 of the Credit Agreement all reasonable out-of-pocket costs and expenses incurred by the Disbursing Agent, the Collateral Agent, the Lenders and their respective Affiliates in connection with the preparation, negotiation, execution, delivery and administration of this Amendment and the other instruments and documents to be delivered hereunder, including, without limitation, the reasonable and documented fees, charges and disbursements of counsel for the Agents and the Lenders with respect thereto and with respect to advising the Disbursing Agent, the Collateral Agent and the Lenders, respectively, as to their rights and responsibilities hereunder and thereunder.

SECTION 10.Execution in Counterparts. This Amendment may be executed by one or more of the parties to this Amendment on any number of separate counterparts (including by facsimile or other electronic imaging means), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. In proving this Amendment or any Loan Document in any judicial proceedings, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom such enforcement is sought. Any

signatures delivered by a party hereto by facsimile transmission or by e-mail transmission shall be deemed an original signature hereto.

SECTION 11.Governing Law. THIS AMENDMENT AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AMENDMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW.

SECTION 12.Entire Agreement; Section Heading; Severability. This Amendment is the entire agreement, and supersedes any prior agreements and contemporaneous oral agreements, of the parties concerning its subject matter. The Section headings used in this Amendment are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof. Any provision of this Amendment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 13.Successors and Assigns. This Amendment shall be binding on and inure to the benefit of the parties and their respective heirs, beneficiaries, successors and permitted assigns.

SECTION 14.Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, BREACH OF DUTY, COMMON LAW, STATUTE OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 14. EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

SECTION 15. Loan Document. This Amendment shall constitute a Loan Document for all purposes of the Credit Agreement and the other Loan Documents.

SECTION 16. General Release; Covenant Not to Sue.

16.1 In consideration of, among other things, the Agents' and the Lenders' execution and delivery of this Amendment, each Loan Party, on behalf of itself and its respective officers, directors, subsidiaries, successors and assigns (collectively, "Releasors"), hereby forever waives, releases and discharges, to the fullest extent not prohibited by law, each Releasee (as hereinafter defined) from any and all claims (including, without limitation, crossclaims, counterclaims, rights of set-off and recoupment), actions, causes of action, suits, debts, accounts, interests, liens, promises, warranties, damages and consequential damages, demands, agreements, bonds, bills, specialties, covenants, controversies, variances, trespasses, judgments, executions, costs, expenses or claims whatsoever (collectively, the "Claims"), that such Releasor now has, of whatsoever nature and kind, whether known or unknown, now existing, whether arising at law or in equity, against any or all of any Agent or any or all of the Lenders in any capacity and their respective affiliates, subsidiaries, shareholders and "controlling persons" (within the meaning of the federal securities laws), and their respective successors and assigns and each and all of the officers, directors, employees, partners, members, agents, attorneys advisors and other representatives of each of the foregoing (collectively, the "Releasees"), based in whole or in part on facts, whether or not now known, existing on or before the date hereof, that relate to, arise out of or otherwise are in connection with: (i) the Credit Agreement and any or all other Loan Documents or transactions contemplated thereby or any actions or omissions in connection therewith, (ii) any aspect of the dealings or relationships between or among any or all of the Borrower and the other Loan Parties, on the one hand, and any or all of the Releasees, on the other hand, relating to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof, or (iii) any aspect of the dealings or relationships between or among any or all of Releasors, on the one hand, and the Releasees, on the other hand, but only to the extent such dealings or relationships relate to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof. In entering into this Amendment, each Loan Party consulted with, and has been represented by, legal counsel and expressly disclaims any reliance on any representations, acts or omissions by any of the Releasees and hereby agrees and acknowledges that the validity and effectiveness of the releases set forth above do not depend in any way on any such representations, acts and/or omissions or the accuracy, completeness or validity hereof. The provisions of this Section shall survive the termination of this Amendment, the Credit Agreement, the other Loan Documents and payment in full of the Obligations.

16.2 Each Loan Party, on behalf of itself and its successors and assigns, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by the Borrower or any other Loan Party pursuant to Section 16 hereof. If any Loan Party or any of their respective successors or assigns violates the foregoing covenant, each Loan Party, each for itself and its successors and assigns, agrees to pay, in addition to such other damages as

any Releasee may sustain as a result of such violation, all reasonable and documented attorneys' fees and costs incurred by any Releasee as a result of such violation.

16.3 The foregoing release shall apply to all unknown or unanticipated results of any events occurring prior to the time this Amendment is signed, as well as those known or anticipated. Each Loan Party understands that the facts in respect of which the foregoing release is given may hereafter turn out to be different from the facts now known or believed to be true. Each Loan Party hereby accepts and assumes the risk that those facts may ultimately be found to be different, and agrees that the foregoing Release shall be in all respects effective, and not subject to termination or rescission by virtue of any such factual differences.

SECTION 17.Lender Direction. By its execution and delivery of its signature page hereto, each of the undersigned Lenders, together constituting Lenders having Loans and unused Fourth Amendment Commitments representing 100% of the sum of all Loans outstanding and unused Fourth Amendment Commitments, and the LC Provider is authorizing and directing (i) the Disbursing Agent and the Collateral Agent to execute this Amendment, (ii) the Collateral Agent to execute that certain Amendment No. 3 to Intercreditor Agreement dated as of the Fourth Amendment Effective Date, among the Collateral Agent and the Revolving Loan Lender, in the form attached hereto as Annex C and (iii) the Disbursing Agent and Alter Domus (US) LLC, as Calculation Agent, to execute that certain Amended and Restated Reimbursement Agreement dated as of the Fourth Amendment Effective Date, among Holdings, LC Provider, the Disbursing Agent and the Collateral Agent, in the form attached hereto as Annex D.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized officers, all as of the day and year first written above.

BORROWER:

FREIGHTCAR NORTH AMERICA, LLC

By: /s/ Terence R. Rogers

Name: Terence R. Rogers

Title: Vice President, Finance, Chief Financial Officer, Treasurer and Secretary

HOLDINGS:

FREIGHTCAR AMERICA, INC.

By: /s/ Terence R. Rogers

Name: Terence R. Rogers

Title: Vice President, Finance, Chief Financial Officer, Treasurer and Corporate Secretary

OTHER LOAN PARTIES:

JAC OPERATIONS, INC.

By: /s/ Terence R. Rogers

Name: Terence R. Rogers

Title: Vice President, Finance, Chief Financial Officer, Treasurer and Secretary

FREIGHT CAR SERVICES, INC.

By: /s/ Terence R. Rogers

Name: Terence R. Rogers

Title: Vice President, Finance, Chief Financial Officer, Treasurer and Secretary

JAIX LEASING COMPANY

By: /s/ Terence R. Rogers

Name: Terence R. Rogers

Title: Vice President, Finance, Chief Financial Officer, Treasurer and Secretary

FREIGHTCAR SHORT LINE, INC.

By: /s/ Terence R. Rogers

Name: Terence R. Rogers

Title: Vice President, Finance, Chief Financial Officer, Treasurer and Secretary

JOHNSTOWN AMERICA, LLC

By: /s/ Terence R. Rogers

Name: Terence R. Rogers

Title: Vice President, Finance, Chief Financial Officer, Treasurer and Secretary

FREIGHTCAR ALABAMA, LLC

By: /s/ Terence R. Rogers

Name: Terence R. Rogers

Title: Vice President, Finance, Chief Financial Officer, Treasurer and Secretary

FREIGHTCAR RAIL SERVICES, LLC

By: /s/ Terence R. Rogers

Name: Terence R. Rogers

Title: Vice President, Finance, Chief Financial Officer, Treasurer and Secretary

FREIGHTCAR RAIL MANAGEMENT SERVICES, LLC

By: /s/ Terence R. Rogers

Name: Terence R. Rogers

Title: Vice President, Finance, Chief Financial Officer, Treasurer and Secretary

FCA-FASEMEX, LLC

By: /s/ Terence R. Rogers

Name: Terence R. Rogers

Title: Vice President, Finance, Chief Financial Officer, Treasurer and Secretary

FCA-FASEMEX, S. DE R.L., DE C.V.

By: /s/ James R. Meyer

Name: James R. Meyer

Title: President

FCA-FASEMEX ENTERPRISE, S. DE R.L., DE C.V.

By: /s/ James R. Meyer

Name: James R. Meyer

Title: President

U.S. BANK NATIONAL ASSOCIATION, solely in its capacities as Disbursing Agent and Collateral Agent and not in its individual capacity

By: /s/ Crystal Crudup-Burt
Name: Crystal Crudup-Burt
Title: Vice President

[Signature Page to Amendment No. 4 to Credit Agreement]

LENDER:

CO FINANCE LVS VI LLC, as a Lender and LC Provider

By: /s/ Chris Neumeyer
Name: Chris Neumeyer
Title: Authorized Person

OC III LVS XII LP, as a Lender

By: OC III GP LLC, its general partner

By: /s/ Chris Neumeyer
Name: Chris Neumeyer
Title: Authorized Person

OC III LVS XXVIII LP, as a Lender

By: OC III GP LLC, its general partner

By: /s/ Chris Neumeyer
Name: Chris Neumeyer
Title: Authorized Person

Annex A

Conformed Credit Agreement

U.S. $~~56,000,000~~71,000,000

CREDIT AGREEMENT,

dated as of October 13, 2020,

as amended by Amendment No. 1 dated as of January 30, 2021,
as amended by Amendment No. 2 dated as of May 14, 2021~~ and~~,
as ~~further ~~amended by Amendment No. 3 dated as of July 30, 2021 and
as further amended by Amendment No. 4 dated as of December 30, 2021

among

FREIGHTCAR AMERICA, INC.,
as Holdings,

FREIGHTCAR NORTH AMERICA, LLC,
as Borrower,

THE LENDERS AND LC ~~PROVIDERS~~PROVIDER PARTY HERETO FROM TIME TO TIME

and

U.S. BANK NATIONAL ASSOCIATION,
as Disbursing Agent and Collateral Agent

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Exhibit D Form of Note
Exhibit E-1 Form of U.S. Tax Compliance Certificate
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Exhibit E-3 Form of U.S. Tax Compliance Certificate
Exhibit E-4 Form of U.S. Tax Compliance Certificate
Exhibit F Form of Borrowing Notice
Exhibit G Form of Solvency Certificate
Exhibit H Form of Subordinated Intercompany Note

CREDIT AGREEMENT, dated as of October 13, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), among FreightCar America, Inc., a Delaware corporation ("Holdings"), FreightCar North America, LLC, a Delaware limited liability company (the "Borrower"), the several banks and other financial institutions or entities from time to time parties hereto as lenders (the "Lenders"), CO Finance LVS VI LLC, as LC Provider (together with its permitted successors and assigns in such capacity, the "LC Provider"), and U.S. Bank National Association, as disbursing agent for the Lenders (together with its permitted successors and assigns in such capacity, the "Disbursing Agent") and as collateral agent for the Secured Parties (together with its successors and permitted assigns in such capacity, the "Collateral Agent").

W I T N E S S E T H:

WHEREAS, the Borrower has requested that the Lenders extend credit in the form of (i) Loans on the Closing Date in an aggregate principal amount equal to $40,000,000, the proceeds of which may be used on the Closing Date solely to fund, in part, the Transactions, the Transaction Expenses, to purchase machinery and equipment, to provide for ongoing working capital requirements of the Borrower and its Subsidiaries and for other general corporate purposes, including distributions, of the Borrower and its Subsidiaries and, (ii) Loans on the Second Amendment Funding Date in an aggregate principal amount equal to $16,000,000, the proceeds of which shall be used on or after the Second Amendment Funding Date to pay fees, costs and expenses incurred in connection with the Second Amendment and to provide for ongoing working capital requirements of the Borrower and its Subsidiaries and for other general corporate purposes; and (iii) Loans during the Fourth Amendment Availability Period in an aggregate principal amount of up to $15,000,000, the proceeds of which shall be used on or after the Fourth Amendment Effective Date to pay fees, costs and expenses incurred in connection with the Fourth Amendment and to provide for ongoing working capital requirements of the Borrower and its Subsidiaries and for other general corporate purposes;

WHEREAS, Holdings has requested, and the LC Provider has obtained, the Third Amendment Letter of Credit;

WHEREAS, the Borrower and each other Loan Party desire to secure all of the Obligations by granting to the Collateral Agent, for the benefit of the Secured Parties, a security interest in and Lien upon substantially all of the property and assets of the Borrower and the other Loan Parties, subject to the limitations described herein and in the Security Documents; and

WHEREAS, the Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the agreements hereinafter set forth, the parties hereto hereby agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01 Defined Terms. As used in this Agreement, the terms listed in this Section 1.01 shall have the respective meanings set forth in this Section 1.01.

"AAR" shall mean The Association of American Railroads (or any successor).

"Accounting Change" shall mean any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

"Administrative Questionnaire" shall mean an administrative questionnaire in a form supplied by the Disbursing Agent.

"Affiliate" shall mean, with respect to a specified Person, another Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; *provided*, *however*, that, the term "Affiliate" shall also include any Person that directly or indirectly owns 10% or more of any class of Equity Interests of the Person specified or that is an officer or director of the Person specified. For the avoidance of doubt, no Lender, solely in its capacity as a holder of Warrants, shall constitute an Affiliate of the Borrower.

"Agents" shall mean the collective reference to the Disbursing Agent and the Collateral Agent.

"Agreement" shall have the meaning set forth in the preamble hereto.

"Anti-Corruption Laws" shall mean all laws, rules, and regulations of any jurisdiction applicable to Holdings, the Borrower or any of its Affiliates from time to time concerning or relating to bribery or corruption, including without limitation the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, the Mexican *Ley General del Sistema Nacional Anticorrupción*, the Mexican *Ley General de Responsabilidades Administrativas*, and the Mexican Federal Criminal Code and other similar legislation in any other jurisdictions.

"Anti-Money Laundering Laws" shall mean all applicable financial recordkeeping and reporting requirements and the money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, which in each case are issued, administered or enforced by any Governmental Authority having jurisdiction over the Borrower or any other Loan Party. For the avoidance of doubt, the term "Anti-Money Laundering Laws" shall include, but shall not be limited to, all laws, rules and regulations of the United States, the United Nations Security Council, the European Union or its Member States, the United Kingdom and Her Majesty's Treasury, and Germany, relating to bribery, corruption, money laundering or terrorist financing, including, without limitation, the Bank Secrecy Act, 31 U.S.C. section 5311 et seq.; Title III of the USA Patriot Act; 18 U.S.C. section 1956; 18 U.S.C. section 1957; the Financial Recordkeeping and Reporting of Currency and Foreign Transactions Regulations, 31 C.F.R. Part 103; the United Kingdom Proceeds of Crime Act 2002; and the United Kingdom Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations

2017 and the Mexican *Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita* and its applicable regulations.

"Applicable Margin" shall mean a percentage *per annum* equal to (i) for Eurodollar Loans, 12.5% and (ii) for Base Rate Loans, 11.5%.

"Applicable Prepayment Premium" shall mean, as of any date of determination, (a) in the case of the Second Amendment Loans, an amount equal to (i) during the period of time ~~from and after~~commencing on the Second Amendment Funding Date through October 30, 2021, 2.0% of the principal amount of the Second Amendment Loans prepaid or accelerated (including, without limitation, automatic acceleration upon an Event of Default under Section 7.01(f) or Section 7.01(g) or operation of law upon the occurrence of a bankruptcy or insolvency event), (ii) during the period of time ~~from and after~~commencing on October 31, 2021 through December 30, 2021, 4.0% of the principal amount of the Second Amendment Loans prepaid or accelerated (including, without limitation, automatic acceleration upon an Event of Default under Section 7.01(f) or Section 7.01(g) or operation of law upon the occurrence of a bankruptcy or insolvency event), and (iii) during the period of time ~~from and after~~commencing on December 31, 2021 through March 30, 2022, 5.0% of the principal amount of the Second Amendment Loans prepaid or accelerated (including, without limitation, automatic acceleration upon an Event of Default under Section 7.01(f) or Section 7.01(g) or operation of law upon the occurrence of a bankruptcy or insolvency event)~~ and~~, (b) in the case of the Fourth Amendment Loans, during the period of time commencing on the Fourth Amendment Effective Date through January 30, 2023, 1.0% of the principal amount of the Fourth Amendment Loans prepaid or accelerated (including, without limitation, automatic acceleration upon an Event of Default under Section 7.01(f) or Section 7.01(g) or operation of law upon the occurrence of a bankruptcy or insolvency event) and (c) in the case of all Loans, an amount equal to (i) during the period of time ~~from and~~ after the third anniversary of the Closing Date through the fourth anniversary of the Closing Date, 4.0% of the principal amount of Loans prepaid or accelerated (including, without limitation, automatic acceleration upon an Event of Default under Section 7.01(f) or Section 7.01(g) or operation of law upon the occurrence of a bankruptcy or insolvency event) and (ii) during the period of time ~~from and~~ after the fourth anniversary of the Closing Date, 3.0% of the principal amount of Loans prepaid~~ or~~, accelerated (including, without limitation, automatic acceleration upon an Event of Default under Section 7.01(f) or Section 7.01(g) or operation of law upon the occurrence of a bankruptcy or insolvency event) or paid on the Maturity Date. For the avoidance of doubt, (A) with respect to Second Amendment Loans, the Make Whole Amount, rather than the Applicable Prepayment Premium, shall apply during the period ~~from and after~~commencing on March 31, 2022 ~~until~~through the third anniversary of the Closing Date and (B) with respect to Fourth Amendment Loans, the Make Whole Amount, rather than the Applicable Prepayment Premium, shall apply during the period commencing on January 31, 2023 through the third anniversary of the Closing Date.

"Approved Electronic Communications" shall mean, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to any Agent or Lender by means of electronic communications pursuant to Section 9.02(b) or Section 9.02(d), including through the Platform.

"Approved Fund" shall mean any Person that is engaged in making, purchasing, holding or investing in loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Asset Sale" shall mean any Disposition of Property or series of related Dispositions of Property (excluding any Disposition pursuant to Section 6.04(a), Section 6.04(b), Section 6.04(c), Section 6.04(d), Section 6.04(e), Section 6.04(g), Section 6.04(i), Section 6.04(j), Section 6.04(k), Section 6.04(l), Section 6.04(m), Section 6.04(n), Section 6.04(o) or Section 6.04(p)) which yields gross proceeds (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds) in excess of $500,000 with respect to any Disposition or series of related Dispositions and $1,000,000 in the aggregate during any fiscal year of Holdings.

"Assignment and Assumption" shall mean an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 9.06), and acknowledged by the Disbursing Agent, in substantially the form of Exhibit C or any other form approved by the Disbursing Agent.

"Attributable Indebtedness" shall mean, when used with respect to any Sale and Leaseback, as at the time of determination, the present value (discounted at a rate equivalent to the Borrower's then-current weighted average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale and Leaseback, including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; *provided* that, if such Sale and Leaseback results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of Capital Lease Obligation.

"Available Tenor" shall mean, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.13(b)(iv).

"Bankruptcy Code" shall mean Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Base Rate" shall mean, for any day, a *per annum* rate of interest equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50%, (c) the Eurodollar Rate (after giving effect to any Eurodollar Rate "floor") that would be payable on such day for a Eurodollar Loan with a one-month interest period plus 1.00% and (d) 2.50%; *provided* that, if the Base Rate determined based on the foregoing is less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Eurodollar Rate shall

be effective as of the opening of business on the effective day of such change in the Prime Rate, the Federal Funds Effective Rate or the Eurodollar Rate, respectively.

"Base Rate Loan" shall mean a Loan bearing interest at a rate determined by reference to the Base Rate.

"Benchmark" shall mean, initially, LIBOR; *provided* that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to LIBOR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.13(b)(i).

"Benchmark Replacement" shall mean, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Required Lenders for the applicable Benchmark Replacement Date:

(a) the sum of: (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment;

(b) the sum of: (i) Daily Simple SOFR and (ii) the related Benchmark Replacement Adjustment;

(c) the sum of: (i) the alternate benchmark rate that has been selected by the Required Lenders (in consultation with the Disbursing Agent and the Borrower) as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (a), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Required Lenders in their reasonable discretion and notified to the Disbursing Agent; *provided further*, that in each case, such Benchmark Replacement shall be administratively feasible for the Disbursing Agent. If the Benchmark Replacement as determined pursuant to clause (a), (b) or (c) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment" shall mean, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

a. for purposes of clauses (a) and (b) of the definition of "Benchmark Replacement," the first alternative set forth in the order below that can be determined by the Required Lenders and is administratively feasible for the Disbursing Agent:

. the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(ii) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(b) for purposes of clause (c) of the definition of "Benchmark Replacement," the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Required Lenders (in consultation with the Borrower) for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities;

provided that, in the case of clause (a) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Required Lenders in their reasonable discretion and notified to the Disbursing Agent; *provided further*, that any such screen or other information service shall be administratively feasible for the Disbursing Agent.

"Benchmark Replacement Conforming Changes" shall mean, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Required Lenders decide may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Disbursing Agent in a manner substantially consistent with market practice (or, if the Required Lenders decide that adoption of any portion of such market practice is not administratively feasible or if the Required Lenders determine that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Required Lenders decide is reasonably necessary in connection with the administration of this Agreement); *provided* that any such changes shall be administratively feasible for the Disbursing Agent.

"Benchmark Replacement Date" shall mean the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein; or

(c) in the case of an Early Opt-in Election, the first Business Day after the Rate Election Notice is provided to each of the other parties hereto.

For the avoidance of doubt, (x) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (y) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" shall mean the occurrence of one or more of the following events with respect to the then-current Benchmark:

a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or the published component used in the calculation thereof), permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component) permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors o such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Unavailability Period" shall mean the period (if any) (a) beginning at the time that a Benchmark Replacement Date pursuant to clauses (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.13(b) and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document pursuant to Section 2.13(b).

"Beneficial Ownership Certification" shall mean a certificate regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" shall mean 31 C.F.R. § 1010.230.

"Board of Governors" shall mean the Board of Governors of the Federal Reserve System of the United States of America, or any successor thereto.

"Borrower" shall have the meaning set forth in the preamble hereto.

"Borrowing Notice" shall mean, with respect to any request for borrowing of Loans hereunder, a notice from the Borrower, substantially in the form of, and containing the information prescribed by, Exhibit F, delivered to the Disbursing Agent.

"Business Day" shall mean (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close and (ii) with respect to all notices, determinations, fundings and payments in connection with the Eurodollar Rate or any Eurodollar Loans, any day which is a Business Day described in clause (i) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

"Capital Expenditure Carryover Amount" shall have the meaning set forth in Section 6.15.

"Capital Expenditures" shall mean, for any period, without duplication, with respect to any Person, (a) any expenditure or commitment to expend money for any purchase or other acquisition of any asset, including capitalized leasehold improvements, which would be classified as a fixed or capital asset on a consolidated balance sheet of such Person prepared in accordance with GAAP and (b) Capital Lease Obligations; *provided* that, in any event, "Capital Expenditures" shall exclude (a) any such expenditure made in accordance with the terms of this Agreement (i) to restore, replace or rebuild property to the condition of such property immediately prior to any damage, loss, destruction or condemnation of such property, to the extent such expenditure is made with

insurance proceeds, condemnation awards or damage recovery proceeds relating to any such damage, loss, destruction or condemnation, or (ii) with the proceeds of the Disposition of any assets, equity proceeds, or insurance proceeds, (b) any such expenditure to the extent resulting from the trade-in of equipment or other assets, and (c) any Investment permitted hereunder.

"Capital Lease" shall mean, with respect to any Person, any lease of, or other arrangement conveying the right to use, any property by such Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such person prepared in accordance with GAAP. For the avoidance of doubt, no operating lease (as determined in accordance with GAAP) shall be considered a Capital Lease.

"Capital Lease Obligations" shall mean, with respect to any Person, the obligations of such Person to pay rent or other amounts under any Capital Lease, any lease entered into as part of any Sale and Leaseback or any Synthetic Lease, or a combination thereof, which obligations are (or would be, if such Synthetic Lease or other lease were accounted for as a Capital Lease) required to be classified and accounted for as Capital Leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof (or the amount that would be capitalized, if such Synthetic Lease or other lease were accounted for as a Capital Lease) determined in accordance with GAAP.

"CARES Act" shall mean, the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act and applicable rules and regulations, as amended from time to time.

"Cash Equivalents" shall mean, as at any date of determination, any of the following: (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the government of the United States of America or (ii) issued by any agency of the United States of America and the obligations of which are backed by the full faith and credit of the United States of America, in each case maturing within one year from the date of acquisition; (b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after the date of acquisition and having a rating of at least A-1 from S&P or at least P-1 from Moody's; (c) certificates of deposit, time deposits, Eurodollar time deposits or overnight bank deposits having maturities of six months or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (i) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator), (ii) has Tier 1 capital (as defined in such regulations) of not less than $1,000,000,000 and (iii) has a rating of at least AA- from S&P and Aa3 from Moody's; (d) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six months from the date of acquisition; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody's; (f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any

commercial bank satisfying the requirements of clause (c) of this definition; and (g) shares of money market, mutual or similar funds which (i) invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition; (ii) has net assets of not less than $500,000,000 and (iii) has the highest rating obtainable from either S&P or Moody's.

"Change in Law" shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" shall mean the occurrence of any of the following events:

(a) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) shall have (x) acquired beneficial ownership or control of 50.1% or more on a fully diluted basis of the voting and/or economic interest in the Equity Interests of Holdings or (y) obtained the power (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of Holdings;

(b) Holdings shall cease to beneficially own and control 100% on a fully diluted basis of each class of outstanding Equity Interests of the Borrower free and clear of all Liens (other than Permitted Equity Liens); or

(c) any "change of control" or similar event (however denominated) shall occur under any indenture or other agreement with respect to Material Indebtedness of any Loan Party.

"Closing Date" shall mean the date on which the conditions precedent set forth in Section 4.02 shall have been satisfied or waived.

"Code" shall mean the Internal Revenue Code of 1986, as amended (unless otherwise provided herein).

"Collateral" shall mean all Property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document, but in any event excluding Excluded Assets.

"Collateral Agent" shall have the meaning set forth in the recitals hereto.

"~~Commitment~~Commitments" shall mean~~, as to any Lender, the obligation of such Lender to make a Loan to the Borrower hereunder in a principal amount not to exceed the amount set forth under the heading "Commitment" opposite such Lender's name on Annex A or, as the case may be, in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same~~

~~may be changed from time to time pursuant to the terms hereof. The aggregate principal amount of the Commitments on the Closing Date is $40,000,000.~~ the Initial Commitments, the Second Amendment Commitments and the Fourth Amendment Commitments.

"Common Stock" shall mean the common stock of Holdings, par value $0.01 per share.

"Common Stock Deemed Outstanding" shall mean the sum of, without duplication, (a) the number of shares of Common Stock actually outstanding at such time, plus (b) the number of shares of Common Stock reserved for issuance at such time under any equity incentive plans approved by the board of directors of Holdings, regardless of whether the shares of Common Stock are actually subject to outstanding options or other rights to acquire shares, plus (c) the number of shares of Common Stock issuable upon exercise of any other options, warrants or rights to acquire shares actually outstanding at such time, plus (d) the number of shares of Common Stock issuable upon conversion or exchange of convertible securities actually outstanding at such time, in each case, regardless of whether the options or convertible securities are actually exercisable at such time.

"Compliance Certificate" shall mean a certificate duly executed by a Responsible Officer of Holdings, substantially in the form of Exhibit A.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Contractual Obligation" shall mean, with respect to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking (other than a Loan Document) to which such Person is a party or by which it or any of its Property is bound.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Corresponding Tenor" with respect to any Available Tenor shall mean, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

"Credit Extension" shall mean the making of a Loan.

"Daily Simple SOFR" shall mean, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Required Lenders in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; *provided*, that if the Disbursing Agent decides that any such convention is not administratively feasible for the Disbursing Agent, then the Required Lenders may establish another convention in their reasonable discretion, *provided* that such convention is administratively feasible for the Disbursing Agent.

"Debtor Relief Laws" shall mean the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership,

insolvency, reorganization or similar debtor relief laws of the United States of America or other applicable jurisdictions from time to time in effect.

"Default" shall mean any event, occurrence or condition which is, or upon notice, lapse of time or both would constitute, an Event of Default.

"Delayed Draw Ticking Fee" shall have the meaning set forth in Section 2.05(b).

"Disbursing Agent" shall have the meaning set forth in the preamble hereto.

"Disinterested Director" shall have the meaning set forth in Section 6.08.

"Disposition" shall mean, with respect to any Property, any sale, lease, sublease, assignment, conveyance, transfer, exclusive license or other disposition thereof (including (i) by way of merger or consolidation, (ii) any Sale and Leaseback and (iii) any Synthetic Lease); and the terms "Dispose" and "Disposed of" shall have correlative meanings.

"Disqualified Equity Interests" shall mean any Equity Interests that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are exchangeable), or upon the happening of any event or condition, (a) require the payment of any dividends (other than dividends payable solely in shares of Qualified Equity Interests), (b) mature or are mandatorily redeemable or subject to mandatory repurchase or redemption or repurchase at the option of the holders thereof (other than solely for Qualified Equity Interests), in each case in whole or in part and whether upon the occurrence of any event, pursuant to a sinking fund obligation on a fixed date or otherwise (including as the result of a failure to maintain or achieve any financial performance standards) or (c) are or become convertible into or exchangeable for, automatically or at the option of any holder thereof, any Indebtedness, Equity Interests or other assets other than Qualified Equity Interests, in the case of each of clauses (a), (b) and (c), prior to the date that is 91 days after the Maturity Date at the time of issuance of such Equity Interests (other than (i) following Payment in Full or (ii) upon a "change in control"; *provided* that any payment required pursuant to this clause (ii) is subject to the prior Payment in Full); *provided*, *however*, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of Holdings, the Borrower or their Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by a Group Member in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability.

"Disqualified Lender" shall mean (a) any Person that is a competitor of Holdings and its Subsidiaries, which Person has been designated as a "Disqualified Lender" by written notice to Disbursing Agent and the Lenders by Borrower prior to the Closing Date and (b) Affiliates of Persons described in clause (a) above (other than such Affiliates that are bona fide fixed income investors, debt funds, regulated bank entities or unregulated lending entities generally engaged in making, purchasing, holding or otherwise investing in commercial loans, debt securities or similar extensions of credit in the ordinary course of business) that are identified in writing by Borrower to Disbursing Agent and the Lenders prior to the Closing Date; *provided*, that the inclusion of such Persons as Disqualified Lenders shall not retroactively apply to disqualify any Persons that have previously acquired an assignment or participation in the Loans; *provided*, *further*, that the term

"Disqualified Lender" shall exclude any Person that Borrower has designated as no longer being a "Disqualified Lender" by written notice delivered to Disbursing Agent and the Lenders from time to time. Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that Disbursing Agent will not have any responsibility or obligation of any kind to determine whether any Lender or potential Lender is a Disqualified Lender and Disbursing Agent will have no liability for, or any duty to ascertain or inquire into, monitor or enforce, compliance with assignment or participation provisions with respect to any assignment or participation made to a Disqualified Lender. Disbursing Agent may deliver or furnish the list of Disqualified Lenders to any Lender upon its request.

"Dollars" or "$" shall mean lawful money of the United States of America.

"Domestic Foreign Holding Company" shall mean any Domestic Subsidiary that holds no material assets other than Equity Interests (or Equity Interests and Indebtedness) of one or more Foreign Subsidiaries that is a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"Domestic Subsidiary" shall mean any Subsidiary of Holdings organized under the laws of the United States of America, any State thereof, the District of Columbia, or any other jurisdiction within the United States of America.

"Early Opt-in Election" shall mean, if the then-current Benchmark is LIBOR, the occurrence of: (a) a notification by the Required Lenders to the Disbursing Agent (with a copy to the Borrower) that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and (b) the joint election by the Borrower and the Required Lenders by affirmative vote to trigger a fallback from LIBOR and the provision by the Borrower of written notice of such election to each of the other parties hereto (the "Rate Election Notice").

"Eligible Assignee" shall mean any Person (other than a Disqualified Lender) that meets the requirements to be an assignee under Section 9.06(b).

"Eligible Inventory" shall mean, at any time of determination, Inventory owned by a Loan Party which satisfies the general criteria set forth below and which is otherwise acceptable to the Required Lenders in their reasonable discretion (*provided*, that the Required Lenders may, in their reasonable discretion, change the general criteria for acceptability of Eligible Inventory and shall notify the Borrower of such change promptly thereafter). Inventory shall be deemed to meet the current general criteria if:

(a) it consists of raw materials;

(b) it is in good, new and saleable condition;

(c) it is not slow-moving (defined as inventory units with no usage for 12 months), obsolete, damaged, contaminated, unmerchantable, returned, rejected, discontinued or repossessed;

(d) it is not in the possession of a processor, consignee or bailee, or located on premises leased or subleased to the applicable Loan Party, or on premises subject to a mortgage in favor of a Person other than the Collateral Agent, unless such processor, consignee, bailee or mortgagee or the lessor or sublessor of such premises, as the case may be, has executed and delivered all documentation which the Required Lenders shall require to evidence the subordination or other limitation or extinguishment of such Person's rights with respect to such Inventory and the Collateral Agent's right to gain access thereto;

(e) it does not consist of labels, pallets, consigned items, supplies or packaging;

(f) it meets all standards imposed by any Governmental Authority;

(g) it is at all times subject to the Collateral Agent's duly perfected, first priority security interest and no other Lien except a Permitted Lien;

(h) it is not purchased or manufactured pursuant to a license agreement that is not assignable to the Collateral Agent or any of its permitted assignees, unless such license agreement is satisfactory to the Required Lenders; and

(i) it is located at the Mexico Facility.

"Environmental Laws" shall mean any and all applicable laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or other legally binding requirements (including, without limitation, principles of common law) of any Governmental Authority, regulating, relating to or imposing liability or standards of conduct concerning pollution, the preservation or protection of the environment, natural resources or human or employee health and safety (as it relates to exposure to Materials of Environmental Concern), or the generation, manufacture, use, labeling, treatment, storage, handling, transportation or release of, or exposure to, Materials of Environmental Concern.

"Environmental Liability" shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties, attorney or consultant fees or indemnities) resulting from or based upon (a) non-compliance with any Environmental Law or any Environmental Permit, (b) exposure to any Materials of Environmental Concern, (c) Release or threatened Release of any Materials of Environmental Concern, (d) any investigation, remediation, removal, clean-up or monitoring required under Environmental Laws or required by a Governmental Authority (including without limitation Governmental Authority oversight costs that the party conducting the investigation, remediation, removal, clean-up or monitoring is required to reimburse) or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Environmental Permits" shall mean any and all Permits required under any Environmental Law.

"Equity Interest" shall mean, with respect to any Person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited), if such Person is a limited liability company, membership interests, and any other interest or participation that confers

on a Person the right to receive a share of the profits and losses of, dividends or distributions of property of, such partnership, whether outstanding on the Closing Date or issued on or after the Closing Date, but excluding debt securities convertible or exchangeable into such equity interests.

"Equity Offering" shall mean, the sale or issuance (or reissuance) by Holdings or any of its Subsidiaries of any Equity Interests or beneficial interests (common stock, preferred stock, partnership interests, member interests or otherwise) or any options, warrants, convertible securities or other rights to purchase such Equity Interests or beneficial interests.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, the regulations promulgated thereunder and any successor thereto.

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated) that, together with any Group Member, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 or 303 of ERISA or Section 412 or 430 of the Code, is treated as a single employer under Section 414 of the Code. Any former ERISA Affiliate of the Group Members shall continue to be considered an ERISA Affiliate of the Group Members within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of any Group Member and with respect to liabilities arising after such period for which any Group Member could be liable under the Code or ERISA.

"ERISA Event" shall mean (a) a "reportable event" within the meaning of Section 4043(c) of ERISA and the regulations issued thereunder with respect to any Single Employer Plan (excluding those for which the provision for 30 day notice to the PBGC has been waived by regulation in effect on the Closing Date); (b) the material failure to meet the minimum funding standard of Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA with respect to any Single Employer Plan, whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Single Employer Plan; (d) the termination of any Single Employer Plan or the withdrawal or partial withdrawal of any Group Member from any Single Employer Plan or Multiemployer Plan; (e) a determination that any Single Employer Plan is, or is expected to be, in "at risk" status (as defined in Section 430 of the Code or Section 303 of ERISA); (f) a determination that any Multiemployer Plan is, or is expected to be, in "critical" or "endangered" status under Section 432 of the Code or Section 305 of ERISA; (g) the receipt by any Group Member or any of their respective ERISA Affiliates from the PBGC or a plan administrator of any notice relating to an intention to terminate any Single Employer Plan or to appoint a trustee to administer any Single Employer Plan; (h) the adoption of any amendment to a Single Employer Plan that would require the provision of security pursuant to Section 436(f) of the Code; (i) the receipt by any Group Member or any of their respective ERISA Affiliates of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, within the meaning of Title IV of ERISA; (j) the material failure by any Group Member or any of their respective ERISA Affiliates to make a required contribution to a Multiemployer Plan; (k) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in material liability to any Group Member; (l) the imposition of a lien pursuant to Section 430(k) of the Code or Section 303(k) of ERISA or a violation of Section 436 of the Code with respect to any Single Employer Plan; (m) the assertion of a material claim (other than routine

claims for benefits) against any Plan other than a Multiemployer Plan or the assets thereof, or against any Group Member or any of their respective ERISA Affiliates in connection with any Plan; or (n) the occurrence of an act or omission which could give rise to the imposition on any Group Member or any of their respective ERISA Affiliates of any material fine, penalty, tax or related charge under Chapter 43 of the Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Plan.

"Eurodollar Base Rate" shall mean, with respect to any Eurodollar Loan for any Interest Period, LIBOR as published by ICE Benchmark Administration Limited, a United Kingdom company (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period), at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; *provided* that, if such rate is not so published at such time for such Interest Period (an "Impacted Interest Period") then the Eurodollar Base Rate shall be the Interpolated Rate; *provided* that, if the Eurodollar Base Rate or any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Eurodollar Loan" shall mean a Loan bearing interest at a rate determined by reference to the Eurodollar Rate.

"Eurodollar Rate" shall mean, subject to the implementation of a Benchmark Replacement Rate in accordance with Section 2.13(b), with respect to any Eurodollar Loan for any Interest Period, a *per annum* rate of interest (rounded upward, if necessary, to the next $1/100^{th}$ of 1.00%) equal to the greater of (a) (i) the Eurodollar Base Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate and (b) 1.50%.

"Eurodollar Tranche" shall mean the collective reference to Eurodollar Loans the then current Interest Periods with respect to all of which begin on the same date and end on the same later date.

"Event of Default" shall mean any of the events specified in Section 7.01; *provided* that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Excluded Assets" shall mean:

(a) any fee owned Real Property (other than Material Owned Real Property) and any leasehold rights and interests in Real Property;

(b) commercial tort claims where the amount of damages claimed by the applicable Loan Party is less than $500,000;

(c) governmental licenses, state or local franchises, charters and authorizations and any other property and assets to the extent that the Collateral Agent may not validly possess a security interest therein under applicable Requirements of Law (including, without limitation, rules and regulations of any Governmental Authority or agency) or the pledge or creation of a security interest in which would require governmental consent, approval, license or authorization that has not been obtained after the applicable Loan Party has used commercially reasonable efforts to do so, other than

to the extent such prohibition or limitation on possessing a security interest therein is rendered ineffective under the UCC or other applicable Requirements of Law notwithstanding such prohibition or limitation;

(d) any lease, license, Permit or agreement to the extent that a grant of a security interest therein (i) is prohibited by applicable Requirements of Law other than to the extent such prohibition is rendered ineffective under the UCC or other applicable Requirements of Law notwithstanding such prohibition or (ii) to the extent and for so long as it would violate or invalidate the terms thereof (in each case, after giving effect to the relevant provisions of the UCC or other applicable Requirements of Law) or would give rise to a termination right of an unaffiliated third party thereunder or require consent of an unaffiliated third party thereunder (except to the extent such provision is overridden by the UCC or other Requirements of Law), in each case, only to the extent that such limitation on such pledge or security interest is otherwise permitted under Section 6.11;

(e) (i) Margin Stock (to the extent a security interest therein would violate the provisions of the regulations of the Board of Governors, including Regulation T, Regulation U or Regulation X) and (ii) Equity Interests in any Person other than Wholly Owned Subsidiaries that cannot be pledged without the consent of unaffiliated third parties (unless such consent has been obtained);

(f) (i) voting Equity Interests in excess of 65% (or such greater percentage that could not reasonably be expected to cause any material adverse Tax consequences) of the total voting Equity Interests in any Excluded Foreign Subsidiary and (ii) any assets of any Excluded Foreign Subsidiary (including 100% of the Equity Interests in any Subsidiary whose immediate parent is an Excluded Foreign Subsidiary);

(g) any intent-to-use trademark or service mark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto and acceptance thereof by the United States Patent and Trademark Office, to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of or void such intent-to-use trademark or service mark application or any registration that may issue therefrom under applicable federal law;

(h) machinery and equipment located at the Shoals Facility that is transferred to the landlord or otherwise disposed of in connection with the Shoals Facility Lease Termination (including any such disposition made by the Mexican Subsidiaries if any of such machinery and equipment is first transferred to them);

(i) the LC Collateral Account; and

(j) particular assets if and for so long as, if reasonably agreed by the Required Lenders and the Borrower, the cost of creating a pledge or security interest in such assets exceed the practical benefits to be obtained by the Lenders therefrom;

provided, *however*, that Excluded Assets shall not include any proceeds, substitutions or replacements of any Excluded Assets referred to in clauses (a) through (j) (unless such Proceeds, substitutions or replacements would independently constitute Excluded Assets referred to in clauses (a) through (j)).

"Excluded Foreign Subsidiary" shall mean, for so long as any such Subsidiary's status as a Guarantor (or the pledge of such Subsidiary's Equity Interests or assets) could reasonably be expected to cause material adverse Tax consequences, (a) each Foreign Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957 of the Code, and (b) each Domestic Foreign Holding Company. For the avoidance of doubt, the definition of Excluded Foreign Subsidiary shall include any Foreign Subsidiaries in existence on the Closing Date (other than the Mexican Subsidiaries).

"Excluded Perfection Assets" shall mean:

(a) (i) rail cars (other than any rail cars owned by any Loan Party that are leased, or intended to be leased, to third parties, which are required to be perfected), (ii) motor vehicles and other assets (other than rail cars) subject to certificates of title with a book value of less than $100,000 individually and $200,000 in the aggregate and (iii) airplanes;

(b) letter of credit rights, except to the extent constituting support obligations for other Collateral as to which perfection of the security interest in such other Collateral is accomplished solely by the filing of a UCC financing statement or another method that is required by the Security Documents for such other Collateral; and

(c) particular assets if and for so long as, if reasonably agreed by the Required Lenders and the Borrower, the cost of perfecting a pledge or security interest in such assets exceed the practical benefits to be obtained by the Lenders therefrom.

"Excluded Subsidiary" shall mean (a) any Subsidiary that is not a Wholly Owned Subsidiary of a Loan Party, (b) any Immaterial Subsidiary, (c) any special purpose securitization vehicle (or similar entity), (d) any captive insurance Subsidiary, (e) any not-for-profit Subsidiary and (f) any Excluded Foreign Subsidiary.

"Excluded Taxes" shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or in this Agreement (other than pursuant to an assignment request by the Borrower under Section 2.19) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.16, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's

failure to comply with Section 2.16(g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Existing Credit Facility" shall mean that certain Credit and Security Agreement dated as of April 12, 2019 among Holdings, JAC Operations, Inc., Freight Car Services, Inc., Johnstown America, LLC, FreightCar Rail Services, LLC, FreightCar Roanoke, LLC and FreightCar Alabama, LLC, as borrowers, FreightCar Short Line, Inc. and the Borrower (f/k/a FCAI Holdings, LLC), as guarantors, and BMO Harris Bank N.A., as Lender, as it may have been amended, restated, supplemented or otherwise modified prior to the Closing Date.

"Extraordinary Receipts" shall mean any cash received by any Group Member not in the ordinary course of business (and not consisting of Net Cash Proceeds) including, without limitation, pension plan reversions, judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, purchase price adjustments, and indemnity payments to the extent not made to reimburse a payment made by a Group Member, in each case, in excess of $500,000 individually and $1,000,000 in the aggregate during any fiscal year of Holdings.

"FASB ASC" shall mean the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

"Federal Funds Effective Rate" shall mean, for any day, the rate *per annum* equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to the Disbursing Agent on such day on such transactions as determined by the Disbursing Agent.

"Fee Letter" shall mean that certain fee proposal letter provided by U.S. Bank National Association and executed by the Borrower on the Signing Date, as it may be amended, restated, supplemented or otherwise modified.

"First Amendment" shall mean that certain Amendment No. 1 to Credit Agreement, dated as of January 30, 2021, by and among Holdings, the Borrower, and the Lenders party thereto.

"Floor" shall mean the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Eurodollar Rate.

"Foreign Lender" shall mean a Lender that is not a U.S. Person.

"Foreign Subsidiary" shall mean any Subsidiary of Holdings that is not a Domestic Subsidiary.

"Fourth Amendment" shall mean that certain Amendment No. 4 to Credit Agreement, dated as of December 30, 2021, by and among Holdings, the Borrower, the other Loan Parties, the Lenders party thereto, the Disbursing Agent and the Collateral Agent.

"Fourth Amendment Availability Period" shall mean the period commencing on the Fourth Amendment Effective Date and ending on January 31, 2023.

"Fourth Amendment Commitment" shall mean, as to any Lender, the obligation of such Lender, if any, to make one or more Loans to the Borrower hereunder in a principal amount not to exceed the amount set forth under the heading "Fourth Amendment Commitment" opposite such Lender's name on Annex A or, as the case may be, in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The aggregate principal amount of the Fourth Amendment Commitments on the Fourth Amendment Effective Date is $15,000,000.

"Fourth Amendment Effective Date" shall mean December 30, 2021.

"Fourth Amendment Effective Date Lenders" shall mean CO Finance LVS VI LLC, OC III LVS XII LP and OC III LVS XXVIII LP.

"Fourth Amendment Funding Date" shall mean each date on which the Borrower borrows Fourth Amendment Loans, which must be a Business Day.

"Fourth Amendment Loan" shall mean a loan made by a Lender pursuant to Section 2.01(c).

"Fourth Amendment Warrants" shall have the meaning set forth in Section 4.03(h).

"Funded Debt" shall mean, with respect to any Person, all Indebtedness of such Person of the types described in clauses (a) through (e) and, solely with respect to letters of credit, bankers' acceptances and similar facilities that have been drawn but not yet reimbursed, clause (f) of the definition of "Indebtedness".

"GAAP" shall mean generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States of America, that are applicable to the circumstances as of the date of determination, consistently applied.

"Gil Family" shall mean, individually or collectively, as the context may require, Jesus Gil, Alejandro Gil and Salvador Gil and any of their Affiliates.

"Governmental Authority" shall mean the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to

government (including any supra-national bodies such as the European Union or the European Central Bank).

"Grantor" shall mean any Loan Party that is party to the Guarantee and Collateral Agreement.

"Group Member" shall mean each of Holdings, the Borrower and their Subsidiaries (other than any Railcar Leasing Subsidiary) and "Group Members" shall refer to each such Person, collectively.

"Guarantee and Collateral Agreement" shall mean the Guarantee and Collateral Agreement, to be dated as of the Closing Date and executed and delivered by Holdings, the Borrower and each Subsidiary Guarantor in favor of the Collateral Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Guarantee Obligation" shall mean, with respect to any Person (the "guaranteeing person"), any obligation of (a) the guaranteeing person or (b) another Person (including any bank under any letter of credit), if to induce the creation of which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; *provided*, *however*, that the term "Guarantee Obligation" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (1) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (2) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"Guarantors" shall mean the collective reference to Holdings, the Borrower and the Subsidiary Guarantors.

"Holdings" shall have the meaning set forth in the preamble hereto.

"Highest Lawful Rate" shall mean the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

"Historical Audited Financial Statements" shall mean the audited consolidated balance sheets of Holdings and its Subsidiaries as at the end of the fiscal years ended December 31, 2017, 2018 and 2019 and the related consolidated statements of income or operations, changes in stockholders' equity and cash flows for such fiscal years, including the notes thereto.

"Immaterial Subsidiary" shall mean any Subsidiary designated by the Borrower as an Immaterial Subsidiary if and for so long as such Immaterial Subsidiary, together with all other Immaterial Subsidiaries so designated as Immaterial Subsidiaries, does not have (a) total assets at such time exceeding 2.5% of the total assets of Holdings and its Subsidiaries, on a consolidated basis, or (b) total revenues and operating income for the most recent 12-month period for which financial statements are available exceeding 2.5% of the total revenues and operating income for the most recent 12-month period of Holdings and its Subsidiaries, on a consolidated basis; *provided* that any Subsidiary would not be an Immaterial Subsidiary to the extent the above required terms are not satisfied; *provided*, *further*, that the Borrower may undesignate any Immaterial Subsidiary in order to cause the above required terms to be satisfied.

"Impacted Interest Period" shall have the meaning set forth in the definition of "Eurodollar Base Rate".

"Indebtedness" shall mean, of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of Property or services, including seller notes or earn-out obligations appearing on such Person's balance sheet in accordance with GAAP (other than trade payables incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures, loan agreements or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property), (e) all Capital Lease Obligations, Purchase Money Obligations or Attributable Indebtedness of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under bankers' acceptance, letter of credit or similar facilities, (g) all obligations of such Person in respect of Disqualified Equity Interests of such Person, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, but if such obligation has not been assumed, then such obligation shall be valued at the lesser of the amount of such obligation and the fair market value of the property securing such obligation at any time of determination and (j) for the purposes of Section 6.01 and Section 7.01(e) only, all obligations of such Person in respect of Swap Contracts.

"Indemnified Liabilities" shall have the meaning set forth in Section 9.05(b).

"Indemnified Taxes" shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Indemnitee" shall have the meaning set forth in Section 9.05(b).

"Initial Commitment" shall mean, as to any Lender, the obligation of such Lender to make a Loan to the Borrower hereunder on the Closing Date in a principal amount not to exceed the amount set forth under the heading "Initial Commitment" opposite such Lender's name on Annex A or, as the case may be, in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The aggregate principal amount of the Initial Commitments on the Closing Date is $40,000,000.

"Intellectual Property" shall mean all rights, priorities, and privileges relating to intellectual property, whether arising under United States of America, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, patents, trademarks, service marks, moral rights, technology, software, source code, know-how, processes, recipes, formulas, trade secrets, confidential information, domain names, and social media accounts; all rights, licenses, and covenants relating to any of the foregoing; and all rights to sue at law or in equity for any infringement, misappropriation, or other impairment of any of the foregoing, including the right to receive all proceeds and damages therefrom.

"Intellectual Property Security Agreements" shall have the meaning set forth in the Guarantee and Collateral Agreement.

"Intercreditor Agreement" shall mean that certain Intercreditor Agreement dated as of the Closing Date, as amended by Amendment No. 1 to Intercreditor Agreement, dated as of the Second Amendment Funding Date ~~and~~, Amendment No. 2 to Intercreditor Agreement, dated as of the Third Amendment Effective Date, and Amendment No. 3 to Intercreditor Agreement, dated as of the Fourth Amendment Effective Date, between the Revolving Loan Lender and the Collateral Agent, and acknowledged by the Loan Parties, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Interest Payment Date" shall mean (a) as to any Eurodollar Loan, the last day of each Interest Period applicable to such Eurodollar Loan and the final maturity date of such Eurodollar Loan; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December to occur while such Loan is outstanding and the Maturity Date.

"Interest Period" shall mean, with respect to any Eurodollar Loan, the period commencing on the date such Eurodollar Loan is disbursed or converted to or continued as a Eurodollar Loan and ending on the date that is three months thereafter, as selected by the Borrower in its Borrowing Notice; *provided* that (i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such next succeeding Business Day falls in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period pertaining to a Eurodollar Loan that

commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no Interest Period shall extend beyond the Maturity Date.

"International Trade Laws" shall mean (a) Sanctions; (b) export control and/or import laws and regulations of the United States and other jurisdictions applicable to the Borrower or any of its Affiliates, including the Arms Export Control Act (22 U.S.C. 2778), the International Traffic in Arms Regulations (ITAR) (22 CFR 120-130), the Export Administration Regulations (EAR) (15 CFR 730-774), and the laws and regulations administered by Customs and Border Protection (19 CFR Parts 1-199); and (c) Anti-Corruption Laws.

"Interpolated Rate" shall mean, at any time, for any Impacted Interest Period, the rate *per annum* (rounded to the same number of decimal places as the rate published by ICE Benchmark Administration Limited) equal to the rate that results from interpolating on a linear basis between: (a) the rate published by ICE Benchmark Administration Limited for the longest period (for which such rate is available) that is shorter than the Impacted Interest Period and (b) the rate published by ICE Benchmark Administration Limited for the shortest period (for which such rate is available) that exceeds the Impacted Interest Period, in each case, at such time.

"Inventory" shall have the meaning assigned to such term in Article 9 of the Uniform Commercial Code.

"Investment" shall mean, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IRS" shall mean the United States Internal Revenue Service.

"ISDA Definitions" shall mean the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or any successor thereto.

"Johnstown Facility" shall mean that certain facility located at 129 Industrial Park Rd., Johnstown, Pennsylvania 15904.

"Junior Indebtedness" shall mean, collectively, any Indebtedness of any Group Member that is (x) secured by a Lien that is junior in priority to the Lien securing the Obligations, (y) by its terms

subordinated in right of payment to all or any portion of the Obligations pursuant to subordination terms reasonably satisfactory to the Required Lenders or (z) unsecured.

"Lenders" shall have the meaning set forth in the preamble hereto.

"LC Collateral Account" shall mean the "Collateral Account" referenced in Section 7 of the Reimbursement Agreement.

"LC Provider" shall have the meaning set forth in the preamble hereto. There shall not be more than one LC Provider at any time.

"LIBOR" shall mean the London interbank offered rate for Dollars.

"Lien" shall mean, with respect to any property, (a) any mortgage, deed of trust, lien (statutory or other), judgment lien, pledge, encumbrance, claim, charge, assignment, hypothecation, deposit arrangement, security interest or encumbrance of any kind or any arrangement to provide priority or preference in the nature of a security interest or any filing of any financing statement under the UCC or any other similar notice of Lien under any similar notice or recording statute of any Governmental Authority, including any easement, servitude, right-of-way or other encumbrance on title to real property, in each of the foregoing cases whether voluntary or imposed or arising by operation of law, and any agreement to give any of the foregoing, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Lien Waiver Agreement" shall mean an agreement which is executed in favor of the Collateral Agent and, in certain cases, the Revolving Loan Lender by a Person who owns or occupies premises at which any Collateral may be located from time to time, in form and substance reasonably satisfactory to the Collateral Agent and the Required Lenders.

"Liquidity" shall mean the aggregate amount of (a) all Unrestricted Cash of the Loan Parties, (b) the undrawn and available portion of the commitments under the Revolving Loan Agreement and any other revolving credit facility of the Borrower ~~and~~, (c) the undrawn and available portion of the Fourth Amendment Commitment and (d) to the extent not constituting collateral with respect to the Revolving Loan Agreement or any other revolving credit facility of the Borrower, an amount equal to (i) from the Second Amendment Effective Date through October 31, 2021, $15,000,000 and (ii) thereafter, the lesser of (A) $10,000,000 or (B) 45% of the net book value of Eligible Inventory of the Loan Parties located in Mexico and earmarked for firm orders.

"Loan" shall mean (a) a loan made by a Lender pursuant to Section 2.01(a) on the Closing Date ~~and~~, (b) the Second Amendment Loans and (c) the Fourth Amendment Loans.

"Loan Documents" shall mean, collectively, (i) this Agreement, including the First Amendment, the Second Amendment ~~and~~, the Third Amendment and the Fourth Amendment, (ii) the Notes, (iii) the Security Documents, (iv) the Intercreditor Agreement, (v) the Fee Letter, (vi) the Reimbursement Agreement and (vii) all other documents, certificates, instruments or agreements

executed and delivered by or on behalf of a Loan Party for the benefit of any Agent or Lender in connection herewith on or after the Signing Date.

"Loan Parties" shall mean, collectively, the Borrower and each Guarantor. For the avoidance of doubt, no Railcar Leasing Subsidiary shall be a Loan Party.

"Make Whole Amount" shall mean (a) with respect to the Loans made on the Closing Date, an amount equal to the sum of (i) the present value, as determined by the Borrower and certified by a Responsible Officer of the Borrower to the Lenders, of all required interest payments due on the Loans that are prepaid from the date of prepayment, acceleration, satisfaction or release through and including the third anniversary of the Closing Date (excluding accrued interest) (assuming that the interest rate applicable to all such interest is equal to (x) the Eurodollar Rate for an Interest Period of three months in effect on the third Business Day prior to such prepayment or acceleration plus (y) the Applicable Margin for Eurodollar Rate Loans in effect as of such prepayment date)~~ plus (ii) the prepayment premium that would be due under Section 2.06(b) if such prepayment, acceleration, satisfaction or release were made on the day after the third anniversary of the Closing Date~~, in each case discounted to the date of prepayment or acceleration on a quarterly basis (assuming a 360-day year and actual days elapsed) at a rate equal to the sum of the Treasury Rate plus 0.50%~~ and ~~, plus (ii) the prepayment premium that would be due under Section 2.06(b) if such prepayment, acceleration, satisfaction or release were made on the day after the third anniversary of the Closing Date, (b) with respect to the Second Amendment Loans, an amount equal to the sum of (i) the present value, as determined by the Borrower and certified by a Responsible Officer of the Borrower to the Lenders, of all required interest payments due on the Second Amendment Loans ~~from and ~~after March ~~31~~30, 2022 that are prepaid from the date of prepayment, acceleration, satisfaction or release through and including the third anniversary of the Closing Date (excluding accrued interest) (assuming that the interest rate applicable to all such interest is equal to (x) the Eurodollar Rate for an Interest Period of three months in effect on the third Business Day prior to such prepayment or acceleration plus (y) the Applicable Margin for Eurodollar Rate Loans in effect as of such prepayment date)~~ plus (ii) the prepayment premium that would be due under Section 2.06(b) if such prepayment, acceleration, satisfaction or release were made on the day after the third anniversary of the Closing Date~~, in each case discounted to the date of prepayment or acceleration on a quarterly basis (assuming a 360-day year and actual days elapsed) at a rate equal to the sum of the Treasury Rate plus 0.50%~~.~~, plus (ii) the prepayment premium that would be due under Section 2.06(b) if such prepayment, acceleration, satisfaction or release were made on the day after the third anniversary of the Closing Date and (c) with respect to the Fourth Amendment Loans, an amount equal to the sum of (i) the present value, as determined by the Borrower and certified by a Responsible Officer of the Borrower to the Lenders, of all required interest payments due on the Fourth Amendment Loans during the period after January 30, 2023 that are prepaid from the date of prepayment, acceleration, satisfaction or release through and including the third anniversary of the Closing Date (excluding accrued interest) (assuming that the interest rate applicable to all such interest is equal to (x) the Eurodollar Rate for an Interest Period of three months in effect on the third Business Day prior to such prepayment or acceleration plus (y) the Applicable Margin for Eurodollar Rate Loans in effect as of such prepayment date), in each case discounted to the date of prepayment or acceleration on a quarterly basis (assuming a 360-day year and actual days elapsed) at a rate equal to the sum of the Treasury Rate plus 0.50%, plus (ii) the prepayment premium that would be due under Section 2.06(b) if such prepayment, acceleration, satisfaction or release were made on the day after the third anniversary of the Closing Date.

"Margin Stock" shall have the meaning assigned to such term in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"Master Agreement" shall have the meaning set forth in the definition of "Swap Contract."

"Material Adverse Effect" shall mean a material adverse effect on and/or material adverse developments with respect to (a) (i) from the period beginning on the Signing Date through the Closing Date, the business, operations, properties, assets, financial condition or prospects of the Group Members taken as a whole and (ii) after the Closing Date, the business, operations, properties, assets or financial condition of the Group Members taken as a whole; (b) the ability of any Loan Party to fully and timely perform its Obligations; (c) the legality, validity, binding effect or enforceability against any Loan Party of this Agreement or any other Loan Document to which it is a party; or (d) the rights, remedies and benefits available to, or conferred upon, any Agent, any Lender or any other Secured Party under any Loan Document.

"Material Agreement" shall mean any agreement, contract or instrument (other than (x) agreements, contracts or instruments with customers of any Loan Party and (y) the Shoals Facility Lease) to which any Loan Party is a party or by which any Loan Party or any of its properties is bound (other than the Loan Documents) (i) pursuant to which any Loan Party is required to make payments or other consideration, or will receive payments or other consideration, in excess of $5,000,000 in any 12-month period, (ii) governing, creating, evidencing or relating to Material Indebtedness of any Loan Party or (iii) the termination or suspension of which, or the failure of any party thereto to perform its obligations thereunder, could reasonably be expected to have a Material Adverse Effect.

"Material Indebtedness" shall mean Indebtedness (other than the Obligations) of any Group Member in an individual principal amount of $5,000,000 or more.

"Material Owned Real Property" shall mean any Real Property, or group of related tracts of Real Property, acquired (whether in a single transaction or a series of transactions) or owned in fee by any Loan Party, in each case, in respect of which the fair market value (including the fair market value of improvements owned or leased by such Loan Party and located thereon) on such date of determination exceeds $1,000,000.

"Materials of Environmental Concern" shall mean any material, substance or waste that is listed, regulated, or otherwise defined as hazardous, toxic, radioactive, a pollutant or a contaminant under applicable Environmental Law, or which could give rise to liability under any Environmental Laws, including but not limited to petroleum (including crude oil or any fraction thereof), petroleum by-products, toxic mold, polychlorinated biphenyls, urea-formaldehyde insulation, per- or poly-fluoroalkyl substances, asbestos or asbestos-containing material.

"Maturity Date" shall mean the earlier of (i) the fifth anniversary of the Closing Date and (ii) the date on which all Loans shall become due and payable in full hereunder, whether by acceleration or otherwise; *provided* that, if any such day is not a Business Day, the Maturity Date shall be the Business Day immediately succeeding such day.

"Mexican ABL Credit Facility" shall mean the revolving credit facility evidenced by a revolving credit agreement in form and substance satisfactory to the Required Lenders, which may be entered into after the Closing Date by one or more of the Mexican Subsidiaries, as borrowers, and the lenders from time to time party thereto, as amended, restated, supplemented, refinanced, replaced or otherwise modified from time to time, and which shall (i) have revolving credit commitments in an aggregate principal amount reasonably satisfactory to the Required Lenders and (ii) be secured only by inventory and related assets owned by one or more of the Mexican Subsidiaries and located in Mexico.

"Mexican Security Documents" shall have the meaning set forth in the Guarantee and Collateral Agreement.

"Mexican Subsidiaries" shall mean, collectively, (a) FCA-Fasemex, S. de R.L., de C.V., an entity organized under the laws of Mexico, and (b) FCA-Fasemex Enterprise, S. de R.L., de C.V., an entity organized under the laws of Mexico.

"Mexico Facility" shall mean that certain facility located at Tepic 1100, Colonia California, Coahuila, México, C.P. 25870.

"Mexico Facility Landlord" shall mean Fabricaciones y Servicios de México, S.A. de C.V.

"Mexico Facility Lease" shall mean that certain Amended and Restated Lease Agreement to be entered into on or prior to the Closing Date by FCA-Fasemex, S. de R.L., de C.V., as lessee, and the Mexican Facility Landlord, as lessor, in connection with the lease of the Mexico Facility.

"Mexico JV Acquisition Agreement" shall mean, that certain Equity Purchase Agreement, to be entered into on or prior to the Closing Date by and among the Borrower, Fasemex, Inc., a Texas corporation, Fabricaciones y Servicios de México, S.A. de C.V., and Agben México, S.A. de C.V., an entity organized under the laws of Mexico.

"Mexico JV Transaction" shall mean, the acquisition by Borrower of 50% of each of the outstanding equity interests in (a) FCA-Fasemex, LLC, a Delaware limited liability company, (b) FCA-Fasemex, S. de R.L., de C.V., an entity organized under the laws of Mexico, and (c) FCA-Fasemex Enterprise, S. de R.L., de C.V., an entity organized under the laws of Mexico, pursuant to the Mexico JV Acquisition Agreement.

"Moody's" shall mean Moody's Investor Service, Inc. and any successor thereto.

"Mortgaged Properties" shall mean any Material Owned Real Property as to which the Collateral Agent for the benefit of the Secured Parties shall be granted a Lien pursuant to the Mortgages.

"Mortgages" shall mean each of the mortgages and deeds of trust made by any Loan Party, if any, in form and substance reasonably satisfactory to the Required Lenders (with such changes thereto as shall be advisable under the laws of the jurisdiction in which such mortgage or deed of trust is to be recorded), in favor of, or for the benefit of, the Collateral Agent for the benefit of the Secured Parties, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"Multiemployer Plan" shall mean a Plan that is a "multiemployer plan" as defined in Section 3(37) or Section 4001(a)(3) of ERISA.

"Net Cash Proceeds" shall mean (a) in connection with any Asset Sale or any Recovery Event, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) received by any Group Member, net of (i) attorneys' fees, accountants' fees, investment banking fees, consulting fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such Asset Sale or Recovery Event (other than any Lien pursuant to a Security Document or any Lien on all or any part of the Collateral), and other customary fees and expenses actually incurred by any Group Member in connection therewith (in each case other than to the extent payable to an Affiliate); (ii) taxes paid or reasonably estimated to be payable by any Group Member as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements); (iii) the amount of any reasonable reserve established in accordance with GAAP against any liabilities (other than any taxes deducted pursuant to clause (ii) above) (A) associated with the assets that are the subject of such event and (B) retained by any Group Member, *provided* that the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Cash Proceeds of such event occurring on the date of such reduction; and (iv) the pro rata portion of the Net Cash Proceeds thereof (calculated without regard to this clause (iv)) attributable to minority interests and not available for distribution to or for the account of any Group Member as a result thereof and (b) in connection with any issuance of any Equity Interests or issuance or sale of debt securities or instruments or the incurrence of Indebtedness, the cash proceeds received from such issuance or incurrence, net of attorneys' fees, investment banking fees, accountants' fees, consulting fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection therewith (in each case other than to the extent payable to an Affiliate).

"Next Available Term SOFR" shall mean, at any time, for any Interest Period, Term SOFR for the longest tenor that can be determined by the Required Lenders that is shorter than the applicable Corresponding Tenor.

"Non-Consenting Lender" shall mean any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of each Lender or each affected Lender, in each case, in accordance with the terms of Section 9.01 and (ii) has been approved by the Required Lenders.

"Non-Public Information" shall mean information which has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD promulgated by the SEC under the Securities Act and the Exchange Act.

"Note" shall mean any promissory note evidencing any Loan.

"Obligations" shall mean the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any proceeding under any Debtor Relief Law, relating to any Group Member, whether or not a claim for post-filing or post-petition interest is allowed in

such proceeding) the Loans and all other obligations and liabilities owed by any Group Member to any Agent or any Lender or LC Provider, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, the Reimbursement Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, Prepayment Premium, all fees, charges and disbursements of counsel to the Agents or any Lender that are required to be paid by the Borrower pursuant hereto) or otherwise.

"OFAC" shall mean the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Organizational Documents" shall mean, collectively, with respect to any Person, (i) in the case of any corporation, the certificate of incorporation or articles of incorporation and by-laws (or similar constitutive documents) of such Person, (ii) in the case of any limited liability company, the certificate or articles of formation or organization and operating agreement or memorandum and articles of association (or similar constitutive documents) of such Person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar constitutive documents) of such Person (and, where applicable, the equity holders or shareholders registry of such Person), (iv) in the case of any general partnership, the partnership agreement (or similar constitutive document) of such Person, (v) in any other case, the functional equivalent of the foregoing, and (vi) any shareholder, voting trust or similar agreement between or among any holders of Equity Interests of such Person.

"Other Connection Taxes" shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

"Parent Expenses" shall mean:

(a) costs (including all professional fees and expenses) incurred by Holdings in connection with reporting obligations under or otherwise incurred in connection with compliance with applicable laws, rules or regulations of any governmental, regulatory or self-regulatory body or stock exchange, or any indenture or other agreement or instrument relating to Indebtedness of the Borrower or any Subsidiary, including in respect of any reports filed with respect to the Securities Act, the Exchange Act or the respective rules and regulations promulgated thereunder;

(b) customary indemnification obligations of Holdings owing to directors, officers, employees or other Persons under its charter or by-laws or pursuant to written agreements with any such Person to the extent relating to the Borrower and its Subsidiaries;

(c) obligations of Holdings in respect of director and officer insurance (including premiums therefor) to the extent relating to the Borrower or any of its Subsidiaries;

(d) general corporate overhead expenses, including professional fees and expenses and other operational expenses of Holdings related to the ownership or operation of the business of the Borrower or any of its Subsidiaries; and

(e) expenses incurred by Holdings in connection with any public offering or other sale of Equity Interests or Indebtedness:

i. where the net proceeds of such offering or sale are intended to be received by or contributed to the Borrower or any Subsidiary;

ii. in a pro-rated amount of such expenses in proportion to the amount of such net proceeds intended to be received by or contributed to the Borrower or any Subsidiary; or

iii. otherwise on an interim basis prior to completion of such offering, so long as Holdings shall cause the amount of such expenses to be repaid to the Borrower or the relevant Subsidiary out of the proceeds of such offering promptly if completed.

"Participant" shall have the meaning set forth in Section 9.06(d).

"Participant Register" shall have the meaning set forth in Section 9.06(d).

"PATRIOT Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"Payment in Full" shall mean (a) the termination of all Commitments and (b) the payment in full in cash of all Loans and other amounts owing to any Lender~~ (including any~~, LC Provider~~) ~~ or any Agent in respect of the Obligations (other than contingent or indemnification obligations not then due).

"Payment Office" shall mean the office specified from time to time by the Disbursing Agent as its payment office by notice to the Borrower and the Lenders.

"PBGC" shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

"Perfection Certificate" shall mean a certificate in form satisfactory to the Required Lenders that provides information with respect to the assets of each Loan Party.

"Permits" shall mean any and all licenses, permits, approvals, certifications, registrations, notifications, exemptions or authorizations of or from any Governmental Authority.

"Permitted Equity Issuance" shall mean the sale or issuance of any Equity Interests (a) pursuant to any employee stock or stock option compensation plan, (b) pursuant to the exercise of the Warrants by the Lenders or their Affiliates in accordance with the terms thereof, (c) by Holdings in connection with the Mexico JV Transaction and (d) in connection with payment of the "Equity Fee" as defined in the Reimbursement Agreement.

"Permitted Equity Liens" shall mean Liens permitted under Section 6.02(a), Section 6.02(c), Section 6.02(r), and Section 6.02(t).

"Permitted Liens" shall mean the collective reference to Liens permitted by Section 6.02.

"Permitted Prior Liens" shall mean Liens permitted pursuant to Section 6.02 (other than Section 6.02(a) and Section 6.02(t)).

"Permitted Refinancing Debt" shall mean any modification, refinancing, refunding, renewal or extension of any Indebtedness; *provided* that (i) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness being modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon *plus* other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder; (ii) such modification, refinancing, refunding, renewal or extension has a maturity no earlier and a Weighted Average Life to Maturity no shorter than the Indebtedness being modified, refinanced, refunded, renewed or extended; (iii) at the time thereof, no Default or Event of Default shall have occurred and be continuing; (iv) if the Indebtedness being modified, refinanced, refunded, renewed or extended is unsecured, such modification, refinancing, refunding, renewal or extension is unsecured; (v) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Obligations on terms, taken as a whole, at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended; (vi) if the Indebtedness being modified, refinanced, refunded, renewed or extended is secured, such modification, refinancing, refunding, renewal or extension is secured by no more collateral than the Indebtedness being modified, refinanced, refunded, renewed or extended; and (vii) the primary obligors and guarantors in respect of such Indebtedness being modified, refinanced, refunded, renewed or extended remain the same (or constitute a subset thereof); *provided* that one or more new obligors and/or guarantors may be added if they are already Loan Parties, are contemporaneously added as Loan Parties at the time of such modification, refinancing, refunding, renewal or extension, or are not required to be Loan Parties because they are Excluded Subsidiaries.

"Person" shall mean any natural Person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"PIK Interest" shall have the meaning set forth in Section 2.11(d).

"Plan" shall mean any "employee benefit plan" as defined in Section 3(3) of ERISA which is sponsored, maintained or contributed to by, or required to be contributed to by, Holdings, the Borrower or any of their respective ERISA Affiliates or with respect to which Holdings, the Borrower or any of their respective ERISA Affiliates has or could reasonably be expected to have liability, contingent or otherwise, under ERISA.

"Platform" shall mean IntraLinks or a substantially similar electronic transmission system.

"Pledged Equity Interests" shall have the meaning set forth in the Guarantee and Collateral Agreement.

"Prepayment Premium" shall have the meaning set forth in Section 2.06(b).

"Prime Rate" shall mean the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. The Disbursing Agent or any Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"Pro Forma Financial Statements" shall have the meaning set forth in Section 3.04(b).

"Projections" shall have the meaning set forth in Section 3.04(c).

"Property" shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Equity Interests.

"Public Lender" shall mean any Lender that does not wish to receive Non-Public Information with respect to Holdings, the Borrower or their Subsidiaries or their respective securities.

"Purchase Money Obligation" shall mean, for any Person, the obligations of such Person in respect of Indebtedness (including Capital Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any fixed or capital assets or the cost of installation, construction or improvement of any fixed or capital assets; *provided*, *however*, that (i) such Indebtedness is incurred within 30 days after such acquisition, installation, construction or improvement of such fixed or capital assets by such Person and (ii) the amount of such Indebtedness does not exceed the lesser of 100% of the fair market value of such fixed or capital asset or the cost of the acquisition, installation, construction or improvement thereof, as the case may be.

"Qualified Equity Interests" shall mean Equity Interests that are not Disqualified Equity Interests.

"Railcar Leasing Subsidiary" shall mean each of FreightCar America Leasing, LLC, a Delaware limited liability company, FreightCar America Leasing 1, LLC, a Delaware limited liability company, FreightCar America Capital Leasing, LLC, a Delaware limited liability company, and FreightCar America Railcar Management, LLC, a Delaware limited liability company.

"Real Property" shall mean all real property held or used by any Group Member, which relevant Group Member owns in fee or in which it holds a leasehold interest as a tenant, including as of the Closing Date.

"Recipient" shall mean (a) each Agent and (b) any Lender, as applicable.

"Recovery Event" shall mean the receipt by any Group Member of any cash payments or proceeds under any casualty insurance policy in respect of a covered loss thereunder or as a result of the taking of any assets of any Group Member by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, in each case, in excess of $500,000 individually or $1,000,000 in the aggregate during any fiscal year of Holdings.

"Reference Time" with respect to any setting of the then-current Benchmark shall mean (a) if the Benchmark is LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (b) if the Benchmark is not LIBOR, the time determined by the Required Lenders in their reasonable discretion and notified to the Disbursing Agent.

"Refinancing" shall mean the repayment in full and termination of the Indebtedness under the Existing Credit Agreement on or prior to the Closing Date.

"Register" shall have the meaning set forth in Section 9.06(c).

"Regulation D" shall mean Regulation D of the Board of Governors as in effect from time to time.

"Regulation T" shall mean Regulation T of the Board of Governors as in effect from time to time.

"Regulation U" shall mean Regulation U of the Board of Governors as in effect from time to time.

"Regulation X" shall mean Regulation X of the Board of Governors as in effect from time to time.

"Reimbursement Agreement" means that certain Amended and Restated Reimbursement Agreement, dated as of ~~July 30, 2021~~the Fourth Amendment Effective Date, by and among Holdings, LC Provider~~ and~~, Disbursing Agent and Alter Domus (US) LLC, as Calculation Agent, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Reimbursement Obligations" shall mean (a) the obligations of Holdings to reimburse LC Provider under the Reimbursement Agreement for amounts drawn by Revolving Loan Lender under the Third Amendment Letter of Credit and (b) all fees, expenses, indemnities and other obligations due under the Reimbursement Agreement. Notwithstanding the foregoing, for purposes of the Register, Reimbursement Obligations shall be limited to (i) the "Principal Amount" of the "Credit", (ii) any portion of the "Principal Amount" that is drawn and required to be reimbursed by Holdings to LC Provider (as notified by LC Provider in writing to the Disbursing Agent in accordance with the Reimbursement Agreement), (iii) the "Letter of Credit Fee" and (iii) the "Cash Fee" (to the extent notified to the Disbursing Agent in writing in accordance with the Reimbursement Agreement); capitalized terms used in this sentence have the meanings ascribed to such terms in the Reimbursement Agreement.

"Related Parties" shall mean, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Release" shall mean, with respect to Materials of Environmental Concern, any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration into or through the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Materials of Environmental Concern).

"Relevant Governmental Body" means the Board of Governors or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors or the Federal Reserve Bank of New York, or any successor thereto.

"Repayment Liquidity" shall mean the aggregate amount of (a) all Unrestricted Cash of the Loan Parties plus (b) the undrawn and available portion of the commitments under the Revolving Loan Agreement minus (c) all accounts payable of the Loan Parties that are more than 30 days past due.

"Required Lenders" shall mean, at any time, Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders.

"Requirement of Law" shall mean, as to any Person, such Person's Organizational Documents, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Responsible Officer" shall mean, as to any Person, the chief executive officer, president or chief financial officer of such Person, but in any event, with respect to financial matters, the chief financial officer or other officer with similar responsibilities of such Person; and with respect to the Disbursing Agent or the Collateral Agent, any officer assigned to the corporate trust office of such Disbursing Agent or Collateral Agent, as applicable, including any managing director, principal, vice president, assistant vice president, assistant treasurer, assistant secretary, or any other officer of such Disbursing Agent or Collateral Agent, as applicable, customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Agreement, and also, with respect to a particular matter, any other officer, to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject. Unless otherwise qualified, all references to a "Responsible Officer" shall refer to a Responsible Officer of the Borrower.

"Restricted Payment" shall mean any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

"Revolving Loan Agreement" shall mean that certain Amended and Resetated Loan and Security Agreement dated as of July 30, 2021 by and among Revolving Loan Lender and the Loan Parties, as amended, restated, amended and restated, supplemented or otherwise modified from time to time to the extent not prohibited by the Intercreditor Agreement.

"Revolving Loan Documents" shall mean, collectively, the following (as the same may be amended, restated, refinanced or otherwise modified from time to time to the extent not prohibited by the Intercreditor Agreement): (a) the Revolving Loan Agreement, all exhibits, schedules and disclosure letters referred to therein or delivered pursuant thereto, if any, (b) all amendments thereto, waivers relating thereto and other side letters or agreements affecting the terms thereof, and (c) all of the other agreements, documents and instruments executed and delivered in connection therewith or related thereto.

"Revolving Loan Indebtedness" shall mean "Obligations" (or any such similar term) (as defined in the Revolving Loan Agreement) of the Loan Parties owing to the Revolving Loan Lender under the Revolving Loan Documents.

"Revolving Loan Lender" shall mean Siena Lending Group LLC.

"SBA PPP Loan" shall mean a loan incurred by Holdings under 15 U.S.C. 636(a) (36) (as added to the Small Business Act by Section 1102 of the CARES Act).

"S&P" shall mean S&P Global Ratings and any successor thereto.

"Sale and Leaseback" shall have the meaning set forth in Section 6.09.

"Sanctioned Country" shall mean, at any time, a country or territory that is subject to comprehensive Sanctions (as of the Closing Date, Cuba, Iran, North Korea, Syria, and the Crimea region).

"Sanctioned Person" shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, or the U.S. Department of Commerce (including the Specially Designated Nationals and Blocked Persons List, the Sectoral Sanctions Identifications List, the Foreign Sanctions Evaders List, the Entity List, the Denied Persons List, or the Unverified List), or by the United Nations Security Council, the European Union or any EU member state; (b) any Person domiciled, organized or resident in a Sanctioned Country; (c) any Person owned or controlled by, or acting on behalf of, any such Person; or (d) any Person that is otherwise targeted by Sanctions.

"Sanctions" shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC pursuant to various statutes, the Foreign Assets Control Regulations (31 CFR Parts 500-598) and all executive orders promulgated thereunder or the U.S. Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom.

"Scheduled Material Agreements" shall mean, as of the Closing Date, the Material Agreements described on Schedule 1.01(a).

"SEC" shall mean the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

"Second Amendment" shall mean that certain Amendment No. 2 to Credit Agreement, dated as of May 14, 2021, by and among Holdings, the Borrower, the other Loan Parties, the Lenders party thereto, the Disbursing Agent and the Collateral Agent.

"Second Amendment Commitment" shall mean, as to any Lender, the obligation of such Lender, if any, to make a Loan to the Borrower hereunder in a principal amount not to exceed the amount set forth under the heading "Second Amendment Commitment" opposite such Lender's name on Annex A or, as the case may be, in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The aggregate principal amount of the Second Amendment Commitments on the Second Amendment Effective Date is $16,000,000.

"Second Amendment Effective Date" shall mean May 14, 2021.

"Second Amendment Effective Date Lender" shall mean CO Finance LVS VI LLC.

"Second Amendment Funding Date" shall mean the date on which the conditions precedent set forth in Section 4 of the Second Amendment shall have been satisfied or waived.

"Second Amendment Loan" shall mean a loan made by a Lender pursuant to Section 2.01(b) on the Second Amendment Funding Date.

"Secured Parties" shall have the meaning set forth in the Guarantee and Collateral Agreement.

"Securities Act" shall mean the Securities Act of 1933, as amended from time to time, and any successor statute.

"Security Documents" shall mean the collective reference to the Guarantee and Collateral Agreement, the Mortgages (if any), the Perfection Certificate, the Intellectual Property Security Agreements, the Mexican Security Documents, any control agreements or any other security documents required to be delivered pursuant to the Guarantee and Collateral Agreement or any other Loan Document and all other security documents hereafter delivered to any Agent for the purpose of granting or perfecting a Lien on any Property of any Loan Party to secure the Obligations.

"Shoals Facility" shall mean the railcar manufacturing facility located at 1200 Haley Drive, Cherokee, Alabama 35616.

"Shoals Facility Lease" shall mean that certain Industrial Facility Lease dated as of September 29, 2011 between Teachers' Retirement Systems of Alabama and Employees' Retirement System of Alabama, as landlord, and Navistar, Inc., as tenant, which lease was assigned to FreightCar Alabama, LLC pursuant to that certain Assignment and Assumption of Lease dated as of February 28, 2018.

"Shoals Facility Lease Termination" shall mean the termination of the Shoals Facility Lease in a manner that does not require any additional cash payment by the Loan Parties and is otherwise in form and substance reasonably satisfactory to the Lenders.

"Signing Date" shall mean the date on which the conditions precedent set forth in Section 4.01 shall have been satisfied or waived, which date is October 13, 2020.

"Signing Date Loan Documents" shall have the meaning set forth in Section 4.01(a).

"Single Employer Plan" shall mean any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

"SOFR" shall mean, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding Business Day.

"SOFR Administrator" shall mean the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" shall mean the website of the Federal Reserve Bank of New York currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"Solvent" shall mean, with respect to any Person, as of any date of determination, on a consolidated basis (a) the amount of the "present fair saleable value" of the assets of such Person will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise," as of such date, (b) the "present fair saleable value" of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, (d) such Person will be able to pay its debts as they mature and (e) such Person is not insolvent within the meaning of any applicable Requirements of Law. For purposes of this definition, (i) "debt" shall mean liability on a "claim," (ii) "claim" shall mean any (A) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured and (iii) such other quoted terms used in this definition shall be determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors.

"Spot Rate" shall have the meaning set forth in Section 1.06.

"Statutory Reserve Rate" shall mean a fraction (expressed as a decimal), (a) the numerator of which is the number one and (b) the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board of Governors to which the Disbursing Agent is subject with respect to the Eurodollar Rate for eurocurrency funding (currently referred

to as "Eurocurrency Liabilities" in Regulation D of the Board of Governors). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of, or credit for, proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinated Intercompany Note" shall mean the Subordinated Intercompany Note, substantially in the form of Exhibit H.

"Subsidiary" shall mean, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of Holdings.

"Subsidiary Guarantor" shall mean each existing and subsequently acquired or organized direct or indirect Wholly Owned Subsidiary of Holdings (other than the Borrower and any Excluded Subsidiary) which has guaranteed the Obligations.

"Swap Contract" shall mean (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement, in each case for the purpose of hedging the foreign currency, interest rate or commodity risk associated with the operations of the Group Members.

"Swap Termination Value" shall mean, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) have been determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or

other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Synthetic Lease" shall mean, as to any Person, (a) any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) (i) that is accounted for as an operating lease under GAAP and (ii) in respect of which the lessee retains or obtains ownership of the property so leased for U.S. federal income tax purposes or (b) (i) a synthetic, off-balance sheet or tax retention lease or (ii) an agreement for the use or possession of property (including a Sale and Leaseback), in each case under this clause (b), creating obligations that do not appear on the balance sheet of such person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Tax Distribution Amount" shall mean any Taxes measured by income of Holdings, the Borrower or any Subsidiary for which Holdings (or another member of any group filing a consolidated, unitary or combined tax return with Holdings) is liable, up to an amount not to exceed the amount of any such Taxes that Holdings and its Subsidiaries would have been required to pay on a separate group basis if Holdings and its Subsidiaries had paid tax on a consolidated, combined, group, affiliated or unitary basis on behalf of an affiliated group consisting only of Holdings and its Subsidiaries, taking into account any net operating losses or other attributes of Holdings or its Subsidiaries.

"Taxes" shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term SOFR" shall mean, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Third Amendment" shall mean that certain Amendment No. 3 to the Credit Agreement, dated as of July 30, 2021, by and among Holdings, the Borrower, the other Loan Parties, the Lenders party thereto, the Disbursing Agent and the Collateral Agent.

"Third Amendment Effective Date" shall mean July 30, 2021.

"Third Amendment Letter of Credit" shall mean that certain standby letter of credit (as may be amended from time to time), dated July 30, 2021, issued by Wells Fargo Bank, N.A., in the stated principal amount of $25,000,000, for the account of Holdings and for the benefit of the Revolving Loan Lender.

"Title Company" shall have the meaning set forth in Section 5.12(c).

"Title Policy" shall have the meaning set forth in Section 5.12(c).

"Total Credit Exposure" shall mean, as to any Lender at any time, the unused Commitments and outstanding Loans of such Lender at such time.

"Transaction Expenses" shall mean any fees or expenses incurred or paid by Holdings or any of the Subsidiaries in connection with the Transactions (including payments to officers, employees and directors as payouts or special or retention bonuses to be paid on or prior to the Closing Date), this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

"Transactions" shall mean (a) as applicable to the Closing Date, collectively, the transactions to occur on or prior to the Closing Date pursuant to the Loan Documents, including (i) the execution, delivery and performance of the Loan Documents, the initial borrowings hereunder and the use of proceeds thereof; (ii) the Refinancing; (iii) the execution, delivery and performance of the Revolving Loan Documents; (iv) the consummation of the Mexico JV Transaction; and (v) the payment of Transaction Expenses; ~~and~~ (b) as applicable to the Second Amendment Funding Date, collectively, the transactions to occur on or prior to the Second Amendment Funding Date, including (i) the execution, delivery and performance of the Second Amendment and the other Loan Documents, the borrowings hereunder and the use of proceeds thereof and (ii) the payment of all fees and expenses owing in connection with the foregoing, and the other transactions contemplated hereby~~.~~; and (c) as applicable to the Fourth Amendment Effective Date, collectively, the transactions to occur on or prior to the Fourth Amendment Effective Date, including (i) the execution, delivery and performance of the Fourth Amendment and the other Loan Documents, the borrowings hereunder and the use of proceeds thereof and (ii) the payment of all fees and expenses owing in connection with the foregoing, and the other transactions contemplated hereby.

"Treasury Rate" shall mean, at any determination date, the yield to maturity as of such date of constant maturity United States Treasury securities (as compiled and published in the most recent Federal Reserve Statistical Release H. 15 (519) that has become publicly available at least two Business Days prior to such date (or, if such statistical release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such date to the third anniversary of the Closing Date; *provided, however*, that if no published maturity exactly corresponds with such date, then the Treasury Rate shall be interpolated or extrapolated on a straight-line basis from the arithmetic mean of the yields for the next shortest and next longest published maturities; *provided further, however*, that if the period from such date to the third anniversary of the Closing Date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"Type" shall mean, as to any Loan, its nature as a Base Rate Loan or a Eurodollar Loan.

"Unadjusted Benchmark Replacement" shall mean the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"Uniform Commercial Code" or "UCC" shall mean the Uniform Commercial Code, as in effect from time to time in any applicable jurisdiction.

"Unrestricted Cash" shall mean, as of any date of determination, the aggregate amount of all cash and Cash Equivalents on the consolidated balance sheet of the Loan Parties that are not "restricted" for purposes of GAAP and in which the Collateral Agent has a perfected first-priority security interest (subject only to Permitted Liens); *provided*, *however*, that the aggregate amount of Unrestricted Cash shall not (i) include any cash or Cash Equivalents that are subject to a Lien

(other than any Permitted Lien) or (ii) include any cash or Cash Equivalents that are restricted by contract, law or material adverse tax consequences from being applied to repay any Funded Debt.

"U.S. Person" shall mean any Person that is a "United States person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" shall have the meaning set forth in Section 2.16(g).

"Warrants" shall have the meaning set forth in Section 4.02(r).

"Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

"Wholly Owned Subsidiary" of any Person shall mean a subsidiary of such Person of which securities (except for directors' qualifying shares) or other ownership interests representing 100% of the Equity Interests are, at the time any determination is being made, owned, Controlled or held by such Person or one or more wholly owned subsidiaries of such Person or by such Person and one or more wholly owned subsidiaries of such Person. Unless otherwise qualified, all references to a "Wholly Owned Subsidiary" or to "Wholly Owned Subsidiaries" in this Agreement shall refer to a Wholly Owned Subsidiary or Wholly Owned Subsidiaries of Holdings.

"Withdrawal Liability" shall mean any liability to a Multiemployer Plan as a result of a "complete withdrawal" or "partial withdrawal" from such Multiemployer Plan, as such terms are defined in Section 4201(b) of ERISA.

"Withholding Agent" shall mean any Loan Party and the Disbursing Agent.

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organizational Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's permitted successors and assigns, (iii) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular

provision thereof, (iv) all references in a Loan Document to Articles, Sections, recitals, Annexes, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and recitals, Annexes, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" shall mean "from and excluding", the words "to" and "until" each mean "to but excluding" and the word "through" shall mean "to and including".

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

Section 1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Historical Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Accounting Change. If at any time any Accounting Change shall occur and such change results in a change in the method of calculation of any financial covenant, standard or term in this Agreement, then upon the written request of the Borrower or the Required Lenders, the Borrower and the Lenders shall negotiate in good faith in order to amend such provisions so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating Holdings' and the Borrower's financial condition shall be the same after such Accounting Change as if such Accounting Change had not occurred; *provided* that, until such time as an amendment shall have been executed and delivered by Holdings, the Borrower and the Required Lenders, (A) all such financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Change had not occurred and (B) the Borrower shall provide to the Disbursing Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such financial covenants, standards and terms made before and after giving effect to such Accounting Change. Without limiting the foregoing, leases

shall continue to be classified and accounted for on a basis consistent with that reflected in the Historical Audited Financial Statements for all purposes of this Agreement, notwithstanding any Accounting Change relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

(c) Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of Holdings and its Subsidiaries or to the determination of any amount for Holdings and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that Holdings is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

Section 1.04 Rounding. Any financial ratios determined pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.06 Currency Equivalents Generally. Any amount specified in this Agreement (other than in Article II, Article VIII and Article IX) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Disbursing Agent at such time on the basis of the Spot Rate for the purchase of such currency with Dollars. The "Spot Rate" for a currency means the rate determined by the Disbursing Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; *provided* that the Disbursing Agent may obtain such spot rate from another financial institution designated by the Disbursing Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

Section 1.07 Rates. The Disbursing Agent does not warrant, nor accept responsibility, nor shall the Disbursing Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurodollar Rate" or with respect to any comparable or successor rate thereto. The Disbursing Agent shall not be under any obligation to (i) monitor, determine or verify the unavailability or cessation of LIBOR (or other applicable benchmark index), or whether or when there has occurred, or to give notice to any other transaction party of the occurrence of, any Benchmark Transition Event, Benchmark Replacement Date or Benchmark Unavailability Period, or (ii) to select, determine or designate any alternative reference rate or Benchmark Replacement, or other successor or replacement benchmark index, or whether any conditions to the designation of such a rate have been satisfied, or (iii) to select, determine or designate any Benchmark Replacement Adjustment, or other modifier to any replacement or

successor index, or (iv) to determine whether or what Benchmark Replacement Conforming Changes are necessary or advisable, if any, in connection with any of the foregoing.

Section 1.08 Cashless Rolls. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, any Lender may exchange, continue or roll over all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower and such Lender.

Section 1.09 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II
LOANS

Section 2.01 Commitments.

(a) Subject to the terms and conditions set forth herein, each Lender with ~~a~~an Initial Commitment made a Loan to the Borrower on the Closing Date in an amount equal to (i) the Initial Commitment of such Lender less (ii) the original issue discount applicable to such Lender as set forth on Annex A. Each Lender's Initial Commitment to make a Loan on the Closing Date terminated on the Closing Date after giving effect to the funding of such Lender's Initial Commitment on the Closing Date. The Borrower hereby acknowledges, confirms and agrees that $40,000,000 of the aggregate Initial Commitments of the Lenders were advanced on the Closing Date and remain outstanding on the ~~Second~~Fourth Amendment Effective Date. Moreover, the Borrower and the Lenders agree and acknowledge that each Loan made on the Closing Date and the associated Warrant comprise an "investment unit" within the meaning of Treasury Regulations Section 1.1273-2(h), and that the fair market value of each Warrant is specified on Annex A hereto. The sum of the discount specified in the foregoing clause (ii) and the fair market value of the Warrants will be treated as original issue discount on the Loans made on the Closing Date for U.S. federal income tax purposes and will reduce the issue price of such Loans.

(b) Subject to the terms and conditions set forth herein, each Lender with a Second Amendment Commitment ~~agrees, severally and not jointly, to make~~made a Loan to the Borrower on the Second Amendment Funding Date in an amount equal to (i) the Second Amendment Commitment of such Lender less (ii) the original issue discount applicable to such Lender as set forth on Annex A. ~~The Borrower may make only one borrowing under the Second Amendment Commitments, which shall be on the Second Amendment Funding Date.~~ Each Lender's Second Amendment Commitment ~~shall terminate immediately and without further action on the earlier of (i)~~terminated on the Second Amendment Funding Date after giving effect to the funding of such Lender's Second

Amendment Commitment on the Second Amendment Funding Date or (ii) May 28, 2021.. The Borrower hereby acknowledges, confirms and agrees that $16,000,000 of the aggregate Second Amendment Commitments of the Lenders were advanced on the Second Amendment Funding Date and remain outstanding on the Fourth Amendment Effective Date.

(c) Subject to the terms and conditions set forth herein, each Lender with a Fourth Amendment Commitment agrees, severally and not jointly, to make one or more Fourth Amendment Loans to the Borrower during the Fourth Amendment Availability Period in an aggregate principal amount that will not result in the aggregate principal amount at such time of all outstanding Fourth Amendment Loans exceeding the aggregated Fourth Amendment Commitments of the Lenders. Any borrowing of Fourth Amendment Loans will automatically and permanently reduce the Fourth Amendment Commitments in an amount corresponding to the amount of such borrowing. All Fourth Amendment Loans will be issued with original issue discount of 2.0%. The Borrower may make up to two borrowings under the Fourth Amendment Commitments, and each borrowing shall be in a minimum amount of $5,000,000 and increments of $1,000,000 in excess thereof. Each Lender's Fourth Amendment Commitment shall terminate immediately and without further action on the earliest of (i) the last day of the Fourth Amendment Availability Period, (ii) the applicable Fourth Amendment Funding Date on which the entire Fourth Amendment Commitments have been funded and (iii) the date that the Fourth Amendment Commitments are terminated in accordance with Section 7.02. Moreover, the Borrower and the Lenders agree and acknowledge that each Fourth Amendment Loan made on a Fourth Amendment Funding Date and the associated Fourth Amendment Warrant comprise an "investment unit" within the meaning of Treasury Regulations Section 1.1273-2(h), and that the fair market value of each Fourth Amendment Warrant shall be determined immediately prior to the borrowing of Fourth Amendment Loans on the applicable Fourth Amendment Funding Date. The sum of the 2.0% discount specified above and the fair market value of the associated Fourth Amendment Warrants will be treated as original issue discount on the Fourth Amendment Loans for U.S. federal income tax purposes and will reduce the issue price of such Fourth Amendment Loans.

(d) (c) Any amounts borrowed under this Section 2.01 and subsequently repaid or prepaid may not be reborrowed. Subject to Section 2.07 and Section 2.08, all amounts owed hereunder with respect to the Loans shall be paid in full no later than the Maturity Date.

(e) (d) The Second Amendment Loans shall constitute a separate tranche from the term loans outstanding immediately prior to the Second Amendment Funding Date, and the Fourth Amendment Loans shall constitute a separate tranche from the term loans outstanding immediately prior to the Fourth Amendment Effective Date. The Borrower and the Lenders hereby acknowledge and agree that, for U.S. federal income tax purposes, pursuant to Treasury Regulation Section 1.1275-2(c), each tranche will be treated as a single debt instrument with a single issue price, maturity date, yield to

maturity and stated redemption price at maturity for purposes of Section 1271 of the Code.

Section 2.02 Procedure for Borrowing.

(a) The Borrower shall deliver to the Disbursing Agent a fully executed Borrowing Notice no later than 2:00 p.m. (x) ~~one~~three Business ~~Day~~Days in advance of the ~~Second~~proposed Fourth Amendment Funding Date in the case of Base Rate Loans and (y) three Business Days in advance of the ~~Second~~proposed Fourth Amendment Funding Date in the case of Eurodollar Loans (or such shorter period as may be acceptable to the Lenders and the Disbursing Agent). If no election as to the Type of Borrowing is specified in any such notice, then the requested borrowing shall be a Base Rate Borrowing. The Disbursing Agent shall promptly advise the Lenders of any notice given pursuant to this Section 2.02 (and the contents thereof), and of each Lender's portion of the requested borrowing.

(b) Upon receipt of written confirmation by the Lenders of the satisfaction or waiver of the conditions precedent specified herein, each Lender shall make its ~~Second~~Fourth Amendment Loan available to the Disbursing Agent not later than 12:00 p.m. on the ~~Second~~applicable Fourth Amendment Funding Date by wire transfer of same day funds in Dollars, at the principal office designated by the Disbursing Agent. Upon satisfaction or waiver of the conditions precedent specified herein and receipt of funds from each Lender sufficient to make the ~~Second~~requested Fourth Amendment Loans, the Disbursing Agent shall make the proceeds of ~~the Second~~such Fourth Amendment Loans available to the Borrower on the ~~Second~~applicable Fourth Amendment Funding Date by causing an amount of same day funds in Dollars equal to the proceeds of all such ~~Second~~Fourth Amendment Loans received by Disbursing Agent from the Lenders to be credited to such account(s) as may be designated in writing to the Disbursing Agent by the Borrower.

Section 2.03 Repayment of Loans. The Borrower shall repay to the Lenders the aggregate principal amount of all Loans outstanding on the Maturity Date.

Section 2.04 Lenders' Evidence of Debt; Register; Notes.

(a) Lenders' Evidence of Debt. Each Lender and LC Provider shall maintain in accordance with its usual practice an account or accounts evidencing the Obligations of the Borrower and Holdings to such Lender or LC Provider, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof and any Reimbursement Obligations owed to such Lender ~~in its capacity as an~~or LC Provider. Any such recordation shall be conclusive and binding on the Borrower and Holdings, absent manifest error; *provided* that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments, the Borrower's Obligations in respect of any applicable Loans or Holdings' Reimbursement Obligations; *provided*, *further*, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. The Disbursing Agent (or its agent or sub-agent appointed by it) shall maintain the Register pursuant to Section 9.06(c), in which shall be recorded (i) the amount of each Loan made hereunder and any Note evidencing such Loan, the Type of such Loan and each Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, (iii) the amount of any sum received by the Disbursing Agent hereunder from the Borrower and each Lender's share thereof and (iv) the Reimbursement Obligations owed to each LC Provider. The entries made in the Register shall be conclusive and binding on the Borrower, Holdings and each Lender, absent manifest error, and the Disbursing Agent and Lenders may treat each Person whose name is recorded in the Register as the owner of the Loans and Reimbursement Obligations recorded therein for the purposes of this Agreement; *provided* that failure to make any such recordation, or any error in such recordation, shall not affect the Borrower's Obligations in respect of any Loans or Holdings' Reimbursement Obligations. Each of Holdings and the Borrower hereby designates the Disbursing Agent to serve as Holdings' and the Borrower's non-fiduciary agent solely for purposes of maintaining the Register as provided in this Section 2.04(b), and each of Holdings and the Borrower hereby agrees that, to the extent the Disbursing Agent serves in such capacity, the Disbursing Agent and its officers, directors, employees, agents, sub-agents and affiliates shall constitute "Indemnitees."

(c) Notes. The Borrower agrees that, upon request by any Lender, the Borrower will promptly execute and deliver to such Lender a promissory note of the Borrower evidencing any Loans of such Lender, substantially in the form of Exhibit D (a "Note"), with appropriate insertions as to date and principal amount; *provided* that the obligations of the Borrower in respect of each Loan shall be enforceable in accordance with the Loan Documents whether or not evidenced by any Note.

Section 2.05 Fees.

(a) The Borrower agrees to pay on the Closing Date to each Lender party to this Agreement as a Lender on the Closing Date, as fee compensation for the availability of such Lender's Initial Commitment, a closing fee in an amount equal to 1.00% of the aggregate principal amount of such Lender's Initial Commitment, payable to such Lender from the proceeds of Loans as and when funded on the Closing Date. Such closing fees shall be in all respects fully earned, due and payable on the Closing Date and non-refundable and non-creditable thereafter.

(b) The Borrower shall pay to the Disbursing Agent for the account of each Lender holding a Fourth Amendment Commitment a non-refundable ticking fee (each, a "Delayed Draw Ticking Fee") for the period commencing on the Fourth Amendment Effective Date and ending on the date that the Fourth Amendment Commitments expire or are terminated, in an amount equal to 1.0% per annum times the actual daily amount of the unutilized Fourth Amendment Commitments. Each Delayed Draw Ticking Fee shall accrue daily and be payable in cash in arrears on the last Business day of each of March, June, September and December during the period that the Fourth Amendment Commitments remain outstanding and on the date that such Fourth Amendment Commitments expire

or are terminated. Each Delayed Draw Ticking Fee shall be distributed by the Disbursing Agent to each Lender holding a Fourth Amendment Commitment pro rata in accordance with such Lenders' respective Fourth Amendment Commitments (as in effect immediately prior to the payment date for such Delayed Draw Ticking Fee).

(c) ~~(b)~~ The Borrower agrees to pay to the Agents the fees in the amounts and on the dates from time to time set forth in the Fee Letter and as otherwise agreed to in writing by the Borrower and the Agents.

Section 2.06 Voluntary Prepayments; Call Protection.

(a) Voluntary Prepayments.
(i) Any time and from time to time (subject to the payment of any Prepayment Premium set forth in Section 2.06(b)):

(A) the Borrower may prepay Base Rate Loans on any Business Day in whole or in part, in an aggregate minimum amount of $1,000,000 and integral multiples of $1,000,000 in excess of that amount; and

(B) the Borrower may prepay Eurodollar Loans on any Business Day in whole or in part in an aggregate minimum amount of $1,000,000 and integral multiples of $1,000,000 in excess of that amount.

(ii) All such prepayments shall be made:

(A) upon not less than one Business Day's prior written notice in the case of Base Rate Loans; and

(B) upon not less than three Business Days' prior written notice in the case of Eurodollar Rate Loans;

in each case given to the Disbursing Agent by 12:00 p.m. on the date required (and the Disbursing Agent will promptly transmit such original notice to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. The Borrower's notice may state that such notice is conditioned upon the effectiveness of other credit facilities or one or more other events specified therein, in which case such notice may be revoked by the Borrower (by notice to the Disbursing Agent on or prior to the specified effective date) if such condition is not satisfied; *provided* that the Borrower shall make any payments required to be made pursuant to Section 2.17. Notwithstanding the foregoing, the Borrower may only repay the Second Amendment Loans if it has Repayment Liquidity of at least $20,000,000 after making such payment.

(b) Call Protection. In the event all or any portion of the principal of the Loans is (i) voluntarily prepaid under Section 2.06(a), (ii) prepaid under Section 2.07(a), Section 2.07(b), Section 2.07(c), Section 2.07(d) or Section 2.07(e), (iii) accelerated in accordance with Article VII (including, without limitation, automatic acceleration upon an Event of Default under Section 7.01(f) or Section 7.01(g) or operation of law upon the occurrence of a bankruptcy or insolvency event) ~~or~~,

(iv) satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means or (v) repaid on the Maturity Date, the Borrower shall be required to pay (A) the Make Whole Amount if such prepayment, acceleration, satisfaction or release with respect to (1) any Loans made on the Closing Date occurs on or prior to the third anniversary of the Closing Date or, (2) any Second Amendment Loans occurs on or after March 31, 2022 and on or prior to the third anniversary of the Closing Date or (3) any Fourth Amendment Loans occurs on or after January 31, 2023 and on or prior to the third anniversary of the Closing Date or (B) the Applicable Prepayment Premium if such prepayment, acceleration, satisfaction or, release or repayment with respect to (1) any Loans made on the Closing Date occurs after the third anniversary of the Closing Date or, (2) any Second Amendment Loans occurs after the Second Amendment Effective Date through March 30, 2022 or after the third anniversary of the Closing Date or (3) any Fourth Amendment Loans occurs after the Fourth Amendment Effective Date through January 30, 2023 or after the third anniversary of the Closing Date (the Make Whole Amount and the Applicable Prepayment Premium, as the case may be, the "Prepayment Premium"); *provided*, that prepayments of outstanding PIK Interest that have been accrued and capitalized pursuant to Section 2.11(d) shall not be subject to any Prepayment Premium. It is understood and agreed that the Prepayment Premium applicable at the time of a prepayment, acceleration, satisfaction or, release or repayment shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's lost profits as a result thereof. Any Prepayment Premium payable prior to the Maturity Date under the terms of this Agreement shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination, and the Borrower agrees that it is reasonable under the circumstances currently existing. EACH LOAN PARTY EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREPAYMENT PREMIUM IN CONNECTION WITH SUCH PREPAYMENT OR, ACCELERATION OR REPAYMENT. The Borrower expressly agrees (to the fullest extent that it may lawfully do so) that: (A) the Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Prepayment Premium shall be payable notwithstanding the then-prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Premium; and (D) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph. The Borrower expressly acknowledges that its agreement to pay the Prepayment Premium to the Lenders as herein described is a material inducement to the Lenders to provide the Commitments and make the Loans. For the avoidance of doubt, the Disbursing Agent shall have no obligation to calculate, or to verify the Borrower's or any Lender's calculation of, any Prepayment Premium due under this Agreement.

Section 2.07 Mandatory Prepayments.

(a) Asset Sales. Subject to the reinvestment right described in the proviso, no later than the fifth Business Day following the date of receipt by any Loan Party of any Net Cash Proceeds of any Asset Sale, the Borrower shall prepay the Loans (subject to the payment of any prepayment premium set forth in Section 2.06(b)) as set forth in Section 2.08 in an aggregate amount equal to such Net Cash Proceeds; *provided* that so long as no Event

of Default shall have occurred and be continuing, if Borrower delivers to the Disbursing Agent a certificate of a Responsible Officer to the effect that the Borrower or its relevant Subsidiaries intend to apply the Net Cash Proceeds from such event (or a portion thereof specified in such certificate), within 365 days of receipt thereof in assets of the type used in the business of Holdings and its Subsidiaries, then no prepayment shall be required pursuant to this paragraph with respect to the Net Cash Proceeds specified in such certificate. In the event that such Net Cash Proceeds are not so reinvested prior to the last day of such 365 day period, the Borrower shall prepay the Loans in an amount equal to such Net Cash Proceeds as set forth in Section 2.08.

(b) Recovery Events. Subject to the reinvestment right described in the proviso, no later than the fifth Business Day following the date of receipt by any Loan Party, or the Collateral Agent as loss payee, of any Net Cash Proceeds of any Recovery Event, the Borrower shall prepay (subject to the payment of any prepayment premium set forth in Section 2.06(b)) the Loans as set forth in Section 2.08 in an aggregate amount equal to such Net Cash Proceeds; *provided* that so long as no Event of Default shall have occurred and be continuing, if Borrower delivers to the Disbursing Agent a certificate of a Responsible Officer to the effect that the Borrower or its relevant Subsidiaries intend to apply the Net Cash Proceeds from such event (or a portion thereof specified in such certificate), within 365 days of receipt thereof in assets of the type used in the business of Holdings and its Subsidiaries, which investment may include the repair, restoration or replacement of the affected assets, then no prepayment shall be required pursuant to this paragraph with respect to the Net Cash Proceeds specified in such certificate. In the event that such Net Cash Proceeds are not so reinvested prior to the last day of such 365 day period, the Borrower shall prepay the Loans in an amount equal to such Net Cash Proceeds as set forth in Section 2.08.

(c) Equity Offerings. No later than the first Business Day following the date of receipt by Holdings of any Net Cash Proceeds with respect to any Equity Offering (other than a Permitted Equity Issuance), the Borrower shall prepay (subject to the payment of any prepayment premium set forth in Section 2.06(b)) the Loans as set forth in Section 2.08 in an aggregate amount equal to 100% of such Net Cash Proceeds.

(d) Issuance of Debt. No later than the first Business Day following the date of receipt by any Loan Party of any Net Cash Proceeds from the incurrence of any Indebtedness of any Loan Party (other than with respect to any Indebtedness permitted to be incurred pursuant to Section 6.01), the Borrower shall prepay (subject to the payment of any prepayment premium set forth in Section 2.06(b)) the Loans as set forth in Section 2.08 in an aggregate amount equal to 100% of such Net Cash Proceeds.

(e) Extraordinary Receipts. No later than the fifth Business Day following the date of receipt by any Loan Party of any Extraordinary Receipts, the Borrower shall prepay the Loans as set forth in Section 2.08 in an aggregate amount equal to such Extraordinary Receipts (net of all reasonable out-of-pocket expenses or other amounts required to be paid in connection therewith and reserves for income taxes and indemnities); *provided* that so long as no Event of Default shall have occurred and be continuing, if Borrower delivers to the Disbursing Agent a certificate of a Responsible Officer to the effect that the Borrower or its relevant Subsidiaries intend to apply the Net Cash Proceeds from such event (or a portion thereof specified in such certificate), within 365 days of receipt

thereof in assets of the type used in the business of Holdings and its Subsidiaries, then no prepayment shall be required pursuant to this paragraph with respect to the Extraordinary Receipts specified in such certificate. In the event that such Extraordinary Receipts are not so reinvested prior to the last day of such 365 day period, the Borrower shall prepay the Loans in an amount equal to such Extraordinary Receipts as set forth in Section 2.08.

Section 2.08 Application of Prepayments. Any prepayment shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Loans, in each case in a manner which minimizes the amount of any payments required to be made by Borrower pursuant to Section 2.17.

Section 2.09 Conversion and Continuation Options. (a) The Borrower may elect from time to time to convert Eurodollar Loans to Base Rate Loans by giving the Disbursing Agent at least one Business Day's prior irrevocable notice of such election; *provided* that any such conversion of Eurodollar Loans may be made only on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert Base Rate Loans to Eurodollar Loans by giving the Disbursing Agent at least three Business Days' prior irrevocable notice of such election; *provided* that no Base Rate Loan may be converted into a Eurodollar Loan (i) when any Event of Default has occurred and is continuing and the Required Lenders have determined not to permit such conversions or (ii) after the date that is one month prior to the Maturity Date. Upon receipt of any such notice, the Disbursing Agent shall promptly notify each relevant Lender thereof.

(b) The Borrower may elect to continue any Eurodollar Loan as such upon the expiration of the then current Interest Period with respect thereto by giving irrevocable notice to the Disbursing Agent; *provided* that no Eurodollar Loan may be continued as such (i) when any Event of Default has occurred and is continuing and the Required Lenders have determined not to permit such continuations or (ii) after the date that is one month prior to the Maturity Date; *provided*, *further*, that if the Borrower shall fail to give any required notice as described above in this Section 2.09(b) or if such continuation is not permitted pursuant to the preceding proviso, such Loans shall be converted automatically to Base Rate Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Disbursing Agent shall promptly notify each relevant Lender thereof.

Section 2.10 Minimum Amounts and Maximum Number of Eurodollar Tranches. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions, continuations and optional prepayments of Eurodollar Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to $5,000,000 or a whole multiple of $1,000,000 in excess thereof and (b) no more than four (4) Eurodollar Tranches shall be outstanding at any one time.

Section 2.11 Interest Rates and Payment Dates.

(a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate *per annum* equal to the Eurodollar Rate determined for such day plus the Applicable Margin in effect for such day.

(b) Each Base Rate Loan shall bear interest for each day on which it is outstanding at a rate *per annum* equal to the Base Rate in effect for such day plus the Applicable Margin in effect for such day.

(c) Automatically, after the occurrence and during the continuance of an Event of Default described in Section 7.01(a), Section 7.01(f) or Section 7.01(g) and (ii) after notice to the Borrower from the Required Lenders, after the occurrence and during the continuance of any other Event of Default, the Borrower shall pay interest on all amounts (whether or not past due) owing by it hereunder at a rate *per annum* at all times, after as well as before judgment, equal to (x) in the case of principal, at the rate otherwise applicable to such Loan pursuant to Section 2.11(a) or Section 2.11(b), as applicable, plus 2.00% *per annum* and (y) in all other cases, at a rate *per annum* (computed on the basis of the actual number of days elapsed over a year of 360 days) equal to the rate that would be applicable to Base Rate Loans plus 2.00% *per annum*, in each case, from the date of such Event of Default or if later, the date specified in any such notice until such Event of Default is cured or waived.

(d) Interest shall be due and payable by the Borrower in arrears on each Interest Payment Date; *provided* that interest accruing pursuant to Section 2.11(c) shall be due and payable upon demand. On each Interest Payment Date, the Borrower shall have the option of paying a portion of the interest due in an amount up to 2.5% *per annum* in cash or in kind ("PIK Interest") by capitalizing such amount and adding it to the principal amount of the Loans. If the Borrower elects to make payments of interest in cash pursuant to the immediately preceding sentence, the Borrower shall notify the Disbursing Agent of such election at least three Business Days prior to the applicable Interest Payment Date.

(e) Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(f) All computations of interest for Base Rate Loans determined by reference to the "Prime Rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, bear interest for one day. Each determination by the Disbursing Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

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Section 2.12 Illegality. If any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable

lending office to perform any of its obligations hereunder or to make, maintain or fund or charge interest with respect to any Loan or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower (with a copy to the Disbursing Agent), (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Loan or continue Eurodollar Loans or to convert Base Rate Loans to Eurodollar Loans shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on such Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Disbursing Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Disbursing Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Disbursing Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Disbursing Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Disbursing Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Disbursing Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued and unpaid interest on the amount so prepaid or converted.

Section 2.13 Inability to Determine Interest Rate; Effect of Benchmark Transition Event.

(a) Temporary Inability to Determine Interest Rate. Unless and until a Benchmark Replacement is implemented in accordance with Section 2.13(b), if, in connection with any request for a Eurodollar Loan or a conversion to or continuation thereof, (a) the Disbursing Agent or the Required Lenders determine that (i) Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period of such Eurodollar Loan, or (ii) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan or in connection with an existing or proposed Base Rate Loan, or (b) the Disbursing Agent or the Required Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Loan, the Disbursing Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended (to the extent of the affected Eurodollar Loans or Interest Periods) and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the

utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Disbursing Agent, upon the instruction of the Required Lenders, revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of Eurodollar Loans (to the extent of the affected Eurodollar Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for Base Rate Loans in the amount specified therein.

(b) Effect of Benchmark Transition Event.

i. Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (A) if a Benchmark Replacement is determined in accordance with clause (a) or (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (B) if a Benchmark Replacement is determined in accordance with clause (c) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the first Business Day after the Rate Election Notice is provided to each of the other parties hereto.

ii. Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Required Lenders (in consultation with the Borrower) will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement; *provided* that the Disbursing Agent shall not be bound to follow or agree to any amendment or supplement to this Agreement (including, without limitation, any Benchmark Replacement Conforming Changes) that would increase or materially change or affect the duties, obligations or liabilities of the Disbursing Agent (including without limitation the imposition or expansion of discretionary authority), or reduce, eliminate, limit or otherwise change any right, privilege or protection of the Disbursing Agent, or would otherwise materially and adversely affect the Disbursing Agent, in each case in its reasonable judgment, without the Disbursing Agent's express written consent.

iii. Notices; Standards for Decisions and Determinations. The Required Lenders will promptly notify the Borrower, the Disbursing Agent and the Lenders of

(A) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes, (D) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.13(b)(iv) below and (E) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lenders pursuant to this Section 2.13(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.13(b). In the event that LIBOR or applicable Benchmark is not available on any determination date, then unless the Disbursing Agent is notified of a replacement Benchmark in accordance with the provisions of this Agreement within two (2) Business Days, the Disbursing Agent shall use the interest rate in effect for the immediately prior Interest Period.

iv. Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement) (A) if the then-current Benchmark is a term rate (including Term SOFR or LIBOR) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Required Lenders may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Required Lenders may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor, and the Required Lenders shall notify the Disbursing Agent of any such modification. In the event that the applicable Benchmark is not available on any determination date, then unless the Disbursing Agent is notified of a replacement Benchmark in accordance with the provisions of this Agreement within two (2) Business Days, the Disbursing Agent shall use the interest rate in effect for the immediately prior Interest Period.

v. Benchmark Unavailability Period. Upon the Borrower's receipt of notice from the Required Lenders of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar

Borrowing of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

Section 2.14 Payments Generally.

(a) General. All payments to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. All payments by the Borrower hereunder shall be made to the Disbursing Agent, for the account of the respective Lenders to which such payment is owed, at the Payment Office, in Dollars and in immediately available funds prior to 1:00 p.m. on the date specified herein. Any payment made by the Borrower hereunder that is received by the Disbursing Agent after 1:00 p.m. on any Business Day shall be deemed to have been received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. The Disbursing Agent shall distribute such payments to the Lenders by wire transfer promptly upon receipt in like funds as received. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(b) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 9.05(c) are several and not joint. The failure of any Lender to make any Loan or to make any payment under Section 9.05(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or to make its payment under Section 9.05(c).

(c) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(d) Insufficient Funds. Subject to Section 7.03, if at any time insufficient funds are received by and available to the Disbursing Agent to pay fully all amounts of principal, interest,

Prepayment Premium and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and Prepayment Premium then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and Prepayment Premium then due to such parties.

Section 2.15 Increased Costs; Capital Adequacy.

(a) If any Change in Law shall:

i. impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurodollar Rate);

ii. subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its Loans, Loan principal, Commitments or other Obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

iii. impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan, or to increase the cost to such Lender or such other Recipient of participating in, issuing or maintaining any such Loan, or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon the request of such Lender or other Recipient, the Borrower will promptly pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time after submission by such Lender to the Borrower (with a copy to the Disbursing Agent) of a written request therefor the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered on an after-tax basis.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Section 2.15(a) or Section 2.15(b) and delivered to the Borrower (with a copy to the Disbursing Agent), shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.15 shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.15 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) The obligations of the Borrower pursuant to this Section 2.15 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.16 Taxes.

(a) Defined Terms. For purposes of this Section 2.16, the term "applicable law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.16) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Disbursing Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.16) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses (including reasonable fees and disbursements of counsel) arising therefrom or with respect thereto, whether or not such Indemnified Taxes were

correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or Agent (with a copy to the Disbursing Agent), or by the Disbursing Agent on its own behalf or on behalf of a Lender or Agent, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Disbursing Agent, within 30 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Disbursing Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.06(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Disbursing Agent in connection with any Loan Document, and any reasonable expenses (including reasonable fees and disbursements of counsel) arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Disbursing Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Disbursing Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Disbursing Agent to the Lender from any other source against any amount due to the Disbursing Agent under this Section 2.16(e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.16, such Loan Party shall deliver to the Disbursing Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Disbursing Agent.

(g) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Disbursing Agent, at the time or times reasonably requested by the Borrower or the Disbursing Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Disbursing Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Disbursing Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Disbursing Agent as will enable the Borrower or the Disbursing Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.16(g)(ii)(A), Section 2.16(g)(ii)(B) and Section 2.16(g)(ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or

submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Disbursing Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Disbursing Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Disbursing Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Disbursing Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10-percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9 and/or other certification documents from each beneficial owner, as applicable; *provided* that, if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Disbursing Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Disbursing Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Disbursing Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Disbursing Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Disbursing Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Disbursing Agent as may be necessary for the Borrower and the Disbursing Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.16(g)(ii)(D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Disbursing Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.16 (including by the payment of additional amounts pursuant to this Section 2.16), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.16 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.16(h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.16(h) in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.16(h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise

to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.16(h) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 2.16 shall survive the resignation or replacement of the Disbursing Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 2.17 Breakage Payments. In the event of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment after the Borrower has given a notice thereof in accordance with the provisions of this Agreement (which notice has not been revoked in accordance with the provisions of this Agreement), (c) the making of a prepayment or conversion of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto or (d) the assignment of any Eurodollar Loan on a day that is not the last day of an Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the Eurodollar Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate as to any amounts payable pursuant to this Section 2.17 submitted to the Borrower (with a copy to the Disbursing Agent) by any Lender shall be conclusive in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within three Business Days after receipt thereof. This Section 2.17 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.18 Pro Rata Treatment.

(a) Each borrowing of Loans by the Borrower shall be allocated pro rata as among the Lenders in accordance with their respective Commitments.

(b) Each repayment by the Borrower in respect of principal or interest on the Loans and each payment in respect of Prepayment Premium, fees or expenses payable hereunder shall be applied to the amounts of such obligations owing to the Lenders entitled thereto pro rata in accordance with the respective amounts then due and owing to such Lenders.

For the avoidance of doubt, any payment of the Reimbursement Obligations owing to ~~any~~ LC Provider shall be payable solely to ~~such~~ LC Provider (or its designee, as applicable, as set forth in the Reimbursement Agreement).

(c) The application of any payment of Loans shall be made, *first*, to Base Rate Loans and, *second*, to Eurodollar Loans. Each payment of the Loans shall be accompanied by accrued interest to the date of such payment on the amount paid.

Section 2.19 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.15, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall (at the request of the Borrower) use reasonable efforts (subject to overall policy considerations of such Lender) to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the sole judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or Section 2.16, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.19(a), or if any Lender is a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Disbursing Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.06), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or Section 2.16) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that any Non-Consenting Lender shall be deemed to have consented to the assignment and delegation of its interests, rights and obligations if it does not execute and deliver an Assignment and Assumption to the Disbursing Agent within one Business Day after having received a request therefor; *provided*, *further*, that:

i. the Borrower shall have paid to the Disbursing Agent the assignment fee (if any) specified in Section 9.06;

ii. such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.06(b) and Section 2.17) from the

assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

iii. in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments thereafter;

iv. such assignment does not conflict with applicable law; and

v. in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. This Section 2.19(b) shall only apply if there is a Lender other than the ~~Second~~Fourth Amendment Effective Date ~~Lender~~Lenders.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

To induce the Agents and the Lenders to enter into this Agreement and to make the Loans, each of Holdings and the Borrower hereby jointly and severally represents and warrants to each Agent and each Lender on the Closing Date ~~and on~~, the Second Amendment Funding Date, the Fourth Amendment Effective Date and each Fourth Amendment Funding Date that:

Section 3.01 Existence, Qualification and Power. Each Group Member (a) is duly incorporated or organized, validly existing and, as applicable, in good standing under the laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to own or lease its assets and carry on its business as now conducted and (c) is duly qualified and licensed and, as applicable, in good standing under the laws of each jurisdiction where such qualification or license or, if applicable, good standing is required; except, in the case of clauses (b) and (c) above, where such failure could not reasonably be expected to have a Material Adverse Effect.

Section 3.02 Authorization; Enforceability. The execution, delivery, and performance by each Loan Party of this Agreement and the other Loan Documents to which it is a party are within such Loan Party's powers and have been duly authorized by all necessary corporate or other organizational action on the part of each such Loan Party. This Agreement has been duly executed and delivered by each Loan Party party hereto and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, regardless of whether considered in a proceeding in equity or at law.

Section 3.03 No Conflicts. The Transactions (i) do not require any consent, exemption, authorization or approval of, registration or filing with, or any other action by, any Governmental Authority, except (A) such as have been obtained or made and are in full force and effect, (B) filings necessary to perfect or maintain the perfection or priority of the Liens created by the Security Documents and (C) consents, approvals, exemptions, authorizations, registrations, filings, permits or actions the failure of which to obtain or perform could not reasonably be expected to have a Material Adverse Effect, (ii) will not violate the Organizational Documents of any Group Member, (iii) will not violate or result in a default or require any consent or approval under any indenture, instrument, agreement, or other document binding upon any Group Member or its property or to which any Group Member or its property is subject, or give rise to a right thereunder to require any payment to be made by any Group Member, except for violations, defaults or the creation of such rights that could not reasonably be expected to have a Material Adverse Effect, (iv) will not violate any Requirement of Law that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect and (v) will not result in the creation or imposition of any Lien on any property of any Group Member, except Liens created by the Security Documents.

Section 3.04 Financial Statements; Projections; No Material Adverse Effect.

(a) The Borrower has heretofore delivered to the Agents and the Lenders (i) the Historical Audited Financial Statements, audited by and accompanied by the unqualified opinion of Deloitte & Touche LLP, independent public accountants~~,~~ and (ii) the consolidated and consolidating balance sheets of Holdings, the Borrower and their Subsidiaries and the related consolidated and consolidating statements of income or operations, changes in stockholders' equity and cash flows as of and for the ~~six-month~~nine-month period ended ~~June~~September 30, ~~2020~~2021 and for the comparable period of the preceding fiscal year~~ and (iii) the consolidated and consolidating balance sheets of Holdings, the Borrower and their Subsidiaries and the related consolidated and consolidating statements of income or operations, changes in stockholders' equity and cash flows with respect to the months ended July 31, 2020 and August 31, 2020~~, in each case, certified by the chief financial officer of Holdings. Such financial statements, and all financial statements delivered pursuant to Section 5.01(a), Section 5.01(b) and Section 5.01(c), have been prepared in accordance with GAAP consistently applied throughout the applicable period covered thereby and present fairly and accurately in all material respects the consolidated financial condition and results of operations and cash flows of Holdings as of the dates and for the periods to which they relate (subject to normal year-end audit adjustments and the absence of footnotes). Except as set forth in such financial statements, there are no material liabilities of Holdings, the Borrower or any of their Subsidiaries of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a liability.

(b) The Borrower has heretofore delivered to the Lenders the unaudited pro forma consolidated balance sheet and statements of income and cash flows of Holdings for the fiscal year ended December 31, 2019, and as of and for the six-month period ended June 30, 2020, in each case after giving effect to the Transactions with respect to the Closing Date as if they had occurred on such date in the case of the balance sheet and as of the

beginning of all periods presented in the case of the statements of income and cash flows (the "Pro Forma Financial Statements"). The Borrower represents and warrants solely as of the Closing Date that the Pro Forma Financial Statements (A) have been prepared in good faith by Holdings based upon (i) the assumptions stated therein (which assumptions are believed by it on the date of delivery thereof and on the Closing Date to be reasonable), (ii) accounting principles consistent with the Historical Audited Financial Statements delivered pursuant to Section 3.04(a) and (iii) the best information available to Holdings, the Borrower and their Subsidiaries as of the date of delivery thereof, (B) accurately reflect all adjustments required to be made to give effect to the Transactions on the Closing Date, (C) have been prepared in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes) consistently applied throughout the applicable period covered thereby and (D) present fairly in all material respects the pro forma consolidated financial position and results of operations of Holdings as of such date and for such periods, assuming that the Transactions on the Closing Date had occurred at such dates.

(c) The Borrower has heretofore delivered to the Lenders the forecasts of financial performance of Holdings, the Borrower and their Subsidiaries for the fiscal years ended December 31, ~~2020~~2021 through December 31, ~~2024~~2022 (the "Projections"). The Projections have been prepared in good faith by Holdings based upon (i) the assumptions stated therein (which assumptions are believed by the Loan Parties on the date of delivery thereof and on the Closing Date to be reasonable), (ii) accounting principles consistent with the Historical Audited Financial Statements delivered pursuant to Section 3.04(a) above consistently applied throughout the fiscal years covered thereby and (iii) the best information available to Holdings, the Borrower and their Subsidiaries as of the date of delivery and the Closing Date (it being recognized that such Projections are not to be viewed as facts and that no assurance can be given that any particular financial projections (including the Projections) will be realized, that actual results may differ significantly from projected results and that such Projections are not a guarantee of performance).

~~Since December 31, 2019, there has been no event, change, circumstance, condition, development or occurrence that has had, or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.~~

Section 3.05 Intellectual Property.

(a) Each Group Member owns or is licensed to use, free and clear of all Liens (other than Permitted Liens), all Intellectual Property, necessary for the conduct of its business as currently conducted, except for those which the failure to own or license, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) No claim (limited to the Loan Parties' knowledge in the case of any Intellectual Property referred to in Section 3.05(a) that is licensed to any Group Member) has been asserted and is pending by any person challenging or questioning the use of any such Intellectual Property referred to in Section 3.05(a) or the validity or effectiveness of any such Intellectual Property, nor does any Loan Party know of any valid basis for any such claim. The use of such Intellectual Property (limited to the Loan Parties' knowledge in the case of any such Intellectual Property that is licensed to any Group Member) does

not infringe the rights of any person, except for such claims and infringements which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Except pursuant to licenses and other user agreements entered into by each Group Member in the ordinary course of business which, in the case of licenses and user agreements, are listed in Schedule 3.05, no Group Member has granted any license or other right to authorize or enable any other person to use any such Intellectual Property. Each Group Member has taken commercially reasonable actions to protect the secrecy, confidentiality and value of all material trade secrets used in such Group Member's business

(c) (i) To the Loan Parties' knowledge, there is no violation by others of any right of any Group Member with respect to any Intellectual Property, other than such violations that, individually or in the aggregate, could not reasonably be expected to materially adversely affect the value or utility of the Intellectual Property or any portion thereof material to the use and operation of the Collateral, (ii) no Group Member is infringing upon or misappropriating any copyright, patent, trademark, trade secret or other intellectual property right of any other person, except where such infringement or misappropriation, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (iii) no Group Member is in breach of, or in default under, any license of Intellectual Property by any other person to such Group Member, except where such breach or default, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and (iv) no proceedings have been instituted or are pending against any Group Member or, to the knowledge of the Loan Parties, are threatened in writing, and no written claim against any Group Member has been received by any Group Member, alleging any such infringement or misappropriation, except to the extent that such proceedings or claims, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(d) Neither the execution, delivery or performance of this Agreement and the other Loan Documents, nor the consummation of the Transactions and the other transactions contemplated hereby and thereby, will alter, impair or otherwise affect or require the consent, approval or other authorization of any other person in respect of any right of any Group Member in any Intellectual Property, except to the extent that such alteration, impairment, affect, or requirement to obtain any such consent, approval or other authorization, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(e) No Group Member is subject to any settlement, covenant not to sue or other instrument, agreement or other document, or any outstanding order, which may materially affect the validity or enforceability or restrict in any manner such Group Member's use, licensing or transfer of any of the Intellectual Property (limited to the Loan Parties' knowledge in the case of any Intellectual Property that is licensed to any Group Member).

Section 3.06 Properties.

(a) Each Group Member has good and valid title to, or valid leasehold interests in, all its property material to its business, free and clear of all Liens and irregularities,

deficiencies and defects in title, except for Permitted Liens and minor irregularities, deficiencies and defects in title that, individually or in the aggregate, do not, and could not reasonably be expected to, interfere with its ability to conduct its business as currently conducted or to utilize such property for its intended purpose.

(b) The property of the Group Members, taken as a whole, (i) is in good operating order, condition and repair (ordinary wear and tear excepted) for the business and operations of the Group Members as presently conducted, and (ii) constitutes all the property which is required for the business and operations of the Group Members as presently conducted.

(c) As of the ~~Second~~Fourth Amendment ~~Funding~~Effective Date, Schedule 3.06 contains a true, accurate and complete list of each ownership and leasehold interest in Real Property (i) owned by any Group Member and describes the type of interest therein held by such Group Member and (ii) leased, subleased or otherwise occupied or utilized by any Group Member, as lessee, sub-lessee, franchisee or licensee and describes the type of interest therein held by such Group Member and whether such lease, sublease or other instrument requires the consent of the landlord thereunder or other parties thereto to the Transactions.

(d) Each Group Member owns or has rights to use all of its property and all rights with respect to any of the foregoing which are required for the business and operations of the Group Members as presently conducted. The use by each Group Member of its property and all such rights with respect to the foregoing do not infringe on the rights or other interests of any person, other than any infringement that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No claim has been made and remains outstanding that any Group Member's use of any of its property does or may violate the rights of any third party that, individually or in the aggregate, has had, or could reasonably be expected to result in, a Material Adverse Effect. The Real Property is zoned in all material respects to permit the uses for which such Real Property is currently being used. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the present uses of the Real Property and the current operations of each Group Member's business do not violate any provision of any applicable building codes, subdivision regulations, fire regulations, health regulations or building and zoning by-laws.

(e) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there is no pending or threatened condemnation or eminent domain proceeding with respect to, or that could affect, any of the Real Property of any Group Member.

(f) Each parcel of Real Property is taxed as a separate tax lot(s) and is currently being used in a manner that is consistent with and in compliance in all material respects with the property classification assigned to it for real estate tax assessment purposes.

(g) No Group Member is obligated under, or a party to, any option, right of first refusal or other contractual right to sell, assign or dispose of any Material Owned Real Property or any portion thereof or interest therein.

Section 3.07 Equity Interests and Subsidiaries. Schedule 3.07 sets forth (i) each Group Member and its jurisdiction of incorporation or organization as of the ~~Second~~Fourth Amendment ~~Funding~~Effective Date and (ii) the number of each class of its Equity Interests authorized, and the number outstanding, on the Closing Date and the number of Equity Interests covered by all outstanding options, warrants, rights of conversion or purchase and similar rights on the ~~Second~~Fourth Amendment ~~Funding~~Effective Date. All Equity Interests of each Group Member are duly and validly issued and are fully paid and non-assessable, and, other than the Equity Interests of Holdings, are owned by Holdings, directly or indirectly, through Wholly Owned Subsidiaries. All Equity Interests of the Borrower are owned directly by Holdings. Each Loan Party is the record, legal and beneficial owner of, and has good and valid title to, the Equity Interests pledged by (or purported to be pledged by) it under the Security Documents, free of any and all Liens, rights or claims of other persons (other than Permitted Equity Liens), and, as of the ~~Second~~Fourth Amendment ~~Funding~~Effective Date, there are no outstanding warrants (other than the Warrants, the warrants described in Section 3.17 of the Fourth Amendment and the Fourth Amendment Warrants, if any, issued on the Fourth Amendment Effective Date), options or other rights (including derivatives) to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any such Equity Interests (or any economic or voting interests therein).

Section 3.08 Compliance with Laws and Contracts. Each Group Member:

(a) holds Permits necessary for the conduct of its business and is in compliance with all applicable laws relating thereto, except where the failure to do so would not have a Material Adverse Effect;

(b) is in compliance with all Requirements of Law except, in any case, where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect; and

(c) is not in violation of or in default under any agreement to which it is a party or by which its assets are subject or bound, except with respect to any violation or default that would not have a Material Adverse Effect.

Section 3.09 Litigation. There are no actions, suits, claims, disputes or proceedings at law or in equity by or before any Governmental Authority now pending or, to the best of the knowledge of Holdings, or the Borrower, threatened against or affecting any Group Member or any business, property or rights of any Group Member (i) that purport to affect or involve any Loan Document or any of the Transactions or (ii) that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 3.10 Investment Company Act. No Group Member is an "investment company" or a company "controlled" by an "investment company," as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 3.11 Federal Reserve Regulations.

(a) No Group Member is engaged principally, or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock.

(b) No part of the proceeds of any Credit Extension will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for purchasing or carrying Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or for any other purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board of Governors, including Regulation T, Regulation U or Regulation X.

Section 3.12 Taxes. Each Group Member has (a) filed or caused to be filed all material Tax returns that are required to be filed by it (or has filed timely extensions with respect to such Tax returns) and (b) paid or caused to be paid all material Taxes required to be paid by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such Group Member has set aside on its books adequate reserves in accordance with GAAP. Each Group Member has made adequate provisions in accordance with GAAP for all Taxes not yet due and payable. No Group Member has knowledge of any proposed or pending Tax assessments, deficiencies, audits or other proceedings with respect to Taxes or Tax returns of such Group Member. No Group Member has ever “participated” in a “reportable transaction” within the meaning of Treasury Regulation Section 1.6011-4 for any period not closed by the applicable statutes of limitations. No Group Member is party to any tax sharing or similar agreement, other than any agreement entered into in the ordinary course of business that is not primarily related to Taxes to the extent tax sharing or similar provisions are typically included in that type of agreement. Each Group Member has withheld all material Taxes required to be withheld under any Requirement of Law.

Section 3.13 No Material Misstatements.

(a) The Borrower has disclosed to the Disbursing Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it, Holdings or any of their Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. At the time furnished, the reports, financial statements, certificates or other information furnished (other than the Projections, forecasts and other forward-looking information, budgets, estimates and information of a general economic or industry-specific nature) by or on behalf of any Loan Party to the Disbursing Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) are complete and correct in all material respects and do not contain any material misstatement of fact or omit to state any material fact necessary to

make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) As of the ~~Second~~Fourth Amendment ~~Funding~~Effective Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

Section 3.14 Labor Matters.

(a) There are no strikes, lockouts, stoppages or slowdowns or other labor disputes affecting any Group Member pending or, to the knowledge of Holdings or the Borrower, threatened that have had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Group Member is bound.

(c) All payments due from any Group Member, or for which any claim may be made against any Group Member, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Group Member except to the extent that the failure to do so has not had, and could not reasonably be expected to have, a Material Adverse Effect.

(d) The hours worked by and payments made to employees of any Group Member have not been in violation of the Fair Labor Standards Act of 1938, as amended, except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect.

Section 3.15 ERISA. Each Plan and, with respect to each Plan, each of Holdings, the Borrower and their respective ERISA Affiliates are in compliance in all material respects with the applicable provisions of ERISA and the Code. Each Plan which is intended to qualify under Section 401(a) of the Code can rely on a favorable determination letter from the IRS indicating that such Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter which would cause such Plan to lose its qualified status. No material liability to the PBGC (other than required premium payments), the IRS, any Plan (other than in the ordinary course) or any trust established under Title IV of ERISA has been or is expected to be incurred by Holdings, the Borrower or any of their respective ERISA Affiliates with respect to any Plan. No ERISA Event has occurred or is reasonably expected to occur. Except as provided on Schedule 3.15, the present value of all accrued benefit obligations under each Single Employer Plan (based on those assumptions used to fund such Single Employer Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Single Employer Plan allocable to such accrued benefit obligations by a material amount. Except as provided on Schedule 3.15, none of Holdings, the Borrower or any of their respective ERISA Affiliates contributes to, or has any liability with respect to, any Multiemployer Plan or has any contingent liability with respect to any post-retirement welfare benefit under a Plan that is subject to ERISA, other than liability for continuation coverage described in Part 6 of

Title I of ERISA. None of Holdings, the Borrower or any of their respective ERISA Affiliates maintains or contributes to any employee benefit plan that is subject to the laws of any jurisdiction outside the United States of America.

Section 3.16 Environmental Matters. As of the ~~Second~~Fourth Amendment ~~Funding~~Effective Date and except as set forth in Schedule 3.16 or other than exceptions to any of the following that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect:

(a) the Loan Parties are, and have been, in compliance with all applicable Environmental Laws including obtaining, maintaining and complying with all Environmental Permits required for their current operations or for any property owned, leased, or otherwise operated by any of them;

(b) Materials of Environmental Concern have not been Released at, on, under, in, or about any real property now or formerly owned, leased or operated by any Loan Party (including, without limitation, any location to which Materials of Environmental Concern have been sent for re-use, recycling, treatment, storage, or disposal);

(c) here are no pending or, to the knowledge of Holdings or the Borrower, threatened actions, suits, claims, disputes, or proceedings at law or in equity, administrative or judicial, by or before any Governmental Authority (including any notice of violation or alleged violation or seeking to revoke, cancel, or amend any Environmental Permit) under or relating to any Environmental Law or with respect to Materials of Environmental Concern to which any Group Member is, or to the knowledge of Holdings or the Borrower, will be, named as a party or affecting any Loan Party or any business, property or rights of any Loan Party;

(d) no Loan Party has received or, to the knowledge of the Loan Parties, been threatened with any written request for information, or currently has liability as a potentially responsible party, in either case, under or relating to the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law, or with respect to any Release of Materials of Environmental Concern;

(e) no real property currently owned, operated or leased by any Group Member is subject to any Lien imposed pursuant to Environmental Law and, to the knowledge of the Loan Parties, there are no existing facts, circumstances or conditions that would reasonably be expected to result in any such Lien attaching to any such property;

(f) no Loan Party has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with Environmental Law or any Environmental Liability; and

(g) no Loan Party has assumed or retained, by contract or operation of law, any liability, under Environmental Law or with respect to Materials of Environmental Concern, of any kind, whether fixed or contingent, known or unknown.

Section 3.17 Insurance. Schedule 3.17 sets forth a true, complete and accurate description in reasonable detail of all insurance maintained by each Group Member as of the ~~Second~~Fourth

Amendment ~~Funding~~Effective Date. Each Group Member is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged. No Group Member has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers. As of the ~~Second~~Fourth Amendment ~~Funding~~Effective Date, each insurance policy listed on Schedule 3.17 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

Section 3.19 Security Documents. The Guarantee and Collateral Agreement is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid, binding and enforceable security interest in the Collateral described therein and proceeds and products thereof. In the case of (i) Pledged Equity Interests represented by certificates, (x) when such certificates are delivered to the Collateral Agent and registered under the relevant stock ledgers registry book or (y) when financing statements in appropriate form are filed in the offices specified on Schedule 3.18, and (ii) the other Collateral described in the Guarantee and Collateral Agreement, when financing statements in appropriate form are filed in the offices specified on Schedule 3.18 and such other filings as are specified on Schedule 3 to the Guarantee and Collateral Agreement have been completed, the Lien created by the Guarantee and Collateral Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds and products thereof, as security for the Secured Obligations (as defined in the Guarantee and Collateral Agreement), in each case, prior and superior in right to any other Person (except, with respect to priority only, Permitted Prior Liens and, in the case of collateral constituting Equity Interests, Permitted Equity Liens).

Sectopm 3.19 Solvency. The Group Members, on a consolidated basis, both immediately before and immediately after the consummation of the Transactions to occur on the Closing Date~~ or~~, the consummation of the Transactions to occur on the Second Amendment Funding Date or the consummation of the Transactions to occur on the Fourth Amendment Effective Date, as applicable, will be Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by any Loan Party in connection with the Transactions with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party.

Section 3,20 Anti-Money Laundering and Anti-Corruption.

(a) Each Loan Party, each Subsidiary, and each director, officer and employee of any Loan Party or an Affiliate of any Loan Party and, to the knowledge of such Loan Party or Affiliate, each agent of such Loan Party or Affiliate is in compliance with all applicable Anti-Money Laundering Laws and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving any Loan Party or any Affiliate with respect to Anti-Money Laundering Laws is (or has ever been) pending and to such Loan Party's knowledge, no such actions, suits or proceedings are threatened or contemplated.

(b) Each Loan Party has instituted and maintains policies and procedures designed to ensure continued compliance with all applicable Anti-Money Laundering Laws.

(c) Each Loan Party, each Subsidiary, and each director, officer and employee of any Loan Party or an Affiliate of any Loan Party and, to the knowledge of such Loan Party or Affiliate, each agent of such Loan Party or Affiliate has been during the last five years, and continues to be, in compliance with the applicable Anti-Corruption Laws. No part of the proceeds of the Loans will be used, directly or indirectly, for any payment to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the applicable Anti-Corruption Laws.

The representations and warranties set forth in this Section 3.20 shall be deemed repeated and reaffirmed by the Borrower as of each date that the Borrower makes a payment to any Agent or any Lender under any of the Loan Documents.

Section 3.21 International Trade Laws.

(a) Each of Holdings and the Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by Holdings, the Borrower, their Subsidiaries and their respective directors, officers, employees and agents with all applicable International Trade Laws. Each Group Member and each of their respective officers, directors, employees and, to the knowledge of the Borrower, each of the agents and representatives of each Group Member, is in compliance with International Trade Laws in all respects.

(b) None of the Loan Parties or any Subsidiary or any of their respective officers, directors or employees or, to the knowledge of the Borrower, the agents or representatives of any Loan Party have, within the past five years, (i) engaged in any activity or transaction, directly or indirectly, with or involving a Sanctioned Country or a Sanctioned Person (including but not limited to services provided by validators), or (ii) engaged in any activity or transaction otherwise prohibited by applicable International Trade Laws.

(c) None of the Loan Parties or any Subsidiary has or is engaged in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any International Trade Laws.

(d) None of the Loan Parties or any Subsidiary or their respective agents acting or benefiting in any capacity in connection with the Loans, the Transactions or the other transactions hereunder, is a Sanctioned Person or located in a Sanctioned Country.

The representations and warranties set forth in this Section 3.21 shall be deemed repeated and reaffirmed by the Borrower as of each date that the Borrower makes a payment to any Agent or any Lender under any of the Loan Documents.

Section 3.22 Use of Proceeds. The Borrower will use the proceeds of the Loans only for the purposes specified in the recitals to this Agreement. The Borrower will not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or

business of or with any Sanctioned Country or Sanctioned Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or (ii) in any other manner that would result in a violation of Anti-Corruption Laws, Anti-Money Laundering Laws or International Trade Laws by any Person (including any Person participating in the Loans, whether as an Agent, Lender, advisor, investor or otherwise).

Section 3.23 Brokers. No broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

ACTICLE IV
CONDITIONS PRECEDENT

Section 4.01 Conditions to Effectiveness. This Agreement shall become effective on the Signing Date upon the satisfaction (or waiver) of each of the following conditions precedent:

(a) Signing Date Loan Documents. The Disbursing Agent and the Lenders shall have received the following documents (the "Signing Date Loan Documents"):

i. this Agreement, executed and delivered by a duly authorized officer of Holdings, the Borrower, each Agent and each Lender; and

ii. the Fee Letter, executed and delivered by a duly authorized officer of the Borrower.

(b) Bank Regulatory Information.

i. At least five Business Days prior to the Signing Date, the Agents and the Lenders shall have received all documentation and other information required by bank regulatory authorities or reasonably requested by any Agent or any Lender under or in respect of applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act, that was requested at least 10 Business Days prior to the Signing Date.

ii. At least five Business Days prior to the Signing Date, if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, it shall deliver a Beneficial Ownership Certification to the Agents and the Lenders.

(c) Permits and Consents. The Loan Parties shall have obtained all Permits and all consents of other Persons, in each case that are necessary to be obtained to authorize the Loan Parties to execute the Signing Date Loan Documents, and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to the Required Lenders.

(d) Representations and Warranties. Each of the representations and warranties set forth in Section 3.01, Section 3.02, Section 3.03, Section 3.20 and Section 3.21 made by any Loan Party shall be true and correct in all material respects on and as of the Signing Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such

representations and warranties shall be true and correct in all material respects as of such earlier date); *provided* that any representation and warranty qualified by "materiality", "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects.

Section 4.02 Conditions to Loans. The obligation of each Lender to make the Loans requested to be made by it hereunder on the Closing Date is subject to the satisfaction (or waiver), prior to or concurrently with the making of such Credit Extension on the Closing Date, of each of the following conditions precedent:

(a) Loan Documents. (i) The Disbursing Agent and the Lenders shall have received (A) the schedules to this Agreement, which shall be satisfactory to the Lenders, (B) the Intercreditor Agreement and (C) each Security Document set forth on Schedule 4.02(a) (including delivery of any ancillary documents, entries, records, or special irrevocable powers of attorney as required thereunder), executed and delivered by a duly authorized officer of each party thereto and (ii) each Lender shall have received a Note, executed and delivered by the Borrower in favor of each Lender that has requested a Note at least two Business Days prior to the Closing Date.

(b) Pro Forma Financial Statements; Financial Statements. The Lenders shall have received the Pro Forma Financial Statements, the financial statements described in Section 3.04(a) and the Projections.

(c) Revolving Loan Documents. The Borrower shall have received no greater than $20,000,000 of total commitments under the Revolving Loan Agreement, of which no more than $10,000,000 shall be outstanding on the Closing Date. The Lenders shall have received true, correct and complete copies of the Revolving Loan Documents, all of which shall be in form and substance reasonably satisfactory to the Lenders.

(d) Repayment and Termination of Existing Indebtedness. The Disbursing Agent and the Lenders shall have received (i) evidence satisfactory to the Required Lenders that all Indebtedness under the Existing Credit Facility shall have been terminated and all amounts thereunder shall have been repaid in full and (ii) evidence that arrangements satisfactory to the Required Lenders shall have been made for the termination and release of guarantees, Liens and security interests granted in connection therewith in a form reasonably satisfactory to the Required Lenders.

(e) Personal Property Collateral. Each Loan Party shall have delivered to the Collateral Agent:

i. a completed Perfection Certificate, dated as of the Closing Date, executed by a duly authorized officer of each Loan Party, together with all attachments contemplated thereby;

ii. evidence that each Loan Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including adoption of relevant corporate authorizations and any amendments to the articles of incorporation or other constitutional documents or agreements of such Loan Party pursuant

to which any restrictions or inhibitions relating to the enforcement of any Lien created by the Security Documents are removed) and authorized, made or caused to be made any other filing and recording required under the Security Documents, and each UCC financing statement shall have been filed, registered or recorded or shall have been delivered to the Collateral Agent and shall be in proper form for filing, registration or recordation;

iii. (1) the certificates and/or stock ledgers registry entries representing the shares of certificated Equity Interests pledged pursuant to the Guarantee and Collateral Agreement, together with an undated stock power or other instrument of transfer for each such certificate executed in blank by a duly authorized officer of the pledgor thereof, (2) an acknowledgement and consent, substantially in the form of Annex A to the Guarantee and Collateral Agreement, duly executed by any issuer of Equity Interests pledged pursuant to the Guarantee and Collateral Agreement that is not itself a party to the Guarantee and Collateral Agreement, (3) each promissory note pledged (*endosado en garantía*) pursuant to the Guarantee and Collateral Agreement duly executed (without recourse) in blank (or accompanied by an undated instrument of transfer executed in blank and satisfactory to the Collateral Agent and the Required Lenders) by the pledgor thereof and (4) the Subordinated Intercompany Note executed by the parties thereto accompanied by an undated instrument of transfer duly executed in blank and satisfactory to the Collateral Agent and the Required Lenders; and

iv. Lien Waiver Agreements with respect to the Borrower's headquarters, the Johnstown Facility and the Mexico Facility.

(f) Fees and Expenses. The Lenders and the Agents shall have received all fees and other amounts due and payable on or prior to the Closing Date, including, to the extent invoiced at least one Business Day prior to the Closing Date, reimbursement or payment of all out-of-pocket expenses (including reasonable and documented fees, disbursements and other charges of counsel) required to be reimbursed or paid under any Loan Document for which invoices have been presented on or prior to the Closing Date.

(g) Solvency Certificate. The Lenders shall have received a solvency certificate (a "Solvency Certificate") substantially in the form attached hereto as Exhibit G, dated the Closing Date and signed by the chief financial officer, chief accounting officer or other officer with equivalent duties of Holdings acceptable to the Required Lenders.

(h) Searches. The Lenders shall have received the results of a recent lien, tax lien, judgment and litigation search in each of the jurisdictions or offices (including, without limitation, in the United States Patent and Trademark Office and the United States Copyright Office) in which UCC financing statement or other filings or recordations should be made to evidence or perfect security interests in all assets of the Loan Parties (or would have been made at any time during the five years immediately preceding the Closing Date to evidence or perfect Liens on any assets of the Loan Parties) (including the search and certificate issued by the Sole Registry of Liens over Movable Assets of the Ministry of Economy (*Registro Único de Garantías Mobiliarias de la Secretaria de Economía*) applicable under Mexican law), and such search shall reveal no Liens or judgments on

any of the assets of the Loan Parties, except for Permitted Liens or Liens and judgments to be terminated on the Closing Date pursuant to documentation satisfactory to the Required Lenders.

(i) Closing Certificate. The Disbursing Agent and the Lenders shall have received a certificate of Holdings, dated the Closing Date, confirming satisfaction of the conditions set forth in Section 4.02(l), Section 4.02(m), Section 4.02(n) and Section 4.02(t).

(j) Secretary's Certificates. The Disbursing Agent and the Lenders shall have received with respect to the Borrower and each other Loan Party:

i. copies of the Organizational Documents of such Loan Party (including each amendment thereto) certified as of a date reasonably near the Closing Date as being a true and complete copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized;

ii. a certificate of the secretary or assistant secretary of each Loan Party dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the Organizational Documents of such Loan Party as in effect on the Closing Date, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors or similar governing body of such Loan Party (and, if applicable, any parent company of such Loan Party) approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party and the consummation of the Transactions, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation, formation or organization, as applicable, of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to clause (iv) below and (D) as to the incumbency and specimen signature of each Person authorized to execute any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party;

iii. a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate pursuant to clause (ii) above; and

iv. a copy of the long-form (if available) a certificate of good standing (or, as applicable, the electronic commercial folio (*folio mercantil electrónico*) issued by the relevant Public Registry of Commerce (*Registro Público de Comercio*) under Mexican law) of such Loan Party from the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized (dated as of a date reasonably near the Closing Date).

(k) Legal Opinions. The Agents and the Lenders shall have received the following executed legal opinions:

(i) the legal opinion of Winston & Strawn LLP, special counsel to the Loan Parties; and
(ii) the legal opinion of local counsel in each jurisdiction in which a Loan Party is organized, to the extent such Loan Party is not covered by the opinion referenced in Section 4.02(k)(i), as may be required by the Required Lenders.

Each such legal opinion shall (a) be dated as of the Closing Date, (b) be addressed to the Agents and the Lenders and (c) cover such matters relating to the Loan Documents and the Transactions as the Required Lenders may reasonably require. Each Loan Party hereby instructs such counsel to deliver such opinions to the Agents and the Lenders.

(l) No Material Adverse Effect. Since December 31, 2019, no Material Adverse Effect shall have occurred.

(m) Representations and Warranties. Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date); *provided* that any representation and warranty qualified by "materiality", "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects.

(n) No Default. No Default or Event of Default shall exist or would result from such Credit Extension or from the application of the proceeds thereof.

(o) Borrowing Notice. The Disbursing Agent shall have received a fully executed and delivered Borrowing Notice in accordance with the requirements hereof.

(p) Insurance. The Lenders shall have received a copy of, or a certificate as to coverage under, the insurance policies required by Section 5.06 and the applicable provisions of the Security Documents, each of which shall be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable or mortgage endorsement (as applicable) and shall name the Collateral Agent, on behalf of the Secured Parties, as additional insured or loss payee, as applicable, in form and substance reasonably satisfactory to the Required Lenders and the Collateral Agent.

(q) Letter of Direction. The Disbursing Agent and the Lenders shall have received a funds flow memorandum and duly executed letter of direction from the Borrower (which may be included as part of the Borrowing Notice) addressed to the Disbursing Agent, on behalf of itself and the Lenders, directing the disbursement on the Closing Date of the proceeds of the Loans made on such date.

(r) Warrants. The Lenders and/or their Affiliates shall have received warrants issued by Holdings in form and substance satisfactory to the Lenders to purchase 23.0% of the Common Stock Deemed Outstanding on the date of any partial or full exercise of the warrants at the agreed purchase price (the "Warrants").

(s) No Litigation. There shall not exist any action, suit, investigation, litigation, proceeding, injunction, hearing or other legal or regulatory developments, pending or

threatened in any court or before any arbitrator or Governmental Authority that individually or in the aggregate materially impairs the Transactions, the financing thereof or any of the other transactions contemplated by the Loan Documents.

(t) Minimum Liquidity. Liquidity shall be at least $15,000,000.

(u) Permits and Consents. The Loan Parties shall have obtained (i) AAR M-1003 certification for the Mexico Facility (or other written confirmation from the AAR in form and substance reasonably satisfactory to the Required Lenders that the Loan Parties are authorized to ship rail cars from the Mexico Facility); *provided* that if the Loan Parties shall not have obtained AAR M-1003 certification, they shall obtain it within the timeframe set forth in Schedule 5.14; and (ii) all Permits and all consents of other Persons, in each case that are necessary in connection with the financing contemplated by the Loan Documents and the issuance of the Warrants (including any such Permits or consents that may be required under Mexican law in connection with the granting, securing and pledging of the Loan Parties' respective rights under the Mexican Security Documents) and to maintain the benefit of Material Agreements and leases, and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to the Required Lenders.

(v) Shoals Facility Lease Termination. The Lenders shall have received a true, correct and complete copy of a fully-executed termination agreement with respect to the Shoals Facility Lease Termination.

(w) Mexico JV Acquisition. The Mexico JV Acquisition shall have been consummated, or substantially simultaneously with the making of the Loans hereunder shall be consummated, in accordance with the Mexico JV Acquisition Agreement.

(x) No Market Events. No material disruption of the loan, banking or capital markets which, in the Required Lenders' reasonable opinion, adversely impacts in any material respect the availability of credit generally shall have occurred since the Signing Date.

Section 4.03 Each Lender, by delivering its signature page to this Agreement and funding a Loan on the Closing Date, shall be deemed to have consented to, approved or accepted or to be satisfied with, each Loan Document and each other document required thereunder to be consented to, approved by or acceptable or satisfactory to a Lender.

Conditions to Fourth Amendment Loans. The obligation of each Lender with a Fourth Amendment Commitment to make the Fourth Amendment Loans requested to be made by it hereunder on the applicable Fourth Amendment Funding Date is subject to the satisfaction (or waiver), prior to or concurrently with the making of such Credit Extension on the applicable Fourth Amendment Funding Date, of each of the following conditions precedent:

(a) Notes. Each Lender that has requested a Note at least two Business Days prior to the applicable Fourth Amendment Funding Date shall have received a Note evidencing the Fourth Amendment Loans made by it on the applicable Fourth Amendment Funding Date, executed and delivered by the Borrower in favor of such Lender.

(b) Closing Certificate. The Disbursing Agent and the Lenders shall have received a certificate of Holdings, dated the applicable Fourth Amendment Funding Date, confirming satisfaction of the conditions set forth in Section 4.03(d) and Section 4.03(e).

(c) Reserved.

(d) Representations and Warranties. Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of the applicable Fourth Amendment Funding Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date); *provided* that any representation and warranty qualified by "materiality", "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects.

(e) No Default. No Default or Event of Default shall exist or would result from such Credit Extension or from the application of the proceeds thereof.

(f) Borrowing Notice. The Disbursing Agent shall have received a fully executed and delivered Borrowing Notice in accordance with the requirements hereof.

(g) Letter of Direction. The Disbursing Agent and the Lenders shall have received a funds flow memorandum and duly executed letter of direction from the Borrower (which may be included as part of the Borrowing Notice) addressed to the Disbursing Agent, on behalf of itself and the Lenders, directing the disbursement on the applicable Fourth Amendment Funding Date of the proceeds of the Fourth Amendment Loans made on such date.

(h) Fourth Amendment Warrants. Upon the funding of the first Fourth Amendment Loan requested hereunder, if any, the Lenders and/or their Affiliates shall have received warrants issued by Holdings in form and substance satisfactory to the Lenders to purchase 3.0% of the Common Stock Deemed Outstanding on the date of any partial or full exercise of the warrants at the same purchase price as included in the Warrants issued to the Lenders and/or their Affiliates on the Closing Date (such warrants issued on the first Fourth Amendment Funding Date, collectively, the "Fourth Amendment Warrants").

ARTICLE V

AFFIRMATIVE COVENANTS

Each of Holdings and the Borrower hereby jointly and severally agrees that, on and after the Closing Date until Payment in Full, each of Holdings and the Borrower shall, and shall (except in the case of the covenants set forth in Section 5.01, Section 5.02 and Section 5.03) cause each of its Subsidiaries (other than any Railcar Leasing Subsidiary) to:

Section 5.01 Financial Statements. Deliver to each Lender, in form and detail reasonably satisfactory to the Required Lenders:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of Holdings (commencing with the fiscal year ended December 31, 2020), a copy of the consolidated balance sheet of Holdings, the Borrower and their Subsidiaries as at the end of such fiscal year and the related consolidated statements of income or operations, changes in stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of any independent certified public accounting firm of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of Holdings (commencing with the fiscal quarter ended September 30, 2020), a copy of the consolidated balance sheet of Holdings, the Borrower and their Subsidiaries as at the end of such fiscal quarter and the related consolidated statements of income or operations, changes in stockholders' equity and cash flows for such fiscal quarter and the portion of the fiscal year through the end of such fiscal quarter, setting forth in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of Holdings as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of Holdings, the Borrower and their Subsidiaries in accordance with GAAP (subject only to normal year-end audit adjustments and the absence of footnotes); and

(c) as soon as available, but in any event within 30 days after the end of each of the first two months of each fiscal quarter of Holdings, a copy of the consolidated balance sheet of Holdings, the Borrower and their Subsidiaries as of the end of such month and the related consolidated statements of income or operations, changes in stockholders' equity and cash flows for such month and for the portion of the fiscal year through the end of such month, setting forth in each case in comparative form the figures for the corresponding month of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of Holdings; and

(d) as soon as available, and in any event within (i) 60 days after the end of the fiscal year ending December 31, 2021 and (ii) 30 days after the end of each fiscal year of Holdings thereafter, a budget in form reasonably satisfactory to the Required Lenders (including budgeted statements of income for each of Holdings', the Borrower's and their Subsidiaries' business units and sources and uses of cash and balance sheets) prepared by Holdings for (A) each fiscal quarter of such fiscal year prepared in detail and (B) each fiscal year in the five years immediately following such fiscal year prepared in summary form, in each case, of Holdings, the Borrower and their Subsidiaries, with appropriate presentation and discussion in reasonable detail of the principal assumptions upon which such budget is based, accompanied by a certificate of a Responsible Officer certifying that such budget is a reasonable estimate for the period covered thereby.

Section 5.02 Certificates; Other Information. Deliver to the Disbursing Agent and each Lender, in form and detail reasonably satisfactory to the Required Lenders:

(a) [reserved];

(b) (i) concurrently with the delivery of the financial statements pursuant to Section 5.01(a), Section 5.01(b) and, commencing on December 31, 2020, Section 5.01(c), a duly completed Compliance Certificate containing all information and calculations necessary for determining compliance by Holdings, the Borrower and their Subsidiaries with the provisions of this Agreement referred to therein as of the last day of the month, fiscal quarter or fiscal year of Holdings, as the case may be and (ii) concurrently with the delivery of the financial statements pursuant to Section 5.01(a) and Section 5.01(b), a copy of management's discussion and analysis of the financial condition and results of operations of Holdings, the Borrower and their Subsidiaries for such fiscal quarter or fiscal year, as compared to the previous fiscal quarter or fiscal year, as applicable, and the portion of the projections covering such periods (including commentary on (x) any material developments or proposals affecting Holdings, the Borrower and their Subsidiaries or their businesses and (y) the reasons for any significant variations from the Projections for such period and the figures for the corresponding period in the previous fiscal year);

(c) promptly after any request by the Required Lenders, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of Holdings, the Borrower or any of their Subsidiaries by independent accountants in connection with the accounts or books of Holdings, the Borrower or any of their Subsidiaries or any audit of any of them;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Holdings, and copies of all annual, regular, periodic and special reports and registration statements which Holdings may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and in any case not otherwise required to be delivered to the Lenders pursuant hereto;

(e) promptly after the same are available, copies of any borrowing base certificates delivered under the Revolving Loan Agreement;

(f) [reserved];

(g) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of Holdings, the Borrower or any of their Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 5.01 or any other clause of this Section 5.02.

(h) as soon as available, but in any event within 30 days after the end of each fiscal year of Holdings, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for Holdings, the Borrower and their Subsidiaries and containing such additional information as the Required Lenders may reasonably specify;

(i) promptly, and in any event within five Business Days after receipt thereof by Holdings, the Borrower or any of their Subsidiaries, copies of each notice or other correspondence received from the SEC (or any comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of such Loan Party or such Subsidiary;

(j) promptly, and in any event within five Business Days after receipt thereof by Holdings, the Borrower or any of their Subsidiaries, copies of all notices, requests and other documents (including amendments, waivers and other modifications) received under or pursuant to any instrument, indenture, loan or credit or similar agreement regarding or related to any breach or default by any party thereto or any other event that could materially impair the value of the interests or the rights of Holdings, the Borrower or any of their Subsidiaries and, from time to time upon request by the Required Lenders, such information and reports regarding such instruments, indentures and loan and credit and similar agreements as the Required Lenders may reasonably request;

(k) as soon as available, but in any event within 30 days after the end of each fiscal year of the Borrower, an updated Perfection Certificate reflecting all changes since the date of the information most recently received by the Lenders pursuant to the Perfection Certificate delivered on the Closing Date or this paragraph (k), as the case may be; and

(l) promptly, (i) such additional information regarding the business, financial, legal or corporate affairs of Holdings, the Borrower or any of their Subsidiaries, or compliance with the terms of the Loan Documents, as the Disbursing Agent or any Lender may from time to time reasonably request and (ii) information and documentation reasonably requested by the Disbursing Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act or other applicable anti-money laundering laws.

Documents required to be delivered pursuant to Section 5.01(a), Section 5.01(b) or Section 5.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings or Borrower posts such documents, or provides a link thereto on Holdings' website; or (ii) on which such documents are posted on Holdings' or Borrower's behalf on IntraLinks/IntraAgency or another relevant website to which each Lender has access; *provided* that: (i) Holdings and Borrower shall deliver paper copies of such documents to the Agents or any Lender that requests in writing that the Borrower deliver such paper copies until a written request to cease delivering paper copies is given by the Agents or such Lender and (ii) the Borrower shall notify the Agents and the Lenders of the posting of any such documents. The Agents shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Holdings or Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Section 5.03 Notices. Promptly give written notice to the Disbursing Agent, the Collateral Agent and each Lender of:

(a) the occurrence of any Default or Event of Default;

(b) any development or event that has had, or could reasonably be expected to have, a Material Adverse Effect, including without limitation (i) any breach or non-performance of, or any default under, a Contractual Obligation of Holdings, the Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between Holdings, the Borrower or any Subsidiary and any Governmental Authority; (iii) the commencement of, or any material development in, any litigation or proceeding affecting Holdings, the Borrower or any Subsidiary; or (iv) any action, suit, or investigation by any Governmental Authority against Holdings, the Borrower or any Subsidiary in relation to alleged or potential violations of Anti-Corruption Laws, Anti-Money Laundering Laws, or International Trade Laws;

(c) the occurrence of any of the following events, as soon as possible and in any event within 30 days after any Group Member knows or has reason to know thereof: (i) any ERISA Event, (ii) the adoption of any new Single Employer Plan by any Group Member or any of their respective ERISA Affiliates, (iii) the adoption of an amendment to a Single Employer Plan if such amendment results in a material increase in benefits or unfunded liabilities or (iv) the commencement of contributions by any Group Member or any of their respective ERISA Affiliates to a Multiemployer Plan or Single Employer Plan other than any Single Employer Plan in existence as of the Closing Date, which, in the case of each of the foregoing clauses (i) through (iv), shall specify the nature thereof, what action such Group Member or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the IRS, the Department of Labor or the PBGC with respect thereto;

(d) any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;

(e) the (i) occurrence of any Disposition of Property or assets for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.07(a), (ii) occurrence of any sale of capital stock or other Equity Interests for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.07(c), (iii) incurrence or issuance of any Indebtedness for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.07(d), (iv) receipt of any Net Cash Proceeds of any Recovery Event for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.07(b) and (v) receipt of any Extraordinary Receipts for which the Borrowers are required to make a mandatory prepayment pursuant to Section 2.07(e);

(f) promptly after the assertion or occurrence thereof, notice of any action or proceeding against, or of any noncompliance by, Holdings, the Borrower or any of their Subsidiaries in respect of or with any Environmental Law or Environmental Permit that could (i) reasonably be expected to result in a Material Adverse Effect or (ii) cause any property described in the Mortgages to be subject to any material restrictions on ownership, occupancy, use or transferability under any Environmental Law;

(g) the termination (other than in accordance with its terms) or amendment in any manner materially adverse to the interests of the Lenders of any Material Agreement;

(h) any Loan Party having any reason to believe that any of the representations and warranties set forth in Section 3.20 or 3.21 are no longer correct; and

(i) any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification.

Each notice pursuant to this Section 5.03 (other than Section 5.03(e)) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken or proposes to take with respect thereto. Each notice pursuant to Section 5.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

Section 5.04 Payment of Obligations. (a) Pay, discharge or otherwise satisfy as the same shall become due and payable in the normal conduct of its business all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, (i) to the extent any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP, or (ii) if such failure to pay or discharge such obligations and liabilities would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (b) timely and accurately file all federal, state and other material Tax returns required to be filed.

Section 5.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the laws of the jurisdiction of its organization, except in a transaction permitted by Section 6.03 and Section 6.04; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

Section 5.06 Maintenance of Property. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

Section 5.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or a similar business of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, and all such insurance shall (i) provide for not less than 30 days' (10 days' in the case of failure to pay premium) prior notice to the Collateral Agent of termination, lapse or cancellation of such insurance, (ii) name the

Collateral Agent as loss payee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) and (iii) be reasonably satisfactory in all other respects to the Required Lenders.

(b) If any portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a Special Flood Hazard Area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect) or any successor act thereto, then the Borrower shall, or shall cause the applicable Loan Party to (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Disaster Protection Act and the National Flood Insurance Act of 1968 and (ii) deliver to the Collateral Agent evidence of such compliance in form and substance reasonably acceptable to the Required Lenders.

Section 5.08 Books and Records; Inspection Rights.

(a) (i) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of Holdings, the Borrower or such Subsidiary, as the case may be; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over Holding, the Borrower or such Subsidiary, as the case may be.

(b) Permit representatives and independent contractors of the Lenders to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours not more than once per year, upon reasonable advance notice to the Borrower; *provided*, *however*, that when an Event of Default exists any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours as often as may be desired and without advance notice.

Section 5.09 Compliance with Laws. (a) Comply with all Requirements of Law and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i) such Requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect and (b) cooperate with the Lenders in good faith to implement and/or enhance the Loan Parties' controls relating to compliance with Anti-Money Laundering Laws, Anti-Corruption Laws and International Trade Laws to the extent the Required Lenders reasonably deem that such enhancements are necessary.

Section 5.10 Compliance with Environmental Laws; Preparation of Environmental Reports

(a) (i) Comply, and cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits; (ii) obtain and renew all Environmental Permits necessary for its operations and properties; (iii) conduct any investigation, study, sampling and testing, and undertake any cleanup, response or other corrective action necessary to address any Releases of Materials of Environmental Concern at, on, under or emanating from any property owned, leased or operated to the extent required by and in accordance with Environmental Laws, and as necessary to avoid any material restrictions on ownership, occupancy, use or transferability or any material impairment of the value of the impacted property and (iv) make an appropriate response to any investigation, notice, demand, claim, suit or other proceeding asserting Environmental Liability against Holdings, the Borrower or any of their Subsidiaries and discharge any obligations it may have to any Person thereunder, except in the case of each of clauses (i) through (iv), where the failure to do so could not reasonably be expected to result in a Material Adverse Effect; *provided* that none of Holdings, the Borrower or any of their Subsidiaries shall be required to undertake any such investigation, study, sampling, testing, cleanup, removal, remedial or other responsive action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

(b) At the reasonable request of the Required Lenders, based upon a reasonable belief that Holdings, the Borrower or any of their Subsidiaries is in material breach of its obligations under this Section 5.10 or at any other time if an Event of Default has occurred and is continuing provide to the Lenders within 60 Business Days after such request, at the expense of the Borrower, an environmental site assessment report for any properties owned, leased or operated by it described in such request, prepared by an environmental consulting firm reasonably acceptable to the Required Lenders, describing the Release and any response or other corrective action to address any Materials of Environmental Concern on such properties and the estimated cost thereof; without limiting the generality of the foregoing, if the Borrower has not provided such environmental site assessment report within the time referred to above, the Lenders may retain an environmental consulting firm to prepare such report at the expense of the Borrower, and the Borrower hereby grants and agrees to cause any Subsidiary that owns or leases any property described in such request to grant the Lenders, such firm and any agents or representatives thereof reasonable access, subject to the rights of tenants or necessary consent of landlords, to enter onto their respective properties to undertake such an assessment.

Section 5.11 Use of Proceeds. Use the proceeds of the Loans only for the purposes specified in the recitals to this Agreement. The Borrower will not request any Credit Extension, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Credit Extension (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption

Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto or (d) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock.

Sectopm 5.12 Covenant to Guarantee Obligations and Give Security.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all further action (including filing Uniform Commercial Code and other financing statements, Mortgages and deeds of trust) that may be required under applicable Requirements of Law, or that the Required Lenders or the Collateral Agent may reasonably request, in order to effectuate the Transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the Security Documents.

(b) In the event that (x) any Person becomes a Subsidiary (other than an Excluded Subsidiary) of the Borrower or any other Loan Party or (y) any Subsidiary of the Borrower or any other Loan Party that previously was an Excluded Subsidiary ceases to be an Excluded Subsidiary, each of Holdings and the Borrower shall, and shall cause each other such Person to (a) within 30 days after such event (or such longer period of time reasonably acceptable to the Required Lenders), cause such Person referred to in clause (x) or (y), as applicable, to become a Guarantor and a Grantor under (and as defined in) the Guarantee and Collateral Agreement by executing and delivering to the Collateral Agent a counterpart agreement or supplement to the Guarantee and Collateral Agreement in accordance with its terms and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates necessary or as may be reasonably requested by the Collateral Agent or the Required Lenders in order to cause the Collateral Agent, for the benefit of the Secured Parties, to have a Lien on all assets of such Person (other than Excluded Assets), which Lien shall (other than with respect to assets constituting Excluded Perfection Assets) be perfected and shall be of first priority (subject to (i) in the case of all such assets constituting Equity Interests, Permitted Equity Liens and (ii) in the case of all such other assets, Permitted Liens) and shall deliver or cause to be delivered to the Collateral Agent, items as are similar to those described in Section 4.02(e), Section 4.02(h), Section 4.02(j) and Section 4.02(k) hereof, Section 5.14 hereof and Section 5 of the Guarantee and Collateral Agreement and, to the extent applicable, any additional Mexican Security Documents. With respect to each such Subsidiary of the Borrower or any other Loan Party, the Borrower shall, within 30 days of such event (or such longer period of time reasonably acceptable to the Required Lenders), send to the Lenders and the Collateral Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary (that is not an Excluded Subsidiary) of the Borrower or any other Loan Party or ceased to be an Excluded Subsidiary and (ii) all of the data required to be set forth in Schedule 3.18 with respect to all Subsidiaries of Holdings, and such written notice shall be deemed to supplement Schedule 3.18 for all purposes hereof. Notwithstanding anything to the contrary set forth herein, in no event shall this Section 5.12(b) require the granting of any Lien on any Excluded Assets or the perfection of any Lien on any Excluded Perfection Assets.

(c) In the event that (i) any Loan Party acquires any Material Owned Real Property, (ii) any Person becomes a Subsidiary (other than an Excluded Subsidiary) of the Borrower or any other Loan Party and such Person owns any Material Owned Real Property at such time, (iii) any Subsidiary ceases to be an Excluded Subsidiary and such Subsidiary owns any Material Owned Real Property at such time or (iv) any Real Property of a Loan Party becomes Material Owned Real Property after the Closing Date, and such interest in such Material Owned Real Property has not otherwise been made subject to the Lien of the Security Documents in favor of Collateral Agent for the benefit of the Secured Parties, then each of Holdings and the Borrower shall, or shall cause such Subsidiary to, within 90 days of such event (or such longer period of time reasonably acceptable to the Required Lenders), take all such actions and execute and deliver, or cause to be executed and delivered, all such Mortgages, documents, instruments, agreements and certificates with respect to each such Material Owned Real Property necessary or that the Required Lenders or the Collateral Agent shall reasonably request to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a valid first-priority security interest (subject to Permitted Prior Liens) in such Material Owned Real Property and shall deliver to the Collateral Agent title reports, surveys necessary to provide a Title Policy (defined below), ALTA mortgagee extended coverage title insurance policies or commitments therefor issued by one or more title companies (the "Title Company") reasonably satisfactory to the Required Lenders with respect to each Mortgaged Property (each, a "Title Policy"), in amounts not less than 110% of the fair market value of each Mortgaged Property that is owned in fee insuring the fee simple title to each of the fee owned Mortgaged Properties vested in the applicable Loan Party and insuring the Collateral Agent that the relevant Mortgage creates a valid and enforceable first-priority Lien on the Mortgaged Property encumbered thereby, together with all endorsements reasonably requested by the Required Lenders, legal opinions, flood certificates, flood insurance (if required) and other items with respect to such Material Owned Real Property. In addition to the foregoing, the Borrower shall, at the request of the Collateral Agent or the Required Lenders, deliver, from time to time, to the Collateral Agent such appraisals as are required by law or regulation of any Material Owned Real Property with respect to which the Collateral Agent has been granted a Lien.

Section 5.13 Further Assurances. Promptly upon request by any Agent, or any Lender, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Disbursing Agent, the Collateral Agent or any Lender may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Security Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Security Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or

under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party.

Section 5.14 Post-Closing Undertakings. Within the time periods specified on Schedule 5.14 (or such later date to which the Required Lenders consent), comply with the provisions set forth in Schedule 5.14.

Section 5.15 Issuance of Additional Warrants. If any Second Amendment Loans remain outstanding on March 31, 2022, Holdings shall immediately issue to the Lenders and/or their Affiliates additional warrants in form and substance satisfactory to the Lenders to purchase 5.0% of the Common Stock Deemed Outstanding on the date of any partial or full exercise of such warrants at the same purchase price as included in the Warrants issued to the Lenders and/or their Affiliates on the Closing Date.

Section 5.16 Lender Calls and Cash Flow Forecast. No later than 25 days after the end of each month, deliver a 13-week cash flow forecast and cause the chief financial officer of the Borrower to attend a meeting (via telephone or videoconference) with the Lenders to discuss the financial performance of the Loan Parties and their Subsidiaries.

Section 5.17 Additional Covenants. Comply with the following covenants within the time periods set forth below:

(a) Deliver to the Lenders one or more reasonably detailed termsheets with respect to at least $15,000,000 of additional Liquidity no later than July 31, 2021; and

(b) File a Form S-3 registration statement with the SEC no later than August 31, 2021.

ARTICLE VI

NEGATIVE COVENANTS

Each of Holdings and the Borrower hereby jointly and severally agrees that, on and after the Closing Date until Payment in Full, each of Holdings and the Borrower shall not, and shall not permit any Subsidiary (other than any Railcar Leasing Subsidiary) to, directly or indirectly:

Section 6.01 Limitation on Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party created hereunder and under the other Loan Documents;

(b) unsecured Indebtedness of the Borrower owing to any Subsidiary, and of any Subsidiary owing to the Borrower or any other Subsidiary, to the extent constituting an Investment permitted by Section 6.06(c); *provided* that (i) any such Indebtedness owed to a Loan Party shall be evidenced by a promissory note that shall be pledged to the Collateral Agent in accordance with the terms of the Guarantee and Collateral Agreement and (ii) all such Indebtedness of any Loan Party owed to any Subsidiary that is not a Loan Party shall be subject to and evidenced by the Subordinated Intercompany Note;

(c) Indebtedness in respect of Capital Lease Obligations and Purchase Money Obligations financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred by the Borrower or any Subsidiary within 270 days after the acquisition, construction, repair, replacement, lease or improvement of the applicable asset in an aggregate principal amount not to exceed $10,000,000 at any one time outstanding;

(d) Indebtedness outstanding on the Closing Date and listed on Schedule 6.01 and any Permitted Refinancing Debt in respect thereof;

(e) Guarantee Obligations by Holdings, the Borrower or any Subsidiary in respect of any Indebtedness of the Borrower or any Subsidiary otherwise permitted to be incurred by the Borrower or such Subsidiary hereunder; *provided* that (A) no Guarantee Obligations in respect of any Junior Indebtedness shall be permitted unless the guaranteeing party shall have also provided a guarantee of the Obligations on the terms set forth in the Guarantee and Collateral Agreement and (B) if the Indebtedness being guaranteed is subordinated to the Obligations, such guarantee shall be subordinated to the guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(f) Indebtedness in respect of Swap Contracts entered into in the ordinary course of business, and not for speculative purposes, to protect against (i) changes in interest rates or (ii) changes in commodity prices or foreign exchange rates; *provided however*, that the aggregate amount of all such Indebtedness under this clause (ii) at any one time outstanding shall not exceed $1,000,000;

(g) Indebtedness of the Borrower or any Subsidiary arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn by the Borrower or such Subsidiary in the ordinary course of business against insufficient funds, so long as such Indebtedness is repaid within five Business Days;

(h) (i) Indebtedness of the Borrower or any Subsidiary in the form of earn-outs, indemnification, incentive, non-compete, consulting or other similar arrangements and other contingent obligations in respect of any Investments permitted by Section 6.06 (before any liability associated therewith becomes fixed) and (ii) Indebtedness incurred by the Borrower or any Subsidiary arising from agreements providing for indemnification related to sales of goods or adjustment of purchase price or similar obligations in any case incurred in connection with the Disposition of any business, assets or Subsidiary;

(i) Indebtedness of the Borrower or any Subsidiary in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments created or issued in the ordinary course of business in connection with workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims; *provided* that any reimbursement obligations in respect thereof are reimbursed within 30 days following the incurrence thereof (or within such longer period as is permitted without interest or other charges under the benefit plan under which reimbursement is to be made);

(j) obligations in respect of performance, bid, customs, government, appeal and surety bonds, performance and completion guaranties and similar obligations provided by the Borrower or any Subsidiary, in each case in the ordinary course of business;

(k) Indebtedness owing to any insurance company in connection with the financing of any insurance premiums permitted by such insurance company in the ordinary course of business;

(l) (i) Indebtedness representing deferred compensation or stock-based compensation to employees of Holdings or any Subsidiary incurred in the ordinary course of business and (ii) Indebtedness consisting of obligations of Holdings or any Subsidiary under deferred compensation or other similar arrangements incurred in connection with the Transactions and any Investment permitted hereunder;

(m) to the extent constituting Indebtedness, take-or-pay obligations contained in supply arrangements;

(n) the Revolving Loan Indebtedness (and any refinancing in respect of such Revolving Loan Indebtedness that is incurred in accordance with the terms of the Intercreditor Agreement);

(o) Indebtedness in connection with treasury management and commercial credit card, merchant card and purchase or procurement card services entered into in the ordinary course of business;

(p) additional Indebtedness of the Borrower or any Subsidiary in an aggregate principal amount not to exceed $2,500,000 at any one time outstanding;

(q) unsecured Indebtedness in the form of the SBA PPP Loan the aggregate principal amount of which does not exceed $10,000,000 at any time;

(r) (i) Indebtedness and (ii) Guarantee Obligations or letters of credit, bank guaranties, surety bonds and similar instruments, in each case (x) incurred in the ordinary course of business in respect of obligations owed to suppliers, customers, franchisees, lessors, licensees or sublicensees or (y) otherwise constituting Investments permitted by Section 6.06(w);

(s) Indebtedness of the Mexican Subsidiaries under the Mexican ABL Credit Facility (and any refinancing in respect thereof); and

(t) all premium (if any), interest (including post-petition interest), fees, expenses, charges, amortization of original issue discount, interest paid in kind and additional or contingent interest on obligations described in Section 6.01(a) through Section 6.01(s) above.

Section 6.02 Limitation on Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

(a) Liens pursuant to any Loan Document;

(b) Liens in existence on the Closing Date and listed on Schedule 6.02, and any Lien granted as a replacement or substitute therefor; *provided* that any such replacement or substitute Lien (i) does not secure an aggregate amount of Indebtedness or other obligations, if

any, greater than that secured on the Closing Date (*minus* the aggregate amount of any permanent repayments and prepayments thereof since the Closing Date but only to the extent that such repayments and prepayments by their terms cannot be reborrowed or redrawn and do not occur in connection with a refinancing of all or a portion of such Indebtedness) and (ii) does not encumber any Property other than the Property subject thereto on the Closing Date (*plus* improvements and accessions to such Property);

(c) Liens for Taxes not yet due or that are being contested in good faith by appropriate proceedings diligently conducted; *provided* that adequate reserves with respect thereto are maintained on the books of Holdings or the applicable Subsidiary, in conformity with GAAP;

(d) statutory or common law Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens arising in the ordinary course of business that secure amounts not overdue for a period of more than 30 days (or, if more than 30 days overdue, that are unfiled and no other action has been taken to enforce such Lien) or that are being contested in good faith by appropriate proceedings diligently conducted; *provided* that adequate reserves with respect thereto are maintained on the books of Holdings or the applicable Subsidiary, in conformity with GAAP;

(e) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Holdings, the Borrower or any of their Subsidiaries;

(f) deposits and other Liens to secure the performance of bids, trade contracts, governmental contracts and other similar contracts (other than Indebtedness for borrowed money), leases (other than Capital Leases), subleases, statutory obligations, surety, stay, judgment and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) encumbrances shown as exceptions in the title insurance policies insuring the Mortgages, easements, zoning restrictions, rights-of-way, restrictions, encroachments, protrusions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, do not materially detract from the value, or materially interfere with the use, of the Property subject thereto or materially interfere with the ordinary conduct of the business of Holdings, the Borrower or any of their Subsidiaries, taken as a whole;

(h) Liens securing Indebtedness permitted under Section 6.01(c); *provided* that (i) such Liens do not at any time encumber any Property other than the Property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed, at the time of incurrence thereof, the lesser of the cost or fair market value of the Property secured by such Lien;

(i) Liens on insurance policies and proceeds thereof securing the financing of the premiums with respect thereto;

(j) any interest or title of a lessor, sublessor, licensor or sublicensor under any lease, sublease, license or sublicense entered into by Holdings, the Borrower or any of their Subsidiaries in the ordinary course of its business and covering only the assets so leased or licensed;

(k) Liens on equipment arising from precautionary UCC financing statements regarding operating leases of equipment;

(l) (i) Liens in favor of customs and revenue authorities arising as a matter of law to secure the payment of customs duties in connection with the importation of goods in the ordinary course of business and (ii) Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit permitted under Section 6.01 issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(m) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Holdings, the Borrower and their Subsidiaries in the ordinary course of business permitted by this Agreement;

(n) Liens on cash or Cash Equivalents used to defease or to satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is permitted by this Agreement;

(o) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(p) (i) Liens that are contractual or common law rights of set-off relating to (A) the establishment of depository relations in the ordinary course of business with banks not given in connection with the issuance of Indebtedness or (B) pooled deposit or sweep accounts of Holdings, the Borrower and any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings, the Borrower and their Subsidiaries and (ii) other Liens securing cash management obligations (that do not constitute Indebtedness) in the ordinary course of business;

(q) Liens of a collection bank arising under Section 4-208 or Section 4-210 of the UCC on items in the course of collection;

(r) Liens on Equity Interests in joint ventures securing obligations of such joint venture;

(s) judgment Liens in respect of judgments not constituting an Event of Default under Section 7.01(i);

(t) Liens on the assets of the Loan Parties (other than the Mexican Subsidiaries) created under the Revolving Loan Documents to secure the Revolving Loan Indebtedness, which are subject to the Intercreditor Agreement;

(u) Liens securing the Mexican ABL Credit Facility, which are subject to an intercreditor agreement in form and substance satisfactory to the Required Lenders and the Collateral

Agent; *provided*, that such Liens only encumber inventory and related assets owned by the Mexican Subsidiaries and located in Mexico and other assets acceptable to the Required Lenders; and

(v) Liens not otherwise permitted by this Section 6.02 on assets not otherwise constituting Collateral so long as (i) the aggregate outstanding principal amount of the obligations secured thereby and (ii) the aggregate fair market value (determined, in the case of each such Lien, as of the date such Lien is incurred) of the assets subject thereto does not exceed $1,000,000 at any one time.

Section 6.03 Limitation on Fundamental Changes. Enter into any merger, acquisition, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property or business (whether now owned or hereafter acquired) or less than all of the Equity Interests of any Subsidiary (except to qualified directors if required by law), except that:

(a) so long as no Default or Event of Default exists or would result therefrom, any Subsidiary may be merged, amalgamated or consolidated with or into the Borrower or any Subsidiary Guarantor (*provided* that the Borrower or a Subsidiary Guarantor shall be the continuing or surviving corporation or simultaneously with such merger, amalgamation or consolidation, the continuing or surviving Person shall become a Subsidiary Guarantor and the Borrower shall comply with Section 5.12 in connection therewith);

(b) any Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is not a Loan Party;

(c) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to Holdings, the Borrower or any Subsidiary Guarantor;

(d) any Subsidiary that is not a Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to any other Subsidiary that is not a Loan Party;

(e) so long as no Default or Event of Default exists or would result therefrom, any Disposition permitted by Section 6.04 and any merger, amalgamation, consolidation, dissolution, liquidation, investment or Disposition the purpose of which is to effect a Disposition permitted by Section 6.04 may be consummated;

(f) Holdings, the Borrower and their Subsidiaries may consummate the Transactions as contemplated by, and in compliance with, the Loan Documents;

(g) Holdings, the Borrower and their Subsidiaries may consummate the Mexico JV Transaction as contemplated by, and in compliance with, the Mexico JV Acquisition Agreement; and

(h) any Subsidiary may liquidate or dissolve if (i) the Borrower determines in good faith that such liquidation or dissolution is in the best interest of the Borrower and the Subsidiaries and is not materially disadvantageous to the Lenders and (ii) if such

Subsidiary is a Loan Party, any assets or business of such Subsidiary not otherwise disposed of or transferred in accordance with this Section 6.03 and Section 6.04 or, in the case of any such business, discontinued, shall be transferred to, or otherwise owned or conducted by, a Loan Party after giving effect to such liquidation or dissolution.

Section 6.04 Limitation on Dispositions. Dispose of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or, in the case of any Subsidiary, issue or sell any Equity Interests of such Subsidiary to any Person, except:

(a) Dispositions of surplus, obsolete or worn out Property and Property no longer used or useful in the conduct of the business of the Borrower or any Subsidiary in the ordinary course of business;

(b) the lapse, abandonment, cancellation or non-exclusive license of any immaterial Intellectual Property in the ordinary course of business;

(c) Dispositions of inventory or goods held for sale in the ordinary course of business;

(d) Dispositions permitted by Section 6.03 (excluding Section 6.03(e) and Section 6.03(h));

(e) any sale or issuance of (i) the Equity Interests of any Subsidiary to Holdings, the Borrower or any Subsidiary Guarantor and (ii) the Equity Interests of any Subsidiary that is not a Loan Party to any other Subsidiary that is not a Loan Party;

(f) any Disposition of other assets for fair market value not to exceed $2,500,000 per fiscal year of Holdings; *provided* that (i) no Default or Event of Default exists or would result therefrom, (ii) at least 75% of the total consideration for any such Disposition shall be received by the Borrower and the Subsidiaries in the form of cash and Cash Equivalents (in each case, free and clear of all Liens at the time received, other than non-consensual Liens permitted by Section 6.02) and (iii) the requirements of Section 2.07(a), to the extent applicable, are complied with in connection therewith;

(g) transfers of condemned Property as a result of the exercise of "eminent domain" or other similar policies to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of properties that have been subject to a casualty to the respective insurer of such Property as part of an insurance settlement;

(h) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture agreements and similar binding agreements; *provided* that the requirements of Section 2.07(a), to the extent applicable, are complied with in connection therewith;

(i) the sale or discount, in each case without recourse and in the ordinary course of business, of overdue accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof consistent with customary industry practice (and not as part of any bulk sale or financing of receivables);

(j) transfers of Property by (i) Holdings or the Borrower to any Subsidiary Guarantor, (ii) any Subsidiary Guarantor to Holdings, the Borrower or any other Subsidiary Guarantor

or (iii) any Subsidiary that is not a Loan Party to (A) Holdings, the Borrower or any Subsidiary Guarantor for no more than fair market value or (B) any other Subsidiary that is not a Loan Party;

(k) dispositions and/or terminations of leases, subleases, licenses and sublicenses in the ordinary course of business and which do not materially interfere with the business of the Borrower or any of the Subsidiaries;

(l) Dispositions of Cash Equivalents;

(m) Dispositions of Property (other than Equity Interests or all or substantially all of the assets of Holdings, the Borrower or any of their Subsidiaries) to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(n) the unwinding of any Swap Contract in accordance with its terms;

(o) to the extent constituting Dispositions, (i) Liens permitted by Section 6.02, (ii) Restricted Payments permitted by Section 6.05 (excluding Section 6.05(h)),(iii) Investments permitted by Section 6.07, and (iv) Sale and Leasebacks permitted by Section 6.09; and

(p) (i) the Shoals Facility Lease Termination and (ii) Dispositions of machinery and equipment in connection with the closing of the Shoals Facility to the Mexican Subsidiaries or otherwise, including any further Dispositions of such machinery and equipment by the Mexican Subsidiaries.

To the extent any Collateral is Disposed of as expressly permitted by this Section 6.04 to any Person that is not a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and the Collateral Agent shall be authorized to take any actions deemed appropriate in order to effectuate the foregoing.

Section 6.05 Limitation on Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that so long as no Default or Event of Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) the Borrower or any Subsidiary may make Restricted Payments to another Loan Party;

(b) the Borrower or any Subsidiary may make Restricted Payments to Holdings the proceeds of which will be used to pay the Tax Distribution Amount or any Parent Expenses;

(c) Holdings may declare and make Restricted Payments on any class of Equity Interests of Holdings payable solely in the form of Qualified Equity Interests of Holdings;

(d) the Borrower or any Subsidiary may make Restricted Payments to, directly or indirectly, purchase the Equity Interests of Holdings from present or former officers, directors, consultants, agents or employees (or their estates, trusts, family members or former spouses) of Holdings, the Borrower or any Subsidiary upon the death, disability, retirement or termination of the applicable officer, director, consultant, agent or

employee; *provided* that the aggregate amount of payments under this Section 6.05(d) shall not exceed $1,000,000 in any calendar year; *provided*, *further*, that such amount in any calendar year may be increased by an amount not to exceed the sum of:

i. the net cash proceeds received from key man life insurance policies received by Holdings or any Subsidiary; plus

ii. to the extent contributed to the Borrower as common equity, the net cash proceeds from the sale of Equity Interests (other than Disqualified Equity Interests) of Holdings to directors, consultants, officers or employees of Holdings, the Borrower or any Subsidiary in connection with permitted employee compensation and incentive arrangements, to the extent the net cash proceeds from the sale of such Equity Interests have not otherwise been applied for another purpose; minus

iii. the amount of any Restricted Payments previously made with the net cash proceeds described in the foregoing clauses (i) and (ii);

(e) non-cash repurchases of Equity Interests of Holdings deemed to occur upon exercise of stock options or warrants or the settlement or vesting of other equity awards if such Equity Interests represent a portion of the exercise price of such options or warrants or similar equity incentive awards;

(f) the Borrower or any Subsidiary may make Restricted Payments to consummate the Transactions;

(g) the Borrower may make Restricted Payments to allow Holdings to make cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of any such Person;

(h) to the extent constituting Restricted Payments, the Borrower or any Subsidiary may enter into and consummate transactions expressly permitted by any provision of Section 6.03, Section 6.04 (other than Section 6.04(o)) and Section 6.08 (other than Section 6.08(b));

(i) to the extent constituting Restricted Payments, the Borrower may make Investments permitted by Section 6.06(v);

(j) to the extent constituting Restricted Payments, the Borrower may make (i) payments to the Mexico Facility Landlord in accordance with the Mexico Facility Lease, including any security deposits required thereby, and (ii) payments, including royalty payments, made to the Gil Family in connection with the Mexico JV Transaction;

(k) any non-Wholly Owned Subsidiary may declare and pay cash dividends to its equity holders generally so long as Holdings, the Borrower or the applicable Subsidiary which owns the Equity Interests in the Subsidiary paying such dividend receives at least its proportional share thereof (based upon its relative holding of the class of Equity Interests in the Subsidiary paying such dividends); and

(l) Holdings may issue the Warrants on the Closing Date in accordance with Section 4.02(r).

Any loan or advance made by the Borrower to Holdings pursuant to Section 6.06(s) shall be in lieu of, and shall correspondingly reduce, the amount of the applicable Restricted Payment that the Borrower would otherwise have been permitted to make pursuant to the applicable clause of this Section 6.05.

Section 6.06 Limitation on Investments. Make or hold, directly or indirectly, any Investments, except:

(a) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(b) Investments by Holdings, the Borrower or any of their Subsidiaries in cash and Cash Equivalents and Investments in assets that were Cash Equivalents when such Investment was made;

(c) Investments by Holdings or any of the Subsidiaries in the Borrower or any of the Subsidiaries; *provided* that (x) any Investment made by any Subsidiary that is not a Loan Party in any Loan Party pursuant to this Section 6.06(c) shall be subordinated in right of payment to the Loans pursuant to the Subordinated Intercompany Note and (y) the aggregate amount of such Investments in Subsidiaries that are not Loan Parties shall not exceed $1,000,000 at any one time outstanding

(d) guarantees by Holdings or any of its Subsidiaries of leases (other than Capital Leases) or of other obligations of the Borrower or any of the Subsidiaries that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(e) loans or advances to officers, directors, managers and employees of Holdings or any of its Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests of Holdings directly from such issuing entity (*provided* that the amount of such loans and advances shall be contributed to the Borrower in cash as common equity) and (iii) for any other purpose not described in the foregoing clauses (i) and (ii); *provided* that the aggregate principal amount of all loans and advances outstanding at any time under this Section 6.06(e) shall not exceed $500,000;

(f) nvestments to the extent that payment for such Investments is made solely with Equity Interests (other than Disqualified Equity Interests) of Holdings;

(g) Investments by the Borrower or any of the Subsidiaries in joint ventures or similar arrangements in an aggregate amount at any one time outstanding not to exceed $1,000,000 (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(h) Investments (including debt obligations and Equity Interests) received in the ordinary course of business by the Borrower or any Subsidiary in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, suppliers and customers arising out of the ordinary course

of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(i) Investments by any Subsidiary that is not a Loan Party in any other Subsidiary that is not a Loan Party;

(j) Investments (i) existing or contemplated pursuant to legally binding written commitments on the Closing Date and set forth on Schedule 6.06 and any modification, replacement, renewal or extension thereof and (ii) existing on the Closing Date by Holdings or any Subsidiary in the Borrower or any other Subsidiary and any modification, replacement, renewal or extension thereof; *provided* that the amount of the original Investment is not increased except by the terms of such original Investment as set forth on Schedule 6.06 or as otherwise permitted by this Section 6.06;

(k) Investments in Swap Contracts permitted under Section 6.01(f);

(l) Investments arising as a result of payments permitted by Section 6.07(a);

(m) consummation of the Transactions pursuant to and in accordance with the Loan Documents;

(n) Investments arising directly out of the receipt by the Borrower or any Subsidiary of non-cash consideration for any sale of assets permitted under Section 6.04; *provided* that, in the case of any sale made in reliance on Section 6.04(f), such non-cash consideration shall in no event exceed 25% of the total consideration received for such sale;

(o) Investments consisting of the licensing or contribution of Intellectual Property pursuant to joint marketing arrangements with other persons;

(p) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(q) to the extent constituting Investments, purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case in the ordinary course of business;

(r) advances of payroll payments to employees in the ordinary course of business;

(s) loans or advances by the Borrower to Holdings in an aggregate amount not to exceed the amount of Restricted Payments permitted to be made to Holdings in accordance with Section 6.05;

(t) so long as no Event of Default shall have occurred and be continuing or would result therefrom, additional Investments in an aggregate amount at any one time outstanding not to exceed $3,000,000; *provided* that no Investment may be made pursuant to this Section 6.06(t) in any Subsidiary for the purpose of making a Restricted Payment prohibited pursuant to Section 6.05;

(u) Investments in FreightCar (Shanghai) Trading Co., Ltd. to fund operations and overhead expenses in an aggregate amount not to exceed $500,000 in any fiscal year;

(v) [reserved];

(w) Investments (i) funded solely with deposits from customers or (ii) funded partially with deposits from customers; *provided,* that any portion of such Investment not funded by customer deposits shall be required to be permitted under another clause of this Section 6.06; and

(x) to the extent constituting Investments, guarantee obligations of the Borrower or any Subsidiary of leases (other than Capital Lease Obligations), customer contracts or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business.

Section 6.07 Limitation on Prepayments; Modifications of Debt Instruments, Certain Material Agreements and Organizational Documents.

(a) Make or offer to make (or give any notice in respect thereof) any payment, prepayment, repurchase or redemption of, or voluntarily or optionally defease, or otherwise satisfy prior to the scheduled maturity thereof in any manner, any Junior Indebtedness, or segregate funds for any such payment, prepayment, repurchase, redemption or defeasance, except:

i. any Permitted Refinancing Debt in respect thereof; and

ii. the Borrower or any Subsidiary may convert any Junior Indebtedness to Qualified Equity Interests of Holdings;

(b) amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, (i) any of the terms of the Revolving Loan Documents other than in accordance with the Intercreditor Agreement or (ii) any of the terms of any Junior Indebtedness or any Scheduled Material Agreement, other than any such amendment, modification, waiver, change or consent which is not, and could not reasonably be expected to be, adverse in any material respect to the interests of the Lenders; or

(c) amend, restate, supplement or otherwise modify any of its Organizational Documents or any agreement to which it is a party with respect to its Equity Interests (including any stockholders' agreement), or enter into any new agreement with respect to its Equity Interests, other than any such amendments, modifications or changes or such new agreements which are not, and could not reasonably be expected to be, adverse in any material respect to the interests of the Lenders.

Section 6.08 Limitation on Transactions with Affiliates.

Enter into, directly or indirectly, any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of Holdings, the Borrower or any Subsidiary (other than between or among Loan Parties), unless such transaction is (i) otherwise not prohibited under this Agreement and (ii) upon fair and reasonable terms no less favorable to Holdings, the Borrower or such Subsidiary, as the case may be, than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate, except that the following shall be permitted:

(a) the Transactions as contemplated by, and in accordance with, the Loan Documents;

(b) Restricted Payments permitted under Section 6.05 (other than Section 6.05(h));

(c) Investments permitted under Section 6.06;

(d) employment and severance arrangements between Holdings, the Borrower and their Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans, stock incentive plans and employee benefit plans and arrangements in the ordinary course of business;

(e) payment of reasonable and customary director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and indemnification arrangements, in each case approved by the board of directors (or equivalent governing body) of Holdings, the Borrower or any Subsidiary, as applicable;

(f) payments to or from, and transactions with, joint ventures (to the extent any such joint venture is an Affiliate solely as a result of Investments by Holdings, the Borrower or any Subsidiary in such joint venture) in the ordinary course of business to the extent otherwise permitted under Section 6.06;

(g) [reserved];

(h) payments to the Mexico Facility Landlord made pursuant to the Mexico Facility Lease, including any security deposits required thereby;

(i) payments, including royalty payments, made to the Gil Family in connection with the Mexico JV Transaction; and

(j) transactions pursuant to agreements, instruments or arrangements in existence on the Closing Date and set forth in Schedule 6.08 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect.

For the avoidance of doubt, this Section 6.08 shall not apply to employment, bonus, retention and severance arrangements with, and payments of compensation or benefits to or for the benefit of, current or former employees, consultants, officers or directors of the Group Members in the ordinary course of business. For purposes of this Section 6.08, any transaction with any Affiliate shall be deemed to have satisfied the standard set forth in clause (ii) of the first sentence of this Section 6.08 if such transaction is approved by a majority of the Disinterested Directors of the board of directors (or equivalent governing body) of Holdings, the Borrower or such Subsidiary, as applicable. "Disinterested Director" shall mean, with respect to any Person and transaction, a member of the board of directors (or equivalent governing body) of such Person who does not have any material direct or indirect financial interest in or with respect to such transaction.

Section 6.09 Limitation on Sale and Leasebacks.

Enter into any arrangement, directly or indirectly, with any Person whereby it shall Dispose of any Property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such Property or other Property which it intends to use for substantially the same purpose or purposes as the Property being sold or transferred (any such transaction, a "Sale and Leaseback"), unless (i) the Disposition of such Property is entered into in the ordinary course

of business and is made for cash consideration in an amount not less than the fair market value of such Property, (ii) the Disposition of such Property is permitted by Section 6.04 and is consummated within 10 Business Days after the date on which such Property is sold or transferred, (iii) any Liens arising in connection therewith are permitted under Section 6.02, and (iv) such Sale and Leaseback would be permitted under Section 6.01, assuming the Attributable Indebtedness with respect to such Sale and Leaseback constituted Indebtedness under Section 6.01.

Section 6.10 Limitation on Changes in Fiscal Periods.

Permit the fiscal year of Holdings to end on a day other than December 31 or change Holdings' method of determining fiscal quarters.

Section 6.11 Limitation on Burdensome Agreements. Enter into or suffer to exist or become effective any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of its properties or revenues, whether now owned or hereafter acquired, to secure the Obligations or (b) the ability of any Subsidiary to (i) make Restricted Payments in respect of any Equity Interests of such Subsidiary held by, or pay any Indebtedness owed to, the Borrower or any other Subsidiary, (ii) make loans or advances to, or other Investments in, Holdings, the Borrower or any other Subsidiary or (iii) transfer any of its properties to Holdings, the Borrower or any other Subsidiary, except for any such restrictions that:

(a) exist under this Agreement and the other Loan Documents;

(b) (x) exist on the Closing Date and (to the extent not otherwise permitted by this Section 6.11) are listed on Schedule 6.11 hereto and (y) to the extent restrictions permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any Permitted Refinancing Debt in respect thereof, so long as such restrictions are not (taken as a whole) materially less favorable to the Lenders than those in the original Indebtedness;

(c) are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as such restrictions were not entered into solely in contemplation of such Person becoming a Subsidiary;

(d) are customary restrictions and conditions contained in any agreement relating to any Disposition permitted by Section 6.04 pending the consummation of such Disposition; *provided* that such restrictions and conditions apply only to the property that is the subject of such Disposition and not to the proceeds to be received by the Group Members in connection with such Disposition;

(e) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 6.06 and applicable solely to such joint venture;

(f) are restrictions on Liens in favor of any holder of Indebtedness permitted under Section 6.01(c) (solely to the extent such restriction relates to assets the acquisition, construction, repair, replacement, lease or improvement of which was financed by such Indebtedness);

(g) are customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate solely to the assets subject thereto;

(h) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Subsidiary;

(i) are customary provisions restricting assignment or transfer of any agreement entered into in the ordinary course of business;

(j) exist under the Revolving Loan Documents or the Mexican ABL Credit Facility; and

(k) are amendments, modifications, restatements, refinancings or renewals of the agreements, contracts or instruments referred to in Section 6.11(a) through Section 6.11(i) above; *provided* that such amendments, modifications, restatements, refinancings or renewals, taken as a whole, are not materially more restrictive with respect to such encumbrances and restrictions than those contained in such predecessor agreements, contracts or instruments.

Section 6.12 Limitation on Lines of Business. Enter into any material line of business, except for those lines of business in which Holdings, the Borrower and their Subsidiaries are engaged on the Closing Date or that are reasonably related thereto or are reasonable extensions thereof.

Section 6.13 Limitation on Activities of Holdings. In the case of Holdings, notwithstanding anything to the contrary in this Agreement or any other Loan Document:

(a) conduct, transact or otherwise engage in, or commit to conduct, transact or otherwise engage in, any business or operations or own any assets other than (i) its ownership of the Equity Interests of its Subsidiaries and activities incidental thereto and Investments by or in Holdings permitted hereunder and activities incidental thereto, (ii) activities incidental to the maintenance of its existence and compliance with applicable laws and legal, tax and accounting matters related thereto and activities relating to its employees, (iii) activities relating to the performance of obligations under the Loan Documents and the documentation governing other permitted Indebtedness to which it is a party, (iv) the making of Restricted Payments permitted to be made by Holdings pursuant to Section 6.05, (v) the receipt of Restricted Payments permitted to be made to Holdings under Section 6.05, (vi) activities related to the Transactions and in connection with the Loan Documents, (vii) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and the Borrower, (viii) holding any other property received by it as a distribution from any of its Subsidiaries and making further distributions with such property, (ix) providing indemnification to officers, managers and directors, (x) holding director and shareholder meetings, preparing organizational records and other organizational activities required to maintain its separate organizational structure or to comply with Requirements of Law, (xi) filing tax reports and paying taxes and other customary obligations related thereto in the ordinary course (and contesting any taxes), (xii) entering into and performance of obligations with respect to contracts and other arrangements in connection with the activities contemplated by this Section 6.13, (xiii) the preparation of reports to any Governmental

Authority and to its shareholders, (xiv) the performance of obligations under and compliance with its Organizational Documents, any demands or requests from or requirements of a Governmental Authority or any Requirement of Law, order, judgment, decree or permit, including as a result of or in connection with the activities of its Subsidiaries; (xv) any activities incidental to the foregoing or customary for passive holding companies, and (xvi) transactions pursuant to agreements, instruments or arrangements in existence on the Closing Date and set forth on Schedule 6.13; or

(b) incur, create, assume or suffer to exist any Indebtedness or other liabilities or financial obligations, except (i) the Obligations, (ii) Guarantee Obligations in respect of Indebtedness incurred under Section 6.01(d), (iii) Indebtedness specifically permitted to be incurred by Holdings under Section 6.01, (iv) obligations with respect to its Equity Interests, (v) non-consensual obligations imposed by operation of law, and (vi) obligations pursuant to agreements, instruments or arrangements in existence on the Closing Date and set forth on Schedule 6.13.

Section 6.14 Minimum Liquidity Covenant. Commencing on December 31, 2020, maintain as of the last day of each month, Liquidity of not less than $20,000,000.

Section 6.15 Limitation on Capital Expenditures. Make any Capital Expenditures of the Borrower or any Subsidiary in the ordinary course of business for any fiscal year of Holdings (or, for the fiscal year in which the Closing Date occurs, the period from the Closing Date to the end of such fiscal year) ending with the last day of any fiscal year set forth below to exceed the amount set forth below opposite such fiscal year of Holdings:

Fiscal Year	Capital Expenditures
From the Closing Date to December 31, 2020	$6,000,000
2021	$4,000,000
2022	$10,000,000
2023	$6,500,000
2024	$2,000,000
2025	$2,000,000

provided, *however*, that (a) up to 25% of any such amount specified above for any such fiscal year may be used in the immediately preceding fiscal year, in which case the amount specified above for such fiscal year shall be reduced by the amount used in the prior year, (b) any such amount specified above for any such fiscal year, if not expended in the fiscal year for which it is permitted, may be carried over for expenditure in the immediately following fiscal year and not in any subsequent fiscal year (the "Capital Expenditure Carryover Amount"), (c) any Capital Expenditures made in a particular fiscal year shall first be deemed to have been made with the portion of Capital Expenditures permitted for such fiscal year before the Capital Expenditure Carryover Amount is applied to such fiscal year, and (d) with respect to any unused amounts for the 2020 fiscal year, the Capital Expenditure Carryover Amount shall not exceed 50% of the

unused amount for the 2020 fiscal year, and no portion of the Capital Expenditures amount with respect to the 2021 fiscal year may be added to the amount with respect to the 2020 fiscal year.

ARTICLE VII
EVENTS OF DEFAULT AND REMEDIES

Section 7.01 Events of Default. On and after the Closing Date, each of the following events shall constitute an Event of Default:

(a) the Borrower or any other Loan Party shall fail to pay (i) any principal of any Loan, any Prepayment Premium with respect thereto or any Reimbursement Obligations when due in accordance with the terms of this Agreement and the other Loan Documents, whether at the due date thereof or at a fixed date for payment thereof or by acceleration thereof or otherwise or (ii) any interest on any Loan or any fee or other amount (other than an amount referred to in clause (i)) payable hereunder or under any other Loan Document within three Business Days after any such interest or other amount becomes due in accordance with the terms hereof or thereof; or

(b) any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document or in any document or certificate delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(c) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.01(a), Section 5.01(b), Section 5.03(a), Section 5.05(a), Section 5.11, Section 5.15, Section 5.16, Section 5.17 or Article VI; or

(d) any Loan Party shall fail to observe or perform any other covenant, condition or agreement contained in this Agreement or any other Loan Document (other than as provided in Section 7.01(a), Section 7.01(b) or Section 7.01(c)), and such failure continues unremedied or unwaived for a period of 30 days after the earlier of (i) the date an officer of such Loan Party becomes aware of such default and (ii) receipt by the Borrower of notice from the Disbursing Agent or the Required Lenders of such default; or

(e) (i) any Loan Party shall (A) fail to pay any principal or interest, regardless of amount, due in respect of any Material Indebtedness, when and as the same shall become due and payable beyond any applicable grace period in respect thereof; or (B) fail to observe or perform any other term, covenant, agreement or condition relating to any Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holders or beneficiaries of such Material Indebtedness (or a trustee or agent on behalf of such holders or beneficiaries) to cause, with or without the giving of notice, the lapse of time or both, such Material Indebtedness to become due prior to its stated maturity or become subject to a mandatory offer to purchase by the obligor; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined, or as such comparable term may be

used and defined, in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party is the "Defaulting Party" (as defined, or as such comparable term may be used and defined, in such Swap Contract) or (B) any "Termination Event" (as defined, or as such comparable term may be used and defined, in such Swap Contract) under such Swap Contract as to which any Loan Party is an Affected Party (as defined, or as such comparable term may be used and defined, in such Swap Contract) and, in either event, the Swap Termination Value owed by any Loan Party as a result thereof is greater than $5,000,000; or

(f) (i) a court of competent jurisdiction shall enter a decree or order for relief in respect of any Loan Party in an involuntary case under any Debtor Relief Law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against any Loan Party under any Debtor Relief Laws now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any Loan Party, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of any Loan Party for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of any Loan Party, and any such event described in this clause (ii) shall continue for 60 days without having been dismissed, bonded or discharged; or

(g) (i) any Loan Party shall have an order for relief entered with respect to it or shall commence a voluntary case under any Debtor Relief Law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or any Loan Party shall make any assignment for the benefit of creditors; or (ii) any Loan Party shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of any Loan Party (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 7.01(f); or

(h) there occurs one or more ERISA Events which has resulted or could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect; or

(i) one or more judgments shall be rendered against any Loan Party and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of any Loan Party to enforce any such judgment and such judgment either (i) is for the payment of money in an aggregate amount in excess of $5,000,000 (to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) or (ii) is for injunctive relief and could reasonably be expected to result in a Material Adverse Effect; or

(j) at any time after the execution and delivery thereof, (i) the guarantee contained in Section 2 of the Guarantee and Collateral Agreement for any reason other than Payment in Full shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Security Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or Payment in Full) or shall be declared null and void, or the Collateral Agent shall not have or shall cease to have a valid and perfected Lien on any material portion of the Collateral purported to be covered by the Security Documents with the priority required by the relevant Security Document, in each case, for any reason other than (x) as a result of the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents or (y) as a result of the Collateral Agent's failure to maintain possession of any stock certificates or other instruments delivered to it under the Security Documents, or (iii) any Loan Party shall contest the validity or enforceability of any Loan Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Loan Document to which it is a party or shall contest the validity or perfection of any Lien on any Collateral (other than, solely with respect to perfection, any Excluded Perfection Assets) purported to be covered by the Security Documents; or

(k) any Change of Control shall occur; or

(l) there shall have occurred the termination of, or the receipt by any Loan Party of notice of the termination of, or the occurrence of any event or condition which would, with the passage of time or the giving of notice or both, constitute an event of default under or permit the termination of, any one or more Material Agreements of any Loan Party;

(m) any Junior Indebtedness or any guarantees thereof shall cease for any reason to be validly subordinated to the Obligations as provided in the documentation governing such Junior Indebtedness or any Loan Party shall contest the subordination of any Junior Indebtedness or any guarantees thereof; or

(n) at any time after the execution and delivery thereof, any Intercreditor Agreement shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared null and void; o

(o) there shall have occurred any changes in tariffs or trade conditions applicable to the Loan Parties' products or businesses that could reasonably be expected to result in a Material Adverse Effect.

Section 7.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Disbursing Agent shall, at the request of, or may, with the consent of, the Required Lenders take any or all of the following actions:

(a) terminate the Commitments;

~~(b)~~ ~~(a)~~ declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable (including any Prepayment

Premium which shall be due and payable as a result of the acceleration of such principal amounts within the time periods specified in Section 2.06(b)), without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

~~(c)~~ ~~(b)~~ exercise on behalf of itself ~~and~~, the Lenders and LC Provider all rights and remedies available to it and the Lenders under the Loan Documents or at law or in equity;

provided, *however*, that upon the occurrence of any Event of Default described in Section 7.01(f) or Section 7.01(g), the obligation of each Lender to make Loans shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid (including any Prepayment Premium which shall be due and payable as a result of the acceleration of such principal amounts within the time periods specified in Section 2.06(b)) shall automatically become due and payable without further act of the Disbursing Agent or any Lender.

Section 7.03 Application of Funds. Subject to the Intercreditor Agreement, after the exercise of remedies provided for in Section 7.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 7.02), any amounts received on account of the Obligations shall be applied by the Disbursing Agent or the Collateral Agent, as the case may be, in the following order:

first, pro rata to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Disbursing Agent and Collateral Agent) payable to the Disbursing Agent and the Collateral Agent in their capacities as such and that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Calculation Agent (as defined in the Reimbursement Agreement)) payable to the Calculation Agent in its capacity as such;

second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, Prepayment Premium, Reimbursement Obligations (as defined in clause (a) of the definition thereof) and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders) arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations arising under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and the Reimbursement Obligations not paid pursuant to any of the foregoing clauses, ratably among the Lenders and LC Provider in proportion to the respective amounts described in this clause Fourth payable to them; and

last, the balance, if any, after Payment in Full, to the Borrower or as otherwise required by Requirements of Law.

With respect to level *fourth* of the foregoing proceeds waterfall, LC Provider agrees that, upon the Disbursing Agent's request, it shall promptly confirm to the Disbursing Agent the Reimbursement Obligations owing to it, and the Disbursing Agent shall be entitled to conclusively rely on such information in making any distributions to LC Provider and shall incur no liability for making distributions in reliance thereon. In furtherance of the foregoing, in no event shall the Disbursing Agent be required to distribute any amounts under level *fourth* above unless and until LC Provider has provided such information to the Disbursing Agent.

ARTICLE VIII
THE DISBURSING AGENT AND THE COLLATERAL AGENT

Section 8.01 Appointment and Authority.

(a) Each Lender (which term includes the LC Provider for purposes of this Article VIII) hereby designates and appoints U.S. Bank National Association to act as Disbursing Agent and Collateral Agent for such Lender under this Agreement and the other Loan Documents, and U.S. Bank National Association hereby accepts such appointment on the Closing Date subject to the terms hereof. Each Lender hereby irrevocably authorizes the Disbursing Agent and the Collateral Agent in such capacities, through their agents or employees, to take such actions on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are delegated to the Disbursing Agent and the Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. Concurrently herewith, each Lender directs the Disbursing Agent and the Collateral Agent, and the Disbursing Agent and the Collateral Agent are authorized, to enter into this Agreement and the other Loan Documents and any other related agreements in the forms presented to such Agent. For the avoidance of doubt, each Lender agrees that it will be subject to and bound by the terms of this Agreement and the other Loan Documents. The provisions of this Section 8.01(a) are solely for the benefit of the Agents and the Lenders, and no Loan Party shall have rights as a third party beneficiary of any such provisions (other than with respect to the Borrower's consent rights under Section 8.06).

(b) Each Lender agrees that in any instance in which this Agreement provides that an Agent's consent may not be unreasonably withheld, provide for the exercise of an Agent's reasonable discretion, or provides to a similar effect, it shall not in its instructions (or, by refusing to provide instruction) to such Agent withhold its consent or exercise its discretion in an unreasonable manner. It is expressly agreed and acknowledged that each Agent is not guaranteeing performance of or assuming any liability for the obligations of the other parties hereto or any parties to the Security Documents. No Agent shall have liability for any failure, inability or unwillingness on the part of any party to provide accurate and complete information on a timely basis to such Agent, or otherwise on the part of any such party to comply with the terms of this Agreement or any other Loan Document, and shall have no liability for any inaccuracy or error in the performance or observance on any Agent's part of any of its duties hereunder or under any other Loan Document that is caused by or results from any such

inaccurate, incomplete or untimely information received by it, or other failure on the part of any such other party to comply with the terms hereof.

(c) For purposes of clarity, and without limiting any rights, protections, immunities or indemnities afforded to either Agent hereunder (including without limitation this Section 8.01(c)), phrases such as "satisfactory to the [Disbursing] [Collateral] Agent," "approved by the [Disbursing] [Collateral] Agent," "acceptable to the [Disbursing] [Collateral] Agent," "as determined by the [Disbursing] [Collateral] Agent," "in the [Disbursing] [Collateral] Agent's discretion," "selected by the [Disbursing] [Collateral] Agent," "elected by the [Disbursing] [Collateral] Agent," "requested by the [Disbursing] [Collateral] Agent," and phrases of similar import that authorize and permit an Agent to approve, disapprove, determine, act or decline to act in its discretion shall be subject to such Agent receiving written direction from the Lenders (other than the LC Provider, in its capacity as such) or Required Lenders, as applicable, to take such action or to exercise such rights. Nothing contained in this Agreement shall require any Agent to exercise any discretionary acts.

(d) Rights as a Lender. Any Person serving as the Disbursing Agent or the Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Disbursing Agent or the Collateral Agent, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include any Person serving as the Disbursing Agent or the Collateral Agent hereunder in its capacity as a Lender. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, the Borrower or any of its Subsidiaries or other Affiliate thereof as if such Person were not the Disbursing Agent or the Collateral Agent hereunder and without any duty to account therefor to the Lenders.

Section 8.03 Exculpatory Provisions.

(a) Neither the Disbursing Agent nor the Collateral Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents to which it is a party, and no implied covenants, duties, obligations or liabilities shall be read into this Agreement or any other Loan Documents on the part of either Agent. The duties of the Disbursing Agent and the Collateral Agent hereunder and in each other Loan Document shall be administrative in nature. Without limiting the generality of the foregoing, the Disbursing Agent and the Collateral Agent:

i. shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

ii. except as to any matters not expressly provided for in this Agreement (including collection of any promissory notes) or any matter that would require the Disbursing Agent or the Collateral Agent to exercise any discretion hereunder or under any other Loan Document, shall not have any duty to take any discretionary action or exercise any discretionary powers, and shall not be required to exercise any discretion or take any action, but shall be required to act or refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders

(or such other number or percentage of the Lenders (excluding the LC Provider, in its capacity as such) as shall be expressly provided for herein or in the other Loan Documents), and such instructions shall be binding; *provided* that neither the Disbursing Agent nor the Collateral Agent shall be required to take any action (i) unless it is furnished with an indemnification satisfactory to such Agent with respect thereto or (ii) that, in its opinion or the opinion of its counsel, may expose the Disbursing Agent or the Collateral Agent to liability or that is contrary to any Loan Document or applicable Requirements of Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law; and

iii. shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as the Disbursing Agent or the Collateral Agent or any of its Affiliates in any capacity.

b. Neither the Disbursing Agent nor the Collateral Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders (excluding the LC Provider, in its capacity as such) as shall be necessary, or as the Disbursing Agent or the Collateral Agent shall believe in good faith shall be necessary, under the circumstances as provided herein or under the other Loan Documents), or (ii) in the absence of its own gross negligence or willful misconduct (as determined by a final judgment issued by a court of competent jurisdiction no longer subject to appeal). The Disbursing Agent and the Collateral Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to an officer of the Disbursing Agent and the Collateral Agent with direct responsibility for administration of this Agreement in writing by the Borrower or a Lender (excluding the LC Provider, in its capacity as such).

c. The Disbursing Agent and the Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein or in any other Loan Document.

d. Without limiting the generality of the foregoing, the use of the term “agent” in this Agreement with reference to the Disbursing Agent and the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Requirements of Law. Instead, such term is used

merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

e. Each party to this Agreement acknowledges and agrees that the Collateral Agent may from time to time use one or more outside service providers for the tracking of all UCC financing statements (and/or other collateral related filings and registrations from time to time) required to be filed or recorded pursuant to this Agreement or the other Loan Documents and the notification to the Collateral Agent, of, among other things, the upcoming lapse or expiration thereof, and that each of such service providers will be deemed to be acting at the request and on behalf of the Borrower. The Collateral Agent shall not be liable for any action taken or not taken by any such service provider.

f. Neither the Disbursing Agent nor the Collateral Agent shall be liable for any action taken in good faith and reasonably believed by it to be within the powers conferred upon it, or taken by it pursuant to any direction or instruction by which it is governed, or omitted to be taken by it by reason of the lack of direction or instruction required hereby for such action (including without limitation for refusing to exercise discretion or for withholding its consent in the absence of its receipt of, or resulting from a failure, delay or refusal on the part of any Lender to provide, written instruction to exercise such discretion or grant such consent from any such Lender, as applicable). Neither the Disbursing Agent nor the Collateral Agent shall be liable for any error of judgment made by it in good faith (or by any officer or other employee of such Agent) unless it shall be determined pursuant to a non-appealable judgment of a court of competent jurisdiction that such Agent was grossly negligent in ascertaining the relevant facts. Nothing herein or in any other Loan Document or related documents shall obligate any Agent to advance, expend or risk its own funds, or to take any action which in its reasonable judgment may cause it to incur any expense or financial or other liability for which it is not indemnified to its satisfaction.

g. Neither the Disbursing Agent nor the Collateral Agent shall be liable for any indirect, special, punitive or consequential damages (including but not limited to lost profits) whatsoever, even if it has been informed of the likelihood thereof and regardless of the form of action. Any permissive grant of power to any Agent hereunder shall not be construed to be a duty to act. Before acting hereunder, the Disbursing Agent and the Collateral Agent shall be entitled to request, receive and rely upon such certificates and opinions as either of them may reasonably determine appropriate with respect to the satisfaction of any specified circumstances or conditions precedent to such action. In no event shall the Disbursing Agent or the Collateral Agent be responsible or liable for: (i) delays or failures in performance resulting from acts beyond its control, including but not limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters, the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, (ii)

any delay, error omission or default of any mail, telegraph, cable or wireless agency or operator, or (iii) the acts or edicts of any government or governmental agency or other group or entity exercising governmental powers. Neither the Disbursing Agent nor the Collateral Agent shall be liable for interest on any money received by it. For the avoidance of doubt, the Disbursing Agent's and the Collateral Agent's rights, protections, indemnities and immunities provided herein shall apply to such Agent for any actions taken or omitted to be taken under this Agreement or any other Loan Documents and any other related agreements in any of their respective capacities. The Disbursing Agent and the Collateral Agent shall not be required to take any action under this Agreement, the other Loan Documents or any related document if taking such action (A) would subject the Disbursing Agent and the Collateral Agent to a tax in any jurisdiction where it is not then subject to a tax, or (B) would require the Disbursing Agent and the Collateral Agent to qualify to do business in any jurisdiction where it is not then so qualified.

h. Neither the Disbursing Agent nor the Collateral Agent shall have any liability for any failure, inability or unwillingness on the part of any Lender or Loan Party to provide accurate and complete information on a timely basis to such Agent, or otherwise on the part of any such party to comply with the terms of this Agreement, and shall not have any liability for any inaccuracy or error in the performance or observance on such Agent's part of any of its duties hereunder that is caused by or results from any such inaccurate, incomplete or untimely information received by it, or other failure on the part of any such other party to comply with the terms hereof.

i. The Disbursing Agent and the Collateral Agent may at any time request instructions from the Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the other Loan Documents such Agent is permitted or required to take or to grant. Without limiting Section 8.03(a)(ii), if the Disbursing Agent or the Collateral Agent shall request any such instructions, such Agent shall be entitled to refrain from such act or taking such action unless and until such Agent shall have received instructions from the Required Lenders (or such other number or percentage of the Lenders (excluding the LC Provider, in its capacity as such) as shall be expressly provided for herein or in the other Loan Documents), and such Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, the Lenders shall not have any right of action whatesoever against the Disbursing Agent or the Collateral Agent as a result of its acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders (or such other number or percentage of the Lenders (excluding the LC Provider, in its capacity as such) as shall be expressly provided for herein or in the other Loan Documents).

j. The Disbursing Agent shall not be under any obligation (i) to monitor, determine or verify the unavailability or cessation of LIBOR, Term SOFR (or other applicable Benchmark), or whether or when there has occurred, or to give notice to any other transaction party of the occurrence of, any Benchmark Transition Event or Benchmark Replacement Date, (ii) to select, determine or designate any Benchmark Replacement, or other successor or replacement benchmark index, or

whether any conditions to the designation of such a rate have been satisfied, (iii) to select, determine or designate any Benchmark Replacement Adjustment, or other modifier to any replacement or successor index, or (iv) to determine whether or what Benchmark Replacement Conforming Changes are necessary or advisable, if any, in connection with any of the foregoing. The Disbursing Agent shall not be liable for any inability, failure or delay on its part to perform any of its duties set forth in this Agreement as a result of the unavailability of LIBOR, Term SOFR (or other applicable Benchmark) and absence of a designated replacement Benchmark, including as a result of any inability, delay, error or inaccuracy on the part of any other transaction party, including without limitation the Required Lenders and the Borrower, in providing any direction, instruction, notice or information required or contemplated by the terms of this Agreement and reasonably required for the performance of such duties. The Disbursing Agent shall not have any liability for any interest rate published by any publication that is the source for determining the interest rates of the Loans, including but not limited to the Reuters Screen (or any successor source), or for any rates compiled by the ICE Benchmark Administration or any successor thereto, or for any rates published on any publicly available source, including without limitation the Federal Reserve Bank of New York's Website, or in any of the foregoing cases for any delay, error or inaccuracy in the publication of any such rates, or for any subsequent correction or adjustment thereto.

Section 8.04 Reliance by Disbursing Agent. Each of the Disbursing Agent and the Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Disbursing Agent may presume that such condition is satisfactory to such Lender unless the Disbursing Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan. Each of the Disbursing Agent and the Collateral Agent may consult, at the expense of the Borrower, with legal counsel of its own choosing (who may, but need not, be counsel for the Borrower or any Lender), independent accountants and other experts and advisors selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants, advisors or experts. Neither Agent nor any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement or any of the other Loan Documents, except for its or their own gross negligence or willful misconduct (as determined by a final judgment issued by a court of competent jurisdiction no longer subject to appeal). Without limiting the generality of the foregoing, each Agent: (i) makes no warranty or representation to any Lender or any other Person and shall not be responsible to any Lender or any other Person for any statements, warranties or representations (whether written or oral) made in or in connection with this Agreement or the other Loan Documents; (ii) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement,

the other Loan Documents or any related documents on the part of the Loan Parties or any other Person or to inspect the property (including the books and records) of the Loan Parties; (iii) shall not be responsible to any Lender or any other Person for the due execution, legality, validity, enforceability, genuineness, sufficiency, ownership, transferability, perfection, priority or value of any Collateral, this Agreement, the other Loan Documents, any related document or any other instrument or document furnished pursuant hereto or thereto; and (iv) shall incur no liability under or in respect of this Agreement or any other Loan Document by relying on, acting upon (or by refraining from action in reliance on) any notice, consent, certificate, instruction or waiver, report, statement, opinion, direction or other instrument or writing (which may be delivered by telecopier, email, cable or telex, if acceptable to it) believed by it to be genuine and believed by it to be signed or sent by the proper party or parties. Neither Agent shall have any liability to any of the Loan Parties or any Lender or any other Person for any of the Loan Parties' or any Lender's, as the case may be, performance of, or failure to perform, any of their respective obligations and duties under this Agreement or any other Loan Document. Each of the Disbursing Agent and the Collateral Agent shall be afforded all of the rights, powers, immunities and indemnities set forth in this Agreement in all of the other Loan Documents to which it is a signatory as if such rights, powers, immunities and indemnities were specifically set out in each such other Loan Document.

Section 8.05 Delegation of Duties. Each of the Disbursing Agent and the Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through, or delegate any and all such rights and powers to, any one or more sub-agents appointed by the Disbursing Agent or the Collateral Agent, as applicable. The Disbursing Agent and the Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article VIII shall apply to any such sub-agent and to the Related Parties of the Disbursing Agent and the Collateral Agent and any such sub-agent, and shall apply, without limiting the foregoing, to their respective activities as the Disbursing Agent and the Collateral Agent. The Disbursing Agent and the Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that the Disbursing Agent or the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agents or attorneys-in-fact as determined by a court of competent jurisdiction in a final and non-appealable judgment.

Section 8.06 Resignation of the Disbursing Agent or the Collateral Agent.

(a) The Disbursing Agent or the Collateral Agent may at any time give written notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor, which (i) shall be a financial institution with an office in New York, or an Affiliate of any such financial institution with an office in New York, and (ii) so long as no Event of Default shall have occurred and be continuing, shall be acceptable to the Borrower (such consent not to be unreasonably withheld or delayed). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Disbursing Agent or Collateral Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the

"Resignation Effective Date"), then the retiring Disbursing Agent or Collateral Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Disbursing Agent or Collateral Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date (i) the retiring Disbursing Agent or Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (ii) except for any accrued but unpaid fees, unreimbursed expenses or any indemnity payments owed to the retiring Disbursing Agent or Collateral Agent, all payments, communications and determinations provided to be made by, to or through the Disbursing Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Disbursing Agent or Collateral Agent as provided for above. Upon the acceptance of a successor's appointment as Disbursing Agent or Collateral Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Disbursing Agent or Collateral Agent (other than any rights to accrued but unpaid fees, unreimbursed expenses or any indemnity payments owed to the retiring Disbursing Agent or Collateral Agent), and the retiring Disbursing Agent or Collateral Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents. The fees payable by the Borrower to a successor Disbursing Agent or Collateral Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Disbursing Agent's or Collateral Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article VIII and Section 9.05 shall continue in effect for the benefit of such retiring Disbursing Agent or Collateral Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Disbursing Agent or Collateral Agent was acting as Disbursing Agent or Collateral Agent, as applicable.

(c) Any resignation by U.S. Bank National Association, as Disbursing Agent, shall also constitute its resignation as Collateral Agent.

Section 8.07 Non-Reliance on Disbursing Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Disbursing Agent, the Collateral Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Disbursing Agent, the Collateral Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Neither Agent shall be responsible to any Lender for any recitals, statements, information, representations or

warranties herein or in any agreement, document, certificate or statement delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, collectability, sufficiency or value of this Agreement or any other Loan Document or any other instrument or document furnished pursuant hereto or thereto, or of the financial condition of any Loan Party, or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement, the other Loan Documents or the financial condition of any Loan Party, or the existence of any Event of Default or any Default.

Section 8.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, neither Agent shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Disbursing Agent, the Collateral Agent or a Lender hereunder or thereunder.

Section 8.09 Disbursing Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Disbursing Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Disbursing Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents under Section 2.05 and Section 9.05) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Disbursing Agent and, in the event that the Disbursing Agent shall consent to the making of such payments directly to the Lenders, to pay to the Disbursing Agent and the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Disbursing Agent and the Collateral Agent and their respective agents and counsel, and any other amounts due to the Disbursing Agent and the Collateral Agent under this Agreement and the other Loan Documents, including Section 2.05 and Section 9.05.

Section 8.10 Collateral and Guaranty Matters.

(a) Each of the Lenders irrevocably authorizes the Disbursing Agent and the Collateral Agent to:

i. release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (x) upon Payment in Full, (y) that is sold or otherwise disposed of as part of or in connection with any sale or other Disposition permitted under the Loan Documents or (z) subject to Section 9.01, if approved, authorized or ratified in writing by the Required Lenders or such other number or percentage of Lenders (excluding the LC Provider, in its capacity as such) required hereby;

ii. subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(h); and

iii. release any Guarantor from its obligations under the Guarantee and Collateral Agreement (x) upon Payment in Full or (y) if such Guarantor ceases to be a Subsidiary as a result of a transaction permitted under and in accordance with the Loan Documents.

Any such release of guarantee obligations or security interests shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

Any such release of Liens shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral. In no event shall the Disbursing Agent or the Collateral Agent be obligated to execute or deliver any document evidencing any release, subordination or re-conveyance without receipt of a certificate executed by a Responsible Officer of the Loan Party or Loan Parties disposing of such property certifying that such release, subordination or re-conveyance, as applicable, complies with this Agreement and the other Loan Documents, and that all conditions precedent to such release, subordination or re-conveyance have been complied with. Upon request by the Disbursing Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Disbursing Agent's or the Collateral Agent's authority to release, subordinate or re-convey its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 8.10.

(b) The Disbursing Agent and the Collateral Agent hereby disclaim any representation or warranty to the Lenders concerning, and shall not be responsible for or have a duty to ascertain or inquire into the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any

certificate prepared by any Loan Party in connection therewith, nor shall the Disbursing Agent or the Collateral Agent be responsible or liable to the Lenders or any other Secured Party for any failure to monitor or maintain any portion of the Collateral. Neither Agent makes any representation as to the value, sufficiency or condition of the Collateral or any part thereof, as to the title of the Loan Parties to the Collateral, or as to the security afforded by the Guarantee and Collateral Agreement or any other Loan Document. Neither Agent shall be responsible for insuring the Collateral or for the payment of Taxes, charges, assessments or liens upon the Collateral. Neither Agent shall be responsible for the maintenance of the Collateral, except as expressly provided in the immediately following sentence when the Collateral Agent has possession of the Collateral. Neither Agent shall have any duty to the Lenders as to any Collateral in its possession or in the possession of someone under its control or in the possession or control of any agent or nominee of such Agent or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto, except the duty to accord such of the Collateral as may be in its possession substantially the same care as it accords similar assets held for the benefit of third parties and the duty to account for monies received by it. Neither Agent shall be under an obligation independently to request or examine insurance coverage with respect to any Collateral. Neither Agent shall be liable for the acts or omissions of any bank, depositary bank, custodian, independent counsel of any Loan Party or any other party selected by such Agent with reasonable care or selected by any other party hereto that may hold or possess Collateral or documents related to Collateral, and neither Agent shall be required to monitor the performance of any such Persons holding Collateral. For the avoidance of doubt, neither Agent shall be responsible to the Lenders for the perfection of any Lien or for the filing, form, content or renewal of any UCC financing statements, fixture filings, mortgages, deeds of trust and such other documents or instruments. The Lenders shall be solely responsible for, and shall arrange for, the filing and continuation of financing statements or other filing or recording documents or instruments for the perfection of security interests in the Collateral. The Collateral Agent shall not be responsible for the preparation, form, content, sufficiency or adequacy of any such financing statements.

(c) In connection with the exercise of any rights or remedies in respect of, or foreclosure or realization upon, any Real Property-related Collateral pursuant to this Agreement or any other Loan Document, the Collateral Agent shall not be obligated to take title to or possession of Real Property in its own name, or otherwise in a form or manner that may, in its reasonable judgment, expose it to liability. In the event that the Collateral Agent deems that it may be considered an "owner or operator" under any Environmental Laws or otherwise cause the Collateral Agent to incur, or be exposed to, any Environmental Liability or any liability under any other federal, state or local law, the Collateral Agent reserves the right, instead of taking such action, either to resign as the Collateral Agent subject to the terms and conditions of Section 8.06 or to arrange for the transfer of the title or control of the asset to a court appointed receiver. The Collateral Agent will not be liable to any Person for any Environmental Liability or any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or

Release or threatened Release of any Materials of Environmental Concern into the environment.

(d) In connection with any tax affidavit or similar instrument required to be filed or delivered by the Collateral Agent in connection with any Mortgage, the Collateral Agent shall complete such tax affidavit or similar instrument pursuant to the information provided to it in a certificate executed by a Responsible Officer of the Borrower. The Collateral Agent shall be entitled to conclusively rely on the information provided to it in such certificate and shall not be liable to the Loan Parties, the Lenders or any other Person for its acting in reliance thereon. The Borrower shall indemnify the Collateral Agent for any losses the Collateral Agent may incur as a result of its reliance on such certificate of the Borrower, including without limitation, any losses relating to any incorrect or misleading information provided in any tax affidavit based upon information contained in the certificate of the Borrower.

(e) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Disbursing Agent, the Collateral Agent and each Lender hereby agree that (i) the LC Provider, solely in its capacity as such, shall not have any rights in connection with the management or release of any Collateral or of the obligations of any Guarantor under the Guarantee and Collateral Agreement or to direct the Collateral Agent with respect thereto, (ii) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Guarantee and Collateral Agreement or any other Security Document, it being understood and agreed that all powers, rights and remedies under any of the Security Documents may be exercised solely by the Collateral Agent for the benefit of the Secured Parties in accordance with the terms thereof, (iii) in the event of a foreclosure or similar enforcement action by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other Disposition (including, without limitation, pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), the Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code) may be the purchaser or licensor of any or all of such Collateral at any such sale or other Disposition and the Collateral Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities) shall be entitled (either directly or through one or more acquisition vehicles), upon instructions from the Required Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or Disposition, to use and apply any or all of the Obligations (other than Obligations owing to the Disbursing Agent or the Collateral Agent) as a credit on account of the purchase price for any collateral payable by the Collateral Agent (or such acquisition vehicle) at such sale or other Disposition.

Section 8.11 Withholding Tax. To the extent required by any Requirement of Law, the Disbursing Agent and the Collateral Agent may deduct or withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the IRS or any other Governmental Authority asserts a claim that the Disbursing Agent or the Collateral Agent, as the case may be, did not properly withhold Tax from amounts paid to or for the account of

any Lender for any reason (including because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Disbursing Agent of a change in circumstance that rendered the exemption from, or reduction of, withholding Tax ineffective), such Lender shall indemnify and hold harmless the Disbursing Agent and the Collateral Agent fully for all amounts paid, directly or indirectly, by such Agent as Tax or otherwise, including any penalties, additions to Tax or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Disbursing Agent or the Collateral Agent, as the case may be, shall be conclusive absent manifest error. Each Lender hereby authorizes the Disbursing Agent and the Collateral Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to such Agent under this Section 8.11. The agreements in this Section 8.11 shall survive the resignation and/or replacement of the Disbursing Agent and the Collateral Agent, any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the repayment, satisfaction or discharge of all other Obligations.

Section 8.12 No Reliance on Agents' Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on either Agent to carry out such Lender's or its Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the PATRIOT Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any other anti-terrorism law, including any programs involving any of the following items relating to or in connection with the Borrower, its Affiliates or agents, the Loan Documents or the transactions hereunder: (a) any identity verification procedures, (b) any record keeping, (c) any comparisons with government lists, (d) any customer notices or (e) any other procedures required under the CIP Regulations or such other laws.

Section 8,13 Erroneous Payments. If a payment is made by the Disbursing Agent (or its Affiliates) in error (whether known to the recipient or not) or if a Lender or another recipient of funds is not otherwise entitled to receive such funds at such time of such payment or from such Person in accordance with the Loan Documents, then such Lender or recipient shall forthwith on demand repay to the Disbursing Agent the portion of such payment that was made in error (or otherwise not intended (as determined by the Disbursing Agent) to be received) in the amount made available by the Disbursing Agent (or its Affiliate) to such Lender or recipient, with interest thereon, for each day from and including the date such amount was made available by the Disbursing Agent (or its Affiliate) to it to but excluding the date of payment to the Disbursing Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Disbursing Agent in accordance with banking industry rules on interbank compensation. Each Lender and other party hereto waives the discharge for value defense in respect of any such payment.

ARTICLE IX
MISCELLANEOUS

Section 9.01 Amendments and Waivers. None of the terms or provisions of this Agreement or any other Loan Document may be waived, supplemented or otherwise modified except in accordance with the provisions of this Section 9.01. The Required Lenders and each Loan Party party to the relevant Loan Document may, from time to time, (x) enter into written amendments, supplements or modifications hereto and to the other Loan Documents (including amendments and restatements hereof or thereof) for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (y) waive, on such terms and conditions as may be specified in the instrument of waiver, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; *provided*, *however*, that, in addition to such Required Lender consent (except as otherwise set forth below), no such waiver, amendment, supplement or modification shall:

i. forgive the principal amount or extend the final scheduled date of maturity of any Loan or Reimbursement Obligations, postpone, extend or delay any scheduled date of any amortization payment, or reduce or waive any amortization payment in respect of any Loan, postpone, extend or delay any date fixed for, or reduce or waive the stated rate of, any interest, premium, fee or other amounts (other than principal) due to the Lenders and payable hereunder or under any other Loan Document (except that, for the avoidance of doubt, (x) mandatory prepayments pursuant to Section 2.08 may be postponed, extended, delayed, reduced, waived or modified with the consent of the Required Lenders and (y) any waiver of any increase in the interest rate pursuant to Section 2.11(c) may be made with the consent of the Required Lenders), or increase the amount or extend the expiration date of any Commitment of any Lender, in each case without the written consent of each Lender directly affected thereby;

ii. amend, modify or waive any provision of this Section 9.01 or reduce any percentage specified in the definition of "Required Lenders", consent to the assignment or transfer by the Borrower of any of its rights or obligations under this Agreement or the other Loan Documents, release all or substantially all of the Collateral or release all or substantially all of the Guarantee Obligations of Holdings or the value of the Guarantee Obligations of the Subsidiary Guarantors under the Guarantee and Collateral Agreement and the other Loan Documents other than in accordance with the provisions of the Loan Documents, in each case without the consent of all Lenders;

iii. amend, modify or waive any provision of Article VIII or any other provision affecting the rights, duties or obligations of the Disbursing Agent (including, without limitation, in connection with the adoption of any Benchmark Replacement Conforming Changes) without the consent of the Disbursing Agent;

iv. amend, modify or waive any provision of Article VIII or any other provision affecting the rights, duties or obligations of the Collateral Agent (including, without limitation, in connection with the adoption of any Benchmark Replacement Conforming Changes) without the consent of the Collateral Agent;

v. amend, modify or waive the pro rata sharing provisions of Section 2.14, Section 2.18 or Section 9.07(a) without the consent of each Lender directly and adversely affected thereby;

vi. impose modifications or restrictions on assignments and participations that are more restrictive than, or additional to, those set forth in Section 9.06 without the consent of each Lender; or

vii. amend, modify or waive any provision of the Reimbursement Agreement without the consent of the LC Provider, Holdings and the Disbursing Agent (but the consent of the Required Lenders shall not be required).

Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Disbursing Agent, the Collateral Agent, and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders, the Disbursing Agent and the Collateral Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Any such waiver, amendment, supplement or modification shall be effected by a written instrument signed by the parties required to sign pursuant to the foregoing provisions of this Section 9.01. In connection with any amendment, waiver or modification hereunder or execution of any additional agreements or amendments as contemplated by this Agreement, each Agent shall be entitled to request an officer's certificate from the Borrower certifying that such amendment, waiver or modification is authorized and permitted by the terms of this Agreement and the other Loan Documents, and each Agent shall be fully protected in relying upon the same and shall incur no liability for any actions or omissions taken or omitted to be taken in reliance thereon.

Section 9.02 Notices.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 9.02(b)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

i. if to Holdings or the Borrower, to FreightCar America, Inc. at 125 S. Wacker Drive, Suite 1500, Chicago, Illinois 60606, Attention of Chris Eppel (Telephone No. (312) 928-0052; Email: ceppel@freightcar.net);

ii. if to the Disbursing Agent or the Collateral Agent, to U.S. Bank National Association at 214 N. Tryon Street, 27th Floor, Charlotte, North Carolina 28202, Attention of CDO Trust Services/James Hanley (Facsimile No.: (704)

335-4670; Telephone No.: (302) 576-3714; Email: james.hanley1@usbank.com); and

iii. if to a Lender, to it at its address (or facsimile number) set forth on the signature pages hereof, in a separate notice provided to the Disbursing Agent and the Borrower or in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications, to the extent provided in Section 9.02(b), shall be effective as provided in Section 9.02(b)

(b) Electronic Communications.

i. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including email and internet or intranet websites) pursuant to procedures approved by the Agents and the Required Lenders; *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Agents that it is incapable of receiving notices under such Section by electronic communication. The Agents, any Lender or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

ii. Unless the Disbursing Agent, the Collateral Agent or the Lenders otherwise prescribe, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement) and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its email address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; *provided* that, in the case of each of the foregoing clauses (i) and (ii), if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Change of Address, etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the Borrower and the Disbursing Agent.

(d) Platform.

i. The Borrower agrees that the Disbursing Agent may, but shall not be obligated to, make any Approved Electronic Communications available to the Lenders by posting such Approved Electronic Communications on the Platform.

ii. The Platform and any Approved Electronic Communications are provided "as is" and "as available." None of the Agents nor any of their respective Related Parties warrants the accuracy, adequacy or completeness of the Platform or any Approved Electronic Communications and each expressly disclaims liability for errors or omissions in the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent or any of their respective Related Parties in connection with the Platform or the Approved Electronic Communications. Each party hereto agrees that no Agent has any responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Approved Electronic Communication or otherwise required for the Platform. In no event shall any Agent or any of its Related Parties have any liability to any Loan Party, any Lender or any other Person or entity for damages of any kind, whether or not based on strict liability and including, without limitation, (A) direct damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or any Agent's transmission of communications through the Platform, except to the extent the same resulted primarily from the gross negligence or willful misconduct of such Agent or its Related Parties, in each case as determined by a court of competent jurisdiction in a final and non-appealable judgment or (B) indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or any Agent's transmission of communications through the Platform. In no event shall any Agent or any of its Related Parties have any liability for any damages arising from the use by others of any information or other materials obtained through internet, electronic, telecommunications or other information transmission systems, except to the extent the same resulted primarily from the gross negligence or willful misconduct of such Agent or its Related Parties, in each case as determined by a court of competent jurisdiction in a final and non-appealable judgment.

iii. Each Loan Party, each Lender and each Agent agrees that the Disbursing Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with the Disbursing Agent's customary document retention procedures and policies.

iv. All uses of the Platform shall be governed by and subject to, in addition to this Section 9.02, separate terms and conditions posted or referenced in such Platform and related agreements executed by the Lenders and their Affiliates in connection with the use of such Platform.

v. Each Loan Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of the Disbursing Agent, in each case as determined by a court of competent jurisdiction in a final and non-appealable judgment.

vi. The Borrower and each Lender acknowledge that certain of the Lenders may be Public Lenders and, if documents or notices required to be delivered pursuant to Section 5.02 or otherwise are being distributed through the Platform, any document or notice that the Borrower has indicated contains Non-Public Information shall not be posted on that portion of the Platform designated for Public Lenders. The Borrower agrees to clearly designate all information provided to the Disbursing Agent by or on behalf of the Loan Parties which is suitable to make available to Public Lenders. If the Borrower has not indicated whether a document or notice delivered pursuant to Section 5.02 or otherwise contains Non-Public Information, the Disbursing Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material non-public information with respect to Holdings, the Borrower, its Subsidiaries and their respective securities.

(e) Public Side Information Contacts. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Requirements of Law, including the U.S. Federal and state securities Laws, to make reference to Approved Electronic Communications that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of the U.S. Federal or state securities Laws. In the event that any Public Lender has elected for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) the Agents and other Lenders may have access to such information and (ii) neither the Borrower nor any Agent or other Lender with access to such information shall have (x) any responsibility for such Public Lender's decision to limit the scope of information it has obtained in connection with this Agreement and the other Loan Documents or (y) any duty to disclose such information to such electing Lender or to use such information on behalf of such electing Lender, and shall not be liable for the failure to so disclose or use such information.

Section 9.03 No Waiver by Course of Conduct; Cumulative Remedies. None of the Agents or the Lenders shall by any act (except by a written instrument pursuant to Section 9.01), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Agent or Lender, any right, power or privilege

hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Agent or Lender of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Agent or Lender would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

Section 9.04 Survival of Representations, Warranties, Covenants and Agreements. All representations, warranties, covenants and agreements made herein, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery hereof and thereof and the making of the Loans and other extensions of credit hereunder, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Disbursing Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension hereunder, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied and so long as the Commitments have not expired or been terminated. The provisions of Section 2.15, Section 2.16, Section 2.17, Section 9.05, Section 9.19, Section 9.21, Section 9.22 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the Payment in Full, the expiration or termination of the Commitments, the resignation or removal of either Agent or the termination of this Agreement or any provision hereof.

Section 9.05 Payment of Expenses; Indemnity.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket costs and expenses incurred by the Disbursing Agent, the Collateral Agent, the Lenders and their respective Affiliates in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, the Warrants and any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), including the reasonable and documented out-of-pocket fees, charges and disbursements of counsel, (ii) all reasonable and documented out-of-pocket costs and expenses incurred by the Lenders in connection with any consultants retained by them to review and advise with respect to the Loan Parties' operations and (iii) all out-of-pocket costs and expenses incurred by the Disbursing Agent, the Collateral Agent and each Lender (including the fees, charges and disbursements of any counsel for the Agents or any Lender) in connection with the enforcement or protection of any rights and remedies under this Agreement and the other Loan Documents, including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including in connection with any workout, restructuring or negotiations in respect of the Loans and the Loan Documents, including the reasonable fees, charges and disbursements of counsel.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Disbursing Agent (and any sub-agent thereof), the Collateral Agent (and any sub-agent thereof), each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs (including settlement costs and the costs of enforcing this indemnity), disbursements and out-of-pocket fees and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), joint or several, of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted or awarded against any Indemnitee in any way relating to or arising out of or in connection with or by reason of (i) any actual or prospective claim, litigation, investigation or proceeding in any way relating to, arising out of, in connection with or by reason of any of the following, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation or proceeding): (A) the execution, delivery, enforcement, performance or administration of any Loan Document or any other document delivered in connection with the transactions contemplated thereby or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) or the consummation of the transactions contemplated thereby or (B) any Commitment, any Credit Extension or the use or proposed use of the proceeds thereof; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, fees and expenses (1) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (2) arise out of any dispute solely among Indemnitees (other than any claims against an Indemnitee in its capacity or in fulfilling its role as an agent or arranger or any similar role hereunder or under any other Loan Document and other than any claims arising out of any act or omission of the Borrower or any of its Affiliates); or (ii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property currently or formerly owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries (clauses (i) and (ii), collectively, the "Indemnified Liabilities"), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of such Indemnitee and regardless of whether such Indemnitee is a party thereto, and whether or not any such claim, litigation, investigation or proceeding is brought by the Borrower, its equity holders, its affiliates, its creditors or any other Person except for purposes of this clause (ii), to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, fees and expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. This Section 9.05(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by the Lenders. To the extent that the Borrower for any reason fails to indefeasibly indemnify the Disbursing Agent or the Collateral Agent or pay any amount required under Section 9.05(a) or Section 9.05(b) to be paid by it to the Disbursing Agent

or Collateral Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to indemnify the Disbursing Agent and the Collateral Agent from and against any all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature, including, without limitation, the fees and expenses of its agents and attorneys, whatsoever which may be imposed on, incurred by or asserted against the Disbursing Agent or the Collateral Agent in performing their respective duties hereunder, or in any way relating to or arising out of this Agreement or any other Loan Document and pay to the Disbursing Agent or Collateral Agent or any such sub-agent or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Disbursing Agent or Collateral Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Disbursing Agent or Collateral Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this Section 9.05(c) are several and not joint.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Requirements of Law, none of Holdings, the Borrower or any Indemnitee shall assert (and Holdings shall cause its Subsidiaries not to assert), and each of Holdings, the Borrower or any Indemnitee hereby waives (and Holdings agrees to cause its Subsidiaries to waive), any claim against any Indemnitee or Holdings, the Borrower or any Subsidiary, as applicable, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any other document contemplated hereby, the transactions contemplated hereby or thereby, any Commitment or any Credit Extension, or the use of the proceeds thereof or such Person's activities in connection therewith (whether before or after the Closing Date); *provided* that such waiver of special, indirect, consequential or punitive damages shall not limit the indemnification obligations of the Borrower under Section 9.05(b). No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials distributed by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby, other than as a result of the gross negligence or willful misconduct of such Indemnitee as determined by a court of competent jurisdiction in a final and non-appealable judgment.

(e) Payments. All amounts due under this Section 9.05 shall be payable promptly after demand therefor.

Section 9.06 Successors and Assigns; Participations and Assignments

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any such assignment without such consent shall be null and void), and no Lender nor LC Provider may assign or otherwise transfer any of its rights or obligations hereunder or under the Reimbursement Agreement except (i) to an assignee in accordance with the provisions of Section 9.06(b), (ii) by way of participation in accordance with the provisions of Section 9.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 9.06(e). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 9.06(d) and, to the extent expressly contemplated hereby, Indemnitees and the Related Parties of each of the Disbursing Agent, the Collateral Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement; provided, however, that the parties hereto acknowledge that the Calculation Agent (as defined in the Reimbursement Agreement) is an intended and express third-party beneficiary of Section 7.03 of this Agreement to the same extent as if it were a party hereto, and shall have the right to enforce such provision of this Agreement.

(b) Assignments by Lenders and LC Provider. (1) Any Lender and LC Provider, upon notice to the Disbursing Agent, may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and/or the Reimbursement Agreement (including all or a portion of its ~~Commitment~~Commitments and the Loans and Reimbursement Obligations at the time owing to it and, in the case of LC Provider, its role as LC Provider under the Reimbursement Agreement); *provided* that any such assignment shall be subject to the following conditions:

i. Minimum Amounts.
(A) In the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans and Reimbursement Obligations at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in Section 9.06(b)(i)(B) in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned.

(B) In any case not described in Section 9.06(b)(i)(A), the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) and Reimbursement Obligations, if any, or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans and the Reimbursement Obligations, if any, of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Disbursing Agent or, if "trade date" is specified in the Assignment and Assumption, as of

such date) shall not be less than $1,000,000 unless, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

ii. Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan, Reimbursement Obligations or the Commitment assigned.

iii. Required Consents. No consent shall be required for any assignment except (x) to the extent required by Section 9.06(b)(i)(B) and (y) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund.

iv. Processing Fee; Administrative Questionnaire. The parties to each assignment shall execute and deliver to the Disbursing Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500; *provided* that the Disbursing Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Disbursing Agent an Administrative Questionnaire.

v. No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries and (B) to the extent that the list thereof has been made available to the Lenders, any Disqualified Lender.

vi. No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

~~vii.~~ ~~Assignment of Reimbursement Agreement. If any Lender is also an~~ LC Provider~~, such Lender may not assign its Commitment or Loans unless such Lender also assigns a corresponding percentage of its rights as~~. LC Provider ~~under the~~may only assign its role as such and any Reimbursement ~~Agreement~~Obligations owing to it in whole and not in part, and there shall only be one LC Provider at any time.

(2) Subject to acknowledgment and recording thereof by the Disbursing Agent pursuant to Section 9.06(c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, if the assignment is with respect to the role of LC Provider, the Reimbursement Agreement, and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and/or LC Provider under the Reimbursement Agreement, and the assigning Lender or LC Provider thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement and/or the Reimbursement Agreement, as applicable (and, in the case of an Assignment and Assumption covering all of the

assigning Lender's or LC Provider's rights and obligations under this Agreement or the Reimbursement Agreement, as the case may be, such Lender or LC Provider shall cease to be a party hereto or thereto) but shall continue to be entitled to the benefits of Section 2.15, Section 2.16 and Section 9.05 of this Agreement and Section 2(a)(v) and Section 4 of the Reimbursement Agreement, as the case may be, with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender (but not, for the avoidance of doubt, any LC Provider) of rights or obligations under this Agreement that does not comply with this Section 9.06(b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.06(d).

(c) Register. The Disbursing Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in New York a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders and LC Provider, and the Commitments of, and principal amounts (and stated interest) of the Loans or Reimbursement Obligations owing to, each Lender and LC Provider pursuant to the terms hereof and of the other Loan Documents from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Disbursing Agent, the LC Provider and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder and/or the LC Provider under the Reimbursement Agreement for all purposes of this Agreement and the other Loan Documents. The Register shall be available for inspection by the Borrower ~~and~~, any Lender and the LC Provider during business hours of the Disbursing Agent at any reasonable time and from time to time upon reasonable prior notice. Notwithstanding the foregoing, the Disbursing Agent shall have no obligation to maintain, nor shall it have any liability in respect of maintaining, the Register with respect to assignments of the LC Provider role or Reimbursement Obligations prior to the Fourth Amendment Effective Date.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Disbursing Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, the Borrower or any of the Borrower's Affiliates or Subsidiaries or a Disqualified Lender) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it, but excluding the Reimbursement Obligations); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 9.05(c) with respect to any payments made by such Lender to its Participants.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clauses (i), (ii) and (v), of the proviso to Section 9.01(a) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Section 2.15, Section 2.16 and Section 2.17 (subject to the requirements and limitations therein, including the requirements in Section 2.16(g) (it being understood that the documentation required under Section 2.16(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.06(b); *provided* that such Participant (A) agrees to be subject to the provisions of Section 2.19 as if it were an assignee under Section 9.06(b); and (B) shall not be entitled to receive any greater payment under Section 2.15 or Section 2.16 with respect to any participation than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.19(a) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.07(b) as though it were a Lender; *provided* that such Participant agrees to be subject to Section 9.07(a) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Disbursing Agent (in its capacity as Disbursing Agent) shall have no responsibility for maintaining a Participant Register.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 9.07 Sharing of Payments by Lenders; Set-off.

(a) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate

amount of its Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Disbursing Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; *provided* that:

i. if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

ii. the provisions of this Section 9.07(a) shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any of its Affiliates, as to which the provision of this Section 9.07(a) shall apply.

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Requirements of Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(b) Each of Holdings and the Borrower hereby irrevocably authorizes each Lender at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to Holdings or the Borrower, any such notice being expressly waived by each of Holdings and the Borrower, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such party to or for the credit or the account of Holdings or the Borrower, or any part thereof in such amounts as such Lender may elect, against and on account of the obligations and liabilities of Holdings and the Borrower to such Lender hereunder and claims of every nature and description of such Lender against Holdings and the Borrower, in any currency, whether arising hereunder, under any other Loan Document or otherwise, as such Lender may elect, whether or not any Lender has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured; *provided* that such Lender complies with Section 9.07(a). Each Lender exercising any right of set-off shall notify Holdings and the Borrower promptly of any such set-off and the application made by such Lender of the proceeds thereof; *provided* that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender under this Section 9.07 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Lender may have.

Section 9.08 Counterparts; Electronic Signatures.

(a) This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic imaging means), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. In proving this Agreement or any Loan Document in any judicial proceedings, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom such enforcement is sought. Any signatures delivered by a party hereto by facsimile transmission or by e-mail transmission shall be deemed an original signature hereto.

(b) The Agents are authorized and permitted to accept directions, certificates, requisitions, statements, notices, approvals, consents, requests, instructions, and any other communications (collectively, "Communications") including but not limited to investment, account transfer, and payment instructions, via e-mail from an authorized corporate e-mail address as listed on an incumbency certificate provided by the applicable party to the Agents. The Borrower, any other Loan Party or any Lender may deliver any Communications, including but not limited to investment, account transfer, and payment instructions, to the Agents via e-mail, provided that such comes from one of the persons authorized on the incumbency certificate delivered pursuant to this section and from the respective authorized e-mail address. Any Communication via e-mail from the persons authorized on such incumbency certificate shall be considered signed by the person or persons designated by the applicable party. The Agents are authorized and permitted to accept Communications, including but not limited to investment, account transfer, and payment instructions, provided via electronic signature. The Borrower, any other Loan Party or any Lender may authorize or sign any Communications, including but not limited to investment, account transfer, and payment instructions, for the Collateral Agent using electronic signatures. Any electronic signature document delivered via email from a person authorized on the incumbency certificate delivered pursuant to this section shall be considered signed or executed by such person on behalf of the applicable party.

(c) Each of the parties hereto agrees on behalf of itself, and any Person acting or claiming by, under or through such party, that any written instrument delivered in connection with this Agreement or any other Loan Document or any related document, including without limitation any amendments or supplements to such documents, may be executed by electronic methods (whether by .pdf scan or utilization of an electronic signature platform or application). Any electronic signature document delivered via email from a person authorized on an incumbency certificate provided by any party to the Agents shall be considered signed or executed by such person on behalf of such party. Each of the Borrower and Holdings, on behalf of itself and the other Loan Parties, and each of the Lenders agrees to assume all risks arising out of the use of electronic methods for all purposes including the authorization, execution, delivery, or submission of documents, instruments, notices, directions, instructions, reports, opinions and certificates to the

Agents, including without limitation the risk of either Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 9.09 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 9.10 Section Headings. The Section headings and Table of Contents used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

Section 9.11 Integration. This Agreement and the other Loan Documents represent the entire agreement of the parties hereto with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. There are no promises, undertakings, representations or warranties by any Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

Section 9.12 Governing Law. THIS AGREEMENT AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW.

Section 9.13 Submission to Jurisdiction; Waivers. Each party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents (whether arising in contract, tort or otherwise) to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive (subject to Section 9.13(c)) general jurisdiction of the courts of the State of New York sitting in the County of New York, the courts of the United States for the Southern District of New York sitting in the County of New York, and appellate courts from any thereof;

(b) agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York state court or, to the fullest extent permitted by applicable Requirements of Law, in such federal court;

(c) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner

provided by law and that nothing in this Agreement or any other Loan Document shall affect any right that the Agents or the Lenders may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against it or any of its assets in the courts of any jurisdiction;

(d) waives, to the fullest extent permitted by applicable Requirements of Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 9.13(a) (and irrevocably waives to the fullest extent permitted by applicable Requirements of Law the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court);

(e) consents to service of process in the manner provided in Section 9.02 (and agrees that nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Requirements of Law);

(f) agrees that service of process as provided in Section 9.02 is sufficient to confer personal jurisdiction over the applicable party in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect; and

(g) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover any special, exemplary, punitive or consequential damages.

Section 9.14 Acknowledgments. Each of Holdings and the Borrower hereby acknowledges and agrees that:

(a) it was represented by counsel in connection with the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof; and

(b) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Agents and the Lenders or among the Group Members, the Agents and the Lenders.

Section 9.15 Confidentiality. Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Related Parties and actual and potential financing sources (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential in accordance with customary practices); (b) to the extent required or requested by any regulatory or similar authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners or any other similar organization) purporting to have jurisdiction over such Person or its Related Parties (in which case such Person shall, except with respect to any audit or examination conducted by bank accountants or any Governmental Authority or regulatory or self-regulatory authority exercising examination or regulatory authority, notify the Borrower as soon as practicable in the event of any such

disclosure by such Person unless such notification is prohibited by law, rule or regulation); (c) to the extent required by applicable Requirements of Law or regulations or by any subpoena or similar legal process (in which case such Person shall, except with respect to any audit or examination conducted by bank accountants or any Governmental Authority or regulatory or self-regulatory authority exercising examination or regulatory authority, notify the Borrower as soon as practicable in the event of any such disclosure by such Person unless such notification is prohibited by law, rule or regulation); (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same (or at least as restrictive) as those of this Section 9.15 (or as may otherwise be reasonably acceptable to the Borrower), to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans; (h) with the consent of the Borrower; or (i) to the extent that such Information (x) becomes publicly available other than as a result of a breach of this Section 9.15, (y) becomes available to any Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower other than as a result of a breach of this Section 9.15 or (z) was independently developed by any Agent, any Lender or any of their respective Affiliates. In addition, each of the Agents and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Credit Extensions. Notwithstanding anything herein to the contrary, the information subject to this Section 9.15 shall not include, and each of the Agents and the Lenders may disclose without limitation of any kind, any information with respect to the "tax treatment" and "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the Loans, the Transactions and the other transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to the Agents or the Lenders relating to such tax treatment and tax structure; *provided* that, with respect to any document or similar item that in either case contains information concerning such "tax treatment" or "tax structure" as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to such "tax treatment" or "tax structure."

For purposes of this Section 9.15, "Information" shall mean all information received from Holdings, the Borrower or any of their Subsidiaries relating to Holdings, the Borrower or any of their Subsidiaries or any of their respective businesses, other than any such information that is available to any Agent or any Lender on a non-confidential basis prior to disclosure by Holdings, the Borrower or any of their Subsidiaries; *provided* that, in the case of information received from Holdings, the Borrower or any of their Subsidiaries after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 9.15 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the

confidentiality of such Information as such Person would accord to its own confidential information.

Section 9.16 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, BREACH OF DUTY, COMMON LAW, STATUTE OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.16. EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

Section 9.17 PATRIOT Act Notice. Each Lender, the Disbursing Agent (for itself and not on behalf of any Lender) and the Collateral Agent hereby notifies each Loan Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name, address and taxpayer information number of each Loan Party and other information that will allow such Lender, the Disbursing Agent or the Collateral Agent, as applicable, to identify such Loan Party in accordance with the PATRIOT Act. The Borrower shall, promptly following a request by any Lender, the Disbursing Agent or the Collateral Agent, provide all documentation and other information that such Lender, the Disbursing Agent or the Collateral Agent, as applicable, requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act.

Section 9.18 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable Requirements of Law, shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due

hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrower shall pay to Disbursing Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Lenders and the Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to the Borrower.

Section 9.19 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Disbursing Agent, the Collateral Agent or any Lender, or the Disbursing Agent, the Collateral Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Disbursing Agent, the Collateral Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Disbursing Agent or the Collateral Agent, as applicable, upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Disbursing Agent or the Collateral Agent (as applicable), plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect.

Section 9.20 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of Holdings and the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) no fiduciary, advisory or agency relationship between the Group Members and any Agent or any Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether any Agent or any Lender has advised or is advising the Borrower or any Subsidiary on other matters, (ii) the arranging and other services regarding this Agreement provided by the Agents and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Agents and the Lenders, on the other hand, (iii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate and (iv) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b) (i) each of the Agents and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates or any other Person; (ii) none of the Agents and the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents

and the Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and none of the Agents and the Lenders has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by applicable Requirements of Law, each of Holdings and the Borrower hereby waives and releases any claims that it may have against the Agents and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 9.21 Judgment Currency. In respect of any judgment or order given or made for any amount due under this Agreement or any other Loan Document that is expressed and paid in a currency (the "judgment currency") other than Dollars, the Loan Parties will indemnify the Disbursing Agent and any Lender against any loss incurred by them as a result of any variation as between (i) the rate of exchange at which the Dollar amount is converted into the judgment currency for the purpose of such judgment or order and (ii) the rate of exchange, as quoted by the Disbursing Agent or by a known dealer in the judgment currency that is designated by the Required Lenders, at which the Disbursing Agent or such Lender is able to purchase Dollars with the amount of the judgment currency actually received by the Disbursing Agent or such Lender. The foregoing indemnity shall constitute a separate and independent obligation of the Loan Parties and shall survive any termination of this Agreement and the other Loan Documents and shall continue in full force and effect notwithstanding any such judgment or order as aforesaid. The term "rate of exchange" shall include any premiums and costs of exchange payable in connection with the purchase of or conversion into Dollars.

Section 9.22 No Publicity. Except as otherwise permitted herein, each of Holdings and the Borrower agrees not to disclose to third parties (other than Persons who have a "need to know" in connection with the Transactions), the existence or terms and conditions of this Agreement or the other Loan Documents or the identities of the Lenders, unless required by law or with the written permission of the Lenders. The Borrower shall direct its Related Parties to comply with the terms of this section, and the Borrower will be responsible for any breach of the terms of this paragraph by its Related Parties. This provision shall survive any termination of this Agreement. Each of Holdings and the Borrower agrees that legal remedies available at law or in equity to the Lenders, including injunctive relief, may be appropriate in the event of a breach of this provision by Holdings or the Borrower.

Section 9.23 Intercreditor Agreement. Notwithstanding anything to the contrary contained in this Agreement, (i) the Liens granted to the Collateral Agent pursuant to this Agreement are expressly subject and subordinate to the Liens securing the Revolving Obligations (as defined in the Intercreditor Agreement) as and only to the extent set forth in the Intercreditor Agreement and (ii) the exercise of any right or remedy by the Collateral Agent hereunder is subject to the limitations and provisions of the Intercreditor Agreement. Without limiting the generality of the foregoing, and notwithstanding anything herein to the contrary, with respect to any Collateral or assignment of claims forms, until the occurrence of the Payment In Full (as defined in the Intercreditor Agreement) of the Revolving Obligations, to the extent set forth in the Intercreditor Agreement, any obligation of any Loan Party under any Security Document or this Agreement with respect to the delivery or control of any Collateral, the

notation of any lien on any certificate of title, bill of lading or other document, the giving of any notice to any bailee or other Person, the provision of voting rights, the obtaining of any consent of any Person or the provision of any assignment of claims form shall be subject and subordinate to the rights of the Revolving Loan Lender pursuant to the Revolving Loan Documents (as defined in the Intercreditor Agreement). To the extent that compliance by any Loan Party with any actions specified in the immediately preceding sentence would (x) conflict with the exercise of or direction by the Revolving Loan Lender of comparable rights, (y) require delivery of Collateral or provision of assignment of claims forms which can only be delivered to one Person or (z) be, under Requirements of Law, prohibited or unable to be completed, then the applicable Loan Party shall not have to take any such actions so long as the applicable Loan Party is, with respect to clause (x), complying with the exercise of, or direction by, the Revolving Loan Lender, with respect to clause (y), has delivered such Collateral or assignment of claims forms to the Revolving Loan Lender or any of its agents, and, with respect to clause (z), only so long as Requirements of Law would prevent such compliance. Any reference herein to the Lien of the Collateral Agent being "first priority" or words of similar effect shall mean that such Lien is a first priority Lien, subject only to the prior Lien securing the Revolving Obligations to the extent set forth in the Intercreditor Agreement and any other Permitted Prior Liens. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control. Each Lender, by its execution and delivery of this Agreement, hereby authorizes and directs the Collateral Agent to enter into, execute and deliver the Intercreditor Agreement and to comply with each of the terms and provisions thereof.

[*Remainder of page left intentionally blank*.]

ANNEX A

COMMITMENTS

Initial Commitments as of the Closing Date:

Lender	Initial Commitment	Original Issue Discount	Pro Rata Share	Fair Market Value of Warrants
OC III LVS XII LP (via assignment)	$40,000,000	$400,000	100%	$7,506,494.03
Total	**$40,000,000**	**$400,000**	**100%**	**$7,506,494.03**

Second Amendment Commitments:

Lender	Second Amendment Commitment	Original Issue Discount	Pro Rata Share
~~CO Finance~~OC III LVS ~~VI LLC~~XXVIII LP (via assignment)	$16,000,000	$320,000	100%
Total	**$16,000,000**	**$320,000**	**100%**

Fourth Amendment Commitments:

Lender	Fourth Amendment Commitment	Original Issue Discount	Pro Rata Share
CO Finance LVS VI LLC	$15,000,000	$300,000	100%
Total	**$15,000,000**	**$300,000**	**100%**

Summary report: Litera® Change-Pro for Word 10.13.0.36 Document comparison done on 1/27/2022 10:21:44 AM	
Style name: SMRH Standard	
Intelligent Table Comparison: Active	
Original DMS: nd://4826-7345-4835/8/FCA Conformed Term Loan Agreement thru Amendment No. 3.docx	
Modified DMS: nd://4887-6046-3366/4/FCA Conformed Term Loan Agreement thru Amendment No. 4.docx	
Changes:	
Add	364
~~Delete~~	239
~~Move From~~	11
Move To	11
Table Insert	1
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	626

Exhibit 10.58

WARRANT ACQUISITION AGREEMENT

by and among

CO FINANCE LVS VI LLC

and

FREIGHTCAR AMERICA, INC.,

Dated as of December 30, 2021

WARRANT ACQUISITION AGREEMENT

This WARRANT ACQUISITION AGREEMENT (this "Agreement") is dated as of December 30, 2021 (the "Effective Date") by and between FreightCar America, Inc., a Delaware corporation (the "Company") and CO Finance LVS VI LLC, a Delaware limited liability company (the "Investor").

BACKGROUND

WHEREAS, FreightCar North America, LLC, a Delaware limited liability company, the Company, the Investor, the other Lenders identified therein, and U.S. Bank National Association, as disbursing agent for the Lenders and as collateral agent for the Secured Parties identified therein, are parties to that certain Credit Agreement, dated as of October 13, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, the parties to the Credit Agreement are entering into that certain Amendment No. 4 to Credit Agreement, dated as of the Effective Date (the "Amendment"), pursuant to which (a) the lenders thereunder will, among other things, advance additional term loans on the Effective Date in an aggregate principal amount of $15,000,000, and (b) the parties thereto agreed to certain other amendments to the Credit Agreement, all as described in the Amendment;

WHEREAS, as a condition to the willingness of the Company and the Investor and/or Affiliates of the Investor to enter into the Amendment, the Company desires to issue to the Investor a warrant, in the form attached hereto as Exhibit A (the "Warrant"), which shall be exercisable for shares (the "Exercise Shares") of Common Stock, par value $0.01 per share, of the Company (the "Common Stock") equal, in the aggregate, to five percent (5%) of the Common Stock Deemed Outstanding of the Company on the date or dates the Warrant is exercised, and shall have the other rights set forth in the Warrant and in this Agreement; and

WHEREAS, the Company and the Investor desire to make certain representations and warranties set forth herein and enter into certain other agreements.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement, intending to be legally bound hereby, agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. As used in this Agreement, the following terms have the respective meanings set forth below:

"Affiliate" means, with respect to any Person, (i) any other Person controlled by, controlling or under common control with, such first Person and (ii) each Person in which such first Person owns in excess of a 50% economic interest. As used in this definition, "control" (including, with its correlative meanings, "controlling," "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction

of management or policies (whether through ownership of securities, by contract or otherwise); provided that, for purposes of this Agreement, the Company and its Subsidiaries shall not be deemed to be Affiliates of the Investor.

"Agreement" has the meaning set forth in the Preamble.

"Applicable Requirements" means (i) all contractual obligations relating to the business of the Company and its Subsidiaries, and (ii) all Legal Requirements applicable to the business of the Company and its Subsidiaries.

"Board of Directors" means the Board of Directors of the Company.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York City are generally authorized by law to close.

"Closing" has the meaning set forth in Section 2.2.

"Closing Date" means the first Business Day after all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all of the conditions set forth in Sections 2.2, 6.1 and 6.2 hereof are satisfied or waived, or such other date as the parties may agree.

"Common Stock" has the meaning set forth in the Recitals.

"Common Stock Deemed Outstanding" means, at any given time, the sum (without duplication) of (a) the number of shares of Common Stock actually outstanding at such time, plus (b) the number of shares of Common Stock issuable upon exercise of Options actually outstanding at such time, plus (c) the number of shares of Common Stock reserved for issuance under any equity incentive plan approved by the Board of Directors at such time, regardless of whether the shares of Common Stock are actually subject to outstanding Options or Convertible Securities, plus (d) the number of shares of Common Stock issuable upon conversion or exchange of Convertible Securities actually outstanding at such time (treating as actually outstanding any Convertible Securities issuable upon exercise of Options actually outstanding at such time), in each case, regardless of whether the Options or Convertible Securities are actually exercisable at such time, plus (e) the number of shares of Common Stock that may be issued pursuant to any Contract, agreement or arrangement of the Company in effect at such time, including without limitation shares of Common Stock to be issued in connection with any acquisition, joint venture, commercial relationship or the acquisition or license by the Company of the securities, businesses, property or other assets of another person or entity or pursuant to any employee benefit plan assumed by the Company in connection with any such acquisition, plus (f) the maximum number of shares of Common Stock issuable pursuant to that certain Reimbursement Agreement, dated as of July 30, 2021, by and among the Investor, U.S. Bank National Association, Alter Domus (US) LLC, and the Company plus (g) the maximum number of shares of Common Stock (including shares of Common Stock issuable upon exercise or conversion of Convertible Securities) issuable pursuant to the Credit Agreement; provided that Common Stock Deemed Outstanding at any given time shall not include shares of Common Stock owned or held by or for the account of the Company or any of its wholly owned subsidiaries.

"Company" has the meaning set forth in the Preamble.

"Company Deliverables" has the meaning set forth in Section 2.2(b)(ii).

"Contract" means any written or, subject to the knowledge of the Company, oral contract, agreement, note, bond, indenture, mortgage, guarantee, option, lease, license, commitment, arrangement, scheme, or other written instrument, in each case, that is legally binding on the Company or any of its Subsidiaries.

"Convertible Securities" means any securities (directly or indirectly) convertible into or exchangeable for the Common Stock, but excluding Options, including, without limitation, (a) securities convertible into shares of Common Stock that may be issued pursuant to any Contract in effect at such time, including without limitation shares of Common Stock to be issued in connection with any acquisition, joint venture, commercial relationship or the acquisition or license by the Company of the securities, businesses, property or other assets of another Person or pursuant to any employee benefit plan assumed by the Company in connection with any such acquisition and (b) the Warrant to Purchase Common Stock issued pursuant to the terms of that certain Warrant Acquisition Agreement, dated as of October 13, 2020, by and between the Company and the Investor.

"Credit Agreement" has the meaning set forth in the Recitals.

"Disclosure Schedules" has the meaning set forth in Article III.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"Exercise Shares" has the meaning set forth in the Recitals.

"GAAP" has the meaning set forth in the Credit Agreement.

"Governmental Entity" means any national, state, local, county, parish or municipal government, domestic or foreign, any agency, board, bureau, commission, court, tribunal, subdivision, department or other governmental or regulatory authority or instrumentality or quasi-governmental authority, in each case, that has jurisdiction over the Company or any of its properties, assets or business or any matter relating to the transactions contemplated by this Agreement.

"Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended.

"Investor" has the meaning set forth in the Preamble.

"Investor Deliverables" has the meaning set forth in Section 2.2(b)(i).

"Legal Requirements" means any federal, state, provincial, local, municipal, foreign, international, multinational or other law, statute, regulation, rule, directive, guidance, convention, ordinance, code, constitution, order, treaty or judgment, or similar provision or Applicable

Requirement of any Governmental Entity, in each case in each case applicable to or binding upon the Company, or any of its Subsidiaries, or to which the Company or any of its Subsidiaries is subject.

"Liens" has the meaning ascribed thereto in the Credit Agreement.

"Material Agreement" has the meaning set forth in Section 3.12.

"Options" means any warrants or other rights or options to subscribe for, acquire, purchase or otherwise be issued Common Stock or Convertible Securities.

"Ordinary Course" means the ordinary course of the Company's business consistent with past practices.

"Permits" has the meaning set forth in Section 3.8(b).

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, association or other entity or a Governmental Entity.

"Preferred Stock" means any Preferred Stock, par value $0.01 per share, of the Company, including any Series A Preferred Stock or Series B Preferred Stock.

"Registration Rights Agreement" means the Registration Rights Agreement in the form attached hereto as Exhibit B.

"Requisite Holders" means the Investor, its Affiliates or any transferee holding the Warrant or Warrants representing Exercise Shares constituting a majority of all Exercise Shares underlying the outstanding Warrant or Warrants.

"SEC" means the United States Securities and Exchange Commission.

"SEC Reports" means all reports, schedules, forms, statements and other documents required to be filed by it under the Securities Act or the Exchange Act, including pursuant to Section 13(a) or 15(d) of the Exchange Act.

"Securities Act" means the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated by the SEC thereunder.

"Series A Preferred Stock" means Series A Voting Preferred Stock, par value $0.01 per share, of the Company.

"Series B Preferred Stock" means Series B Non-Voting Preferred Stock, par value $0.01 per share, of the Company.

"Subsidiary" means, with respect to any Person, any other Person (other than an individual) of which (i) if a corporation, a majority of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors thereof is

at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of the profits or losses of such limited liability company, partnership, association or other business entity (as the case may be) is allocated, directly or indirectly, to that Person or one or more Subsidiaries of that Person or a combination thereof, or that Person or one or more Subsidiaries of that Person or a combination thereof controls the general partner, manager, managing member, managing director (or a board or comparable governing body comprised of any of the foregoing) of such limited liability company, partnership, association or other business entity. For purposes hereof, references to a "Subsidiary" of any Person shall be given effect only at such times such Person has one or more Subsidiaries, and, unless otherwise indicated, the term "Subsidiary" refers to a Subsidiary of the Company.

"Tax Returns" means all returns, declarations, reports, forms, estimates, information returns and statements filed or required to be filed in respect of any Taxes with a taxing authority (including any schedules thereto or amendments thereof).

"Taxes" means all federal, state, county, local, foreign and other taxes and similar governmental assessments (including, without limitation, income, profits, premium, estimated, excise, sales, use, occupancy, gross receipts, franchise, ad valorem, severance, capital levy, production, transfer, escheat or unclaimed or abandoned property obligation, withholding, employment, unemployment compensation, payroll-related and property taxes, import duties and other governmental charges and assessments), whether or not measured in whole or in part by net income, and including deficiencies, interest, additions to tax or interest and penalties with respect thereto.

"Transaction Documents" means this Agreement, the schedules and exhibits attached hereto, the Warrant, the Registration Rights Agreement, the Amendment, and any other documents or agreements explicitly contemplated hereunder.

"Warrant" has the meaning set forth in the Recitals.

ARTICLE II
ACQUISITION OF THE WARRANT

Section 2.1 Issuance of Warrant. Subject to the terms and conditions set forth in this Agreement, at the Effective Date, in consideration for the Fourth Amendment Commitments (as defined in the Amendment) extended pursuant to the Amendment, the Company shall issue the Warrant to the Investor.

Section 2.2 Closing.

(a) The closing of the acquisition of the Warrant (the "Closing") shall be held at the offices of Sheppard, Mullin, Richter & Hampton LLP, 333 South Hope Street, 43rd Floor, Los Angeles, California 90071, at 10 a.m. Pacific Time on the Closing Date, or at such other time and place agreed to by the parties in writing. If and to the extent the Company and the Investor

mutually agree, the Closing may take place by exchange of facsimile or electronic signatures without the necessity for a physical meeting of the parties.

(b) At the Closing, upon the terms and subject to the conditions set forth in this Agreement:

(i) the Investor shall execute and deliver to the Company (A) the Warrant duly executed by the Investor, (B) the Registration Rights Agreement duly executed by the Investor and (C) a certificate, dated as of the Closing Date and signed by an officer of the Investor, certifying to the fulfillment of the conditions specified in Section 6.2 of this Agreement (collectively, the "Investor Deliverables"); and

(ii) the Company shall execute and deliver to the Investor (A) the Warrant duly executed by the Company and registered in the name of the Investor, (B) the Registration Rights Agreement duly executed by the Company and the other parties thereto, (C) a certificate of an officer of the Company, dated the Closing Date, (1) certifying the resolutions adopted by the Board of Directors approving the transactions contemplated by this Agreement and the Registration Rights Agreement and the issuance of the Warrant, (2) certifying the current versions of the Company's certificate of incorporation and bylaws, and (3) certifying as to the signature and authority of the Person executing this Agreement, the Registration Rights Agreement, the Warrant and related Transaction Documents on behalf of the Company and (D) a certificate, dated as of the Closing Date and signed by the Company's Chief Executive Officer, certifying as to the fulfillment of the conditions specified in Section 6.1 of this Agreement (collectively, the "Company Deliverables").

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Investor that, subject to the qualifications and exceptions set forth in the disclosure schedules delivered to the Investor pursuant to this Agreement (the "Disclosure Schedules"):

Section 3.1 Organization. Each of the Company, and its Subsidiaries (a) is duly incorporated or organized, validly existing and, as applicable, in good standing under the laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to own or lease its assets and carry on its business as now conducted and (c) is duly qualified and licensed and, as applicable, in good standing under the laws of each jurisdiction where such qualification or license or, if applicable, good standing is required; except, in the case of clauses (b) and (c) above, where such failure could not reasonably be expected to have a material adverse effect on the business, operations, financial condition or results of operations of the Company and its Subsidiaries, taken as a whole (a "Material Adverse Effect").

Section 3.2 Authorization; Enforceability. The Company has all corporate power and authority to execute and deliver this Agreement, the Warrant, the Registration Rights Agreement, the other Transaction Documents, and any other agreements, certificates,

instruments or writings contemplated hereby or thereby, and to perform its obligations hereunder and thereunder. The execution, delivery and performance by the Company of this Agreement, the Warrant, the Registration Rights Agreement, the other Transaction Documents, and any other agreements, certificates, instruments or writings contemplated hereby or thereby, and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of the Company. This Agreement, the Warrant, the Registration Rights Agreement, the other Transaction Documents, and any other agreements contemplated hereby or thereby, assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles.

Section 3.3 Capitalization. As of the Effective Date, (a) the Company is authorized to issue up to 50,000,000 shares of Common Stock and 2,500,000 shares of Preferred Stock, of which 100,000 shares have been designated Series A Preferred Stock and 100,000 shares have been designated Series B Preferred Stock and (b) the Company has 15,947,228 shares of Common Stock issued and outstanding, no shares of Common Stock held in treasury and no shares of Preferred Stock issued and outstanding. The outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable and were issued in compliance with all federal and state securities laws. None of the outstanding shares of capital stock of the Company was issued in violation of the preemptive or other similar rights of any security holder of the Company. Except as a result of the purchase and sale of the Warrant under this Agreement, and except as set forth in the SEC Reports, there are no outstanding options, warrants, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional shares of Common Stock. The issuance and sale of the Warrant will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. There are no stockholders agreements, voting agreements or other agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

Section 3.4 Subsidiaries. Section 3.4 of the Disclosure Schedules sets forth a true and correct list of the Subsidiaries of the Company. Except as described on Section 3.4 of the Disclosure Schedules, the Company owns, directly or indirectly, all of the issued and outstanding shares of capital stock of or all other equity interests in each of its Subsidiaries, free and clear of any Liens (other than Permitted Equity Liens, as defined in the Credit Agreement) and all of such shares or equity interests are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

Section 3.5 Valid Issuance of Warrant. The Warrant (a) is duly authorized by all necessary corporate action on the part of the Company, (b) when issued and delivered by the Company pursuant to this Agreement will be validly issued, and (c) will not be subject to any Liens or statutory or contractual preemptive rights or other similar rights of equityholders at the time of issuance except for any such rights that have been waived prior to issuance. The Exercise Shares issuable to the Investor upon exercise of the Warrant in accordance with the terms thereof (x) will be, upon issuance, duly authorized by all necessary corporate action on the part of the Company, (y) when issued and delivered by the Company will be validly issued, fully paid and nonassessable and free of Liens, encumbrances or restrictions on transfer (other than those created by this Agreement, the Warrant, the Registration Rights Agreement, the Company's certificate of incorporation or bylaws and applicable state and/or federal securities laws) and (z) will not be subject to any statutory or contractual preemptive rights or other similar rights of equityholders at the time of issuance. The Company shall at all times have reserved and available for issuance a sufficient number of shares of Common Stock to satisfy any issuance of the Warrant by the Investor.

Section 3.6 Non-Contravention. The Company is not in violation or default of any provision of its certificate of incorporation or bylaws (or comparable constituent documents). The Company's execution, delivery and performance of and compliance with this Agreement, the Warrant, the Registration Rights Agreement, the other Transaction Documents, and any other agreements, certificates, instruments or writings contemplated hereby or thereby to which it is a party, the issuance and delivery by the Company of the Warrant and, upon exercise of the Warrant, the Exercise Shares and the consummation of the other transactions contemplated hereby and thereby (a) will not result in any violation of the provisions of its certificate of incorporation or bylaws (or comparable constituent documents), (b) will not conflict with or constitute a breach of or a default (or constitute an event which with notice or lapse of time or both would become a default) under or give rise to any right of termination, recapture, acceleration or cancellation under any material Contract of the Company, or result in the creation or imposition of any Lien or encumbrance upon any property or assets of the Company or any of its Subsidiaries, or, to the Company's knowledge, the suspension, revocation, impairment or forfeiture of any material permit, license, authorization, or approval applicable to the Company, its businesses or operations, or any of its assets or properties, (c) to the Company's knowledge will not result in any violation of any Legal Requirement or any judgment, order or decree of any Governmental Entity applicable to the Company or any of its Subsidiaries, or (d) to the Company's knowledge require the consent, approval, order, or authorization of, or registration, qualification, declaration, or filing with, any Governmental Entity on the part of the Company or any of its Subsidiaries, in each of clauses (b), (c) and (d), other than those as would not reasonably be expected to have a Material Adverse Effect.

Section 3.7 Litigation. There is no action, suit, proceeding or investigation pending or threatened against, nor any outstanding judgment, order or decree affecting, the Company or any of its Subsidiaries before or by any Governmental Entity or arbitral body, that individually or in the aggregate would have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is in default with respect to any judgment, order or decree of any Governmental Entity specifically directed at the Company or any of its Subsidiaries. The

Company is not a party or subject to, and none of its assets is bound by, the provisions of any order, writ, injunction, judgment, or decree of any Governmental Entity specifically directed at the Company or any of its Subsidiaries, except as would not reasonably be expected to have a Material Adverse Effect.

Section 3.8 **Compliance with Legal Requirements; Permits; No Defaults**.

(a) The Company and each of its Subsidiaries is in compliance with all Legal Requirements applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, except where the failure thereof would not have a Material Adverse Effect.

(b) The Company and each of its Subsidiaries have all required permits, registrations, licenses, authorizations, consents, certificates, orders, clearances, approvals and franchises from Governmental Entities to own, lease and operate their properties and conduct their businesses as currently conducted ("Permits"), such Permits are in full force and effect and there has occurred no violation of, suspension, reconsideration, imposition of penalties or fines, imposition of additional conditions or requirements, default (with or without notice or lapse of time or both) under, or event giving rise to any right of termination, amendment or cancellation of, with or without notice or lapse of time or both, any such Permit, and the Company and each of its Subsidiaries have fulfilled and performed all of their obligations with respect to such Permits to the extent required to be so performed on or prior to the Closing Date and are in compliance with the terms of such Permits, in each case except where any such failure would not have a Material Adverse Effect.

(c) Since January 1, 2020, the Company and each of its Subsidiaries has timely filed all reports, applications, statements, certifications, documents, registrations, filings, notices or submissions required to be filed with any Governmental Entity, in each case except where any such failure would not have a Material Adverse Effect. All such reports were in compliance with the Applicable Requirements when filed and no deficiencies have been asserted by such Governmental Entity, in each case except where any such noncompliance would not have a Material Adverse Effect.

Section 3.9 **Financial Statements; Undisclosed Liabilities**. The consolidated financial statements of the Company included or incorporated by reference in the SEC Reports filed since January 1, 2019, together with the related notes and schedules, present fairly, in all material respects, the consolidated financial position of the Company and the Subsidiaries as of the dates indicated and the consolidated results of operations, cash flows and changes in stockholders' equity of the Company for the periods specified and have been prepared in compliance with the requirements of the Securities Act and the Exchange Act, as applicable, and in conformity with GAAP (except (i) for such adjustments to accounting standards and practices as are noted therein or (ii) in the case of unaudited interim financial statements, to the extent that they may not include footnotes or may be condensed or summary statements) during the periods involved. The other financial and statistical data with respect to the Company and the Subsidiaries contained or incorporated by reference in the SEC Reports filed since January 1, 2019 are accurately and fairly presented in all material respects and

prepared on a basis consistent with the financial statements and books and records of the Company.

Section 3.10 **Tax Matters**. Since January 1, 2019, each of the Company and its Subsidiaries has (a) filed or caused to be filed all material Tax Returns required to have been filed by it (or has filed timely extensions with respect to such Tax Returns), (b) paid or caused to be paid all material Taxes required to be paid by it, except for those which are being contested in good faith and for which the Company or the applicable Subsidiary has set aside on its books adequate reserves in accordance with GAAP, and (c) complied with all applicable requirements relating to the withholding of material Taxes and timely collected or withheld and paid over to the proper Governmental Entity all material amounts required to be so collected or withheld and paid over by it. Each of the Company and its Subsidiaries has made adequate provisions in accordance with GAAP for all Taxes not yet due and payable. Neither the Company nor any of its Subsidiaries has knowledge (or could reasonably have knowledge upon due inquiry) of any proposed or pending tax assessments, deficiencies, audits or other proceedings and no proposed or pending tax assessments, deficiencies, audits or other proceedings have had, or could reasonably be expected to have, individually or in the aggregate, a material adverse effect. Neither the Company nor any of its Subsidiaries has ever "participated" in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4. Neither the Company nor any of its Subsidiaries is party to any tax sharing or similar agreement.

Section 3.11 **Not a U.S. Real Property Holding Corporation**. Each of the Company and its Subsidiaries is not and has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code at any time during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

Section 3.12 **Agreements**. Since January 1, 2019, neither the Company nor any of its Subsidiaries has received written notice of any violation or default (or any condition which with the passage of time or the giving of notice or both would cause such a violation of or a default) by any party under any material agreement to which the Company or any of its Subsidiaries is a party ("Material Agreement"), nor has such notice been threatened, except as would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Company, no other party to any Material Agreement is in material breach or violation of, or default under, or has repudiated any material provision of, any Material Agreement, except as would not reasonably be expected to have a Material Adverse Effect.

Section 3.13 **SEC Reports**. Since January 1, 2019, the Company has filed all SEC Reports on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective filing dates, the SEC Reports filed since January 1, 2019 complied in all material respects with the requirements of the Securities Act and the Exchange Act, and none of such SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company does not

have pending before the SEC any request for confidential treatment of information or any comments from the SEC which have not been resolved.

Section 3.14 Brokers and Finders. Neither the Company nor any of its Subsidiaries has employed any broker or finder or incurred any liability for any financial advisory fee, brokerage fee, commission or finder's fee, and no broker or finder has acted directly or indirectly for the Company or any of its Subsidiaries, each in connection with this Agreement or the transactions contemplated hereby.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE INVESTOR

The Investor represents and warrants to the Company that:

Section 4.1 Organization. The Investor is duly organized and is validly existing and in good standing as a limited liability company under the laws of the State of Delaware and has all the requisite power and authority to carry on its business as it is now being conducted, except as would not, individually or in the aggregate, have or reasonably be expected to have a material adverse effect on the Investor.

Section 4.2 Authorization. The Investor has the full limited liability company or comparable right, power, authority and capacity to enter into this Agreement, the Warrant, the Registration Rights Agreement and any other agreements contemplated hereby or thereby, and to perform its obligations hereunder and thereunder. The execution, delivery and performance by the Investor of this Agreement, the Warrant, the Registration Rights Agreement and any other agreements contemplated hereby or thereby, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary and proper actions on the part of the Investor. This Agreement, the Warrant, the Registration Rights Agreement and any other agreements contemplated hereby or thereby have been (or will be) duly executed and delivered by the Investor and, assuming due authorization, execution and delivery of this Agreement, the Warrant, the Registration Rights Agreement and any other agreements contemplated hereby or thereby by the other parties thereto, constitute valid and binding obligations of the Investor, enforceable against the Investor in accordance with their respective terms, except as such may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles.

Section 4.3 Non-Contravention. The execution, delivery and performance by the Investor of this Agreement, the Warrant, the Registration Rights Agreement, and any other agreements contemplated hereby or thereby, the receipt and acceptance of the Warrant and the consummation of the other transactions contemplated hereby and thereby (a) will not conflict with or violate any provision of its limited liability company agreement, (b) will not conflict with or result in any breach of, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give rise to any right of termination, acceleration or cancellation under, any lease, mortgage, license, indenture or any other material agreement to which the Investor is a party or by which its properties may be bound or affected or result in the creation of any lien or encumbrance upon any property or assets

of the Investor or the suspension, revocation, impairment or forfeiture of any material permit, license, authorization, or approval applicable to the Investor, its business or operations, or any of its assets or properties, respectively, or (c) will not conflict with or violate any law or regulation applicable to the Investor, in each of clauses (b) and (c), other than those as would not reasonably be expected to have a material adverse effect on the Investor.

Section 4.4 **Brokers and Finders**. Neither the Investor nor any of its Affiliates or any of their respective officers or directors has employed any broker or finder or incurred any liability for any financial advisory fee, brokerage fee, commission or finder's fee, and no broker or finder has acted directly or indirectly for the Investor or any of its Affiliates or any of their respective officers or directors, in connection with this Agreement or the transactions contemplated hereby.

Section 4.5 **Securities Matters**. The Investor is an "accredited investor" within the meaning of Rule 501 of Regulation D under the Securities Act, as presently in effect. The Warrant and the Exercise Shares issuable to the Investor upon exercise of the Warrant shall be acquired for investment for the Investor's own account, not as a nominee or agent, and not with a view to the public resale or distribution of such Warrant or Exercise Shares within the meaning of the Securities Act. The Investor has no present intention of selling, granting any participation in or otherwise distributing the Warrant or the Exercise Shares. The Investor acknowledges that the Warrant and Exercise Shares issued to the Investor upon exercise of the Warrant have not been registered under the Securities Act and are being offered and sold pursuant to an exemption from registration contained in the Securities Act based in part upon the representations of the Investor contained in this Agreement.

ARTICLE V
COVENANTS

Section 5.1 **Further Assurances**. Upon the terms and subject to the conditions set forth in this Agreement, following the Closing the parties hereto shall each use their commercially reasonable efforts to promptly take, or to cause to be taken, all actions, and to do, or to cause to be done, and to assist and cooperate with the other parties in doing all things necessary, proper or advisable under applicable Legal Requirements or otherwise to assure compliance with the terms, provisions, purposes and intents of this Agreement.

Section 5.2 **Warrant Exercise**. Concurrently with and as a condition precedent to the exercise by the Investor of the Warrant in accordance with its terms, the Investor shall pay the Exercise Price in accordance with the terms of the Warrant.

Section 5.3 **Transfer Taxes**. The Company shall pay any and all documentary, stamp or similar issue or transfer tax due upon the issuance of the Warrant and issuance of Exercise Shares upon exercise of the Warrant.

ARTICLE VI
CONDITIONS PRECEDENT TO CLOSING

Section 6.1 Conditions Precedent to the Obligations of the Investor. The obligation of the Investor to proceed with the Closing is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by the Investor:

(a) Representations and Warranties. The representations and warranties of the Company contained herein shall be true and correct in all material respects (except for those representations and warranties which are qualified as to materiality, in which case such representations and warranties shall be true and correct) as of the date when made and as of the Closing Date, as though made on and as of such date, except for such representations and warranties that speak as of a specific date, which shall be true and correct as of such specified date.

(b) Performance. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by it at or prior to the Closing.

(c) Amendment. All conditions precedent to the completion of the transactions contemplated by the Amendment shall have been satisfied or waived.

(d) Closing Deliverables. The Company shall have delivered the Company Deliverables in accordance with Section 2.2(b)(ii).

Section 6.2 Conditions Precedent to the Obligations of the Company. The obligation of the Company to proceed with the Closing is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by the Company:

(a) Representations and Warranties. The representations and warranties made by the Investor herein shall be true and correct in all material respects (except for those representations and warranties which are qualified as to materiality, in which case such representations and warranties shall be true and correct) as of the date when made, and as of the Closing Date as though made on and as of such date, except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specified date.

(b) Performance. The Investor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Investor at or prior to the Closing Date.

(c) Investor Deliverables. The Investor shall have delivered its Investor Deliverables in accordance with Section 2.2(b)(i).

ARTICLE II
SURVIVAL

Section 7.1 Survival. The representations and warranties provided for in this Agreement shall survive for a period of eighteen (18) months from the date when made; provided, however, that the representations and warranties in Section 3.1 (Organization), Section 3.2 (Authorization), Section 3.3 (Capitalization), Section 3.4 (Subsidiaries), Section 3.5 (Valid Issuance of Warrant), Section 3.14 (Brokers and Finders), Section 4.1 (Organization) Section 4.2 (Authorization), Section 4.4 (Brokers and Finders), and Section 4.5 (Securities Matters) of this Agreement shall survive the Closing until the expiration of the applicable statute of limitations. The covenants or agreements contained in this Agreement shall survive the Closing until the expiration of the term of the undertaking set forth in such agreements and covenants.

ARTICLE III
MISCELLANEOUS

Section 8.1 No Personal Liability of Directors, Officers, Owners, Etc. Except as set forth herein, no director, officer, employee, incorporator, stockholder, controlling Person, manager, member, general partner, limited partner, principal or other agent of the Investor or the Company shall have any liability for any obligations of the Investor or the Company, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the respective obligations of the Investor or the Company, as applicable, under this Agreement.

Section 8.2 Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally, (b) by electronic transmission, upon confirmation of receipt; provided, that any electronic transmission delivered after 5:00 p.m. (local time at the recipient's location) or on a day that is not a Business Day shall be deemed delivered after confirmation of receipt at 9:00 a.m. (local time at the recipient's location) on the next succeeding Business Day, (b) on the date of delivery according to the records of a nationally recognized overnight courier service, if delivered by such overnight courier service, (c) on the third (3rd) Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid, or (d) on the date the sender's receipt of an acknowledgement from the intended recipient of e-mail notice (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided, that any e-mail notice delivered after 5:00 p.m. (local time at the recipient's location) or on a day that is not a Business Day shall be deemed delivered after confirmation of receipt at 9:00 a.m. (local time at the recipient's location) on the next succeeding Business Day, in each case, to the parties to this Agreement at the following address or to such other address either party to this Agreement shall specify by notice to the other party pursuant to this Section 8.2:

If to the Company:

FreightCar America, Inc.
125 South Wacker Drive

Suite 1500
Chicago, IL 60606
Email: CEppel@freightcar.net
Attention: Vice President and Chief Financial Officer

With a copy to (which shall not constitute notice for purposes of this Section 8.2):

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601
Facsimile No.: (312) 558-5700
Email: odavid@winston.com and dsakowitz@winston.com
Attention: Oscar David, Esq. and David A. Sakowitz, Esq.

If to the Investor:

CO Finance LVS VI LLC
650 Newport Center Drive
Newport Beach, California 92660
Telephone No.: (949) 720-6809
Email: chris.neumeyer@pimco.com
Attention: Chris Neumeyer

With a copy to (which shall not constitute notice for purposes of this Section 8.2):

Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, California 90071
Email: srosenberg@sheppardmullin.com
Attention: Stacey L. Rosenberg, Esq.

Section 8.3 Amendments and Waivers. Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is duly executed and delivered by the Company and the Requisite Holders. No failure or delay by any party to this Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 8.4 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Investor's rights, interests and obligations under this Agreement may be assigned to any transferee of the Warrant in which the Investor owns a majority of the equity interests or any other investment entity that is controlled, advised or managed by the same person or persons that control the Investor or is an Affiliate of that person.

Section 8.5 **Governing Law**. THIS AGREEMENT, THE WARRANT AND ALL CLAIMS OR CAUSES OF ACTION (WHETHER AT LAW, IN CONTRACT, IN TORT OR OTHERWISE) THAT MAY BE BASED UPON, ARISE OUT OF OR RELATE TO THIS AGREEMENT, THE WARRANT, OR THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS AGREEMENT OR THE WARRANT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, THE INTERNAL LAW OF THE STATE OF NEW YORK WILL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT AND THE WARRANT, EVEN IF UNDER SUCH JURISDICTION'S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY.

Section 8.6 **Consent to Jurisdiction; Venue; Waiver of Jury Trial.**

(a) EACH PARTY HERETO IRREVOCABLY AGREES AND CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK, WITH RESPECT TO ALL MATTERS RELATING TO THIS AGREEMENT AND THE WARRANT AND TO THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, WAIVES ALL OBJECTIONS BASED ON LACK OF VENUE AND FORUM NON CONVENIENS AND IRREVOCABLY CONSENTS TO THE PERSONAL JURISDICTION OF ALL SUCH COURTS.

(b) THE PARTIES HERETO FURTHER AGREE THAT THE MAILING BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESS SET FORTH IN SECTION 8.2, OF ANY PROCESS REQUIRED BY ANY SUCH COURT SHALL CONSTITUTE VALID AND LAWFUL SERVICE OF PROCESS AGAINST THEM, WITHOUT NECESSITY FOR SERVICE BY ANY OTHER MEANS PROVIDED BY STATUTE OR RULE OF COURT.

(c) EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. EACH PARTY HERETO CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY HERETO WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING

WAIVER, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (III) IT MAKES SUCH WAIVER VOLUNTARILY, AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.6(C).

Section 8.7 Entire Agreement. This Agreement, the Warrant, the Registration Rights Agreement, the Amendment, the other Transaction Documents and any agreements, certificates, instruments or other writings delivered in connection therewith, together with the exhibits and schedules hereto (including the Disclosure Schedules) and thereto, constitute the entire agreement among the Company and the Investor with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the Company and the Investor and/or their Affiliates with respect to the subject matter of this Agreement.

Section 8.8 Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 8.9 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable Legal Requirements, such provision shall be deemed to be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision were so excluded and shall be enforced in accordance with its terms to the maximum extent permitted by Legal Requirements and the parties shall enter into alternative arrangements to implement the economic effect of such unenforceable provisions in an enforceable way.

Section 8.10 Counterparts. This Agreement may be executed in any number of counterparts, and with signatures to this Agreement by facsimile or in electronic format, each of which shall be an original, but all of which when taken together shall constitute one and the same Agreement. Signatures of the parties transmitted electronically or by facsimile shall be deemed to be their original signatures for all purposes.

Section 8.11 No Third-Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended to confer on any Person (other than the parties hereto) any rights, remedies, obligations or liabilities under or by reason of this Agreement, and no Person that is not a party to this Agreement (including any director, officer, employee, incorporator, stockholder, controlling Person, manager, member, general partner, limited partner, principal or other agent of any party to this Agreement, in its own capacity as such or in bringing a derivative action on behalf of such party) shall have standing as third-party beneficiary with respect to this Agreement or the transactions contemplated by this Agreement.

Section 8.12 Enforcement of Agreement. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties to this Agreement shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any

state or federal court located in the city or county of New York, this being in addition to any other remedy to which the parties to this Agreement are entitled at law or in equity. Additionally, each party to this Agreement hereto irrevocably waives any defenses based on adequacy of any other remedy, whether at Law or in equity, that might be asserted as a bar to the remedy of specific performance of any of the terms or provisions hereof or injunctive relief in any action brought therefor.

Section 8.13 **Terms and Usage Generally**. The definitions in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. All references herein to Articles, Sections, Exhibits and Schedules shall be deemed to be references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “or” shall be deemed to mean “and/or”. All accounting terms not defined in this Agreement shall have the meanings determined by GAAP as in effect from time to time. The words “hereof”, “herein”, “hereto” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the Effective Date.

FREIGHTCAR AMERICA, INC.

By: /s/ Terence R. Rogers
Name: Terence R. Rogers
Title: Vice President, Finance, Chief Financial Officer, Treasurer and Secretary

CO FINANCE LVS VI LLC

By: /s/ Christopher Neumeyer
Name: Christopher Neumeyer
Title: Authorized Person

EXHIBIT A

WARRANT

[See attached]

EXHIBIT B

REGISTRATION RIGHTS AGREEMENT

[See attached

Exhibit 10.59

THIS WARRANT AND THE UNDERLYING SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF APPLICABLE STATES. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION UNDER SUCH LAWS OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENT.

WARRANT TO PURCHASE COMMON STOCK

OF

FREIGHTCAR AMERICA, INC.

NO. W-002 December 30, 2021

THIS WARRANT CERTIFIES THAT, for value received, CO Finance LVS VI LLC, a Delaware limited liability company, or its assigns (the "Holder"), is entitled to subscribe for and purchase from FreightCar America, Inc., a Delaware corporation (the "Company"), a number of shares of the Company's common stock, par value $0.01 per share ("Common Stock"), equal to (a) 5.0% of the Common Stock Deemed Outstanding on the date of any exercise of this Warrant less (b) the aggregate number of shares of Common Stock previously issued from time to time as a result of any partial exercise of this Warrant in accordance with the terms set forth herein (collectively, the "Exercise Shares"), at a purchase price per share of $0.01 (the "Exercise Price"), all subject to the terms, conditions and adjustments set forth below in this Warrant.

This Warrant is being issued pursuant to the terms of the Warrant Acquisition Agreement, dated as of December 30, 2021, by and between the Company and the Holder (the "Warrant Agreement"). Certain capitalized terms used herein are defined in Section 1 hereof. Capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Warrant Agreement. The Exercise Shares are subject to adjustment as provided herein.

This Warrant is subject to the following terms and conditions:

1. DEFINITIONS. As used herein, the following terms shall have the following respective meanings:

(a) "Aggregate Exercise Price" means an amount equal to the product of (a) the number of Exercise Shares in respect of which this Warrant is then being exercised pursuant to Section 2 hereof, multiplied by (b) the Exercise Price.

(b) "Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York City are generally authorized by law to close.

(c) "Change of Control" means: (i) a capital reorganization or reclassification of the capital stock of the Company resulting in any Person or group of Persons other than holders of

the voting securities of the Company outstanding immediately prior to such transaction, becoming the holders, directly or indirectly, of more than 50% of the combined voting power of the outstanding voting securities of the Company having the right to vote for the election of members of the Board of Directors; (ii) a merger, consolidation or reorganization or other similar transaction or series of related transactions, in each case which results in the voting securities of the Company outstanding immediately prior thereto representing immediately thereafter (either by remaining outstanding or by being converted into voting securities of the surviving or acquiring entity) less than 50% of the combined voting power of the outstanding voting securities of the Company having the right to vote for the election of members of the Board of Directors of the Company or such surviving or acquiring entity outstanding immediately after such merger, consolidation or reorganization; (iii) the issuance by the Company of equity securities of the Company, in a single transaction or series of related transactions, representing at least 50% of the combined voting power of the outstanding voting securities of the Company having the right to vote for the election of members of the Board of Directors; or (iv) the acquisition by any "person" (together with his, her or its Affiliates) or "group" (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), directly or indirectly, of the beneficial ownership (as such term is defined in Rule 13d-3 promulgated under the Exchange Act) of outstanding shares of capital stock and/or other equity securities of the Company, in a single transaction or series of related transactions (including, without limitation, one or more tender offers or exchange offers), representing at least 50% of the combined voting power of the outstanding voting securities of the Company having the right to vote for the election of members of the Board of Directors; provided that a transaction (or series of related transactions) consisting solely of the issuance by the Company of equity securities of the Company, representing less than 20% of the combined voting power of the outstanding voting securities of the Company, for cash consideration in a bona fide capital raising transaction shall not be considered a Change of Control.

(d) "Common Stock Deemed Outstanding" means, at any given time, the sum (without duplication) of (i) the number of shares of Common Stock actually outstanding at such time, plus (ii) the number of shares of Common Stock issuable upon exercise of Options actually outstanding at such time, plus (iii) the number of shares of Common Stock reserved for issuance under any equity incentive plan approved by the Board of Directors at such time, regardless of whether the shares of Common Stock are actually subject to outstanding Options or Convertible Securities, plus (iv) the number of shares of Common Stock issuable upon conversion or exchange of Convertible Securities actually outstanding at such time (treating as actually outstanding any Convertible Securities issuable upon exercise of Options actually outstanding at such time), in each case, regardless of whether the Options or Convertible Securities are actually exercisable at such time, plus (v) the number of shares of Common Stock that may be issued pursuant to any Contract, agreement or arrangement of the Company in effect at such time, including without limitation shares of Common Stock to be issued in connection with any acquisition, joint venture, commercial relationship or the acquisition or license by the Company of the securities, businesses, property or other assets of another person or entity or pursuant to any employee benefit plan assumed by the Company in connection with any such acquisition, plus (vi) the maximum number of shares of Common Stock issuable pursuant to that certain Reimbursement Agreement, dated as of July 30, 2021, by and among the Investor, U.S. Bank National Association, Alter Domus (US) LLC, and the Company plus (vii) the maximum number of shares of Common Stock (including shares of Common Stock issuable upon exercise or conversion of Convertible Securities) issuable

pursuant to the Credit Agreement; provided that Common Stock Deemed Outstanding at any given time shall not include shares of Common Stock owned or held by or for the account of the Company or any of its wholly owned subsidiaries.

(e) "Convertible Securities" means any securities (directly or indirectly) convertible into or exchangeable for the Common Stock, but excluding Options.

(f) "Exercise Period" means the period commencing on the date hereof and ending on the Expiration Date.

(g) "Expiration Date" means ten (10) years from the date hereof.

(h) "Fair Market Value" means, as of any particular date: (a) the volume weighted average of the closing sales prices of the Common Stock for such day on all U.S. national securities exchanges on which the Common Stock may at the time be listed; (b) if there have been no sales of the Common Stock on any such exchange on any such day, the average of the highest bid and lowest asked prices for the Common Stock on all such exchanges at the end of such day; (c) if on any such day the Common Stock is not listed on a domestic securities exchange, the closing sales price of the Common Stock as quoted on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association for such day; or (d) if there have been no sales of the Common Stock on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association on such day, the average of the highest bid and lowest asked prices for the Common Stock quoted on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association at the end of such day; in each case, averaged over twenty (20) consecutive Business Days ending on the Business Day immediately prior to the day as of which "Fair Market Value" is being determined; provided that, if the Common Stock is listed on any U.S. national securities exchange, the term "Business Day" as used in this sentence means Business Days on which such national securities exchange is open for trading. If at any time the Common Stock is not listed on any domestic securities exchange or quoted on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association, the "Fair Market Value" of the Common Stock shall be the fair market value per share as determined jointly by the Company's Board of Directors and the Holder.

(i) "Liquid Securities" means a class of securities registered under Section 12(b) of the Exchange Act, which are listed or quoted for trading on a U.S. national securities exchange.

(j) "Options" means any warrants or other rights or options to subscribe for, acquire, purchase or otherwise be issued Common Stock or Convertible Securities.

(k) "Original Issue Date" means December 30, 2021.

(l) "OTC Bulletin Board" means the Financial Industry Regulatory Authority OTC Bulletin Board electronic inter-dealer quotation system.

(m) "Person" means any individual, sole proprietorship, partnership, limited liability company, corporation, joint venture, trust, incorporated organization or government or department or agency thereof.

(n) "Pink OTC Markets" means the OTC Markets Group Inc. electronic inter-dealer quotation system, including OTCQX, OTCQB and OTC Pink.

(o) "Securities Act" means the United States Securities Act of 1933, as amended.

2. EXERCISE OF WARRANT.

2.1 Exercise. The rights represented by this Warrant may be exercised in whole or in part at any time during the Exercise Period, by delivery of the following to the Company at its address set forth in Section 8.2 of the Warrant Agreement (or at such other address as it may designate by notice in writing to the Holder):

(a) an executed Notice of Exercise in the form attached hereto;

(b) payment of the Exercise Price in cash (by wire transfer to the account designated in writing by the Company) or by check; and

(c) this Warrant.

Upon receipt by the Company of this Warrant and payment of the Exercise Price in cash (by wire transfer to the account designated in writing by the Company) or by check, or pursuant to Section 2.2, shares of Common Stock in certificated or book entry form representing the Exercise Shares so purchased, registered in the name of the Holder or Persons affiliated with the Holder, if the Holder so designates, shall be issued and delivered to the Holder at the Company's expense within three (3) Business Days after the Company's receipt of such Notice of Exercise and/or Exercise Price.

The Person in whose name any certificate or book entry representing the Exercise Shares that are to be issued upon exercise of this Warrant shall be deemed to have become the holder of record of such shares on the date on which this Warrant was surrendered and payment of the Exercise Price was made, irrespective of the date of delivery of such shares.

2.2 Net Exercise. Notwithstanding any provisions herein to the contrary, if the Fair Market Value of one Exercise Share issuable hereunder is greater than the Exercise Price (at the date of calculation as set forth below), in lieu of exercising this Warrant by payment of cash, the Holder may elect to receive shares equal to the value (as determined below) of this Warrant (or the portion thereof being canceled) by surrender of this Warrant at the principal office of the Company together with the properly endorsed Notice of Exercise in which event the Company shall issue to the Holder a number of Exercise Shares computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where X = the number of Exercise Shares to be issued to the Holder

Y = the number of Exercise Shares purchasable under the Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being exercised (at the date of such exercise)

A = the Fair Market Value of one Exercise Share purchasable under the Warrant (at the date of such exercise)

B = Exercise Price (as adjusted to the date of such exercise)

The Company acknowledges that the provisions of this Section 2.2 are intended, in part, to ensure that a full or partial exchange of this Warrant pursuant to this Section 2.2 will qualify as a conversion, within the meaning of paragraph (d)(3)(iii) of Rule 144 under the Securities Act. At the request of the Holder, the Company will accept reasonable modifications to the exchange procedures provided for in this Section in order to accomplish such intent. For the avoidance of doubt, the Holder shall not be required to pay any cash upon any exercise of this Warrant pursuant to this Section 2.2. For all purposes of this Warrant (other than this Section 2), any reference herein to the exercise of this Warrant shall be deemed to include a reference to the exchange of this Warrant for Exercise Shares in accordance with the terms of this Section 2.2.

2.3 Automatic Exercise.

(a) Change of Control. In the event of a Change of Control, if the fair market value of the consideration payable in connection with such Change of Control for each share of Common Stock is greater than the per share Exercise Price hereunder, the Company may elect by providing proper notice pursuant to Section 3.4 hereof ("Auto-Exercise Notice") to cause this Warrant to be automatically exercised (even if this Warrant is not surrendered), in lieu of an exercise in accordance with Section 2.1 or Section 2.2, upon consummation of such Change of Control to the extent that any portion of the Warrant remains unexercised at the time of the consummation of the Change of Control. The Holder shall be entitled to receive consideration in the amount equal to the difference between the consideration payable in connection with such Change of Control for the Exercise Shares, if exercised, and the Aggregate Exercise Price for such Exercise Shares. The consideration payable to the Holder in connection with this Section 2.3(a) shall be in the same form as the consideration distributed to holders of Common Stock in connection with such Change of Control; provided that, if the consideration distributed to holders of Common Stock in connection with such Change of Control consists of consideration other than cash or Liquid Securities (or a combination thereof), the consideration payable to the Holder in connection with this Section 2.3(a) shall be an amount of cash payable by the Company equal to the aggregate Fair Market Value of the Exercise Shares minus the Aggregate Exercise Price. To the extent this Warrant or any portion thereof is automatically exercised pursuant to this Section 2.3(a), the Company agrees to promptly notify the Holder of the amount and form of consideration payable to the Holder in connection with such Change of Control. This Warrant shall terminate in connection with a deemed exercise pursuant to this Section 2.3 after payment in full to the Holder of the amounts payable to the Holder under this Section 2.3. If the fair market value of the consideration payable in connection with a Change of Control for each shares of Common Stock is equal to or less than the per share Exercise Price, this Warrant will expire upon the consummation of a Change of Control to the extent this Warrant has not been previously exercised as to all Exercise Shares subject hereto.

(b) Expiration Date. To the extent that there has not been an exercise of this Warrant pursuant to this Section 2, any portion of the Warrant that remains unexercised shall be

exercised automatically in whole (not in part), upon the Expiration Date in the manner set forth in Section 2.2.

2.4 Delivery of New Warrant. Unless the purchase rights represented by this Warrant shall have expired or shall have been fully exercised, the Company shall, at the time of delivery of the Common Stock representing the Exercise Shares being issued in accordance with this Section 2, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unexpired and unexercised Exercise Shares called for by this Warrant. Such new Warrant shall in all other respects be identical to this Warrant.

3. COVENANTS OF THE COMPANY.

3.1 Covenants as to Exercise Shares. The Company covenants and agrees that all Exercise Shares that may be issued upon the exercise of the rights represented by this Warrant will, upon issuance, be validly issued and outstanding, fully paid and nonassessable. The Company further covenants and agrees that the Company will at all times during the Exercise Period have authorized and reserved, free from preemptive rights, a sufficient number of Exercise Shares to provide for the exercise of the rights represented by this Warrant. If at any time during the Exercise Period the number of authorized but unissued Exercise Shares shall not be sufficient to permit exercise of this Warrant, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued Exercise Shares to such number of shares as shall be sufficient for such purposes.

3.2 Expenses and Taxes. The Company shall pay all reasonable and documented expenses, taxes and owner charges payable in connection with the preparation, issuance and delivery of certificates (if any) for the Exercise Shares and any new Warrants.

3.3 No Impairment. Except and to the extent waived or consented to by the Requisite Holders, the Company will not (a) adopt any amendment to its certificate of incorporation or bylaws after the date hereof which (i) results in any increase in the issued or authorized number of equity securities of the Company or (ii) otherwise has a disproportionate and adverse impact of the Holder, including through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, or (b) avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company. The Company will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may be necessary or appropriate in order to protect the exercise rights of the Holder as set forth herein against impairment.

3.4 Notices. Prior to (a) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, (b) a Change of Control, or (c) the issuance by the Company of any Common Stock, Options, Convertible Securities or any other equity securities of the Company, in each case, that would result in an adjustment pursuant to Section 4 to the number of Exercise Shares issuable upon exercise of this Warrant, the Company shall send to the Holder, at least thirty (30) days prior to the date of any such action, a notice specifying the date on which any such proposed action is to be taken and, in the case of a Change of Control, whether the Company

intends to exercise its automatic exercise rights under Section 2.3(a) upon consummation of the Change of Control.

4. EFFECT OF CERTAIN EVENTS ON EXERCISE SHARES.

4.1 Adjustment to Exercise Shares Upon Reorganization, Reclassification, Consolidation or Merger. In the event of any (i) capital reorganization of the Company, (ii) reclassification of the capital stock or other equity securities of the Company (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), (iii) consolidation or merger of the Company with or into another Person, (iv) sale of all or substantially all of the Company's assets to another Person, or (v) other similar transaction, in each case which entitles the holders of Common Stock to receive (either directly or upon subsequent liquidation) capital stock, securities or assets with respect to or in exchange for Common Stock, each Warrant shall, immediately after such reorganization, reclassification, consolidation, merger, sale or similar transaction, remain outstanding and shall thereafter, in lieu of or in addition to (as the case may be) the number of Exercise Shares then exercisable under this Warrant, be exercisable for the kind and number of shares of stock or other securities or assets of the Company or of the successor Person resulting from such transaction to which the Holder would have been entitled upon such reorganization, reclassification, consolidation, merger, sale or similar transaction if the Holder had exercised this Warrant in full immediately prior to the time of such reorganization, reclassification, consolidation, merger, sale or similar transaction and acquired the applicable number of Exercise Shares then issuable hereunder as a result of such exercise (without taking into account any limitations or restrictions on the exercisability of this Warrant); and, in such case, appropriate adjustment (in form and substance satisfactory to the Holder) shall be made with respect to the Holder's rights under this Warrant to insure that the provisions of this Warrant shall thereafter be applicable, as nearly as possible, to any shares of stock, securities or assets thereafter acquirable upon exercise of this Warrant. The provisions of this Section 4.1 shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or similar transaction. The Company shall not effect any such reorganization, reclassification, consolidation, merger, sale or similar transaction unless, prior to the consummation thereof, the successor Person (if other than the Company) resulting from such reorganization, reclassification, consolidation, merger, sale or similar transaction, shall assume, by written instrument substantially similar in form and substance to this Warrant and satisfactory to the Holder, the obligation to deliver to the Holder such shares of capital stock, securities or assets which, in accordance with the foregoing provisions, such Holder shall be entitled to receive upon exercise of this Warrant. Notwithstanding anything to the contrary contained herein, with respect to any corporate event or other transaction contemplated by the provisions of this Section 4.1, the Holder shall have the right to elect, prior to the consummation of such event or transaction, to exercise this Warrant pursuant to Section 2 instead of giving effect to the provisions contained in this Section 4.1 with respect to this Warrant.

4.2 Dividends and Distributions. Subject to the provisions of Section 4.1, as applicable, if the Company shall, at any time or from time to time after the Original Issue Date, make or declare, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or any other distribution payable in securities of the Company (other than a dividend or distribution of Common Stock, Options or Convertible Securities in respect of

outstanding Common Stock), cash or other property, then, and in each such event, provision shall be made so that the Holder shall receive upon exercise of the Warrant, in addition to the number of Exercise Shares receivable thereupon, the kind and amount of securities of the Company, cash or other property which the Holder would have been entitled to receive had the Warrant been exercised in full for Exercise Shares on the date of such event and had the Holder thereafter, during the period from the date of such event to and including the Exercise Date, retained such securities, cash or other property receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this Section 4.2 with respect to the rights of the Holder; provided that no such provision shall be made if the Holder receives, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities, cash or other property in an amount equal to the amount of such securities, cash or other property as the Holder would have received if the Warrant had been exercised in full for Exercise Shares on the date of such event.

4.3 Certificate as to Adjustment.

(a) As promptly as reasonably practicable following any adjustment to the Exercise Shares, but in any event not later than five (5) Business Days thereafter, the Company shall furnish to the Holder a certificate of an executive officer setting forth in reasonable detail such adjustment and the facts upon which it is based and certifying the calculation thereof.

(b) As promptly as reasonably practicable following the receipt by the Company of a written request by the Holder, but in any event not later than five (5) Business Days thereafter, the Company shall furnish to the Holder a certificate of an executive officer certifying the Exercise Price then in effect and the number of Exercise Shares or the amount, if any, of other shares of stock, securities or assets then issuable upon exercise of the Warrant.

5. FRACTIONAL SHARES. No fractional shares shall be issued upon the exercise of this Warrant as a consequence of any adjustment pursuant hereto. All Exercise Shares (including fractions) issuable upon exercise of this Warrant may be aggregated for purposes of determining whether the exercise would result in the issuance of any fractional share. Except in the case of a net exercise of all or a portion of this Warrant pursuant to Section 2.2, if, after aggregation, the exercise would result in the issuance of a fractional share, the Company shall, in lieu of issuance of any fractional share, pay the Holder otherwise entitled to such fraction a sum in cash equal to the product resulting from multiplying the then current Fair Market Value of an Exercise Share by such fraction. In the event of a net exercise of all or a portion of this Warrant pursuant to Section 2.2 which would otherwise result in the issuance of a fraction of a shares of Common Stock, the Holder and the Company agree that the number of shares of Common Stock issuable pursuant to this Warrant shall be rounded down to the nearest whole share and, for the avoidance of doubt, no cash shall be paid to the Holder in lieu of such fractional share.

6. NO STOCKHOLDER RIGHTS. This Warrant in and of itself shall not entitle the Holder to any rights as a stockholder of the Company, and prior to the issuance to the Holder of the Exercise Shares to which the Holder is then entitled to receive upon the due exercise of this Warrant, the Holder shall not be entitled to vote or be deemed the holder of shares of capital stock of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, as such, any of the rights of a stockholder of the Company or any right to

vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, or subscription rights, or otherwise; provided that, in the event the Company declares a dividend during the Exercise Period, the Holder shall be entitled to participate in such dividend in accordance with Section 4.2 hereof and the Holder shall be entitled to receive notices regarding any Change of Control or other corporate events contemplated elsewhere in this Warrant.

7. COMPLIANCE WITH THE SECURITIES ACT; LEGEND. The Holder, by acceptance of this Warrant, agrees to comply in all respects with the provisions of this Section 7 and the restrictive legend requirements set forth on the face of this Warrant. This Warrant and all Exercise Shares issued upon exercise of this Warrant (unless registered under the Securities Act or unless such legend may otherwise be removed in accordance with applicable law (including Rule 144 promulgated under the Securities Act)) shall be stamped or imprinted with a legend in substantially the following form:

> THIS WARRANT AND THE UNDERLYING SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF APPLICABLE STATES. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION UNDER SUCH LAWS OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENT.

8. TRANSFER OF WARRANT. Subject to applicable laws and the restriction on transfer set forth on the first page of this Warrant and the Warrant Agreement, this Warrant and all rights hereunder are transferable, in whole or in part, upon the books of the Company by the registered holder hereof in person or by duly authorized attorney, and a new warrant shall be made and delivered by the Company, of the same tenor and date as this Warrant but registered in the name of one or more transferees, upon surrender of this Warrant, duly endorsed, to the office or agency of the Company described in Section 10. All expenses (other than stock transfer taxes) and other charges payable in connection with the preparation, execution and delivery of the new warrants pursuant to this Section 8 shall be paid by the Company.

9. LOST, STOLEN, MUTILATED OR DESTROYED WARRANT. If this Warrant is lost, stolen, mutilated or destroyed, the Company may, on such terms as to indemnity or otherwise as it may reasonably impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination and tenor as the Warrant so lost, stolen, mutilated or destroyed.

10. NOTICES, ETC. Any notice required or permitted hereunder shall be given in writing in accordance with Section 8.2 of the Warrant Agreement, which is incorporated herein *mutatis mutandis*.

11. AMENDMENT AND WAIVER. Any term of this Warrant may be amended or waived with the written consent of the Company and the Requisite Holders.

12. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price, the Fair Market Value or the arithmetic calculation of the Exercise Shares, as the case may be, the Company or the Holder (as the case may be) shall submit the disputed determinations or arithmetic calculations (as the case may be) via electronic mail (i) within two (2) Business Days after receipt of the applicable notice giving rise to such dispute to the Company or the Holder (as the case may be) or (ii) if no notice gave rise to such dispute, at any time after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to agree upon such determination or calculation (as the case may be) of the Exercise Price, the Fair Market Value or the number of Exercise Shares (as the case may be) within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Company or the Holder (as the case may be), then the Company shall, within two (2) Business Days submit the disputed determination of the Exercise Price or the Fair Market Value to an independent, reputable investment bank selected by the Company and reasonably acceptable to the Holder. The Company shall cause the investment bank to perform the determinations or calculations (as the case may be) and notify the Company and the Holder of the results as soon as reasonably practicable. Such investment bank's determination or calculation (as the case may be) shall be binding upon all parties absent demonstrable error. The fees and expenses of the investment bank shall be borne by the Company unless the number is question, as finally determined by such investment bank, is within one percent (1%) of the Company's originally proposed number, in which case such fees and expenses shall be borne by the Holder.

13. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL. Section 8.5 and 8.6 of the Warrant Agreement are incorporated herein *mutatis mutandis*. For the avoidance of doubt, any dispute governed by Section 12 shall be determined exclusively pursuant to Section 12.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company and the Holder have each caused this Warrant to be executed by its duly authorized officer as of the date first above written.

FREIGHTCAR AMERICA, INC.

By: /s/ Terence R. Rogers
Name: Terence R. Rogers
Title: Vice President, Finance, Chief Financial Officer, Treasurer and Secretary

CO FINANCE LVS VI LLC

By: /s/ Christopher Neumeyer
Name: Christopher Neumeyer
Title: Authorized Person

NOTICE OF EXERCISE

1.a. ❑ The undersigned hereby elects to purchase a number of shares of Common Stock, par value $0.01 per share ("Common Stock"), of FreightCar America, Inc. (the "Company") equal to ___% of the Common Stock Deemed Outstanding pursuant to the terms of the attached Warrant, and tenders herewith payment of the exercise price in full.

1.b ❑ The undersigned hereby elects to purchase a number of shares of Common Stock of the Company equal to ___% of the Common Stock Deemed Outstanding pursuant to the terms of the net exercise provisions set forth in Section 2.2 of the attached Warrant.

2. Please issue said shares of Common Stock in the name of the undersigned or in such other name as is specified below:

____
(Name)

____
____
(Address)

____
(Date)

____
(Signature)

____
(Print name)

ASSIGNMENT FORM

(To assign the foregoing Warrant or a portion thereof, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant (or portion thereof) and all rights evidenced thereby are hereby assigned to

Name: _(“Assignee”)

(Please Print)

Address:

(Please Print)

Assignee agrees to take and hold the Warrant and any shares of stock to be issued upon exercise of the rights thereunder subject to, and to be bound by, the terms and conditions set forth in the Warrant to the same extent as if Assignee were the original holder thereof.

Dated: ___________________, 20__

Holder’s Signature:

Holder’s Address:

Assignee’s Signature:

Assignee’s Address:

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant (or portion thereof).

Exhibit 10.60

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "Agreement") is dated as of December 30, 2021 (the "Effective Date"), by and between FreightCar America, Inc., a Delaware corporation (the "Company"), and CO Finance LVS VI LLC, a Delaware limited liability company (the "Investor").

RECITALS

A. The Investor acquired a warrant (the "Warrant") which is exercisable for shares of Common Stock, par value $0.01 per share, of the Company (the "Common Stock") equal, in the aggregate, to five percent (5.0%) of the Common Stock Deemed Outstanding (the "Shares") pursuant to that certain Warrant Acquisition Agreement, dated as of December 30, 2021, by and between the Company and the Investor (the "Warrant Agreement").

B. In connection with the closing of the transactions contemplated by the Warrant Agreement (the "Closing"), the Company desires to enter into this Agreement with the Investor to grant the Investor the registration rights set forth below.

AGREEMENT

The parties to this Agreement, intending to be legally bound, agree as follows:

1.DEFINITIONS

All capitalized terms used but not defined herein shall have the meanings ascribed to those terms in the Warrant Agreement. As used in this Agreement, and unless the context requires a different meaning, the following terms have the meanings indicated:

"Agreement" has the meaning set forth in the Preamble.

"Business Day" is any day other than a day on which banks and other financial institutions are authorized or required to be closed for business in the State of New York.

"Closing" has the meaning set forth in the Recitals.

"Common Stock" has the meaning set forth in the Recitals.

"Company" has the meaning set forth in the Preamble.

"Demand Registration Notice" has the meaning set forth in Section 2.1.

"Demand Registration Statement" has the meaning set forth in Section 2.1.

"Effective Date" has the meaning set forth in the Preamble.

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

"FINRA" means the Financial Industry Regulatory Authority, Inc.

"General Disclosure Package" has the meaning set forth in Section 6.1(a).

"Indemnified Party" has the meaning set forth in Section 6.3.

"Indemnifying Party" has the meaning set forth in Section 6.3.

"Initiating Investor" has the meaning set forth in Section 3.2.

"Investor" has the meaning set forth in the Preamble.

"Permitted Transferee" means, with respect to any Investor, any other person in which the Investor owns a majority of the equity interests or any other investment entity that is controlled, advised or managed by the same person or persons that control the Investor or is an affiliate of that person.

"Piggyback Registration Statement" has the meaning set forth in Section 3.1.

"Registrable Shares" means the Common Stock held by the Investor in the Company or any successor to the Company (including (x) any shares of Common Stock acquired prior to, on, or after the Effective Date, (y) any shares of Common Stock acquired upon the exercise of the Warrant, and (z) all of the shares of Common Stock issuable upon exercise of the Warrant (whether or not the Warrant has been exercised at the time the applicable Registration Statement is filed to register such Registrable Shares)), excluding any Common Stock that (a) has been disposed of pursuant to any offering or sale in accordance with a Registration Statement, or has been sold pursuant to Rule 144 or Rule 145 (or any successor provisions) under the Securities Act or in any other transaction in which the purchaser does not receive "restricted securities" (as that term is defined for purposes of Rule 144 under the Securities Act), (b) has been transferred to a transferee that has not agreed in writing and for the benefit of the Company to be bound by the terms and conditions of this Agreement or (c) has ceased to be of a class of securities of the Company that is listed and traded on a recognized national securities exchange or automated quotation system. For the avoidance of doubt, the Company and the Investor acknowledge and agree that the shares of Common Stock underlying the Warrant shall be deemed to be Registrable Shares for all purposes under this Agreement.

"Registration Expenses" means all expenses incurred in connection with the preparation, printing and distribution of any Registration Statement and Prospectus and all amendments and supplements thereto, and any and all expenses incident to the performance by the Company of its registration obligations pursuant to this Agreement, including: (a) all registration, qualification and filing fees; (b) all fees and expenses associated with a required listing of the Registrable Shares on any securities exchange or market; (c) fees and expenses with respect to filings required to be made with The Nasdaq Stock Market (or such other securities exchange or market on which the Shares are then listed or quoted) or FINRA; (d) fees and expenses of compliance with securities or "blue sky" laws; (e) fees and expenses related to registration in any non U.S.

jurisdictions, as applicable; (f) fees and disbursements of counsel for the Company and fees and expenses for independent certified public accountants retained by the Company (including the expenses of any comfort letters, costs associated with the delivery by independent certified public accountants of a comfort letter or comfort letters, and expenses of any special audits incident to or required by any such registration); (g) all internal expenses of the Company (including all salaries and expenses of its officers and employees performing legal or accounting duties); (h) the fees and expenses of any person, including special experts, retained by the Company in connection with the preparation of any Registration Statement; and (i) the reasonable fees and disbursements of one legal counsel to represent the Investor.

"Registration Statement" and "Prospectus" mean, as applicable, any Demand Registration Statement and related prospectus (including any preliminary prospectus) and/or any Piggyback Registration Statement and related prospectus (including any preliminary prospectus), whichever is utilized by the Company to satisfy the Investor's registration rights pursuant to this Agreement, including, in each case, any documents incorporated therein by reference.

"Rule 144" means Rule 144 under the Securities Act or any successor rule thereto.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the United States Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Suspension Event" has the meaning set forth in Section 4.

"Warrant Agreement" has the meaning set forth in the recitals to this Agreement.

2.DEMAND REGISTRATION RIGHTS

2.1 Demand Rights. At any time, and from time to time, the Investor may deliver to the Company one or more written notices (each, a "Demand Registration Notice") informing the Company of its desire to have some or all of its Registrable Shares registered for sale. As soon as reasonably practicable after receiving any Demand Registration Notice, but in no event more than sixty (60) calendar days following receipt of such notice, the Company shall file a registration statement and related prospectus that complies as to form and substance in all material respects with applicable SEC rules providing for the sale by the Investor of all of the Registrable Shares requested to be registered by the Investor (each, a "Demand Registration Statement"), and agrees (subject to Sections 4 and 5.2) to use commercially reasonable efforts to cause such Demand Registration Statement to be declared effective by the SEC upon, or as soon as practicable following, the filing thereof. Subject to Section 4, the Company agrees to use commercially reasonable efforts to keep any Demand Registration Statement continuously effective (including the preparation and filing of any amendments and supplements necessary for that purpose) until the date on which the Investor consummates the sale of all of the Registrable Shares registered for resale under such Demand Registration Statement or such earlier date on which all Registrable Shares held by the Investor are freely tradeable in a single transaction pursuant to Rule 144 (or any successor provision.

2.2 Underwritten Offering. If the Investor intends to distribute the Registrable Shares covered by any Demand Registration Notice by means of an underwriting, it shall so advise the Company as a part of such Demand Registration Notice. Notwithstanding any other provision of this Section 2, if an underwriter advises the Company that, in the opinion of the underwriter, the distribution of all of the Registrable Shares requested to be registered would materially and adversely affect the distribution of all of the securities to be underwritten, then (a) the Company shall deliver to the Investor a copy of the underwriter's opinion, which shall be in writing and state the reasons for its opinion, and (b) the number of Registrable Shares that may be included in such registration shall be allocated: (i) first, to the Investor; and (ii) second, to the other persons proposing to register securities in such registration, if any; provided, however, that the number of Registrable Shares to be included in the underwriting shall not be reduced unless all other securities are entirely excluded from the underwriting. Any Registrable Shares excluded or withdrawn from the underwriting shall be withdrawn from the registration.

2.3 Selection of Underwriter. The Investor shall have the right to select the underwriter or underwriters to administer any underwritten demand registration offering or underwritten takedown under a Demand Registration Statement; provided that the underwriter or underwriters shall be reasonably acceptable to the Company.

3.INCIDENTAL OR "PIGGY-BACK" REGISTRATION

3.1 Piggy-Back Rights. If the Company proposes to file a Registration Statement under the Securities Act with respect to an offering of its Common Stock, whether to be sold by the Company or by one or more selling securityholders, other than (a) any Demand Registration Statement (in which case the ability of an Investor to participate in such Demand Registration Statement shall be governed by Section 2.1) or (b) a registration statement (i) on Form S-8 or any successor form to Form S-8 or in connection with any employee or director welfare, benefit or compensation plan, (ii) in connection with an exchange offer or an offering of securities exclusively to existing securityholders of the Company or its subsidiaries or (iii) relating to a transaction pursuant to Rule 145 under the Securities Act, the Company shall give written notice of the proposed registration to the Investor at least twenty (20) calendar days prior to the filing of such Registration Statement. The Investor shall have the right to request that all or any portion of its Registrable Shares be included in such Registration Statement by giving written notice to the Company within ten (10) calendar days after receipt of the foregoing notice by the Company. Subject to the provisions of Sections 3.1, 3.2 and 5.2, the Company will include all such Registrable Shares requested to be included by the Investor in such Piggyback Registration Statement. For purposes of this Agreement, any Registration Statement of the Company in which Registrable Shares are included pursuant to this Section 3.1 shall be referred to as a "Piggyback Registration Statement."

3.2 Withdrawal of Exercise of Rights. If, at any time after giving written notice of its intention to register any securities and prior to the effective date of any Piggyback Registration Statement filed in connection with such registration, the Company or any other holder of securities that initiated such registration (each, an "Initiating Investor") determines for any reason not to proceed with the proposed registration, the Company may at its election (or the election of the Initiating Investor(s), as applicable) give written notice of the

determination to the Investor and thereupon shall be relieved of its obligation to register any Registrable Shares in connection with such registration (but not from its obligation to pay the Registration Expenses incurred in connection therewith).

3.3 Underwritten Offering. If a registration pursuant to this Section 3 involves an underwritten offering and the managing underwriter advises the Company in writing that, in its opinion, the number of securities which the Company and the holders of the Registrable Shares and any other persons intend to include in the registration exceeds the largest number of securities that can be sold in the offering without having an adverse effect on the offering (including the price at which the securities can be sold), then the Company shall include in the registration the maximum number of securities as follows: (a) first, all of the securities the Company proposes to sell for its own account, if any; provided that the registration of the securities was initiated by the Company with respect to securities intended to be registered for sale for its own account; (b) second, the number of Registrable Shares requested to be included in the registration by the Investor which, in the opinion of the managing underwriter, can be sold without having the adverse effect described above; and (c) third, the securities requested to be included therein by holders of Common Stock other than holders of Registrable Securities, allocated among such holders in such manner as they may agree.

3.4 Selection of Underwriter. Except to the extent Section 2.3 applies, Registrable Shares proposed to be registered and sold under this Section 3 pursuant to an underwritten offering for the account of the Investor holding Registrable Shares shall be sold to prospective underwriters selected by the Company; provided that such underwriters shall be reasonably acceptable to the Investor.

4.SUSPENSION OF OFFERINGS. Notwithstanding the provisions of Section 2 or 3, the Company shall be entitled to postpone the effectiveness of a Registration Statement, and from time to time to require the Investor not to sell under such Registration Statement or to suspend the effectiveness thereof, if the negotiation or consummation of a significant transaction by the Company or its subsidiaries is pending or another event has occurred, in each case, which negotiation, consummation or event the Company reasonably believes would require additional disclosure by the Company in such Registration Statement of material information that the Company has a *bona fide* business purpose for keeping confidential and the non-disclosure of which in such Registration Statement would be expected, in the Company's reasonable determination, to cause such Registration Statement to fail to comply with applicable disclosure requirements (each such circumstance, a "Suspension Event"); provided, however, that the Company may not delay or suspend such Registration Statement on more than two (2) occasions or for more than thirty (30) consecutive calendar days, or more than one hundred twenty (120) total calendar days, during any twelve (12) month period. Upon receipt of any written notice from the Company of the happening of any Suspension Event during the period that any Registration Statement is effective or, if as a result of a Suspension Event, such Registration Statement or related Prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made (in the case of the Prospectus) not misleading, the Investor agrees that it will immediately discontinue offers and sales of the Registrable Shares under the Registration Statement until the Investor receives copies of a supplemental or amended Prospectus (which the Company agrees to promptly prepare) that corrects the misstatement(s) or

omission(s) referred to above and receives notice that any post-effective amendment has become effective or unless otherwise notified by the Company that it may resume such offers and sales. If so directed by the Company, the Investor will deliver to the Company or, in the Investor's sole discretion, destroy all copies of the Prospectus covering the Registrable Shares in the Investor's possession.

5.REGISTRATION PROCEDURES

5.1 Obligations of the Company. When the Company is required to effect the registration of Registrable Shares under the Securities Act pursuant to this Agreement, the Company shall:

(a) use commercially reasonable efforts to register or qualify the Registrable Shares by the time the applicable Registration Statement is declared effective by the SEC under all applicable state securities or "blue sky" laws of such jurisdictions as the Investor may reasonably request in writing, to keep each such registration or qualification effective during the period such Registration Statement is required to be kept effective pursuant to this Agreement, and to do any other similar acts and things that may be reasonably necessary or advisable to enable the Investor to consummate the disposition of the Registrable Shares owned by the Investor in each such jurisdiction; provided, however, that the Company shall not be required to (i) qualify generally to do business in any jurisdiction or to register as a broker or dealer in such jurisdiction where it would not otherwise be required to qualify but for this Agreement, (ii) take any action that would cause it to become subject to any taxation in any jurisdiction where it would not otherwise be subject to such taxation or (iii) take any action that would subject it to the general service of process in any jurisdiction where it is not then subject;

(b) prepare and file with the SEC such amendments and supplements as to such Registration Statement and the Prospectus used in connection therewith as may be necessary to (i) keep such Registration Statement effective, and (ii) comply with the provisions of the Securities Act with respect to the disposition of the Registrable Shares covered by such Registration Statement, in each case for such time as is contemplated in the applicable provisions above;

(c) promptly furnish, without charge, to the Investor the number of copies of such Registration Statement, each amendment and supplement thereto (in each case including all exhibits), and the Prospectus included in such Registration Statement (including each preliminary Prospectus) in conformity with the requirements of the Securities Act, the documents incorporated by reference in such Registration Statement or Prospectus and such other documents as the Investor may reasonably request to facilitate the public sale or other disposition of the Registrable Shares owned by the Investor;

(d) promptly notify the Investor (i) when such Registration Statement, any pre-effective amendment, the Prospectus or any prospectus supplement related thereto or post-effective amendment to such Registration Statement has been filed, and, with respect to such Registration Statement or any post-effective amendment, when the same has become effective, (ii) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or the initiation or threat of any proceedings for that purpose, (iii) of any delisting or pending delisting of the Common Stock by any national securities exchange or market on which

the Common Stock is then listed or quoted, and (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of any Registrable Shares for sale under the securities or "blue sky" laws of any jurisdiction or the initiation of any proceeding for such purpose;

(e) use commercially reasonable efforts to prevent the issuance of any order suspending the effectiveness of such Registration Statement, and, if any such order suspending the effectiveness of such Registration Statement is issued, shall promptly use commercially reasonable efforts to obtain the withdrawal of such order at the earliest possible moment;

(f) until the expiration of the period during which the Company is required to maintain the effectiveness of the applicable Registration Statement as set forth in the applicable sections hereof, promptly notify the Investor: (i) of the existence of any fact of which the Company is aware or the happening of any event that has resulted, or could reasonably be expected to result, in (x) such Registration Statement, as is then in effect, containing an untrue statement of a material fact or omitting to state a material fact required to be stated therein or necessary to make any statements therein not misleading, or (y) the Prospectus included in such Registration Statement containing an untrue statement of a material fact or omitting to state a material fact necessary to make any statements therein, in the light of the circumstances under which they were made, not misleading, and (ii) of the Company's reasonable determination that a post-effective amendment to such Registration Statement would be appropriate or that there exist circumstances not yet disclosed to the public which make further sales under such Registration Statement inadvisable pending such disclosure and post-effective amendment;

(g) if any event or occurrence giving rise to an obligation of the Company to notify the Investor pursuant to Section 5.1(f) takes place, subject to Section 4, the Company shall prepare and, to the extent the exemption from prospectus delivery requirements in Rule 172 under the Securities Act is not available, furnish to the Investor a reasonable number of copies of a supplement or post-effective amendment to such Registration Statement or related Prospectus or any document incorporated therein by reference or file any other required document, and shall use commercially reasonable efforts to have the supplement or amendment declared effective, if required, as soon as practicable following the filing thereof, so that (i) such Registration Statement shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and (ii) as thereafter delivered to the purchasers of the Registrable Shares being sold thereunder, such Prospectus shall not include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(h) use commercially reasonable efforts to cause all such Registrable Shares to be listed or quoted on the national securities exchange or market on which the Common Stock is then listed or quoted, if the listing or quotation of the Registrable Shares is then permitted under the rules of such national securities exchange or market;

(i) if requested by any Investor participating in an offering of Registrable Shares, as soon as practicable after such request, but in no event later than fifteen (15) calendar days after such request, incorporate in a prospectus supplement or post-effective amendment such

information concerning the Investor or the intended method of distribution as the Investor reasonably requests to be included therein and is reasonably necessary to permit the sale of the Registrable Shares pursuant to the Registration Statement, including information with respect to the number of Registrable Shares being sold, the purchase price being paid therefor and any other material terms of the offering of the Registrable Shares to be sold in such offering; provided, however, that the Company shall not be obligated to include in any such prospectus supplement or post-effective amendment any requested information that is not required by the rules of the SEC and is unreasonable in scope compared with the Company's most recent prospectus or prospectus supplement used in connection with a primary or secondary offering of equity securities by the Company;

(j) in connection with the preparation and filing of any Registration Statement, the Company will give the Investor and its counsel (i) the opportunity to review and provide comments on such Registration Statement, each Prospectus included therein or filed with the SEC and each amendment thereof or supplement thereto (other than amendments or supplements that do not make any material change in the information related to the Company); provided that the Company shall not file any such Registration Statement including Registrable Shares or an amendment thereto or any related Prospectus or any supplement thereto to which the Investor or the managing underwriter or underwriters, if any, shall reasonably object in writing), and (ii) such access to its books and records and such opportunities to discuss the business of the Company and its subsidiaries with its officers, its counsel and the independent public accountants who have certified its financial statements as shall be necessary, in the opinion of the Investor's and underwriters' respective counsel, to conduct a reasonable due diligence investigation within the meaning of the Securities Act;

(k) provide a transfer agent and registrar and a CUSIP number for the Registrable Shares not later than the effective date of the first Registration Statement filed hereunder;

(l) cooperate with the Investor to facilitate the timely preparation and delivery of certificates for the Registrable Shares to be offered pursuant to the applicable Registration Statement and enable such certificates for the Registrable Shares to be in such denominations or amounts as the case may be, as the Investor may reasonably request and, within three (3) Business Days after a Registration Statement that includes Registrable Shares is declared effective by the SEC, the Company shall deliver, or shall cause legal counsel selected by the Company to deliver, to the transfer agent for the Registrable Shares (with copies to the Investor) an appropriate instruction and opinion of such counsel;

(m) enter into an underwriting agreement in customary form and substance reasonably satisfactory to the Company, the Investor and the managing underwriter or underwriters of the public offering of Registrable Shares, if the offering is to be underwritten, in whole or in part, provided that the Investor may, at its option, require that any or all of the conditions precedent to the obligations of such underwriters under such underwriting agreement be conditions precedent to the obligations of the Investor. The Investor shall not be required to make any representations or warranties to or agreement with the Company or the underwriters other than representations, warranties or agreements regarding the Investor and its intended method of distribution and any other representation or warranty required by law or reasonably requested by the underwriters. The Company shall cooperate and participate in the marketing of Registrable Shares, including

participating in customary "roadshow" presentations, as the Investor and/or the managing underwriters may reasonably request;

(n) furnish, at the request of the Investor on the date that any Registrable Shares are to be delivered to the underwriters for sale in connection with a registration pursuant to this Agreement, if such Registrable Shares are being sold through underwriters, or, if such Registrable Shares are not being sold through underwriters, on the date that the Registration Statement with respect to such Registrable Shares becomes effective, (i) an opinion, dated such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters, if any, to the Investor, and (ii) a comfort letter dated such date, from the independent certified public accountants of the Company who have certified the Company's financial statements included in such Registration Statement, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Investor;

(o) make available to the Investor, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months, but not more than eighteen (18) months, beginning with the first month of the first fiscal quarter after the effective date of the applicable Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act, including Rule 158 promulgated thereunder; and

(p) take all other reasonable actions necessary to expedite and facilitate disposition by the Investor pursuant to the applicable Registration Statement.

5.2 Obligations of the Investor. In connection with any Registration Statement utilized by the Company to satisfy the provisions of this Agreement, the Investor agrees to reasonably cooperate with the Company in connection with the preparation of such Registration Statement, and the Investor agrees that such cooperation shall include (a) responding within fifteen (15) calendar days to any written request by the Company to provide or verify information regarding the Investor or the Registrable Shares (including the proposed manner of sale) that may be required to be included in such Registration Statement pursuant to the rules and regulations of the SEC, and (b) providing in a timely manner information regarding the proposed distribution by the Investor of the Registrable Shares and any other information as may be requested by the Company from time to time in connection with the preparation of and for inclusion in such Registration Statement and related Prospectus.

5.3 Participation in Underwritten Registrations. No Investor may participate in any underwritten registration hereunder unless the Investor (a) agrees to sell the Registrable Shares on the basis provided in the applicable underwriting arrangements (that shall include a customary form of underwriting agreement, reasonably satisfactory to the Investor, which will provide that the representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of the underwriters shall also be made to and for the benefit of the Investor), and (b) completes and executes all questionnaires, powers of attorney, indemnities, and other documents in customary form as reasonably required under the terms of such underwriting arrangements; provided, however, that, in the case of each of clause (a) and (b), if the provisions of the underwriting arrangements, or the terms or provisions of the questionnaires, powers of attorney, indemnities, underwriting agreements or other

documents, are less favorable in any respect to an Investor than to any other person or entity that is party to the underwriting arrangements as a selling stockholder, then the Company shall use commercially reasonable efforts to cause the parties to the underwriting arrangements to amend the arrangements so that the Investor receives the benefit of any provisions thereof that are more favorable to such other person or entity. If the Investor does not approve of the terms of the underwriting arrangements, the Investor may elect to withdraw from the offering by providing written notice to the Company and the underwriter(s).

5.4 Offers and Sales. All offers and sales by an Investor under any Registration Statement shall be completed within the period during which such Registration Statement is required to remain effective pursuant to the applicable provision above and not the subject of any stop order, injunction or other order of the SEC. Upon expiration of that period, no Investor will offer or sell the Registrable Shares under such Registration Statement. If directed in writing by the Company, the Investor will return or, in the Investor's sole discretion, destroy all undistributed copies of the applicable Prospectus in its possession upon the expiration of the period.

6.INDEMNIFICATION; CONTRIBUTION

6.1 Indemnification by the Company. The Company agrees to indemnify and hold harmless the Investor and each person, if any, who controls the Investor within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, and any of their partners, members, managers, officers, directors, trustees, employees or representatives, as follows:

(a) against all loss, liability, claim, damage, judgment and expense whatsoever, as incurred (including reasonable fees and disbursements of counsel to the Investor), arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement (or any amendment thereto) pursuant to which the applicable Registrable Shares were registered under the Securities Act, including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any "issuer free writing prospectus" (within the meaning of Rule 433 under the Securities Act, and together with any preliminary Prospectus and other information conveyed to the purchaser of Registrable Shares at the time of sale (as such terms are used in Rule 159(a) under the Securities Act), the "General Disclosure Package"), the General Disclosure Package or any Prospectus (or any amendment or supplement thereto), including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(b) against any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law;

(c) against all loss, liability, claim, damage, judgment and expense whatsoever, as incurred (including reasonable fees and disbursements of counsel to the Investor), and to the extent of the aggregate amount paid in settlement of any litigation, or investigation or proceeding

by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, any such alleged untrue statement or omission or any such violation or alleged violation, if such settlement is effected with the written consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed); and

(d) against any and all expense whatsoever, as incurred (including reasonable fees and disbursements of counsel to the Investor), reasonably incurred in investigating, preparing, defending against or participating in (as a witness or otherwise) any litigation, arbitration, action, or investigation or proceeding by any governmental agency or body, commenced or threatened, in each case whether or not a party, or any claim whatsoever based upon any such untrue statement or omission, any such alleged untrue statement or omission or any such violation or alleged violation, to the extent that any such expense is not indemnified under Section 6.1(a), (b) or (c) above;

provided, however, that the indemnity provided pursuant to this Section 6 does not apply to the Investor with respect to any loss, liability, claim, damage, judgment or expense to the extent arising out of (i) any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in strict conformity with written information furnished to the Company by the Investor expressly for use in the applicable Registration Statement (or any amendment thereto) or the Prospectus (or any amendment or supplement thereto) (such information, the "Investor Information"), or (ii) the Investor's failure to deliver an amended or supplemental Prospectus furnished to the Investor by the Company, if required by law to have been delivered, if such loss, liability, claim, damage, judgment or expense would not have arisen had such delivery occurred.

6.2 Indemnification by Investor. The Investor agrees to indemnify and hold harmless the Company, and each of its directors and officers (including each director and officer of the Company who signed the applicable Registration Statement), and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, as follows:

(a) against all loss, liability, claim, damage, judgment and expense whatsoever, as incurred (including reasonable fees and disbursements of counsel), arising out of or based upon any untrue statement or alleged untrue statement of a material fact in the Investor Information contained in the Registration Statement (or any amendment thereto) pursuant to which the Registrable Shares were registered under the Securities Act, including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact required to be stated as part of the Investor Information or necessary to make the Investor Information included therein not misleading or arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any "issuer free writing prospectus" (within the meaning of Rule 433 under the Securities Act), the General Disclosure Package, or any Prospectus (or any amendment or supplement thereto), including all documents incorporated therein by reference, or the omission or alleged omission therefrom in the Investor Information of a material fact necessary in order to make the Investor Information included therein, in the light of the circumstances under which they were made, not misleading;

(b) against all loss, liability, claim, damage, judgment and expense whatsoever, as incurred (including reasonable fees and disbursements of counsel), and to the extent of the aggregate amount paid in settlement of any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, in in each case, directly related to the Investor Information, if such settlement is effected with the written consent of the Investor (which consent shall not be unreasonably withheld, conditioned or delayed); and

(c) against all expense whatsoever, as incurred (including reasonable, documented, out-of-pocket, fees and disbursements of counsel), reasonably incurred in investigating, preparing, defending against or participating in (as a witness or otherwise) any litigation, arbitration, action, or investigation or proceeding by any governmental agency or body, commenced or threatened, in each case whether or not a party, or any claim whatsoever based upon any such untrue statement or omission, any such alleged untrue statement or omission or any such violation or alleged violation, in each case, directly related to the Investor Information, to the extent that any such expense is not indemnified under Section 6.2(a) or (b) above;

provided, however, that the Investor shall only be liable under the indemnity provided pursuant to Section 6.2 with respect to any loss, liability, claim, damage, judgment or expense to the extent directly related to (i) any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in strict conformity with the Investor Information, or (ii) the Investor's failure to deliver an amended or supplemental Prospectus furnished to the Investor by the Company, if required by law to have been delivered by the Investor, if such loss, liability, claim, damage or expense would not have arisen had such delivery occurred. Notwithstanding the provisions of this Section 6, the Investor and any of its Permitted Transferees shall not be required to indemnify the Company, its directors, officers or control persons for any amount in excess of the amount of the aggregate net cash proceeds received by the Investor or its Permitted Transferee, as the case may be, from sales of the Registrable Shares of the Investor (or Permitted Transferee) under the Registration Statement that is the subject of the indemnification claim.

6.3 Conduct of Indemnification Proceedings. An indemnified party hereunder (the "Indemnified Party") shall give reasonably prompt notice to the indemnifying party hereunder (the "Indemnifying Party") of any action or proceeding commenced against such Indemnified Party in respect of which indemnity may be sought hereunder, but failure to so notify the Indemnifying Party (a) shall not relieve the Indemnifying Party from any liability which it may have under the indemnity provisions of Section 6.1 or 6.2 unless and only to the extent the Indemnifying Party did not otherwise learn of such action and the lack of notice by the Indemnified Party results in the forfeiture by the Indemnifying Party of substantial rights and defenses, and (b) shall not, in any event, relieve the Indemnifying Party from any obligations to any Indemnified Party other than the indemnification obligation provided under Section 6.1 or 6.2 above. If the Indemnifying Party so elects within a reasonable time after receipt of such notice, the Indemnifying Party may assume the defense of such action or proceeding at such Indemnifying Party's own expense with counsel chosen by the Indemnifying Party and approved by the Indemnified Party, which approval shall not be unreasonably withheld or delayed; provided, however, that the Indemnifying Party will not settle, compromise or consent to the entry of any judgment with respect to any such action or

proceeding without the written consent of the Indemnified Party unless such settlement, compromise or consent (a) secures the unconditional release of the Indemnified Party, (b) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of the Indemnified Party or any of its affiliates; (c) does not impose any restriction upon the operations of the Indemnified Party or any of its affiliates; and (d) relates solely to monetary damages indemnifiable hereunder; and provided further that, if the Indemnified Party reasonably determines that a conflict of interest exists where it is advisable for the Indemnified Party to be represented by separate counsel or that, upon advice of counsel, there may be legal defenses available to the Indemnified Party that are different from or in addition to those available to the Indemnifying Party, then the Indemnifying Party shall not be entitled to assume such defense and the Indemnified Party shall be entitled to separate counsel at the Indemnifying Party's expense. If the Indemnifying Party is not entitled to assume the defense of such action or proceeding as a result of the second proviso to the preceding sentence, the Indemnifying Party's counsel shall be entitled to conduct the Indemnifying Party's defense and counsel for the Indemnified Party shall be entitled to conduct the defense of the Indemnified Party, at the Indemnifying Party's expense, it being understood that both such counsel will cooperate with each other to conduct the defense of such action or proceeding as efficiently as possible. If the Indemnifying Party (x) is not so entitled to assume the defense of such action, (y) does not assume such defense, after having received the notice referred to in the first sentence of this paragraph, or (z) indicates that it will assume such defense but thereafter fails to diligently pursue such defense, in any such case, the Indemnifying Party will pay the reasonable fees and expenses of counsel for the Indemnified Party. In such event, however, the Indemnifying Party will not be liable for any settlement effected without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, conditioned, or delayed. If an Indemnifying Party is entitled to assume, and assumes and diligently pursues, the defense of such action or proceeding in accordance with this paragraph, the Indemnifying Party shall not be liable for any fees and expenses of counsel for the Indemnified Party incurred thereafter in connection with such action or proceeding.

6.4 Contribution.

(a) To provide for just and equitable contribution in circumstances in which the indemnity agreement in Sections 6.1 through 6.3 is for any reason held to be unenforceable in favor of the Indemnified Party although applicable in accordance with its terms, the Indemnified Party and the Indemnifying Party shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by such indemnity agreement incurred by the Indemnified Party and the Indemnifying Party, in such proportion as is appropriate to reflect the relative fault of the Indemnified Party, on the one hand, and the Indemnifying Party, on the other hand, in connection with the statements or omissions that resulted in such losses, liabilities, claims, damages or expenses. The relative fault of the Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether the action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, the Indemnifying Party or the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action; provided, that, for the avoidance of doubt the only information supplied by the Investor is the Investor Information.

(b) The parties agree that it would not be just or equitable if contribution pursuant to this Section 6.4 were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 6.4(a). Notwithstanding the provisions of this Section 6.4, the Investor shall not be required to contribute any amount (together with the amount of any indemnification payments made by the Investor pursuant to Section 6.2) in excess of the amount of the aggregate net cash proceeds received by the Investor from sales of the Registrable Shares of the Investor under the Registration Statement that is the subject of the indemnification claim.

(c) Notwithstanding the foregoing, no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 6.4, each person, if any, who controls the Investor within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, and any of their partners, members, officers, directors, trustees, employees or representatives, shall have the same rights to contribution as the Investor, and each director of the Company, each officer of the Company who signed the applicable Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Company.

7.EXPENSES. The Company will pay all Registration Expenses in connection with each registration of Registrable Shares pursuant to Section 2 or 3. The Investor shall be responsible for the payment of all brokerage and sales commissions, fees and disbursements of the Investor's counsel that are not Registration Expenses, accountants and other advisors, and any transfer taxes relating to the sale or disposition of the Registrable Shares by the Investor pursuant to any Registration Statement or otherwise.

8.RULE 144 REPORTING. With a view to making available to the Investor the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit an Investor to sell securities of the Company to the public without registration or pursuant to a registration statement, for so long as the Common Stock is registered under the Exchange Act, the Company agrees to:

(a) make and keep available adequate current public information, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(c) for so long as the Investor owns any Registrable Shares, furnish to the Investor upon request (i) a written statement from the Company that it has complied with the reporting requirements of Rule 144, the Securities Act and the Exchange Act, or that it qualifies as a registrant whose securities may be resold pursuant to a registration statement, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company and (iii) such other information as may be reasonably requested in availing any Investor of any rule or regulation of the SEC that permits the selling of any such securities without registration or pursuant to a registration statement.

9.MISCELLANEOUS

9.1 Waivers. No waiver by a party hereto shall be effective unless made in a written instrument duly executed by the party against whom the waiver is sought to be enforced, and only to the extent set forth in that instrument. Neither the waiver by any of the parties hereto of a breach or a default under any of the provisions of this Agreement, nor the failure of any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights or privileges hereunder.

9.2 Notices. Notices to the Company and to the Investor shall be sent to their respective addresses as set forth in Section 8.2 of the Warrant Agreement which is incorporated herein *mutatis mutandis*.

9.3 Public Announcements and Other Disclosure. The Company and the Investor shall not make any press release, public announcement or other disclosure ("Disclosure") with respect to this Agreement unless such Disclosure is mutually agreed to by the Company and the Investor in writing; provided, that the Company and the Investor may make any Disclosure required by law or the rules or regulations of any securities exchange or national market system upon which the securities of the Investor are listed or quoted; provided, further, that, in the case of any Disclosure required by law, rule or regulation, the party making the disclosure shall use all reasonable efforts to consult with the other party prior to making the disclosure.

9.4 Headings and Interpretation. All section and subsection headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning, construction or scope of any of the provisions hereof. The Company and the Investor hereby disclaim any defense or assertion in any litigation or arbitration that any ambiguity herein should be construed against the drafter.

9.5 Entire Agreement; Amendment. This Agreement, together with the Warrant Agreement and any related exhibits and schedules hereto or thereto, constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter hereof and thereof, and supersede all prior agreements and understandings of the parties with respect to the subject matter hereof and thereof. Notwithstanding the foregoing, in the event of any conflict between the terms and provisions of this Agreement and those of the Warrant Agreement, the terms and conditions of this Agreement shall control. Except as otherwise expressly provided in this Agreement, no amendment, modification or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed by the Company and the Investor.

9.6 Assignment; Successors and Assigns. This Agreement and the rights granted hereunder may not be assigned by the Investor without the prior written consent of the Company; provided, however, that the rights to cause the Company to register Registrable Shares pursuant to this Agreement may be assigned by an Investor to a Permitted Transferee of the Investor's Registrable Shares; and provided further that in each case the transferee or assignee

agrees in writing to be bound by and subject to the terms and conditions of this Agreement. This Agreement and the rights granted hereunder may not be assigned by the Company without the prior written consent of the Investor. Any attempted assignment of this Agreement or the rights granted hereunder in violation of this Section 9.6 shall be void *ab initio*. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their successors, heirs, legatees, devisees, permitted assigns, legal representatives, executors and administrators, except as otherwise provided herein.

9.7 Saving Clause. If any provision of this Agreement, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. If the operation of any provision of this Agreement would contravene the provisions of any applicable law, such provision shall be void and ineffectual. In the event that applicable law is subsequently amended or interpreted in such a way to make any provision of this Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

9.8 Counterparts; Exchanges. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. The execution and exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile, electronic mail or another form of electronic signature or transmission (including .pdf) shall be sufficient to bind the parties to the terms of this Agreement.

9.9 Representations and Warranties. Each of the parties hereto, as to itself only, represents and warrants that this Agreement has been duly authorized and executed by it and that all necessary corporate actions have been taken by it in order for this Agreement to be enforceable against it under all applicable laws. Each party hereto, as to itself only, further represents and warrants that all persons signing this Agreement on such party's behalf have been duly authorized to do so.

9.10 Governing Law; Service of Process and Venue; Waiver of Jury Trial. Section 8.5 and 8.6 of the Warrant Agreement are incorporated herein *mutatis mutandis*.

9.11 Specific Performance. The parties agree that irreparable damage would occur in the event the provisions of this Agreement were not performed in accordance with the terms hereof, and that the Investor and the Company shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

9.12 No Third-Party Beneficiaries. Except as expressly set forth in Section 6, it is the explicit intention of the parties that no person other than the parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors, heirs, executors, administrators, legal representatives and permitted assigns.

9.13 General Interpretive Principles. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Agreement include the plural as well as the singular, and the use of any gender or neuter form herein shall be deemed to include the other gender and the neuter form;

(b) references herein to "Sections", "subsections," "paragraphs", and other subdivisions without reference to a document are to designated Sections, paragraphs and other subdivisions of this Agreement;

(c) a reference to a paragraph without further reference to a Section is a reference to the paragraph contained in the same Section in which the reference appears, and this rule shall also apply to other subdivisions;

(d) the words "herein", "hereof", "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision;

(e) the term "include", includes" or "including" shall be deemed to be followed by the words "without limitation";

(f) the term "person" means any individual, corporation, partnership, limited liability company, association, joint venture, an association, a joint stock company, trust, unincorporated organization, governmental or political subdivision or agency or any other entity of whatever nature; and

(g) any reference to dollars or "$" shall be deemed to refer to U.S. dollars.

9.14 Termination. This Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earlier to occur of (a) the date and time that the Warrant Agreement is terminated in accordance with its terms, (b) upon the mutual written agreement of the parties to terminate this Agreement or (c) the date and time at which no Registrable Securities remain outstanding; provided that Sections 6 and 7 of this Agreement shall survive any termination (along with any other provision necessary to give effect thereto).

9.15 Limitations on Subsequent Registration Rights. From and after the Effective Date, the Company shall not, without the prior written consent of the Investor enter into any agreement with any holder or prospective holder of any securities of the Company that (a) would provide to such holder the right to include securities in any registration on other than a subordinate basis after the Investor has had the opportunity to include in the registration and offering all Registrable Shares that it wishes to so include or (b) allow such holder or prospective holder to initiate a demand for registration of any securities held by such holder or prospective holder.

[Signature Page Follows]

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

FREIGHTCAR AMERICA, INC.

By: /s/ Terence R. Rogers

Name: Terence R. Rogers

Title: Vice President, Finance, Chief Financial Officer, Treasurer and Secretary

CO FINANCE LVS VI LLC

By: /s/ Christopher Neumeyer

Name: Christopher Neumeyer

Title: Authorized Person

Exhibit 10.61

FORBEARANCE AND SETTLEMENT AGREEMENT

THIS FORBEARANCE AND SETTLEMENT AGREEMENT (this "Agreement"), dated as of December 28, 2021 (the "Effective Date"), is made by and among FREIGHTCAR AMERICA LEASING 1, LLC, a Delaware limited liability company (the "Borrower"), FREIGHTCAR AMERICA LEASING, LLC, a Delaware limited liability company (the "Guarantor"), FREIGHTCAR AMERICA, INC., a Delaware corporation ("FCA"), FREIGHTCAR AMERICA RAILCAR MANAGEMENT, LLC, a Delaware limited liability company ("FCA Management") and MANUFACTURERS AND TRADERS TRUST COMPANY (a/k/a M&T BANK), a New York banking corporation (the "Lender").

RECITALS

Pursuant to that certain Credit Agreement dated as of April 16, 2019 (as the same may be amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and between the Lender and the Borrower, the Lender made available to the Borrower a revolving credit facility in the original principal amount of up to, but not to exceed, $40,000,000 at any one time outstanding (the "Revolving Credit Facility"). Capitalized terms used herein but not defined shall have the meanings given to such terms in the Credit Agreement.

The Borrower's obligation to repay all Loans made to it or on its behalf, together with interest thereon, is evidenced by the Borrower's Revolving Credit Note dated April 16, 2019 in the original principal amount of $40,000,000 and made payable to the order of the Lender.

As security for the prompt payment and performance of its obligations to the Lender, the Borrower granted the Lender a continuing, first priority duly perfected security interest in and to (including, but not limited to, the right to enforce) substantially all of its assets, wherever located, whether now owned or hereafter acquired, together with all substitutions therefor, all replacements and renewals thereof, and all accessions and additions relating thereto, all as more fully set forth in that certain Security Agreement dated as of April 16, 2019 (the "Security Agreement"), between the Borrower and the Lender and, in particular, in the definition of "Collateral" set forth therein. Among the assets included in the granting clause of the Security Agreement were all of the Borrower's rights, title and interests in and to, inter alia:

(i) the Master Railcar Lease Agreement dated as of September 30, 2014, between the Borrower (as assignee of JAIX Leasing Company), as lessor, and Smart Sand Inc. ("Smart Sand"), as lessee, solely with respect to Rider 7, as amended by that certain Amendment No. 1 to Rider 7 to Master Railcar Lease Agreement effective May 1, 2020, executed pursuant thereto (the "Smart Sand Lease"), and the one hundred 3,282 cubic foot covered hopper railcars, bearing car numbers and marks, JAIX 860750 through and including JAIX 860849, leased pursuant thereto (collectively, "Smart Sand Railcars"); and

(ii) the Railcar Equipment Lease dated as of December 20, 2017 between the Borrower (as assignee of JAIX Leasing Company), as lessor, and Taylor Frac, LLC ("Taylor Frac"), as lessee, solely with respect to Rider 2 dated December 20, 2017, as amended by that certain First Amendment to Rider 2 dated June 22, 2018, executed pursuant thereto (the "Taylor Frac Lease"), and the one hundred twenty-five 3,282 cubic foot covered hopper railcars, bearing car numbers and marks, JAIX 860134, JAIX 860149, JAIX 860152, JAIX 860154, JAIX 860160, JAIX 860169, JAIX 860182, JAIX 860189, JAIX 860191, JAIX 860192, JAIX 860196, JAIX 860211, JAIX 860228, JAIX 860229, JAIX 860233, JAIX 860234, JAIX 860238, JAIX 860240, JAIX 860242, JAIX 860243, JAIX 860247, JAIX 860248, JAIX 860249, JAIX860250, JAIX 860251, JAIX

860252, JAIX 860255, JAIX 860256, JAIX 860258, JAIX 860267, JAIX 860270, JAIX 860271, JAIX 860278, JAIX 860282, JAIX 860284 through and including JAIX 860374 (collectively, the "Taylor Frac Railcars").

The Lender perfected its security interest (i) in the Smart Sand Lease and the Taylor Frac Lease by taking a collateral assignment thereof and filing of a financing statement with the Secretary of State of Delaware, and (ii) in the Smart Sand Railcars and the Taylor Frac Railcars by filing a separate Memorandum of Security Agreement with the Surface Transportation Board and with the Office of the Registrar General of Canada.

Pursuant to and subject to the terms and conditions of that certain Railcar Reporting Mark Assignment and Assumption Agreement effective as of April 11, 2019, JAIX Leasing Company sold and assigned to the Guarantor all of its rights, title and interests in and to the JAIX railcar reporting mark, including the corresponding registrations and applications for registration thereof. In turn, pursuant to and subject to the terms and conditions of that certain Railcar Reporting Mark Usage Agreement dated as of April 11, 2019, the Guarantor granted JAIX Leasing Company an exclusive license to use the JAIX mark on all railcars owned by it, which it in turn permitted the use thereof by the Borrower on the Smart Sand Railcars and the Taylor Frac Railcars that JAIX Leasing Company sold to the Borrower.

In addition, pursuant and subject to the terms and conditions of that certain Collateral Assignment of Railcar Services Agreement dated June 26, 2019 (the "Collateral Assignment of Railcar Services Agreement"), between the Borrower and the Lender, the Borrower assigned and transferred to the Lender, as additional security for its obligations to the Lender, all of its rights under the Railcar Services Agreement dated June 26, 2019 (the "Railcar Services Agreement") between it and FCA Management, to the extent such rights pertained to Pledged Railcars and Pledged Railcar Leases (each as defined in the Collateral Assignment of Railcar Services Agreement), wherein FCA Management agreed to be responsible for (i) payment of all railcar repair services to the Smart Sand Railcars which are associated solely with running repairs (i.e. routine maintenance or repairs due to normal wear and tear) and are required by the Interchange Rules of the Association of American Railroads ("AAR") for the Smart Sand Railcars to be used in interchange service, and (ii) payment (and filing of the associated tax returns) in Smart Sand's name and on its behalf, of all ad valorem taxes imposed on the Smart Sand Railcars, in exchange for the Borrower's payment to the Guarantor (as fiscal agent for FCA Management) of a $64 per car/per month service fee.

To assist it in complying with the requirements of the AAR and applicable law and the overall management of all railcars within its fleet, the Borrower entered into that certain Management Services Agreement on March 26, 2019 (the "Management Services Agreement") with RAS Data Services, Inc. to provide it certain mechanical, regulatory, accounting and consulting services, as more particularly described in the Management Services Agreement. As additional security for its obligations to the Lender, the Borrower collaterally assigned to the Lender, pursuant to that certain Collateral Assignment of Management Services Agreement dated April 16, 2019 (the "Collateral Assignment of Management Services Agreement"), all of its rights under the Management Services Agreement to the extent such rights pertained to Pledged Railcars and Pledged Railcar Leases (each as defined in the Collateral Assignment of Management Services Agreement).

To induce the Lender to make the Revolving Credit Facility available to the Borrower, the Guarantor agreed, pursuant and subject to the terms and conditions of that certain Guaranty Agreement dated as of April 16, 2019 (the "Guaranty"), to irrevocably and unconditionally guarantee, as a primary obligor and not merely as a surety, all obligations owed by the Borrower to the Lender pursuant to the Credit Agreement and other Credit Documents (collectively, the "Guaranteed Obligations"). As security for, inter alia, the Guaranteed Obligations, the Guarantor pledged and granted the Lender a continuing, first priority security interest in 100% of the equity securities in the Borrower and in all proceeds thereof.

In addition, to provide services to the Borrower in connection with the operation of its railcar leasing business, FCA entered into that certain Shared Services Agreement dated as of April 11, 2019 (the "Shared Services Agreement"), pursuant and subject to the terms and conditions of which FCA agreed to provide to the Borrower, upon request, certain lease management services, accounting, finance, financial reporting and tax support services, insurance services, IT services and office support services as set forth in Exhibit A thereto.

On April 16, 2021, the Note matured. Notwithstanding, the Borrower failed to pay to the Lender all sums then due and owing to it.

As a result thereof, on April 20, 2021, the Lender notified the Borrower of such default, demanded immediate payment of all sums then due and outstanding and, in the interim, reserved all other rights and remedies then available to it.

In the interim, the Borrower and the Guarantor (collectively, the "Obligors") have requested that they be given certain additional time in which to honor their obligations to the Lender or otherwise settle their differences.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

ARTICLE 1

REPRESENTATIONS AND WARRANTIES

Section 1.1. Acknowledgments of the Obligors. The Obligors hereby acknowledge that:

(a) The Recitals set forth above are true and complete in all material respects and are incorporated herein by reference.

(b) All sums due under the Note are now due and payable in full and, but for the terms and conditions of this Agreement, the Lender has the right to exercise any and all rights and remedies now available to it with respect thereto against the Obligors and the Collateral, including, but not limited to, the Pledged Railcars and under the Pledged Railcar Leases.

(c) As of December 21, 2021, the Obligors owe the Lender $9,452,988.00 in principal, $236,202.95 in accrued but unpaid scheduled interest, $404,392.33 in default interest and late charges, plus all reasonable out-of-pocket fees, costs and other expenses.

(d) The Obligors hereby acknowledge that they have no defenses, affirmative or otherwise, rights of setoff, rights of recoupment, claims, counterclaims, actions or causes of action of any kind or nature whatsoever against the Lender or any employee, officer, director, agent, attorney, legal representative or predecessor-in-interest of the Lender (collectively, the "Lender Group"), directly or indirectly, arising out of, based upon, or in any manner connected with, any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type, whether known or unknown, which occurred, existed, was taken, permitted, or began prior to the execution of this Agreement and accrued, existed, was taken, permitted or begun in accordance with, pursuant to, or by virtue of, the Obligations or any of the terms or conditions of the Credit Documents; TO THE EXTENT ANY SUCH DEFENSES, AFFIRMATIVE OR OTHERWISE, RIGHTS OF SETOFF, RIGHTS OF RECOUPMENT, CLAIMS,

COUNTERCLAIMS, ACTIONS OR CAUSES OF ACTION EXIST, SUCH DEFENSES, RIGHTS, CLAIMS, COUNTERCLAIMS, ACTIONS AND CAUSES OF ACTION ARE HEREBY FOREVER WAIVED, DISCHARGED AND RELEASED.

(e) Each of the Obligors hereby acknowledges that it has freely and voluntarily entered into this Agreement after an adequate opportunity and sufficient period of time to review, analyze and discuss all terms and conditions of this Agreement and all factual and legal matters relevant hereto with its counsel. Each Obligor further acknowledges that it has actively and with full understanding participated in the negotiation of this Agreement and that this Agreement has been negotiated, prepared and executed without fraud, duress, undue influence or coercion of any kind or nature whatsoever having been exerted by or imposed upon any party to this Agreement.

(f) There is (i) no statute, rule, regulation, order or judgment, and (ii) no provision of any organizational document, and (iii) no provision of any mortgage, indenture, contract or other agreement binding on either Obligor or any of its properties which, in each case, would prohibit or cause a default under or in any way prevent the execution, delivery, performance, compliance or observance by them of any of the terms or conditions of this Agreement.

(g) Neither Obligor has, voluntarily or involuntarily, granted any liens or security interests to any creditor not previously disclosed to the Lender in writing on or before the date of this Agreement and has not otherwise taken any action or failed to take any action which could or would impair, change, jeopardize or otherwise adversely affect the priority, perfection, validity or enforceability of any liens or securing interests securing all or any portion of the Obligations or the priority or validity of the Lender's claims with respect to the Obligations relative to any other creditor of any Obligor.

(h) Each Obligor has the full legal right, power and authority to enter into and perform its obligations under this Agreement, and the execution and delivery of this Agreement by each Obligor and the consummation by the Obligors of the transactions contemplated hereby have been duly authorized by all appropriate action (corporate or otherwise).

(i) This Agreement constitutes the valid, binding and enforceable agreement of the Obligors, enforceable against the Obligors in accordance with the terms hereof, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and to the effect of general principles of equity whether applied by a court of law or equity.

ARTICLE 2

COVENANTS AND AGREEMENTS

In consideration of the Lender's forbearance during the Forbearance Period (as hereinafter defined) from taking any further action against the Obligors or any of their assets as a result of the defaults that now exist and of the respective parties' performance of the various agreements recently reached between them in settlement of their differences, the parties to this Agreement (to the extent applicable) hereby agree as follows:

Section 2.1. Financial Statements. The Obligors have provided to the Lender copies of their financial statements for the Fiscal Year ended 2020 and of their interim financial statements for the month ended August, 2021, in the forms required pursuant to Section 5.09 of the Credit Agreement. The Lender hereby acknowledges receipt thereof and confirms that such financial statements comply with the requirements of this Section 2.1.

Section 2.2. Rents Collected. The Obligors have requested, and FCA has agreed, as servicing agent to the Borrower pursuant to the Shared Services Agreement, (i) to provide the Lender with a full accounting and reconciliation of all payments FCA has received to date from Smart Sand under the Smart Sand Lease, and from Taylor Frac under the Taylor Frac Lease, respectively, and (ii) where, in the case of Taylor Frac, a single payment was received covering both Taylor Frac Railcars as well as other railcars leased by JAIX Leasing Company to Taylor Frac, an explanation and accounting of how such payments were applied. The Lender hereby acknowledges receipt thereof and confirms that such accountings, reconciliation and explanations comply with the delivery requirements of this Section 2.2, having assumed the truth of the information provided. On the date of execution hereof, the Obligors have requested, and FCA has agreed, as servicing agent to the Borrower pursuant to the Shared Services Agreement, to pay to the Lender, by wire transfer of immediately available funds, $715,000. FCA hereby confirms that it has received no additional rents from Smart Sand and Taylor Frac under the Smart Sand Lease and Taylor Frac Lease since February, 2021. Upon its receipt thereof, the Lender shall apply said funds to reduce the principal balance now due from Borrower under the Note.

Section 2.3. Rents to be Received. The Obligors had previously requested, and FCA had, as servicing agent to the Borrower pursuant to the Shared Services Agreement, previously notified Smart Sand and Taylor Frac, respectively, to make all future rent payments due under the Smart Sand Lease and the Taylor Frac Lease directly to the Lender at the address designated by the Lender. FCA hereby agrees to deliver to the Lender, on the date hereof, copies of the notices previously sent by it to Smart Sand and Taylor Frac, respectively.

Section 2.4. Turnover of Funds. If, notwithstanding the foregoing, the Obligors or FCA, as servicing agent to the Borrower pursuant to the Shared Services Agreement, shall receive any rent or other sums from Smart Sand or Taylor Frac otherwise due to be paid directly to the Lender, said parties shall hold such funds in trust and immediately remit the same to the Lender (along with any required endorsements).

Section 2.5. Late Charges/Default Interest. The Lender hereby waives collection of all late charges and default interest accrued through the date of this Agreement.

Section 2.6. Licensing of JAIX Mark. Upon the Turnover Date, the Guarantor, with the permission of JAIX Leasing Company, shall grant the Lender a non-exclusive non-cancellable license to continue to use the JAIX mark and road numbers now on the Smart Sand Railcars and the Taylor Frac Railcars. Such license shall be evidenced by a new railcar reporting mark usage agreement, substantially in the form of Exhibit A hereto (the "Railcar Reporting Mark Usage Agreement").

Section 2.7. Outstanding Principal Balance. As set forth in Section 2.02.6 of the Credit Agreement, from and after April 16, 2021, the principal balance of all outstanding Loans have been converted to Base Rate Loans, which, in the absence of a Default hereunder, shall continue to bear interest at the Adjusted Base Rate in effect each day (in no event to be less than 4% per annum).

Section 2.8. Taylor Frac Lease. Prior to their execution of this Agreement, FCA, as servicing agent to the Borrower pursuant to the Shared Services Agreement, and the Obligors, in conjunction with the Lender, have worked collaboratively with the Lender in helping to resolve the defaults that now exist under the Traylor Frac Lease. The parties to the Taylor Frac Lease have now reached an agreement in principle with respect to such resolution, the terms of which are set forth in the draft Second Amendment to Rider 2 (a copy of which is attached). Once the terms thereof have been approved by the appropriate governing bodies of the Borrower and Taylor Frac, the parties thereto shall execute the Second Amendment to Rider 2. Notwithstanding, should such approval not be forthcoming and the Lender is forced to pursue its various remedies against Taylor Frac and/or its parent company, Mammoth Energy Services, FCA, as servicing

agent to the Borrower pursuant to the Shared Services Agreement, and the Obligors hereby agree to make themselves reasonably available for depositions, hearings and trial, if need be, to resolve the matter. For the avoidance of doubt, the failure of the Lender to resolve any matters with respect to the Taylor Frac Lease shall not affect any provision of this Agreement, including, without limitation, Articles 3 or 4 hereof.

Section 2.9. Disclaimer. The Lender hereby acknowledges and agrees that JAIX Leasing Company leases to Taylor Frac certain other railcars owned by it and that the Lender has no claims to any rents payable by Taylor Frac to JAIX Leasing Company or any other rights, title or interests in respect of such railcars.

Section 2.10. Maintenance and Servicing of Smart Sand Railcars and Taylor Frac Railcars. Until the earlier of (i) the date that title to each Smart Sand Railcar or each Taylor Frac Railcar, as the case may be, is transferred to a third party (other than the Lender or an affiliate thereof as contemplated below), and (ii) expiration or termination of the Smart Sand Lease and the Taylor Frac Lease (including the extension of the Taylor Frac Lease until April 30, 2026) with respect to each such Smart Sand Railcar or Taylor Frac Railcar, as the case may be, and the return of such railcar to the Lender at such location specified by the Lender in accordance with the applicable lease (but in no event later than one hundred twenty (120) days following the date such railcar is obligated to be returned), (x) FCA Management, at no cost to the Lender, shall continue to provide, with respect to such Smart Sand Railcar owned by the Borrower the services as described in, and pursuant to the provisions of, the Railcar Services Agreement, (y) FCA, as servicing agent to the Borrower pursuant to the Shared Services Agreement, at no cost to the Lender, shall continue to provide, with respect to the Smart Sand Railcars and the Taylor Frac Railcars, in each case owned by the Borrower, the services as described in, and pursuant to the provisions of, the Shared Services Agreement, and (z) the Borrower shall maintain in effect (unless it expires by its own terms) that certain Management Services Agreement dated March 26, 2019 between it and RAS Data Services, Inc. (the "Management Services Agreement"), and the Guarantor shall continue to comply with its obligations thereunder as fiscal agent with respect to such railcars. In addition, on a monthly basis, FCA Management shall provide, or cause to be provided, to the Lender TRACE reports in the forms previously provided to the Lender. Notwithstanding the foregoing, the Lender hereby agrees, upon its receipt of detailed invoices therefor and evidence reasonably satisfactory to it of the payment thereof, to reimburse (i) FCA Management for all maintenance charges it incurs and all ad valorem taxes it pays with respect to the Smart Sand Railcars, and (ii) FCA or to any affiliate of FCA that has advanced such amounts, for those fees and charges it pays to RAS Data Services, Inc. in respect of and related solely to the Smart Sand Railcars and the Taylor Frac Railcars and based on the schedule of fees and charges set forth in Section 10 of the Management Services Agreement. In furtherance thereof, FCA Management and/or the Obligors shall, upon the reasonable request of the Lender, provide the Lender such additional information within its possession or under its control relating to the maintenance of the Smart Sand Railcars or payment of any ad valorem taxes in respect thereof. Following the transfer to the Lender of title to the Smart Sand Railcars and Taylor Frac Railcars as provided for in Section 2.12 hereof, until the date set forth in the first sentence of this Section 2.10, FCA and FCA Management shall continue to comply with their respective obligations under clauses (x) and (y) of this Section 2.10 while such railcars are still under lease to Smart Sand and Taylor Frac, respectively, in exchange for which the Lender shall pay to FCA, on behalf of itself and FCA Management a maintenance and servicing fee of $10,000 per quarter, payable quarterly in arrears. Once the Smart Sand Railcars are returned to the Lender upon expiration of the Smart Sand Lease, the Lender or the Borrower shall have the right to terminate the maintenance and servicing arrangement between Lender, on the one hand, and FCA and FCA Management, on the other hand, provided under clauses (x) and (y) of this Section 2.10 for no additional cost to Lender, at which time, if the Taylor Frac Lease is still in effect, FCA will continue to comply with its obligations under clause (y) of this Section 2.10 with respect to the Taylor Frac Railcars for a fee not to exceed $5,000 per quarter, payable quarterly in arrears, until such railcars are returned to the Lender following expiration or termination of Taylor Frac's Lease. FCA shall be permitted to sublet or

assign any or all of such obligations to a third party provided FCA continues to remain primarily liable therefor.

Section 2.11. Insurance. In addition, the Obligors shall, or shall cause Smart Sand and Taylor Frac, respectively, to continue to insure the railcars leased to them, in the amounts, for the risks, on the terms and as required pursuant to Section 5.02 of the Credit Agreement. All such policies of insurance shall name the Lender as sole loss payee and/or an additional insured and shall provide for not less than thirty (30) days' prior written notice of cancellation to the Lender and evidence thereof provided to the Lender annually.

Section 2.12. Turnover of Title. On December 1, 2023, or sooner if requested in writing by the Lender (such date, the "Turnover Date"), the Borrower shall execute and deliver to the Lender (i) a bill of sale, duly executed by it, transferring to the Lender good and marketable title to the Smart Sand Railcars and the Taylor Frac Railcars, free and clear of all liens and encumbrances other than those in favor of Lender, substantially in the form attached hereto as Exhibit B, and (ii) an assignment and assumption agreement, in substantially the form attached hereto as Exhibit C, assigning to the Lender all of its rights, title and interests in and to the Smart Sand Lease and the Taylor Frac Lease and providing for the assumption, from and after such date, of each lessor's obligations under the respective leases. Contemporaneously therewith, the Borrower shall provide to the Lender updated TRACE reports showing the location of such railcars, noting any damage to any such railcar and, for any railcar damaged, shall deliver to the Lender copies of all inspection reports with respect thereto. To the extent that such damage was caused by a third party thereby triggering application of the AAR Interchange Rules, the Obligors and FCA, as servicing agent to the Borrower under the Shared Services Agreement, hereby agree to cooperate in good faith with the Lender in the settlement of any such claims.

Section 2.13. Appraisal and Credit. By not later than October 1, 2023 (or not later than 60 days prior to the date on which Lender notifies Borrower that it wishes to take title prior to December 1, 2023 in accordance with Section 2.12 of this Agreement), the Lender shall provide Borrower with an updated desktop appraisal of the then "fair market value" of the Smart Sand Railcars and Taylor Frac Railcars, assuming they are in the condition required by the terms of the Credit Documents, prepared by Rail Solutions, LLC (or if it is then unavailable or out of business, Railroad Appraisal Associates and, if it is not then available or out of business, Biggs Appraisal and, if none of those parties are then available, then such other appraisal firm chosen by the Lender and reasonably acceptable to the Obligors). Upon its receipt of such written appraisal, the Lender shall provide the Obligors with a copy thereof and, upon tender of the bill of sale tendering title to such railcars to the Lender, the Lender shall credit the value thereof (up to, but not to exceed, the amounts then owed by the Obligors to the Lender) against the balance then due by the Obligors to the Lender under the Credit Agreement and other Credit Documents.

Section 2.14. Enforcement Actions. If, at any time after the Forbearance Period has ended, the Lender decides to enforce its lien against all or any portion of its Collateral (each, an "Enforcement Proceeding"), the Obligors hereby covenant and agree to cooperate reasonably with the Lender in connection with such Enforcement Proceeding, such cooperation to include, without limitation, (i) acquiescence to foreclosure by not contesting, objecting to, filing exceptions with respect to or otherwise hindering or delaying such Enforcement Proceeding in any way or requesting, inducing or influencing other third parties to do the same; and (ii) upon request of the Lender, delivering the following documents and other items to the Lender, to the extent such documents and other items are within their possession or control, (1) all warranties, guaranties and assurances given by third parties, (2) all service contracts, maintenance agreements, and other similar agreements, (3) all inspection and updated TRACE reports, and (4) all tax assessments, notices, bills and/or statements. To the extent FCA, as servicing agent to the Borrower under the Shared Services Agreement, or in its individual capacity, and/or FCA Management have possession or control over such documents or other items, FCA and/or FCA Management (as

applicable) shall, upon request of and at no cost to the Lender, deliver such documents and other items to the Lender.

Section 2.15. Consent to Relief from Automatic Stay. The Obligors hereby further agree that if the Lender has commenced an Enforcement Proceeding in accordance with this Agreement and in the event that either Obligor (by its own action or the action of any third party creditor) shall, prior to the completion of such Enforcement Proceeding: (i) file a petition in bankruptcy with any bankruptcy court of competent jurisdiction or be the subject of any petition for relief under the United States Bankruptcy Code, as amended, (ii) be the subject of any order for relief issued under the United States Bankruptcy Code, as amended, (iii) file any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, receivership, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, or (iv) seek, consent to, or acquiesce in the appointment of any trustee, receiver, conservator, or liquidator, then and in such event the Lender will thereupon be entitled to relief from any automatic stay imposed by Section 362 of the United States Bankruptcy Code or otherwise, on or against the exercise of the rights and remedies otherwise available to the Lender as provided in the Credit Documents, and as otherwise provided by law, and Obligors hereby waive the benefits of such automatic stay and consent and agree to raise no objection to such relief.

Section 2.16. Fees and Expenses.

(i) Upon their execution hereof, the Obligors shall pay (to the extent not previously paid), to the Lender (or to such other person or persons as the Lender shall direct) all reasonable and documented out-of-pocket outside attorneys' legal fees and costs incurred by the Lender in connection with the preparation, negotiation, execution and delivery of this Agreement, and all other documents and instruments to be executed and delivered in connection herewith, in no event to exceed $65,000.

(ii) Upon demand, the Obligors shall pay to the Lender, all reasonable and documented out-of-pocket outside legal and other fees paid or incurred by, or on behalf of, the Lender in connection with the enforcement of the terms of this Agreement, including, without limitation, reasonable and documented outside attorneys' legal fees and expenses (collectively, the "Enforcement Costs").

ARTICLE 3

STANDSTILL PROVISIONS

Section 3.1. No Exercise of Remedies. During the period (the "Forbearance Period") from the date hereof until the Termination Date (as defined in Section 5.1(a) hereof), the Lender agrees that it will not (except as otherwise expressly set forth herein), take any action against the Obligors or exercise or enforce any rights or remedies provided for in the Credit Documents or otherwise available to it, at law or in equity, or take any action against any property in which any of the Obligors has any interest. Without limiting the generality of the foregoing, during the Forbearance Period, the Lender shall not commence or initiate any Enforcement Proceeding.

Section 3.2. No Waiver of Rights or Remedies. The Obligors acknowledge and agree that, subject to the terms and conditions of this Agreement, the Lender (a) shall retain all rights and remedies it may have against the Obligors with respect to the Obligors' obligations under the Credit Documents and the Obligors' previous failure to honor or otherwise comply with said obligations (such rights and remedies being hereinafter collectively referred to as "Default Rights"), and (b) shall have the right, upon a continuing Default hereunder, to exercise and enforce all Default Rights immediately upon termination of the Forbearance Period. The Obligors further agree that the exercise of any Default Rights by the Lender upon a Default hereunder and termination of the Forbearance Period shall not be affected by reason of this

Agreement, and the Obligors shall not assert as a defense thereto the passage of time, estoppel, laches or any statute of limitations to the extent that the exercise of any Default Rights was precluded by this Agreement.

Section 3.3. Other Obligations. Except to the extent modified or altered by the terms of this Agreement or waived in writing by the Lender, the Obligors shall continue to perform and comply with all of their other performance obligations (as opposed to payment obligations unless such payment results from the liquidation of the Lender's collateral, from its receipt of any insurance or settlements in respect thereof, or from receipt of funds from Taylor Frac or Smart Sand under the Taylor Frac Lease and/or the Smart Sand Lease) solely under Sections 2.01.3(d)(i) through and including (d)(iv), 5.02, 5.06 through and including 5.09.2, 5.09.7 through and including 5.11, 5.13, 5.14, 5.16, 6.01 (with respect to all Collateral), 6.02 through and including 6.09, 9.04, 9.05, 9.06.2 through and including 9.06.5, 9.11 through and including 9.15 and 9.19 of the Credit Agreement and the provisions of the Security Agreement, which obligations shall remain in full force and effect and unchanged.

Section 3.4 Termination of Credit Agreement and Other Documents.

(a) Upon the Turnover Date and the Obligors' performance of their respective obligations under this Agreement through such date, including, without limitation, Section 2.12 thereof, the Lender acknowledges and agrees that (i) all Obligations (as defined in the Credit Agreement) shall be deemed satisfied in full and the Lender shall no longer have any further claims against the Obligors under the Credit Documents; (ii) at that time, the Credit Documents shall automatically terminate and be of no further force or effect except for the provisions thereof that expressly survive termination; (iii) the Lender shall cause its counsel to prepare and deliver to the Borrower on such date copies of the UCC-3 termination statements, terminating the filings of record against the Borrower and the Guarantor and deliver them to the Borrower and the Guarantor for filing (and the Borrower and the Guarantor are hereby authorized to make such filings); (iv) contemporaneously therewith, the Lender shall, at the Borrower's sole cost and expense, cause Alford & Alford, its special STB counsel, to prepare and file notices of termination of all previous filings made with STB and RGC in connection with this transaction and provide the Borrower with recorded copies thereof; and (v) and take such other reasonable steps as the Obligors and the Lender may agree in order to properly effect the termination of the Lender's security interests in any assets of the Borrower or the Guarantor.

(b) Notwithstanding the provisions of Section 3.4(a), nothing in this Section 3.4 shall otherwise release or relieve any of the applicable Parties from any of their respective obligations under (i) the Shared Services Agreement, the Railcar Services Agreement, the Management Services Agreement or the Railcar Reporting Mark Usage Agreement, or (ii) this Agreement (other than as it relates to any Obligations contained within the Credit Agreement or other Credit Documents).

(c) For avoidance of doubt, neither the Shared Services Agreement, the Railcar Services Agreement, the Management Services Agreement nor the Railcar Reporting Mark Usage Agreement shall be deemed, for purposes of clause (b) above, to be a "Credit Document".

ARTICLE 4

RELEASES AND WAIVERS

Section 4.1. Releases and Waivers.

Release up to Date of This Agreement

(a) Upon execution of this Agreement, the Lender Group (as defined below) hereby knowingly and voluntarily forever releases, acquits and discharges FCA, FCA Management and their respective affiliates (other than Obligors), and their respective predecessors, officers, directors, agents, employees, representatives, successors and assigns (collectively, the "FCA Group") from and of any and all claims or potential claims, damages, losses, actions, counterclaims, suits, judgments, obligations, liabilities, defenses, affirmative defenses, setoffs, and demands of any kind or nature whatsoever, in law or in equity (whether based on contract, tort, statutory or other theory of recovery) whether presently known or unknown, which they may have had, now have, or which it can, shall or may have for, upon, or by reason of any matter, course or thing whatsoever relating in any way to, arising from, based upon, or in any manner connected with, any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type, whether known or unknown, which occurred, existed, was taken, permitted, begun, based on, or otherwise related to in any way, arising from, or connected to, from the beginning of time until the execution date of this Agreement: (i) the condition or deterioration of the business operations of either Obligor and/or the financial condition of either Obligor; (ii) any and all claims and potential claims that any member of the FCA Group breached any agreement with the Lender Group or in which any member of the Lender Group has an interest; and (iii) any obligations owed by the FCA Group to the Lender Group including, without limitation, any or all of the obligations under the Credit Documents, the Shared Services Agreement, the Railcar Services Agreement, the Management Services Agreement and any other agreement, document or instrument referred to in the Credit Agreement, and further with respect to any claimed or potentially claimed direct or indirect action or omission of any member of the FCA Group relating thereto; provided, however, that no claim or potential claim against the FCA Group to the extent based upon any misrepresentation made by any member of the FCA Group to the Lender in entering into this Agreement shall be released.

(b) As a result of Section 4.1(a), for all periods prior to the Effective Date of this Agreement, the Lender Group hereby acknowledges and agrees that, upon its execution of this Agreement, and except as expressly set forth in this Agreement, it has no actual or potential claims against the FCA Group for payment of any sums due to it, for performance of any of the obligations owed to it, or for any damages or losses, whether in law or in equity, based upon, arising from, or related in any way to, the Credit Agreement or other Credit Documents (other than those, if any, caused by their breach of the Shared Services Agreement, the Railcar Services Agreement or the Management Services Agreement), or the deterioration of the business operations or financial condition of the Obligors.

(c) Upon their execution of this Agreement, FCA Group and each Obligor hereby knowingly and voluntarily forever releases, acquits and discharges the Lender and all of its affiliates, and its respective predecessors, officers, directors, agents, employees, representatives, successors and assigns (collectively, the "Lender Group") from and of any and all other claims or potential claims, damages, losses, actions, counterclaims, suits, judgments, obligations, liabilities, defenses, affirmative defenses, setoffs, and demands of any kind or nature whatsoever, in law or in equity, whether presently known or unknown, which they may have had, now have, or which they can, shall or may have for, upon, or by reason of any matter, course or thing whatsoever relating in any way to, arising from, based upon, or in any manner connected with, any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type, whether known or unknown, which occurred, existed, was taken, permitted, begun, based on, or otherwise related to in any way, arising from, or connected to, from the beginning of time until the execution date of this Agreement: (i) the condition or deterioration of the business operations and/or financial condition of either Obligor; (ii) any and all claims or potential claims that the Lender or any member of the Lender Group breached any agreement with the FCA Group or in which an member of the FCA Group has an interest; and (iii) any obligations, if any, owed by the Lender Group to the FCA Group including, without limitation, any or all of the obligations under the Credit Documents, or any other agreement, document or instrument referred to in this Agreement, and further with respect to any claimed or potentially claimed direct or

indirect action or omission of any member of the Lender Group relating thereto and any other agreement, document or instrument referred to in the Credit Agreement.

(d) As a result of Section 4.1(c), for all periods prior to the Effective Date of this Agreement, the FCA Group hereby acknowledges and agrees that, upon their execution of this Agreement, they have no actual or potential claims against the Lender Group for performance of any of the obligations, if any, owed to it, or for any damages or losses, whether in law or in equity, based upon, arising from, or related in any way to, the Credit Agreement or other Credit Documents, or the deterioration of the business operations or financial condition of the Obligors.

Release and Waiver of Claims Arising After Date of This Agreement

(e) The Lender agrees that from and after the Effective Date, the Lender shall not assert, claim, or enforce (or cause to assert, claim, or enforce) any actual or potential claim or cause of action against the FCA Group for damages, losses, or liabilities, whether in law or in equity, based upon, arising out of, or related in any way to, the Credit Agreement or other Credit Documents (other than, if a Default occurs thereunder, the Shared Services Agreement, the Railcar Services Agreement, the Management Services Agreement, Railcar Reporting Mark Usage Agreement and this Agreement), or the deterioration of the business operations or financial condition of the Obligors as caused by any wrongful act of any of the FCA Group.

(f) The FCA Group and each Obligor agree that from and after the Effective Date, the FCA Group and each Obligor shall not assert, claim, or enforce (or cause to assert, claim, or enforce) any actual or potential claim or cause of action against the Lender Group for damages, losses, or liabilities, whether in law or in equity, based upon, arising out of, or related in any way to, the Credit Agreement or other Credit Documents or the deterioration of the business operations or financial condition of the Obligors as caused by any wrongful act of any of the Lender Group.

Final Release and Waiver of Claims Arising After Date of This Agreement

(g) Assuming, between the Effective Date and the date all of the Smart Sand Railcars and Taylor Frac Railcars are physically returned to the Lender at the location or locations designated by it upon expiration of the Smart Sand Lease and the Taylor Frac Lease, respectively, and, in the case of Taylor Frac Railcars, in the condition required by the terms thereof, and FCA and FCA Management shall have complied in all material respects with each of their respective obligations under the Shared Services Agreement, the Railcar Services Agreement, the Management Services Agreement, Railcar Reporting Mark Usage Agreement, and this Agreement, then, in such event, the Lender Group shall thereafter execute and deliver to the FCA Group, a release releasing, acquitting and forever discharging the FCA Group (inclusive of FCA and FCA Management) from any further obligations for payment of any sums due to it, for performance of any of the obligations owed to it, or for any liability, damages or losses, whether in law or in equity, based upon, arising from, or related in any way to, the Credit Agreement and other Credit Documents, the Shared Services Agreement, the Railcar Services Agreement, the Management Services Agreement, the Railcar Reporting Mark Usage Agreement and this Agreement, and any other agreement, document or instrument referred to in this Agreement.

(h) Upon performance of all obligations owed by the Obligors in this Agreement, and FCA and FCA Management comply in all material respects with each of their respective obligations under the Shared Services Agreement, the Railcar Services Agreement, the Management Services Agreement, the Railcar Reporting Mark Usage Agreement and this Agreement, then, in such event, the Lender Group shall thereafter execute and deliver to the Obligors, a release releasing, acquitting and forever discharging Obligors from any further obligations for payment of any sums due to it, for performance of any of the

obligations owed to it, or for any liability, damages or losses, whether in law or in equity, based upon, arising from, or related in any way to, the Credit Agreement and other Credit Documents, the Shared Services Agreement, the Railcar Services Agreement, the Management Services Agreement, the Railcar Reporting Mark Usage Agreement and this Agreement, and any other agreement, document or instrument referred to in this Agreement.

(i) Simultaneously with the Lender Group's agreement to release the FCA Group from any further obligations owed to them, the FCA Group shall execute and deliver to the Lender Group a release releasing, acquitting and forever discharging the Lender Group from performance of any of the obligations, if any, owed to them, or for any liability, damages or losses, whether in law or in equity, based upon, arising from, or related in any way to, the Credit Agreement and other Credit Documents, this Agreement, and any other agreement, document or instrument referred to in this Agreement.

ARTICLE 5

TERMINATION

Section 5.1. Termination.

(a) The Forbearance Period shall terminate automatically upon the occurrence of a Default hereunder (the "Termination Date").

(b) For purposes hereof, a "Default" shall occur if:

(i) FCA, FCA Management and/or the Obligors shall fail to observe, perform, or comply in any material respect with any of the terms, conditions or provisions of this Agreement, as and when required;

(ii) the Obligors fail to observe, perform or comply in any material respect with any of their other performance obligations under the Credit Agreement or other Credit Documents as set forth in Section 3.3 hereof, except to the extent otherwise provided or permitted herein;

(iii) any recital, representation or warranty made herein, in any document executed and delivered in connection herewith, or in any report, certificate, financial statement or other instrument or document previously, now or hereafter furnished by or on behalf of FCA, FCA Management or either of the Obligors in connection with this Agreement or any other document executed and delivered in connection with this Agreement, shall prove to have been false, incomplete or misleading in any material respect on the date as of which it was made; or

(iv) the occurrence after the date of execution of this Agreement of an Event of Default related to the Obligors' performance under the Credit Agreement or other Credit Documents as set forth in Section 3.3 hereof.

Upon termination of the Forbearance Period, the Lender shall be entitled to immediately pursue its various rights and remedies, including its Default Rights, against the breaching party or any other person liable therefor.

ARTICLE 6

MISCELLANEOUS

Section 6.1. Headings. Descriptive headings are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement.

Section 6.2. Notices. Any notice required or permitted by or in connection with this Agreement (but without implying any duty or obligation to give a notice if not expressly required by the terms of this Agreement) shall be in writing and shall be deemed to have been given and received on the Business Day delivered by hand, or one (1) Business Day after the date delivered to a commercial overnight courier or five (5) Business Days after the date deposited in the United States mail, certified or registered mail, first class postage prepaid, return receipt requested, to the person to whom such communication is to be given, at the following addresses:

Borrower: FreightCar America Leasing 1, LLC
125 South Wacker Drive
Suite 1500
Chicago Illinois 60606
Attn: Chief Restructuring Officer

Guarantor: FreightCar America Leasing, LLC
125 South Wacker Drive
Suite 1500
Chicago Illinois 60606
Attn: Chief Restructuring Officer

FCA: FreightCar America, Inc. 125 South Wacker Drive
Suite 1500
Chicago Illinois 60606
Attn: Chief Financial Officer

FCA Management: FreightCar America Railcar Management, LLC
125 South Wacker Drive
Suite 1500
Chicago Illinois 60606
Attn: Chief Restructuring Officer

Lender: Manufacturers and Traders Trust Company
One Fountain Plaza
9th Floor
Buffalo, New York 14203-1495
Attn: Special Assets

or at such other address as any party shall have notified the other in the manner set forth herein.

Section 6.3. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and each of its respective heirs, personal representatives, successors and assigns.

Section 6.4. Time of Essence. Time is of the essence of this Agreement.

Section 6.5. Counterparts. This Agreement may be executed in any number of duplicate originals or counterparts, each of such duplicate originals or counterparts shall be deemed to be an original and all taken together shall constitute but one and the same instrument. The parties further agree that facsimile and DocuSign signatures and signature pages delivered by other electronic means shall be binding on all parties and have the same force and effect as original signatures.

Section 6.6. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 6.7. Severability. In case one or more provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions contained herein shall remain effective and binding and shall not be affected or impaired thereby.

Section 6.8. Amendments. This Agreement may be amended, modified or supplemented only by written agreement signed by all parties hereto. No provision of this Agreement may be waived except in writing signed by the party against whom such waiver is sought to be enforced.

Section 6.9. Entire Agreement. This Agreement, along with Credit Documents, the Shared Services Agreement, the Railcar Services Agreement, the Management Services Agreement and the Railcar Reporting Mark Usage Agreement, set forth the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, superseding all prior representations, understandings and agreements, whether written or oral.

Section 6.10. Effective Date. This Agreement shall be effective immediately upon the execution and delivery of this Agreement by all persons who are parties hereto.

Section 6.11. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH IT MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO (A) THIS AGREEMENT (B) ANY OF THE OTHER DOCUMENTS EXECUTED BY IT IN CONNECTION HEREWITH, (C) ANY OBLIGATIONS, AND/OR (D) ANY OF THE CREDIT DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS.

THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND EACH OF THE PARTIES HERETO HEREBY REPRESENTS AND WARRANTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY NOTIFY OR NULLIFY ITS EFFECT. EACH OF THE PARTIES HERETO FURTHER REPRESENTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 6.12. Confidentiality. This Agreement and the transactions contemplated hereby shall be treated as strictly private and confidential by each of the parties hereto and this Agreement and its contents shall not be disclosed to any other party, except (i) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (ii) to the extent requested by any regulatory agency or authority purporting to have jurisdiction over it, (iii) to the extent that such information becomes publicly available other than as a result of a breach of this Section, or (iv) in connection with the exercise of any remedy hereunder or under any other Credit Documents or any suit, action or proceeding relating to this

Agreement, any other Credit Documents, the Shared Services Agreement, the Railcar Services Agreement, the Management Services Agreement and the Railcar Reporting Mark Usage Agreement or the enforcement of rights hereunder or thereunder. In the event of permitted disclosure to any third party, the disclosing party shall use its reasonable efforts to ensure that the person receiving the information shall assume the same obligation of confidentiality as the parties hereto. Notwithstanding anything to the contrary contained in this paragraph, the parties may disclose this Agreement and its terms their respective attorneys, accountants, auditors and/or other advisors.

Section 6.13. Further Assurances. The parties to this Agreement hereby agree to execute and deliver from time to time such other documents and instruments and to take such other actions as may be reasonably requested in order to more effectively carry out the terms hereof.

Section 6.14. Recitals. The Recitals are a substantive part of this Agreement and are incorporated by reference herein.

Section 6.15. USA Patriot Act/Bank Secrecy Act Requirements. The Obligors, FCA, and FCA Management shall deliver to the Lender, sufficiently in advance of their entry into this Agreement, all documentation and other information required by the Lender and bank regulatory authorities generally, under all applicable "know your customer" and "anti-money laundering" rules and regulations in effect from time to time, including, without limitation, the USA PATRIOT Act and the Bank Secrecy Act. Any failure by the Obligors, FCA, or FCA Management or any other necessary third party to deliver to the Lender, in a timely manner, any material information required under the Lender's applicable regulatory compliance policies, as may be amended from time to time, or any misrepresentation or inaccuracy with respect to any such information received, or if the Lender's due diligence reveals that opening the accounts or maintaining the credit accommodations contemplated herein would potentially violate the Lender's regulatory compliance policies or applicable law, shall entitle the Lender, in its sole discretion, to void the Agreement, whereupon the respective parties hereto shall be placed in the position they were in had this Agreement never been entered into.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

WITNESS: FREIGHTCAR AMERICA LEASING 1, LLC

_______________________________ By: /s/ Sandy Prabhakar
Name: Sandy Prabhakar
Title: Chief Restructuring Officer

FREIGHTCAR AMERICA LEASING, LLC

_______________________________ By: /s/ Sandy Prabhakar
Name: Sandy Prabhakar
Title: Chief Restructuring Officer

FREIGHTCAR AMERICA, INC.

_______________________________ By: /s/ Terence R. Rogers
Name: Terence R. Rogers
Title: CFO

FREIGHTCAR AMERICA RAILCAR
MANAGEMENT, LLC,

_______________________________ By: /s/ Sandy Prabhakar
Name: Sandy Prabhakar
Title: Chief Restructuring Officer

WITNESS: MANUFACTURERS AND TRADERS TRUST
COMPANY

_______________________________ By: /s/ Scott D. Guthrie
Name: Scott D. Guthrie
Title: Administrative Vice President

PRIMER CONVENIO MODIFICATORIO A CONTRATO DE NOVACIÓN Y REEXPRESIÓN DE CONTRATO DE ARRENDAMIENTO
(EL "PRIMER CONVENIO")

CELEBRADO POR Y ENTRE

JESÚS SALVADOR GIL BENAVIDES
ALEJANDRO GIL BENAVIDES
SALVADOR GIL BENAVIDES
(CONJUNTAMENTE LOS "SEÑORES GIL"),

FCA FASEMEX, S. DE R.L. DE C.V. ("FCA")

Y

FABRICACIONES Y SERVICIOS DE MEXICO, S.A. DE C.V.
("FASEMEX")

5 de noviembre de 2021

FIRST AMENDMENT AGREEMENT TO NOVATION AGREEMENT AND RESTATEMENT OF LEASE AGREEMENT
(THE "FIRST AMENDMENT")

ENTERED INTO BY AND BETWEEN

JESÚS SALVADOR GIL BENAVIDES
ALEJANDRO GIL BENAVIDES
SALVADOR GIL BENAVIDES
(JOINTLY THE "GILS"),

FCA FASEMEX, S. DE R.L. DE C.V. ("FCA")

AND

FABRICACIONES Y SERVICIOS DE MEXICO, S.A. DE C.V.
("FASEMEX")

November 5, 2021

PRIMER CONVENIO MODIFICATORIO A CONTRATO DE NOVACIÓN Y REEXPRESIÓN DE CONTRATO DE ARRENDAMIENTO (EL “PRIMER CONVENIO”) QUE CELEBRAN POR UNA PARTE LOS SEÑORES JESÚS SALVADOR GIL BENAVIDES, ALEJANDRO GIL BENAVIDES Y SALVADOR GIL BENAVIDES (CONJUNTAMENTE LOS “SEÑORES GIL”), POR SUS PROPIOS DERECHOS, POR OTRA PARTE FCA FASEMEX, S. DE R.L. DE C.V. (“FCA”), REPRESENTADA EN ESTE ACTO POR JAMES R. MEYER, Y POR UNA ULTIMA PARTE FABRICACIONES Y SERVICIOS DE MÉXICO, S.A. DE C.V. (“FASEMEX”), REPRESENTADA EN ESTE ACTO POR EL SEÑOR ALEJANDRO GIL BENAVIDES, DE CONFORMIDAD CON LOS SIGUIENTES ANTECEDENTES, DECLARACIONES Y CLÁUSULAS:	FIRST AMENDMENT AGREEMENT TO NOVATION AND RESTATED LEASE AGREEMENT (THE “FIRST AMENDMENT”) ENTERED INTO BY AND BETWEEN MESSRS. JESÚS SALVADOR GIL BENAVIDES, ALEJANDRO GIL BENAVIDES AND SALVADOR GIL BENAVIDES (JOINTLY THE “GILS”), ON THEIR OWN BEHALF, FCA FASEMEX, S. DE R.L. DE C.V. ("FCA"), REPRESENTED HEREIN BY MR. JAMES R. MEYER, IN HIS CAPACITY AS LEGAL REPRESENTATIVE OF SUCH ENTITY, AND FABRICACIONES Y SERVICIOS DE MEXICO, S.A. DE C.V. ("FASEMEX"), REPRESENTED HEREIN BY MR. ALEJANDRO GIL BENAVIDES, PURSUANT TO THE FOLLOWING RECITALS, REPRESENTATIONS AND CLAUSES:
A N T E C E D E N T E S	**R E C I T A L S**
I. En fecha 1 de enero de 2019, Fasemex y los Señores Gil celebraron un contrato de arrendamiento (el “Contrato de Arrendamiento de los Señores Gil”), mediante el cual, entre otros asuntos, los Señores Gil (a) dieron en arrendamiento a Fasemex el Inmueble (como dicho término se define en el Contrato de Arrendamiento de los Señores Gil) del que forma parte el Segundo Terreno (como dicho término define en el Contrato de Novación), y (b) autorizaron a Fasemex a subarrendar el Inmueble (como dicho término se define en el Contrato de Arrendamiento de los Señores Gil) a un tercero.	**I.** On January 1, 2019, Fasemex and the Gils entered into a lease agreement (the “Gils Lease Agreement"), whereby, among other matters, the Gils (a) leased to Fasemex the Property (as such term is defined in the Gils Lease Agreement) of which the Second Plot (as such terms is defined in the Novation Agreement) is a part, and (b) authorized Fasemex to sublease the Property (as such term is defined in the Gils Lease Agreement) to a third party.
II. En fecha 13 de septiembre de 2019, Fasemex y FCA celebraron un contrato de arrendamiento (el “Primer Contrato de Arrendamiento”), por medio del cual Fasemex dio en Arrendamiento a FCA la Propiedad Arrendada (como dicho término se define en el Primer Contrato de Arrendamiento).	**II.** On September 13, 2019, Fasemex and FCA entered into a lease agreement (the “First Lease Agreement”), whereby Fasemex leased the Leased Property (as such term is defined in the First Lease Agreement) to FCA.
III. En fecha 27 de abril de 2020, Fasemex y FCA celebraron el primer convenio modificatorio al Primer Contrato de	**III.** On April 27, 2020, Fasemex and FCA entered into a first amendment agreement to the First Lease Agreement (the “Amendment Agreement”) to clarify their original intent

Arrendamiento (el "Convenio Modificatorio"), con el objeto de aclarar su intención original en relación a la definición de Propiedad Arrendada (como dicho término se define en el Primer Contrato de Arrendamiento) definiéndola como (a) el Primer Terreno (como dicho término se define en el Convenio Modificatorio), (b) el Segundo Terreno (como dicho término se define en el Convenio Modificatorio), y (c) el Edificio (como dicho término se define en el Convenio Modificatorio).	regarding the definition of the Leased Property (as such term is defined in the First Lease Agreement) as (a) the First Plot (as such term is defined in the Amendment Agreement), (b) the Second Plot (as such term is defined in the Amendment Agreement), and (c) the Building (as such term is defined in the Amendment Agreement).
IV. Con fecha 16 de octubre de 2020, Fasemex y FCA celebraron el contrato de novación y reexpresión de contrato de arrendamiento (el "Contrato de Novación"), por medio del cual, entre otros asuntos, Fasemex y FCA acordaron (a) novar el Primer Contrato de Arrendamiento y el Convenio Modificatorio alterando substancialmente sus acuerdos, por lo que las obligaciones pactadas en dicho instrumento sustituyeron las pactadas anteriormente en el Primer Contrato de Arrendamiento y en el Convenio Modificatorio, (b) extinguir las obligaciones principales y accesorias del Primer Contrato de Arrendamiento y el Convenio Modificatorio, (c) reexpresar el Primer Contrato de Arrendamiento y el Convenio Modificatorio, conforme a lo pactado a partir de la cláusula 2.3 y subsecuentes del Contrato de Novación, (d) que FCA depositaría a Fasemex (i) el Depósito de Garantía A y (ii) el Depósito de Garantía B, (e) que Fasemex se reservaba la facultad de enajenar, cargar y/o gravar la Propiedad Arrendada como dicho término se define en el Contrato de Novación) a los Señores Gil bastando con que realizara una notificación a FCA para ejecutar la operación de que se tratara, y (f) que Fasemex se encontraba en negociaciones con los Señores Gil para enajenar el Primer Terreno (como dicho término se define en el Contrato de Novación) y el Edificio (como dicho término se define en el Contrato de Novación) por lo que en caso de que se llevara a cabo dicha transmisión (i) el Contrato de Arrendamiento de los Señores Gil quedaría automáticamente terminado, y (ii) Fasemex y los Señores Gil darían aviso a FCA para que se aplicaran las reglas pactadas en el Contrato de Novación para el reconocimiento de los nuevos arrendadores.	**IV.** On October 16, 2020, Fasemex and FCA entered into a novation and restatement of lease agreement (the "Novation Agreement"), whereby, among other matters, Fasemex and FCA agreed to (a) novate the First Lease Agreement and the Amendment Agreement by substantially altering their agreements, (b) extinguish both the principal and ancillary obligations of the First Lease Agreement and the Amendment Agreement, (c) restate the First Lease Agreement and the Amendment Agreement, as agreed to in clause 2.2 thereof and the subsequent clauses of the Novation Agreement, (d) FCA would deposit with Fasemex (i) Security Deposit A and (ii) Security Deposit B, (e) Fasemex reserved certain rights to transfer, lien and/or encumber the Leased Property (as such term is defined in the Novation Agreement) to or for the Gils by giving notice to FCA in order to execute the transaction in question upon the terms and conditions sets forth therein, and (f) Fasemex was in negotiations with the Gils to transfer the First Plot (as such term is defined in the Novation Agreement) and the Building (as such term is defined in the Novation Agreement) so that in the event of such transfer (i) the Gils Lease Agreement would automatically terminate, and (ii) Fasemex and the Gils would give notice to FCA so that the rules agreed to in the Novation Agreement for the recognition of the new lessors applied.

V. En fecha 1 de noviembre del 2020, Fasemex y los Señores Gil celebraron un contrato de promesa de arrendamiento financiero (el "Contrato de Promesa de Arrendamiento"), mediante el cual, entre otros asuntos, (a) los Señores Gil solicitaron a Fasemex y Fasemex accedió a realizar la terminación de la construcción directa o indirecta del Edificio (como dicho termino se define en el Contrato de Novación) sobre el Primer Terreno (como dicho término se define en el Contrato de Novación) y el Segundo Terreno (como dicho término se define en el Contrato de Novación), (b) los Señores Gil y Fasemex prometieron, sujeto al cumplimiento de cierta condición suspensiva, celebrar un contrato de arrendamiento financiero para que Fasemex les diera a los Señores Gil en arrendamiento financiero, en una proporción de 51% (cincuenta y uno por ciento) para Alejandro Gil Benavides, 33% (treinta y tres por ciento) para Jesús Salvador Gil Benavides y 16% (dieciséis por ciento) para Salvador Gil Benavides (los "Porcentajes del Arrendamiento Financiero"), el Edificio (como dicho término se define en el Contrato de Novación) y el Primer Terreno (como dicho término se define en el Contrato de Novación) (el "Contrato de Arrendamiento Financiero"), y (c) los Señores Gil y Fasemex reconocieron el Primer Contrato de Arrendamiento, su Convenio Modificatorio y el Contrato de Novación y acordaron que (i) Fasemex haría del conocimiento de FCA que los Señores Gil podrían sustituirlo posteriormente como sus arrendadores, (ii) Fasemex solicitaría el consentimiento de FCA para la celebración del Contrato de Arrendamiento Financiero, (iii) el Contrato de Arrendamiento Financiero preverá expresamente el derecho de subarrendamiento de los Señores Gil en favor de FCA del Primer Terreno y el Edificio, y (iv) Fasemex solicitaría a FCA la celebración de un convenio modificatorio al Contrato de Novación o el instrumento jurídico que fuera necesario firmar para ratificar que los Señores Gil se convertirían en sus subarrendadores. **VI.** En esta misma fecha, Fasemex y los Señores Gil están celebrando el Contrato de Arrendamiento Financiero.	**V.** On November 1, 2020, Fasemex and the Gils entered into a promissory financial lease agreement (the "Promissory Lease Agreement"), whereby, among other matters, (a) the Gils requested Fasemex and Fasemex agreed to complete, either directly or indirectly, the construction of the Building (as such term is defined in the Novation Agreement) on the First Plot (as such term is defined in the Novation Agreement) and the Second Plot (as such term is defined in the Novation Agreement), (b) the Gils and Fasemex promised, subject to the fulfillment of a certain condition precedent, to enter into a financial lease agreement for Fasemex to grant to the Gils the financial lease, in a proportion of 51% (fifty one percent) in the case of Alejandro Gil Benavides, 33% (thirty three percent) in the case of Jesús Salvador Gil Benavides and 16% (sixteen percent) in the case of Salvador Gil Benavides (the "Percentages of the Financial Lease"), the Building (as such term is defined in the Novation Agreement) and the First Plot (as such term is defined in the Novation Agreement) (the "Financial Lease Agreement"), and (c) the Gils and Fasemex acknowledged the First Lease Agreement, its Amendment Agreement and the Novation Agreement and agreed that (i) Fasemex would advise FCA that the Gils could subsequently replace it as its lessors, (ii) Fasemex would request FCA's consent to the entry into the Financial Lease Agreement, and (iii) the Financial Lease Agreement will expressly contemplate the right upon the Gils to sublease to FCA the First Plot and the Building, and (iv) Fasemex would request FCA to enter into an amendment agreement to the Novation Agreement or such other legal instrument as may be necessary to ratify that the Gils would become their sublessors.

VII. En esta misma fecha Fasemex y los Señores Alejandro Gil Benavides y Salvador Gil Benavides, con la comparecencia de FCA, están celebrando un convenio de cesión de deuda mediante el cual, entre otros asuntos, (a) Fasemex, los Señores Alejandro Gil Benavides y Salvador Gil Benavides y FCA reconocen que Fasemex ha reembolsado a FCA a la fecha (i) la cantidad de USD $59,150.00 (cincuenta y nueve mil ciento cincuenta dólares 00/100 Moneda de Curso Legal de los Estados Unidos de América) correspondiente al Depósito de Garantía A (el "Reembolso del Depósito de Garantía A"), adeudando a FCA la cantidad de USD $447,850.00 (cuatrocientos cuarenta y siete mil ochocientos cincuenta dólares 00/100 Moneda de Curso Legal de los Estados Unidos de América) (el "Saldo del Depósito de Garantía A"), y (ii) la cantidad de USD $133,737.00 (ciento treinta y tres mil setecientos treinta y siete dólares 00/100 Moneda de Curso Legal de los Estados Unidos de América) correspondiente al Depósito de Garantía B (el "Reembolso del Depósito de Garantía B"), adeudando a FCA la cantidad de USD $1'609,263.00 (un millón seiscientos nueve mil doscientos sesenta y tres dólares 00/100 Moneda de Curso Legal de los Estados Unidos de América) (el "Saldo del Depósito de Garantía B"), (b) Fasemex cedió a los Señores Alejandro Gil Benavides y Salvador Gil Benavides y estos asumieron en una proporción de 50% (cincuenta por ciento) en el caso de Alejandro Gil Benavides y 50% (cincuenta por ciento) en el caso de Salvador Gil Benavides (los "Porcentajes de las Deudas") (i') la deuda del Saldo Depósito de Garantía A, y (ii') la deuda del Saldo del Depósito de Garantía B (las "Deudas de los Depósitos"), (c) FCA, como acreedor de las Deudas de los Depósitos, consintió expresamente la sustitución de Fasemex en su calidad de deudor de las Deudas de los Depósitos, siendo ahora los nuevos deudores los Señores Alejandro Gil Benavides y Salvador Gil Benavides, y (d) Fasemex se constituyó como obligado solidario y subsidiario para el cumplimiento de la obligación de pago de las Deudas de los Depósitos (el "Convenio de Cesión de Deuda").	**VI.** On the date hereof, Fasemex and the Gils are entering into the Financial Lease Agreement. **VII.** On the date hereof, Fasemex and Messrs. Alejandro Gil Benavides and Salvador Gil Benavides, with the appearance of FCA, are entering into a debt transfer agreement whereby, among other matters, (a) Fasemex, Messrs. Alejandro Gil Benavides and Salvador Gil Benavides and FCA acknowledge that Fasemex has reimbursed FCA (i) the amount of USD$59,150.00 (fifty nine thousand one hundred fifty dollars 00/100 of the United States of America) corresponding to the Security Deposit A (the "Reimbursement of Security Deposit A"), owing FCA the amount of USD$447,850.00 (four hundred forty seven thousand eight hundred and fifty dollars 00/100 of the United States of America) (the "Balance of Security Deposit A"), and (ii) the amount of USD$133,737.00 (one hundred thirty three thousand seven hundred thirty seven dollars 00/100 of the United States of America) corresponding to Security Deposit B (the "Reimbursement of Security Deposit B"), owing FCA the amount of USD$1'609,263.00 (one million six hundred nine thousand two hundred sixty three dollars 00/100 of the United States of America) (the "Balance of Security Deposit B"), (b) Fasemex assigned to Messrs. Alejandro Gil Benavides and Salvador Gil Benavides and they assumed in a proportion of 50% (fifty percent) in the case of Alejandro Gil Benavides and 50% (fifty percent) in the case of Salvador Gil Benavides (the "Percentages of the Debts") (i') the Debt of Security Deposit A, and (ii') the Debt of Security Deposit B (the "Debts of the Deposits"), (c) FCA, as creditor of the Debts of the Deposits, expressly agreed to the substitution of Fasemex as debtor of the Debt of the Deposits, becoming Messrs. Alejandro Gil Benavides and Salvador Gil Benavides the new debtors, and (d) Fasemex remained and remains jointly and severally liable of the obligation to pay the Debts of the Deposits (the "Debt Transfer Agreement").

VIII. En esta misma fecha Fasemex y los Señores Gil están celebrando el convenio de terminación del Contrato de Arrendamiento de los Señores Gil, mediante el cual, entre otros asuntos dieron por terminado dicho contrato para los efectos legales a que hubiera lugar.	**VIII.** On the date hereof, Fasemex and the Gils are entering into the termination of the Gils Lease Agreement, whereby, among other matters, they terminated such agreement for all legal purposes.
IX. Las partes acordaron actualizar el <u>Anexo "A"</u>, el <u>Anexo "B"</u> y el <u>"Anexo "C"</u> del Contrato de Novación, con las versiones que se adjuntan al presente Primer Convenio para su incorporación al mismo.	**IX.** The parties agreed to update <u>Exhibit "A"</u>, <u>Exhibit "B"</u> and <u>Exhibit "C"</u> of the Novation Agreement, pursuant to the blueprints attached hereto and incorporated by means of this reference.
D E C L A R A C I O N E S	**R E P R E S E N T A T I O N S**
I. Cada uno de los Señores Gil, por sus propios derechos, declaran y garantizan, que:	**I.** Each of the Gils hereby represent and warrant, by on their own behalf, that:
A. Son personas físicas, de nacionalidad mexicana, mayores de edad, casados, en pleno ejercicio de sus derechos y que tienen capacidad jurídica suficiente y bastante para obligarse en los términos del presente Primer Convenio.	A.They are individuals, of Mexican nationality, of legal age, married, with full authority to exercise their own rights and with sufficient and enough legal capacity to be bound by the terms of this First Amendment.
B. Son propietarios del Segundo Terreno (como dicho término se define en el Contrato de Novación).	B. They own the Second Plot (as such term is defined in the Novation Agreement).
C. Por virtud del Contrato de Arrendamiento Financiero son arrendatarios con posibilidad de subarrendar el Primer Terreno (como dicho término se define en el Contrato de Novación) y el Edificio (como dicho término se define en el Contrato de Novación).	C. By virtue of the Financial Lease Agreement, they are lessees with the right to sublease the First Plot (as such term is defined in the Novation Agreement) and the Building (as such term is defined in the Novation Agreement).
D. Mediante el Contrato de Promesa de Arrendamiento reconocieron el Primer Contrato de Arrendamiento, su Convenio Modificatorio y el Contrato de Novación y acordaron con Fasemex que éste (i) haría del conocimiento de FCA que los Señores Gil podrían sustituirlo posteriormente como sus arrendadores con relación al Contrato de Novación, (ii) solicitaría el consentimiento de FCA para la celebración del Contrato de Arrendamiento Financiero, (iii) el Contrato de Arrendamiento Financiero prevería expresamente el derecho de subarrendamiento de los Señores Gil en favor de FCA del Primer Terreno y el Edificio, y (iv) solicitaría a FCA la celebración del presente	D. Through the Promissory Lease Agreement, they acknowledged the existence of the First Lease Agreement, its Amendment Agreement and the Novation Agreement and agreed with Fasemex that Fasemex would (i) give notice to FCA that the Gils could subsequently replace Fasemex as its lessor under the Novation Agreement, (ii) request FCA's consent to the execution of the Financial Lease Agreement, (iii) the Financial Lease Agreement would expressly contemplate the right upon the Gils to sublease to FCA the First Plot and the Building, and (iv) request FCA to execute this instrument to ratify that the Gils would become their sublessors.

instrumento para ratificar que los Señores Gil se convertirían en sus subarrendadores.	
E. La Propiedad Arrendada (como dicho término se define en el Contrato de Novación) se encuentra libre de gravámenes, cargas, afectaciones o limitaciones de dominio de cualquier tipo y al corriente en el pago de todas las contribuciones gubernamentales que le son aplicables.	**E.** The Leased Property (as such term is defined in the Novation Agreement) is free of liens, encumbrances or any type of ownership limitations and has paid all applicable governmental taxes and levies.
F. Están registrados ante la Secretaria de Hacienda y Crédito Público, con el Registro Federal de Contribuyentes número GIBA6704248B7, GIBJ640213SP1 y GIBS720425663, respectivamente.	**F.** They are registered before the Ministry of Finance and Public Credit, with the Federal Taxpayers Registry number GIBA6704248B7, GIBJ640213SP1 and GIBS720425663, respectively.
G. La Propiedad Arrendada (como dicho término se define en el Contrato de Novación) tiene un uso de suelo autorizado para fines industriales adecuado para el uso que FCA actualmente da y pretende dar en el futuro, de conformidad con las normas aplicables en Colonia California, Castaños, Coahuila de Zaragoza.	**G.** The Leased Property (as such term is defined in the Novation Agreement) has a zoning land use authorized for industrial purpose adequate for FCA actual and intended use, in accordance with the applicable regulations in Colonia California, Castaños, Coahuila de Zaragoza.
H. Reconocen y han revisado el texto contenido en la cláusula 5.4 del Contrato de Novación que a la letra dice:	**H.** They acknowledge the content and have reviewed clause 5.4 of the Novation Agreement that establishes the following:
"5.4. <u>Maquinaria y Equipo Introducida a la Propiedad Arrendada</u>. El Arrendatario reconoce y conviene que toda maquinaria, equipo, mobiliario, vehículo y demás bienes que introduzca o instale en la Propiedad Arrendada, los introduce a su propio riesgo y en todo momento serán responsabilidad única y exclusiva del Arrendatario. Por consiguiente, el Arrendador no asume responsabilidad alguna por cualquier daño, robo o extravío que pudiera sufrir cualquiera de dichos bienes. El Arrendador reconoce que el Arrendatario es el propietario, o tiene la titularidad legal (de conformidad con los arrendamientos financieros y otro financiamiento en el curso normal de operaciones, u otro), sobre dicha maquinaria y equipo y, por lo tanto, el Arrendador no tiene ningún derecho sobre la maquinaria y el equipo, o cualquier otro bien introducido por el Arrendatario en la Propiedad Arrendada, incluso si dicha	"*5.4 <u>Machinery and Equipment</u>. Lessee acknowledges and agrees that all machinery, equipment, furniture, vehicles, manufactured goods and any other goods introduced to or installed by Lessee at the Leased Property, are introduced at its own risk and at all times they shall be the exclusive responsibility of Lessee. Therefore, Lessor shall not assume any liability whatsoever for any damage, theft or loss of any of such goods. Lessor acknowledges that Lessee is the owner, or has legal title (pursuant to capital leases and other financing in the*

maquinaria y equipo está adherido al piso. El Arrendador proporcionará inmediatamente, previa solicitud, las certificaciones necesarias y comunes que manifiesten que no existen gravámenes u otras cargas sobre dichos bienes, según lo solicite cualquier fuente de financiamiento del Arrendatario."

I. La veracidad y exactitud de las declaraciones de FCA y de Fasemex contenidas en el capítulo de Declaraciones de este instrumento es uno de los motivos determinantes para la celebración del presente Primer Convenio y por medio del presente se ratifican.

II. FCA, por medio de su representante legal, declara y garantiza que:

A. Es una sociedad anónima de capital variable, legalmente constituida en México, según consta en la escritura pública número 31,100, de fecha 13 de septiembre de 2019, otorgada ante la fe del licenciado Emilio Cárdenas Estrada, notario público número 3, con ejercicio en la ciudad de Monterrey, Nuevo León, e inscrita en el Registro Público de Comercio de la Ciudad de México, bajo el folio número N-2019075492, con fecha 20 de septiembre de 2019.

B. Su representante legal goza de las facultades necesarias para la celebración de este Primer Convenio, sin que las mismas le hayan sido limitadas o modificadas de forma alguna.

C. (a) Fasemex hizo de su conocimiento que los Señores Gil podrían sustituirlo posteriormente como sus arrendadores con relación al Contrato de Novación con respecto del Primer Terreno y el Edificio, (b) Fasemex solicitó y obtuvo su consentimiento para la celebración del Contrato de Arrendamiento Financiero, y (c) Fasemex le solicitó la celebración del presente instrumento para ratificar que los Señores Gil se convertirían en sus subarrendadores.

D. Los recursos con los que hará frente a sus obligaciones derivadas del presente Primer

ordinary course of business, or other), on such machinery and equipment and thus, Lessor does not have any right on the machinery and equipment, or any other goods introduced by Lessee in the Leased Property, even if such machinery and equipment is attached to the floor. Lessor shall provide promptly upon request customary acknowledgements of having no liens or other encumbrances on such assets, as may be requested by any financing source of Lessee."

I. The truthfulness and accuracy of the representations made by FCA and Fasemex in the Representations section of this First Amendment is one of the fundamental motives for the Gils to enter into this First Amendment and are hereby reaffirmed.

II. FCA, hereby represents and warrants, through its legal representative, that:

A.It is a corporation duly incorporated in Mexico, as shown in public deed number 31,100, dated September 13, 2019, granted before Mr. Emilio Cárdenas Estrada, notary public number 3, with authority in the city of Monterrey, Nuevo León, and recorded before the Public Registry of Commerce of México City, under folio number N-2019075492, on September 20, 2019.

B.Its legal representative has the necessary authority to enter into and execute this First Amendment, and that such authority has not been limited or amended in any manner whatsoever.

C.(a) Fasemex informed it that the Gils could subsequently replace Fasemex as its lessor

Convenio provienen de fuentes lícitas conforme a lo establecido en la Ley Nacional de Extinción de Dominio y en los artículos 17 y 18 de la Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita. **E.** Está registrada ante la Secretaría de Hacienda y Crédito Público, con el Registro Federal de Contribuyentes número FCA190913BC9. **F.** Por virtud del Contrato de Novación tiene la posesión de la Propiedad Arrendada (como dicho término se define en el Contrato de Novación) y por lo tanto conoce sus condiciones actuales y la ha inspeccionado debidamente. **G.** Está de acuerdo en que los Señores Gil ahora sean sus arrendadores con relación al Segundo Terreno (como dicho término se define en el Contrato de Novación) y subarrendadores con relación al Primer Terreno (como dicho término se define en el Contrato de Novación) y el Edificio (como dicho término se define en el Contrato de Novación) de conformidad con los términos y condiciones del presente instrumento. **H.** La veracidad y exactitud de las declaraciones de los Señores Gil y de Fasemex contenidas en el capítulo de Declaraciones de este instrumento es uno de sus motivos determinantes para la celebración del presente Primer Convenio, y por medio del presente se ratifican. **III.** Fasemex, por medio de su representante legal, declara y garantiza que: **A.** Es una sociedad debidamente constituida y existente conforme a las leyes de los Estados Unidos Mexicanos, según consta en la escritura pública número 93 de fecha 15 de marzo de 1996, otorgada ante la fe del licenciado Rafael Treviño Garza, notario público número 2, con ejercicio en la ciudad de Monclova, Coahuila e inscrita en el Registro Público de la Propiedad de Monclova, Coahuila, bajo el número de partida 3245, folio número 670, libro 51-3º, con fecha 22 de abril de 1996.	under the Novation Agreement with respect to the First Plot and the Building, (b) Fasemex requested and obtained its consent to enter into the Financial Lease Agreement, and (c) Fasemex requested FCA to enter into this First Amendment to ratify that the Gils would become its sublessors. D.The resources with which it shall meet its obligations under this First Amendment come from lawful sources in accordance with the provisions of the National Law of Extinction of Ownership and Articles 17 and 18 of the Federal Law for the Prevention and Identification of Operations with Resources of Illicit Origin. E.It is registered before the Ministry of Finance and Public Credit, with the Federal Taxpayer Registry number FCA190913BC9. F.By virtue of the Novation Agreement, it has possession of the Leased Property (as defined in the Novation Agreement) and therefore it knows its current conditions and it has duly inspected it. G.It accepts that the Gils shall now become its lessors with respect to the Second Plot (as such term is defined in the Novation Agreement) and sublessors with respect to the First Plot (as such term is defined in the Novation Agreement) and the Building (as such term is defined in the Novation Agreement) in accordance with the terms and conditions hereof. H.The truthfulness and accuracy of the representations of the Gils and Fasemex contained in the Representations chapter of this First Amendment is one of the fundamental motives for FCA to enter into this First Amendment and are hereby reaffirmed.

B. Su representante legal goza de las facultades necesarias para la celebración de este Primer Convenio, sin que las mismas le hayan sido limitadas o modificadas de forma alguna, según consta en el poder general para actos de administración, otorgado mediante la escritura pública número 107, de fecha 28 de septiembre de 2004, otorgada ante la fe del licenciado Alejandro Coronado Rodríguez, notario público número 1, en ejercicio en la ciudad de Monclova, Coahuila. **C.** Es propietario del Primer Terreno (como dicho término se define en el Contrato de Novación) y del Edificio (como dicho termino se define en el Contrato de Novación) mismos que dio en arrendamiento a FCA. **D.** (a) Hizo del conocimiento de FCA que los Señores Gil podrían sustituirlo posteriormente como sus arrendadores con relación al Contrato de Novación, (b) solicitó y obtuvo el consentimiento de FCA para la celebración del Contrato de Arrendamiento Financiero, y (c) solicitó a FCA la celebración del presente instrumento para ratificar que los Señores Gil se convertirían en sus subarrendadores. **E.** Comparece a la celebración de este Primer Convenio para dar cumplimiento a lo estipulado en la cláusula 23.2 del Contrato de Novación en cuanto a que dicho contrato únicamente podrá ser modificado mediante instrumento por escrito debidamente firmado por Fasemex y FCA y para constituirse como obligado solidario y subsidiario para el cumplimiento de las obligaciones a cargo de los Señores Gil conforme al presente instrumento, incluyendo las cláusulas 8.1 y 9.4. **F.** Está registrada ante la Secretaria de Hacienda y Crédito Público, con el Registro Federal de Contribuyentes número FSM960315HU0. **G.** La veracidad y exactitud de las declaraciones de los Señores Gil y de FCA contenidas en el capítulo de Declaraciones de este instrumento es uno de los motivos determinantes para la celebración del presente	**III.** Fasemex, hereby represents and warrants, through its legal representative, that: **A**. It is a corporation duly incorporated and existing in accordance with the laws of the United Mexican States, as evidenced by public deed number 93 dated March 15, 1996, executed before the faith of Rafael Treviño Garza, notary public number 2, with authority in the city of Monclova, Coahuila and registered in the Public Registry of Property of Monclova, Coahuila, under item number 3245, folio number 670, book 51-3º, dated April 22, 1996. **B.** Its legal representative has the necessary authority to enter into and execute this First Amendment, and that such authority has not been limited or modified in any manner whatsoever, as shown in the general power of attorney for acts of administration, granted by means of public deed number 107, dated September 28, 2004, granted before Mr. Alejandro Coronado Rodríguez, notary public number 1, with authority in the city of Monclova, Coahuila. **C.** It is the owner of the First Plot (as such term is defined in the Novation Agreement), and the Building (as such term is defined in the Novation Agreement), which it leased to FCA. **D.** (a) It informed FCA that the Gils could subsequently replace it as its lessor under the Novation Agreement, (b) it requested and obtained FCA's consent to enter into the Financial Lease Agreement, and (c) it requested FCA to enter into this First Amendment to ratify that the Gils would become its sublessors. **E.** It signs this First Amendment to comply with the provisions of clause 23.2 of the Novation Agreement, regarding the fact that such agreement may only be amended by means of a written instrument duly signed by Fasemex and FCA, and to remain jointly and severally

Primer Convenio, y por medio del presente se ratifican. **IV.** Las partes, por sus propios derechos y a través de su representante legal, respectivamente, declaran y garantizan que: **A.** Es condición esencial y uno de los motivos determinantes de la voluntad de las partes al celebrar el presente Primer Convenio que la Renta (como dicho término se define en el Contrato de Novación) se denomine en Dólares (como dicho término se define en el Contrato de Novación). **B.** Reconocen que, no obstante, el hecho de que la Renta (como dicho término se define en el Contrato de Novación) se denomina y expresa en Dólares (como dicho término se define en el Contrato de Novación), conforme al artículo 8 de la Ley Monetaria de los Estados Unidos Mexicanos, FCA podrá liberarse de su obligación de pago de la Renta (como dicho término se define en el Contrato de Novación) entregando a los Señores Gil (o a quién sus derechos represente) el equivalente en Pesos (como dicho término se define en el Contrato de Novación) al Tipo de Cambio (como dicho término se define en el Contrato de Novación). **C.** Reconocen que es condición esencial y uno de los motivos determinantes de la voluntad de las partes al celebrar el presente Primer Convenio, la capacidad de FCA para dar cumplimiento a sus obligaciones conforme a este Primer Convenio y que el Garante (como dicho término se define en el Contrato de Novación) modifica y otorga la Garantía (como dicho término se define en el Contrato de Novación) en favor de los Señores Gil. Expuesto lo anterior, las partes se sujetan a las siguientes: **C L A U S U L A S** **Cláusula 1. <u>Modificación de la Cláusula 1 del Contrato de Novación</u>.**	liable of the obligations of the Gils in accordance with this First Amendment, including clauses 8.1 and 9.4. **F.** It is registered before the Ministry of Finance and Public Credit, with the Federal Taxpayer Registry number FSM960315HU0. **G.** The truthfulness and accuracy of the representations of the Gils and FCA contained in the Representations chapter of this First Amendment is one of the fundamental motives for Fasemex to enter into this First Amendment and are hereby reaffirmed. **IV.** The parties, hereby represent and warrant, on their own behalf and through their legal representatives, that: A.It is a condition precedent and one of the fundamental motives for the parties to enter into and execute this First Amendment, for the Rent (as such term is defined in the Novation Agreement), to be payable in Dollars (as such term is defined in the Novation Agreement). B.They acknowledge that, notwithstanding the fact that the Rent (as such term is defined in the Novation Agreement) is denominated and expressed in Dollars (as such term is defined in the Novation Agreement), pursuant to article 8 of the Monetary Law of the United Mexican States, FCA may be released from its obligation to pay the Rent (as such term is defined in the Novation Agreement) by delivering to the Gils (or to whom may represent their rights) the equivalent in Pesos (as such term is defined in the Novation Agreement) at the Exchange Rate (as such term is defined in the Novation Agreement). C.They acknowledge that it is a condition precedent and one of the fundamental motives for the parties to enter into and execute this First Amendment, the capacity of FCA to fulfill its obligations hereunder and that Guarantor (as such term is defined in the Novation Agreement) signs and delivers the Guaranty (as such term is defined in the Novation

Las partes acuerdan modificar la cláusula 1 del Contrato de Novación para modificar e incluir las siguientes definiciones en orden alfabético, resaltando el texto agregado y/o modificado en negrillas:

““Arrendador o Arrendadora”, ***significan los Señores Gil en su calidad de subarrendadores por lo que respecta al Primer Terreno y al Edificio y arrendadores por lo que respecta al Segundo Terreno****.*

“Arrendatario o Arrendataria”, ***significa FCA en su calidad de de subarrendatario por lo que respecta al Primer Terreno y al Edificio y arrendatario por lo que respecta al Segundo Terreno****.*

“Contrato de Arrendamiento de los Señores Gil”, tiene el significado que se le atribuye a dicho término en el antecedente I del Primer Convenio.

“Contrato de Arrendamiento Financiero”, tiene el significado que se le atribuye a dicho término en el antecedente IV del Primer Convenio.

“Contrato de Novación”, tiene el significado que se le atribuye a dicho término en el antecedente V del Primer Convenio.

“Contrato de Promesa”, tiene el significado que se le atribuye a dicho término en el antecedente IV del Primer Convenio.

“Convenio de Cesión de Deuda”, tiene el significado que se le atribuye a dicho término en el antecedente VII del Primer Convenio.

“Convenio Modificatorio”, tiene el significado que se le atribuye a dicho término en el antecedente III del Primer Convenio.

“Depósito de Garantía A”, significa **la cantidad de USD $507,000.00 (quinientos siete mil dólares 00/100 Moneda de Curso Legal de los Estados Unidos de América)***.*

Agreement) in favor of the Gils.

Now Therefore, in consideration of the foregoing, the parties agree as follows:

C L A U S E S

Clause 1. Amendment of Clause 1 of the Novation Agreement.

The parties agree to amend Clause 1 of the Novation Agreement in order to modify and include the following definitions in alphabetical order, highlighting in bold letters the added and/or modified text:

"Lessor", means the Gils as sublessors with respect to the First Plot and the Building and lessors with respect to the Second Plot.

"Lessee", means FCA as sublessee with respect to the First Plot and the Building and lessee with respect to the Second Plot.

“Gils Lease Agreement”, has the meaning ascribed to such term in recital I of the First Amendment.

"Financial Lease Agreement", has the meaning ascribed to such term in recital IV of the First Amendment.

"Novation Agreement", has the meaning ascribed to such term in recital V of the First Amendment.

"Deudas de los Depósitos", tiene el significado que se le atribuye a dicho término en el antecedente VII del Primer Convenio. ***"Fasemex", significa Fabricaciones y Servicios de México, S.A de C.V.*** ***"FCA", significa FCA-Fasemex, S. de R.L. de C.V.*** ***"Fecha de Inicio del Primer Convenio", 5 de noviembre de 2021.*** ***"Lugar de Pago", tiene el significado que se le atribuye a dicho término en la cláusula 4.2 del Contrato de Novación, según se modifica conforme a este Primer Convenio.*** ***"Opción de Compra del Arrendamiento Financiero", tiene el significado que se le atribuye a dicho término en la cláusula 15 de este Primer Convenio.*** ***"Porcentaje de Derechos", tiene el significado que se le atribuye a dicho término en la cláusula 2.3 de este Primer Convenio.*** ***"Porcentaje de Obligaciones", tiene el significado que se le atribuye a dicho término en la cláusula 2.3 de este Primer Convenio.*** ***"Porcentajes de Arrendador", tiene el significado que se le atribuye a dicho término en la cláusula 2.3 de este Primer Convenio.*** ***"Porcentajes del Arrendamiento Financiero", tiene el significado que se le atribuye a dicho término en el antecedente V del Primer Convenio.*** ***"Porcentajes de las Deudas", tiene el significado que se le atribuye a dicho término en el antecedente VII del Primer Convenio.*** ***"Primer Contrato de Arrendamiento", tiene el significado que se le atribuye a dicho término en el antecedente II del Primer Convenio.***	***"Promissory Agreement", has the meaning ascribed to such term in recital IV of the First Amendment.*** ***"Debt Transfer Agreement", has the meaning ascribed to such term in recital VII of the First Amendment.*** ***"Amendment Agreement", has the meaning ascribed to such term in recital III of the First Amendment.*** ***"Security Deposit A", means the amount of USD $507,000.00 (five hundred and seven thousand dollars 00/100 of the United States of America).*** ***"Debts of the Deposits", has the meaning attributed to such term in recital VII of the First Amendment.*** ***"Fasemex", means Fabricaciones y Servicios de México, S.A. de C.V.*** ***"FCA", means FCA-Fasemex, S. de R.L. de C.V.*** ***"Commencement Date of the First Amendment", means November 5, 2021.*** ***"Place of Payment", has the meaning ascribed to such term in Clause 4.2 of the Novation Agreement as amended pursuant to this First Amendment.*** ***"Finance Lease Purchase Option", has the meaning ascribed to such term in Clause 15 of this First Amendment.*** ***"Percentage of Rights", has the meaning ascribed to such term in Clause 2.3 of this First Amendment.*** ***"Percentage of Obligations", has the meaning ascribed to such term in Clause 2.3 of this First Amendment.*** ***"Percentages of Lessor", has the meaning ascribed to such term in Clause 2.3 of this First Amendment.***

“<u>Primer Convenio</u>”, significa el presente convenio modificatorio al Contrato de Novación de fecha 5 de noviembre de 2021. ***“<u>Reembolso del Depósito de Garantía A</u>”, tiene el significado que se le atribuye a dicho término en el antecedente VII del Primer Convenio.*** ***“<u>Reembolso del Depósito de Garantía B</u>”, tiene el significado que se le atribuye a dicho término en el antecedente VII del Primer Convenio.*** ***“<u>Saldo del Depósito de Garantía A</u>”, tiene el significado que se le atribuye a dicho término en el antecedente VII del Primer Convenio.*** ***“<u>Saldo del Depósito de Garantía B</u>”, tiene el significado que se le atribuye a dicho término en el antecedente VII del Primer Convenio.*** ***“<u>Señores Gil</u>”, significa en conjunto Salvador Gil Benavides, Alejandro Gil Benavides y Jesús Salvador Gil Benavides en conjunto.”*** **Cláusula 2. <u>Modificación a las Cláusulas 2.3 y 2.4 del Contrato de Novación</u>.** Las partes acuerdan modificar las cláusulas 2.3 y 2.4 del Contrato de Novación, resaltando el texto agregado y/o modificado en negrillas, para efectos de que a partir de esta fecha dichas cláusulas establezcan lo siguiente: *“2.3 <u>Arrendamiento</u>. Sujeto a los términos y condiciones de este Contrato, en este acto,* ***los Señores Gil, en una proporción de 50.51% (cincuenta punto cincuenta y uno por ciento) en el caso de Alejandro Gil Benavides, 33.01% (treinta y tres punto cero uno por ciento) en el caso de Jesús Salvador Gil Benavides y 16.48% (dieciséis punto cuarenta y ocho por ciento), en el caso de Salvador Gil Benavides (los “<u>Porcentajes de Arrendador</u>”),*** *le da**n** a* ***FCA*** *el uso y goce temporal de la Propiedad Arrendada, y* ***FCA,*** *a su vez, se obliga a pagar a* ***los Señores Gil, en la proporción de los Porcentajes de Arrendador,*** *la Renta a partir de la Fecha de Inicio* ***del Primer Convenio****.*	***"<u>Percentages of the Financial Lease</u>", has the meaning ascribed to such term in recital V of the First Amendment.*** ***"<u>Percentages of Debts</u>", has the meaning ascribed to such term in recital VII of the First Amendment.*** ***"<u>First Lease Agreement</u>", has the meaning ascribed to such term in recital II of the First Amendment.*** ***"<u>First Amendment</u>", means this first amendment agreement to the Novation Agreement dated November 5, 2021.*** ***"<u>Reimbursement of Security Deposit A</u>", has the meaning ascribed to such term in recital VII of the First Amendment.*** ***"<u>Reimbursement of Security Deposit B</u>", has the meaning ascribed to such term in recital VII of the First Amendment.*** ***“<u>Balance of Security Deposit A</u>”, has the meaning attributed to such term in recital VII of the First Amendment.*** ***“<u>Balance of Security Deposit B</u>”, has the meaning attributed to such term in recital VII of the First Amendment.*** ***“<u>Gils</u>”, means jointly Salvador Gil Benavides, Alejandro Gil Benavides and Jesús Salvador Gil Benavides jointly.”*** **Clause 2. <u>Amendment to Clauses 2.3 and 2.4 of the Novation Agreement</u>.** The parties agree to modify Clauses 2.3 and 2.4 of the Novation Agreement, highlighting in bold letters the text added and/or modified, for the purposes that from this date such clauses establish the following: *"2.3 <u>Lease</u>. Subject to the terms and conditions of this Agreement,* ***the Gils hereby grant FCA***

Además de lo anterior, las partes acuerdan que (a) cada uno de los Señores Gil será titular, en la proporción de los Porcentajes de Arrendador, de los derechos provenientes del presente Contrato (el "Porcentaje de Derechos") y también cada uno será obligado o deudor en esa misma proporción (el "Porcentaje de Obligaciones"), con excepción de los derechos y obligaciones plasmados en la cláusula 4.5 de este instrumento de los cuales solo son titulares y obligados los Señores Alejandro Gil Benavides y Salvador Gil Benavides en la proporción de los Porcentajes de las Deudas debiendo aplicar para este último caso la regla establecida en el inciso (b) siguiente y (b) no habrá responsabilidad subsidiaria ni solidaria entre los Señores Gil, para el cumplimiento del Porcentaje de Obligaciones que le corresponda a cada uno. ***Sin embargo, cada uno de los Señores Gil nombra y autoriza de manera irrevocable a los otros Señores Gil con relación a los derechos contemplados en el presente instrumento, de tal forma que el tenedor del 51% (cincuenta y uno por ciento) del Porcentaje de Derechos tenga facultades para vincular a los otros Señores Gil frente a FCA respecto de cualquier obligación, derecho o notificación, incluyendo respecto de la Clausula 4.5 del presente instrumento.*** *2.4 Entrega de Posesión.* ***Fasemex por medio del Primer Contrato de Arrendamiento, el Convenio Modificatorio y el Contrato de Novación*** *entregó a* ***FCA*** *la posesión de la Propiedad Arrendada. Las partes acuerdan expresamente que la aceptación por parte de* ***FCA*** *de la posesión de la Propiedad Arrendada es prueba suficiente de que* ***FCA inspeccionó, recibió y aceptó*** *la posesión de la Propiedad Arrendada en* ***la*** *condición* ***en que estaba a la firma del Primer Contrato de Arrendamiento, el Convenio Modificatorio y el Contrato de Novación*** *en los términos pactados en dichos instrumentos."* **Cláusula 3. Modificación a las Cláusulas 4.1, 4.2, y 4.5 del Contrato de Novación.** Las partes acuerdan modificar las cláusulas 4.1, 4.2, y 4.5	***in a proportion of 50.51% (fifty point fifty-one percent) in the case of Alejandro Gil Benavides, 33.01% (thirty-three point zero one percent) in the case of Jesús Salvador Gil Benavides, and 16.48% (sixteen point forty-eight percent) in the case of Salvador Gil Benavides (the "Percentages of Lessor")****, the temporary use and enjoyment of the Leased Property, and* ***FCA****, hereby agrees to pay* ***the Gils, in proportion to the Percentages of Lessor****, the Rent as of the Commencement Date* ***of the First Amendment****.* ***In addition to the foregoing, the parties agree that (a) each of the Gils shall be the owner, in proportion to the Percentages of Lessor, of the rights under this Agreement (the "Percentage of Rights") and each one shall be also liable or debtor in the same proportion (the "Percentage of Obligations"), with the exception of the rights and obligations set forth in clause 4.5 of this agreement of which only Messrs. Alejandro Gil Benavides and Salvador Gil Benavides are owners and liable in the proportion of the Percentages of Debts, the rule established in subsection (b) below must apply in the latter case and (b) there shall be no joint or several liability among the Gils of the Percentage of Obligations that correspond to each one of them.*** ***However, each of the Gils irrevocably appoints and authorizes each other of the Gils with respect to its rights hereunder, such that FCA may rely on the action of holders of 51% (fifty one percent) of the Percentage of Rights with respect to any obligation, right or notice of the Gils hereunder, including with respect to Section 4.5. hereof.*** *2.4 Delivery of Possession.* ***Fasemex by means of the First Lease Agreement, the Amendment Agreement and the Novation Agreement*** *delivered to* ***FCA*** *the possession of the Leased Property. The parties expressly agree that the*

del Contrato de Novación resaltando el texto agregado y/o modificado en negrillas, para efectos de que a partir de esta fecha dichas cláusulas establezcan lo siguiente:

"4.1 Monto, Forma y Fecha de Pago de la Renta. (a) A partir de la Fecha de Inicio ***del Primer Convenio, FCA*** *pagará a* ***los Señores Gil, en la proporción de los Porcentajes de Arrendador,*** *como contraprestación por el uso y goce de la Propiedad Arrendada una renta anual por la cantidad de USD $6.72 (seis Dólares 72/100) por pie cuadrado del Edificio, más el IVA, equivalente a USD $2'028,848.00 (dos millones veintiocho mil ochocientos cuarenta y ocho Dólares 00/100), más el IVA, la cual será pagadera mensualmente por el monto de USD $169,070.66 (ciento sesenta y nueve mil setenta Dólares 66/100), más el IVA, (b) a partir del 5º (quinto) aniversario de la Fecha de Inicio,* ***FCA*** *pagará como contraprestación por el uso y goce de la Propiedad Arrendada una renta anual por la cantidad de USD $7.21 (siete Dólares 21/100) por pie cuadrado del Edificio, más el IVA, la cual será pagadera mensualmente, (c) a partir del 10º (décimo) aniversario de la Fecha de Inicio,* ***FCA*** *pagará como contraprestación por el uso y goce de la Propiedad Arrendada una renta anual por la cantidad de USD $7.64 (siete Dólares 64/100) por pie cuadrado del Edificio, más el IVA, la cual será pagadera mensualmente, y (d) a partir del 15º (décimo quinto) aniversario de la Fecha de Inicio,* ***FCA*** *pagará como contraprestación por el uso y goce de la Propiedad Arrendada una renta anual por la cantidad de USD $8.10 (ocho Dólares 10/100) por pie cuadrado del Edificio, más el IVA, la cual será pagadera mensualmente (las cantidades pagaderas bajo los incisos (a), (b), (c) y (d) anteriores, según se apliquen en cada uno de los cuatro periodos, en adelante la "Renta"). Las partes acuerdan que, en el caso de cualquier expansión futura al Edificio,* ***los Señores Gil*** *cobrará**n** cuando menos la misma renta pagadera por pie cuadrado, en los términos arriba indicados, dependiendo cual Renta sea la aplicable cuando la expansión se termine de construir; en el entendido que en caso que la expansión termine de construirse dentro de los primeros 5 (cinco) años de vigencia, la renta pagadera se*

acceptance by ***FCA*** *of the possession of the Leased Property is sufficient proof that* ***FCA inspected, received and accepted*** *the possession of the Leased Property in its "as is" condition* ***at the execution of the First Amendment, the Amendment Agreement and the Novation Agreement in accordance with terms thereof."***

Clause 3. Amendment to Clauses 4.1, 4.2, and 4.5 of the Novation Agreement. The parties agree to modify clauses 4.1, 4.2, and 4.5 of the Novation Agreement, highlighting in bold letters, the text added and/or modified, for the purposes that from this date such clauses establish the following:

"*4.1 Amount, Form and Date of Payment of the Rent. (a) Starting on the Commencement Date of the* ***First Amendment***, ***FCA*** *shall pay to* ***the Gils, in the proportion of the Percentages of Lessor***, *as consideration for the use and enjoyment of the Leased Property an annual rent of USD$6.72 (six Dollars 72/100) per square foot of the Building, plus the VAT, equivalent to USD $2'028,848.00 (two million twenty eight thousand eight hundred forty eight Dollars 00/100), plus the VAT, which shall be payable on a monthly basis in the amount of USD $169,070.66 (one hundred sixty nine thousand seventy Dollars 66/100), plus the VAT,*
(b) starting on the 5th (fifth) anniversary of the Commencement Date, ***FCA*** *shall pay, as consideration for the use and enjoyment of the Leased Property an annual rent of USD $7.21 (seven Dollars 21/100) per square foot of the Building, plus the VAT, which shall be payable on a monthly basis, (c) starting on the 10th (tenth) anniversary of the Commencement Date,* ***FCA*** *shall pay as consideration for the shall pay, as consideration for the use and enjoyment of the Leased Property an annual rent of USD $7.64 (seven Dollars 64/100) per square foot of the Building, plus the VAT, which shall be payable on a monthly basis, and (d) starting on the 15th (fifteenth) anniversary of the Commencement Date,* ***FCA*** *shall pay, as consideration for the use and enjoyment of the Leased Property an annual rent of USD $8.10 (eight Dollars 10/100) per square foot of the*

calculará a USD $6.80 (seis Dólares 80/100), y no USD $6.72 (seis dólares 72/100). *Toda Renta la pagará **FCA** por mensualidades adelantadas, contra la entrega de la**s** factura**s** con los requisitos fiscales aplicables y dentro de los primeros 10 (diez) días hábiles del mes por pagar; con excepción de la Renta del primer mes que se pag**ó** en la fecha **del Contrato de Novación.*** *Las partes entienden que históricamente han existido devaluaciones significativas en el valor del Peso frente al Dólar, por lo que, es previsible que, en el futuro existan nuevos cambios en la paridad. En esa eventualidad, **FCA** será responsable de tomar las providencias y medidas que, a su juicio, estime convenientes con el fin de minimizar su riesgo ante el supuesto previsible de una devaluación cambiaria, de tal forma que si **FCA** decide pagar en Pesos, en los términos de la Ley Monetaria, **FCA** pagará la cantidad necesaria para que **los Señores Gil** adquiera**n** los mismos Dólares al tipo de cambio vigente en la fecha de cada pago, aunque tenga que pagar cantidades adicionales necesarias para compensar el diferencial en el Tipo de Cambio, de manera que **los Señores Gil** reciba**n** en la fecha de pago la cantidad de Dólares convenida.* *Por otra parte, es la intención de las partes que la Renta pagadera conforme al presente Contrato sea absolutamente neta para **los Señores Gil** a efecto que el presente Contrato produzca durante el Plazo, los rendimientos que ést**os** ha**n** calculado; por lo tanto, las partes expresamente convienen en que **FCA** (a) deberá cubrir el gasto y cualquier costo en relación con la propiedad y mantenimiento de la Propiedad Arrendada, (b) deberá pagar el impuesto predial de la Propiedad Arrendada, (c) deberá pagar las pólizas de seguro pactadas en la cláusula 13, y (d) no tendrá derecho a compensar o deducir cualquier cantidad de los pagos de Renta, con excepción de los montos establecidos en el presente instrumento referentes a la reducción de la Renta para reembolsar los Depósitos en Garantía, en los términos pactados en la cláusula 4.5. **FCA** en*	*Building, plus the VAT, which shall be payable on a monthly basis (the amounts payable under (a), (b), (c) and (d) above, as they apply in each of the four periods, hereinafter the "Rent"). The parties agree that for any future expansion **the Gils** shall charge at least the same rent payable per square footage, as stated above, depending on the Rent payable at the time such expansion is finally built; provided that with respect to such expansion finally being built in the first 5 (five) year period, such rent amount shall be calculated off of USD $6.80 (six Dollars 80/100), as opposed to USD $6.72 (six Dollars 72/100).* *All Rents shall be paid by **FCA** in advance every month against the delivery of the invoice in compliance with the applicable tax regulations and within the first 10 (ten) business days of the month to pay; with the exception of the first month which was payable on the date of the **Novation Agreement**.* *The parties understand that historically there have been significant devaluations in the value of the Peso versus the Dollar, so it is expected that in the future, there may be new changes in such exchange rates. In this eventuality, **FCA** shall be responsible for taking the providences and actions that, to its judgment, deems appropriate in order to minimize the risk in the predictable event of a currency devaluation, so that if **FCA** chooses to pay in Pesos, in terms of the Monetary Law, **FCA** shall pay the amount required by **the Gils** to acquire the same amount of Dollars at the exchange rate prevailing on the date of each payment, even if it needs to pay additional necessary amounts to compensate the difference in the Exchange Rate, so that **the Gils** shall receive, at the date of payment, the amount of Dollars agreed herein.* *Moreover, it is the purpose of the parties that the Rent payable hereunder shall be absolutely net to **the Gils** so that this Agreement shall yield the calculated income during the Term; therefore, it is expressly agreed to by the parties that **FCA** shall (a) bear the cost and any and all*

este acto renuncia, de manera expresa e irrevocable, a cualquier derecho pedir reducciones de Renta o a retener el pago de la Renta previsto en el Código Civil Federal.

*4.2 Lugar de Pago. **FCA** pagará la Renta a través de transferencia electrónica de fondos a las cuentas a nombre de **los Señores Gil,** conforme a las siguientes instrucciones **(el "Lugar de Pago"):***

(a)Jesús Salvador Gil Benavides.

i. Número de cuenta: 00448249008.
ii. CLABE: 012065004482490089.
iii. Banco: Bancomer.

(b)Alejandro Gil Benavides.

i. Número de cuenta: 60527879916.
ii. CLABE: 014068605278799165.
iii. Banco: Santander.

(c) Salvador Gil Benavides.

i. Número de cuenta: 00165284031.
ii. CLABE: 012068001652840317.
iii. Banco: Bancomer.

No obstante, lo anterior, las partes acuerdan que los Señores Gil podrán notificarle por escrito a FCA, con al menos 30 (treinta) días naturales de anticipación, el cambio de parte o de la totalidad de las cuentas del Lugar de Pago, en el entendido que recibida dicha notificación FCA no requerirá solicitar confirmación alguna.

*La Renta será pagada a **los Señores Gil** sin necesidad de aviso ni demanda y sin deducciones, retenciones o diferimientos de especie alguna.*

***Los Señores Gil** no están obligados a aceptar pagos parciales de Renta y en caso de que lo hiciera, tal circunstancia no significará que hubiera habido modificación respecto de la forma y tiempo de pago convenida en este Contrato. Así mismo, si por cualquier eventualidad **FCA** paga a **los Señores Gil** la Renta en forma distinta a la estipulada en esta*

*costs and expenses relating the ownership and maintenance of the Leased Property, (b) pay the real estate tax of the Leased Property, (c) pay the insurance policies agreed to in clause 13, and (d) not be entitled to compensate or deduct any amount from the Rent, other than such amounts set forth herein with respect to the reduction of the Rents to reimburse the Security Deposits as discussed in clause 4.5. **FCA** hereby expressly and irrevocably waives the right to request reductions of the Rent or withhold the payment of the Rent established in the Federal Civil Code.*

*4.2 Place of Payment. **FCA** shall pay the Rent by electronic transfer of funds to **the Gils** accounts, pursuant to the following instructions **(the "Place of Payment"):***

(a) Jesus Salvador Gil Benavides.

i. Bank Account Number: 00448249008.
ii. CLABE: 012065004482490089.
iii. Bank: Bancomer.

(b) Alejandro Gil Benavides.

i. Bank Account Number: 60527879916.
ii. CLABE: 014068605278799165.
iii. Bank: Santander.

(c) Salvador Gil Benavides.

i. Bank Account Number: 00165284031.
i. CLABE: 012068001652840317.
ii. Bank: Bancomer.

Notwithstanding the foregoing, the parties agree that upon not less than 30 (thirty) calendar days prior notice, the Gils may notify in writing FCA the change of some or all of the accounts as the Place of Payment and FCA may rely exclusively on such notice without further investigation.

cláusula, las partes no deberán entender por ello la modificación o novación del Contrato, el cual permanecerá en pleno vigor y efecto. ***FCA** está obligado a pagar la Renta y las demás contraprestaciones pactadas, a pesar de que no pueda ocupar o usar la Propiedad Arrendada por cuestiones fiscales, laborales, administrativas u otras que le sean atribuibles o hayan sido decididas por **FCA.*** *(…)* *4.5 <u>El Depósito en Garantía</u>.* ***Las partes en este acto reconocen que FCA*** *deposit**ó a Fasemex*** *los Depósitos en Garantía* ***y que por virtud del Convenio de Cesión de Deuda (a) FCA, Fasemex y los Señores Alejandro Gil Benavides y Salvador Gil Benavides reconocieron que Fasemex había reembolsado a FCA a la fecha del Convenio de Cesión de Deuda el Reembolso del Depósito de Garantía A y el Reembolso del Depósito de Garantía B, adeudando a FCA el Saldo del Depósito de Garantía A y el Saldo del Depósito de Garantía B, (b) Fasemex cedió a los Señores Alejandro Gil Benavides y Salvador Gil Benavides y éstos asumieron en la proporción de los Porcentajes de las Deudas, las Deudas de los Depósitos, (c) FCA, como acreedor de las Deudas de los Depósitos, consintió expresamente (i) la sustitución de Fasemex en su calidad de deudor de las Deudas de los Depósitos, siendo ahora los nuevos deudores los Señores Alejandro Gil Benavides y Salvador Gil Benavides, y (ii) que el pago de las Deudas de los Depósitos lo realicen los Señores Alejandro Gil Benavides and Salvador Gil Benavides conforme a lo establecido en el Convenio de Cesión de Deuda, y (d) Fasemex se constituyó como obligado solidario y subsidiario para el cumplimiento de la obligación de pago de las Deudas de los Depósitos. Derivado de lo anterior***, ***FCA*** *autoriza expresamente a* ***los Señores Alejandro Gil Benavides and Salvador Gil Benavides*** *a utilizar discrecionalmente los Depósitos en Garantía, y además a usarlos para cubrir, entre otros gastos, razonablemente documentados y previamente notificados a **FCA** (a) el pago de servicios, (b) las reparaciones que se tengan que realizar a la terminación del*	*The Rent shall be paid to **the Gils** without prior notice or demand and without deductions, withholdings or deferrals of any kind.* ***The Gils** shall not have to accept partial Rent payments and if it does, such circumstance will not imply an amendment regarding the form and time of payment agreed to in this Agreement. Likewise, in the event that **FCA** pays the Rent to **the Gils** in a different way than that agreed to in this clause, the parties shall not interpret this as an amendment or novation of the Agreement, which will remain in full force and effect.* ***FCA** shall continue paying the Rent and any other fees agreed, even in the event it does not occupy or use the Leased Property for tax, labor, administrative or other reasons whatsoever that are attributable to or have been decided by **FCA**.* *(…)* *4.5 <u>The Security Deposit</u>.* ***The parties hereby acknowledge that FCA*** *deposit**ed to Fasemex*** *the Security Deposits* ***and that by virtue of the Debt Transfer Agreement (a) FCA, Fasemex and Messrs. Alejandro Gil Benavides and Salvador Gil Benavides acknowledged that Fasemex had reimbursed FCA as of the date of the Debt Transfer Agreement the Reimbursement of Security Deposit A and the Reimbursement of Security Deposit B, (b) Fasemex transferred to Messrs. Alejandro Gil Benavides and Salvador Gil Benavides and these assumed in the proportion of the Percentages of the Debts, the Debts of the Deposits, (c) FCA, as creditor of the Debts of the Deposits, expressly consents (i) to the substitution of Fasemex as debtor of the Debts of the Deposits, being Messrs. Alejandro Gil Benavides and Salvador Gil Benavides the new debtors hereinafter, and (ii) that the payment of the Debts of the Deposits shall be performed by Messrs. Alejandro Gil Benavides and Salvador Gil Benavides in accordance with the***

presente Contrato en caso de que el Contrato termine antes del vencimiento del plazo en que deban devolverse los Depósitos, (c) el pago de las pólizas de seguros, y (d) el pago de las cuotas de mantenimiento, si lo hubiere. Los Depósitos en Garantía en ningún momento deberán de considerarse como pago de Renta futura, ni como pago por adelantado de servicios o cualquier otro adeudo que pudiere tener ***FCA,*** *en los términos del presente Contrato.*	***terms of the Debt Transfer Agreement, and (d) Fasemex remains jointly and severally liable of the obligation to pay the Debts of the Deposits. Accordingly, FCA*** *expressly authorizes* **Messrs. Alejandro Gil Benavides and Salvador Gil Benavides** *to use the Security Deposits at its own discretion and also to use them to cover, among other expenses, that are reasonably documented and following notice to* ***FCA*** *(a) the payment of services, (b) the repairs that must be made at the termination of this Agreement in the event the Agreement terminates prior to the expiration of the Security Deposit Term, (c) the payment of insurance policies, and (d) the payment of maintenance fees, if any. The Security Deposits shall not be considered at any time as payment of future Rent, nor as advance payment for services or any other debt that* ***FCA*** *may have, under the terms of this Agreement.*
Sin perjuicio del uso de los Depósitos de Garantía por parte de **los Señores Alejandro Gil Benavides and Salvador Gil Benavides** *para cualquier fin o para pagar los gastos establecidos en el párrafo anterior,* ***los Señores Alejandro Gil Benavides and Salvador Gil Benavides y/o en su caso Fasemex*** *reembolsará**n** a* ***FCA el Saldo del Depósito de Garantía A y el Saldo del Depósito de Garantía B conforme a la fecha, forma y lugar de pago estipulados en el Convenio de Cesión de Deuda****. En el caso de que* **los Señores Gil** *aplique**n** una parte de los Depósito**s** de Garantía para pagar cualquiera de los gastos establecidos en el párrafo anterior, el monto reembolsable* **de los** *Depósito**s** de Garantía se reducirá en consecuencia.*	*Without prejudice to the use of the Security Deposits by* **Messrs. Alejandro Gil Benavides and Salvador Gil Benavides** *to any end or to pay the expenses set forth above* ***Messrs. Alejandro Gil Benavides and Salvador Gil Benavides and/or Fasemex, as the case may be, shall reimburse FCA for the Balance of Security Deposit A and the Balance of Security Deposit B in accordance with the date, form and place of payment established in the Debt Transfer Agreement.*** *In the event that Lessor applies a portion of the Security Deposit to pay any of the expenses set forth in the previous paragraph, the reimbursable amount of the Security Deposit shall be reduced accordingly.*
En ningún caso FCA estará obligado a reintegrar o reponer cualquier parte del Depósito en Garantía B."	***In no case shall FCA be obliged to refund or replace any part of Security Deposit B."***
Cláusula 4. <u>Modificación a la Cláusula 8.1 del Contrato de Novación</u>. Las partes acuerdan modificar la cláusula 8.1 del Contrato de Novación resaltando el texto agregado y/o modificado en negrillas, para efectos de que a partir de esta fecha dicha cláusula establezca lo siguiente:	**Clause 4. <u>Amendment to Clause 8.1 of the Novation Agreement</u>.** The parties agree to amend Clause 8.1 of the Novation Agreement, highlighting in bold letters, the text added
*"8.1 <u>Mantenimiento de **los Señores Gil**</u>.* ***Los Señores Gil****, a su propio costo y gasto, llevarán a cabo todas las reparaciones, la estructura de muros, la estructura del techo (incluyendo los miembros de soporte, pero excluyendo el aislamiento de techos y la membrana), del Edificio, que sean necesarios; siempre y cuando dichas reparaciones (a) no sean imputables a* ***FCA*** *o sus Filiales, causahabientes,*	

subarrendatarios, contratistas subcontratistas, empleados, visitas, agentes, o cualquier Persona bajo su responsabilidad, por haber sometido estas áreas estructurales a cargas por encima de las cargas de diseño, y que el uso de estos elementos estructurales están siendo estrictamente utilizadas para el propósito para el cual fueron diseñadas, y (b) no sean imputables a la negligencia o mala fe de ***FCA*** *o de sus Filiales, causahabientes, subarrendatarios, contratistas, subcontratistas, empleados, visitas, agentes, o cualquier Persona bajo su responsabilidad.* ***FCA*** *deberá notificar por escrito a* ***los Señores Gil*** *en un plazo que no excederá de 10 (días) días naturales a la fecha en que tenga conocimiento de los daños a la Propiedad Arrendada, la necesidad de que realice algún mantenimiento o reparación conforme a lo dispuesto por esta cláusula.*

En este acto, Fasemex se constituye como obligado solidario y subsidiario para el cumplimiento de las obligaciones a cargo de los Señores Gil conforme a la presente cláusula 8.1.

Los Señores Gil y/o en su caso Fasemex *realizarán los esfuerzos razonables para minimizar la interferencia con la actividad comercial de* ***FCA*** *en relación con el desempeño de cualquier trabajo descrito en esta cláusula."*

Cláusula 5. **Modificación a la Cláusula 9.4 del Contrato de Novación.** Las partes acuerdan modificar la cláusula 9.4 del Contrato de Novación resaltando el texto agregado y/o modificado en negrillas, para efectos de que a partir de esta fecha dicha cláusula establezca lo siguiente:

"9.4 Ampliaciones del Edificio. En caso que ***FCA*** *desee construir alguna ampliación en el Edificio que implique la construcción de pies cuadrados cubiertos bajo techo, las partes acuerdan someterse a lo siguiente:*

(a) ***FCA*** *deberá notificarlo por escrito a* ***los Señores Gil,*** *para que* ***los Señores Gil,*** *en un plazo de 30 (treinta) días naturales contados a*

and/or modified, for the purposes that from this date such clause establish the following:

"8.1 Maintenance by ***the Gils****.* ***The Gils*** *shall, at its own cost and expense, provide all repairs and replacements of Building foundations, the structure of walls and the structure of the roof (including the support members but without including the ceiling insulation and the membrane) that may be needed; provided that such repairs (a) are not imputable to* ***FCA****, its Affiliates, successors, sub-lessees, contractors, subcontractors, employees, visitors, agents, or any Person under its responsibility, for subjecting this structural areas to loads over the designed loads, and that the use of these structural elements has been strictly used for the purpose for which they were designed, and (b) are not imputable to the gross negligence or bad faith of the* ***FCA****, its Lessee or its Affiliates, or Affiliates, successors, sub-lessees, contractors, subcontractors, employees, visitors, agents, or any Person under its responsibility.* ***FCA*** *must notify* ***the Gils*** *in writing within a period not exceeding 10 (ten) calendar days from the date it becomes aware of damage to the Leased Property, the need to perform any maintenance or repair in accordance with the provisions of this clause.*

Fasemex shall hereby remain jointly and severally liable of the obligations of the Gils in accordance with this clause 8.1.

The Gils and or Fasemex, as the case may be, *shall use reasonable efforts to minimize interference with* ***FCA****'s conduct of business in connection with Lessor's performance of any work described in this clause."*

Clause 5. **Amendment to Clause 9.4 of the Novation Agreement.** The parties agree to modify clause 9.4 of the Novation Agreement, highlighting in bold letters, the text added

*partir de la fecha en que reciba**n** la notificación, le comunique**n** a **FCA** si tiene**n** interés en fondear y construir la ampliación,* *(b) En caso que **los Señores Gil** decida**n** construir la ampliación, las partes deberán negociar de buena fe los términos y condiciones comunes a esta clase de obras, por un periodo que no exceda los treinta (30) días, en el entendido que, la construcción será con las mismas características del Edificio actual para la manufactura de carros de ferrocarril. Además, en este caso **los Señores Gil** será**n** responsable**s** de obtener todas las licencias, permisos y autorizaciones requeridas por las autoridades federales, estatales o municipales para realizar las construcciones mencionadas, incluyendo sin limitar, manifestaciones de impacto ambiental, informes preventivos, licencias de construcción, terminación de obra, avisos, autorización sanitaria de las autoridades laborales y cualquier otro estudio, permiso, licencia o autorización que requiera la Ley Aplicable a la Propiedad Arrendada o al tipo de obra o instalación a realizar por **FCA** en la Propiedad Arrendada, y las pólizas de seguros de responsabilidad y riesgo adecuadas para este tipo de obras. Antes del inicio de las obras correspondientes, **los Señores Gil** entregará**n** a **FCA** copias de la póliza de seguro y demás documentos antes mencionados. Asimismo, **los Señores Gil** mantendrá**n** dichas licencias, permisos y autorizaciones, pólizas de seguro y demás documentos, vigentes durante el tiempo necesario para realizar las obras o instalaciones relacionadas a la ampliación del Edificio,* *(c) **FCA** pagará a **los Señores Gil,** de conformidad con la cláusula 4.1, la cantidad anual de Renta por pie cuadrado de la superficie total de la expansión, pagadera en el momento en que dicha expansión esté terminada,* *(d) **FCA** le pagará a **los Señores Gil** la renta por la ampliación de la misma forma pactada en la cláusula 4 de este Contrato, aplicable para el pago de la Renta,*	and/or modified, for the purposes that from this date such clause establish the following: *"9.4 Expansions to the Building. In the event **FCA** wishes to build an expansion to the Building that imply the construction of under roof square footage, the parties hereto agree as follows:* *(a) **FCA** shall give written notice to **the Gils**, so that **the Gils**, in a term of 30 (thirty) calendar days from the date it receives such notice, may let **FCA** know if **they** intend to fund and build such expansion,* *(b) In the event that **the Gils** decides to build the expansion, the parties shall negotiate in good faith the terms and conditions common to these types of works for a period not to exceed thirty (30) days, provided however that, the construction shall be, of the same characteristics of the current Building for the manufacture of railcars. In addition, in this case **the Gils** shall be responsible to obtain all licenses, permits and authorizations required by the federal, state or municipal authorities to carry out the related constructions, including without limitation, environmental impact reports, preventive reports, construction licenses, construction termination notices, sanitary authorization by labor authorities and any other study, permit, license or authorization required by Applicable Law to the Leased Property or to the type of work or installation to be carried out by the **FCA** at the Leased Property, and the liability and risk insurance policies adequate for such kind of works. Before the commencement of the corresponding works, **the Gils** shall deliver to **FCA** copies of the insurance policy and other documents mentioned above. Likewise, **the Gils** shall maintain such licenses, permits and authorizations, certificate of insurance and other documents, in effect during the time necessary to carry out the related works or installations for the expansion of the Building,*

*(e) **Los Señores Gil** no está**n** obligado**s** a construir la ampliación, en cuyo caso, después del periodo de treinta (30) días siguientes a la recepción de la notificación anterior referida en el inciso (a) anterior, **FCA** estará automáticamente autorizado para construir la ampliación directamente. **FCA** no pagará renta alguna sobre la ampliación del Edificio y las obras que construya serán transferidas por accesión a **los Señores Gil** a la terminación por cualquier causa, y **los Señores Gil** no estará**n** obligado**s** a pagar la ampliación o a reembolsar los gastos incurridos por **FCA** en la edificación de dichas obras.* *(f) En caso de que **FCA** construya la ampliación de conformidad con esta cláusula será responsable de obtener todas las licencias, permisos y autorizaciones que se requieran de parte de las autoridades federales, estatales y/o municipales para llevar a cabo las construcciones de que se trate, incluyendo sin limitar, manifestaciones de impacto ambiental, informes preventivos, informes continuos, licencias de construcción, avisos de terminación de obra, licencias sanitarias, autorizaciones de autoridades laborales y cualquier tipo de estudio, permiso, licencia o autorización requerido por la Legislación Aplicable a la Propiedad Arrendada o al tipo de obra o instalación que **FCA** pretenda llevar a cabo dentro de ésta, así como de los seguros de responsabilidad y riesgos que sean adecuados a los trabajos de que se trate. Previo al inicio de los trabajos correspondientes, **FCA** se obliga a entregar a **los Señores Gil**, copias de las pólizas de seguros y demás documentos antes mencionados. Asimismo, **FCA** será responsable de mantener dichas licencias, permisos, autorizaciones, seguros y demás documentos vigentes durante el tiempo que sea necesario para llevar a cabo las obras o instalaciones de la ampliación del Edificio.* ***En este acto, Fasemex se constituye como obligado solidario y subsidiario para el cumplimiento de las obligaciones a cargo de los Señores Gil conforme a la presente cláusula 9.4."***	*(c) **FCA** shall pay **the Gils**, pursuant to clause 4.1, the annual amount of Rent per square foot of the total surface of the expansion, payable in the time such expansion is finished,* *(d) **FCA** shall pay **the Gils** the rent payable for the expansion under the same terms set forth in clause 4 of this Agreement, applicable to the payment of the Rent,* *(e) **The Gils** shall not be obligated to build the expansion, in which case, following the first thirty (30) day period following receipt of notice in subsection (a) above, **FCA** shall be automatically authorized to build the expansion directly. **FCA** shall pay no rent whatsoever over the expansion of the Building and the works that builds shall be transferred to **the Gils.** at the termination hereof for any reason whatsoever, and **the Gils** shall not be obligated to pay the expansion or to reimburse any expenses or costs incurred by **FCA** when building such works.* *(f) In the event that **FCA** builds the expansion pursuant to this clause, then it shall be responsible to obtain all licenses, permits and authorizations required by the federal, state or municipal authorities to carry out the related constructions, including without limitation, environmental impact reports, preventive reports, construction licenses, construction termination notices, sanitary authorization by labor authorities and any other study, permit, license or authorization required by Applicable Law to the Leased Property or to the type of work or installation to be carried out by the **FCA** at the Leased Property, and the liability and risk insurance policies adequate for such kind of works. Before the commencement of the corresponding works, the Lessee shall deliver to **the Gils.** copies of the insurance policy and other documents mentioned above. Likewise, **FCA** shall maintain such licenses, permits and authorizations, certificate of insurance and other documents, in effect during the time*

Cláusula 6. <u>Modificación a la Cláusula 13.2 del Contrato de Novación</u>. Las partes acuerdan modificar la cláusula 13.2 del Contrato de Novación resaltando el texto agregado y/o modificado en negrillas, para efectos de que a partir de esta fecha dicha cláusula establezca lo siguiente: *"13.2 <u>Reglas Comunes a los Seguros</u>. Las partes se someten a las siguientes reglas en materia de seguros:* *(a) Las pólizas de seguro deberán obtenerse y acreditarse conforme a pólizas de seguro válidas y vigentes, emitidas por aseguradoras autorizadas para operar en México y razonablemente aceptables para* ***los Señores Gil.*** *(b) Todas las pólizas de seguro citadas en esta Cláusula deberán designar a* ***los Señores Gil*** *como asegurado**s** y/o beneficiario**s** preferente**s** en primer lugar* ***en la proporción de los Porcentajes de Arrendador, Fasemex*** *como asegurado adicional o beneficiario preferente en segundo lugar,* ***y FCA como asegurado adicional o beneficiario preferente en tercer lugar;*** *siendo en cada caso cubiertos sus intereses en la medida del interés asegurable de cada una de las partes.* ***Por virtud de la celebración del Contrato de Novación, FCA tramitó y obtuvo las pólizas de seguro citadas en esta Cláusula designando a Fasemex como asegurado y/o beneficiario preferente en primer lugar y a FCA como asegurado adicional o beneficiario preferente en segundo lugar, por lo que las partes acuerdan que por virtud de la celebración del Primer Convenio, FCA tomará las medidas razonables para tramitar y obtener las modificaciones necesarias para que las pólizas de seguro en mención designen a los Señores Gil como asegurados y/o beneficiarios preferentes en primer lugar en la proporción de los Porcentajes de Arrendador, a Fasemex como asegurado adicional o beneficiario preferente en segundo lugar, a FCA como asegurado adicional o beneficiario preferente en tercer lugar y cumplan con todas las demás reglas establecidas en está clausula 13.2, en un***	*necessary to carry out the related works or installations for the expansion of the Building.* ***Fasemex shall hereby remain jointly and severally liable of the obligations of the Gils in accordance with this clause 9.4."*** **Clause 6. <u>Amendment to Clause 13.2 of the Novation Agreement</u>.** The parties agree to modify clause 13.2 of the Novation Agreement, highlighting in bold letters, the text added and/or modified, for the purposes that from this date such clause establish the following: *"13.2 <u>Common Rules for Insurance</u>. The parties submit to the following insurance rules:* *(a) Any the insurance provided in this clause shall be obtained and evidenced under valid and enforceable policies issued by insurers authorized to do business in Mexico and reasonably acceptable to* ***the Gils****.* *(b) All insurance policies provided in this clause shall designate* ***the Gils*** *as insured or beneficiary in first place* ***in proportion of the Percentages of Lessor****,* ***Fasemex*** *as additional insured or beneficiary in second place limited* ***and FCA as additional insured or beneficiary in third place limited****; in each case, as their interests may appear and to the extent of said party insurable interest.* ***By virtue of the execution of the Novation Agreement, FCA processed and obtained the insurance policies mentioned in this Clause designating Fasemex as insured or beneficiary in first place and FCA as additional insured or beneficiary in second place limited; therefore, the parties agree that by virtue of the execution***

plazo que no podrá exceder de 30 (treinta) días naturales contados a partir de la firma del Primer Convenio. *(c) Las pólizas de seguro deberán contener cláusulas estándares de hipoteca en favor de los acreedores hipotecarios.* *(d) Cada póliza de seguro deberá incluir (i) un compromiso de la compañía de seguros previendo que dicha póliza no será cancelada sin previo aviso a* ***los Señores Gil*** *con al menos 30 (treinta) días naturales de anticipación, (ii) que cualquier pérdida pagadera a* ***los Señores Gil*** *será totalmente pagada, no obstante que* ***los Señores Gil*** *haya**n** actuado de manera negligente o dolosa y que como resultado de dicha conducta se cancele total o parcialmente la póliza respectiva, y (iii) una renuncia a ejercer el derecho de subrogación por parte de la compañía de seguros, en favor de* ***los Señores Gil.*** *(e) En caso de siniestro en la Propiedad Arrendada, que resulte en daños o destrucción al Edificio,* ***FCA*** *inmediatamente deberá notificar por escrito a* ***los Señores Gil*** *e inmediatamente iniciar con el procedimiento de ajuste de daños.* *(f) La suma de la indemnización del seguro, que se pagará como resultado por dicho daño o destrucción se pagará como se establece en el presente a fin de restaurar, reparar, reconstruir o remplazar la Propiedad Arrendada, en la medida de lo posible, a su valor, condición y característica original, inmediatamente antes de los daños o destrucción."* **Cláusula 7.** **<u>Modificación a las Cláusulas 14.1 14.2 y al segundo párrafo de la Cláusula 14.3 del Contrato de Novación</u>.** Las partes acuerdan modificar las cláusulas 14.1, 14.2 y el segundo párrafo de la cláusula 14.3 del Contrato de Novación resaltando el texto agregado y/o modificado en negrillas, para efectos de que a partir de esta fecha dichas cláusulas establezcan lo siguiente:	***of the First Amendment, FCA shall use reasonable efforts to process and obtain the necessary amendments so that the insurance policies mentioned in this Clause designate the Gils as insured or beneficiary in first place in the proportion of the Percentages of Lessor, Fasemex as additional insured or beneficiary in second place limited and FCA as additional insured or beneficiary in third place limited, and comply with all other rules set forth in this clause 13.2, within a term not to exceed 30 (thirty) calendar days from the date of execution of the First Amendment*** *(c) Insurance policies should contain standard clauses regarding mortgage in favor of mortgagees.* *(d) Each insurance certificate shall contain (i) an agreement made by the insurance company, stating that such policy shall not be canceled without at least 30 (thirty) calendar days' prior notice to* ***the Gils****, (ii) any loss payable to* ***the Gils*** *will be fully paid, even though* ***the Gils*** *has acted negligently or intentionally and as a result of such conduct the respective policy is canceled in whole or in part, and (iii) a waiver to exercise the right of subrogation by the insurance company, in favor of* ***the Gils****.* *(e) In case of casualty to the Leased Property, which results in damage or destruction to the Building,* ***FCA*** *shall immediately give written notice to* ***the Gils*** *and immediately begin damage adjustment proceedings.* *(f) The sum of the insurance moneys that are to be paid as a result of such damage or destruction shall be paid as set forth herein for the purpose of restoring, replacing, rebuilding or repairing the Leased Property as nearly as possible to its original value, condition and character, existing immediately prior to such damage or destruction."*

"14.1 <u>Enajenación, Cargas y Gravámenes</u>. ***(i) Fasemex y (ii) los Señores Gil*** *tendrán la facultad de enajenar, cargar y/o gravar la Propiedad Arrendada (**a**) a Filiales, (**b**) después de un periodo de 5 (cinco) años a terceros con el consentimiento de **FCA**, el cual no deberá ser negado sin razón (en el entendido que transmisiones de propiedad a competidores y sus filiales, cuyo negocio principal es la manufactura de carros de tren y partes para los mismos, deberá considerarse razón suficiente para negar dicho consentimiento).* *En todos los casos, **Fasemex o los Señores Gil**, según sea el caso, notificará**n** por escrito a **FCA** con 30 (treinta) días naturales de anticipación a la fecha en que surtirá efectos la transacción. En **el** caso señalado en **el** inciso (a), la notificación bastará para que **Fasemex o los Señores Gil, según sea el caso,** ejecuten la operación. En el caso del inciso **(b),** dentro de ese plazo, **FCA** deberá otorgar su consentimiento o negarlo sustentando fundadamente las razones de su negativa.* *En los casos en que proceda la celebración de la transacción, **Fasemex** o **los Señores Gil, según sea el caso,** incluirá**n** en el documento donde se haga constar la operación una disposición que reconozca la existencia y duración del presente Contrato.* *Si lo solicita**n Fasemex o los Señores Gil, según sea el caso**, **FCA** deberá, dentro de los 10 (diez) días hábiles siguientes a que **Fasemex o los Señores Gil** se lo solicite**n** por escrito, suscribir, reconocer y entregar a **los Señores Gil** un documento certificando que (a) una copia fiel y exacta de este Contrato se adjunta a dicho documento; (b) el presente Contrato se encuentra en pleno vigor y efecto y sin modificación alguna (o, en su caso, especificando la naturaleza de dicha modificación y adjuntando una copia de la misma); (c) la última fecha de pago de Renta realizado por **FCA;** (d) la ausencia de incumplimientos sin subsanar por parte de **los Señores Gil** (o, en su caso, una especificación de dichos incumplimientos, si los hubiere); y (e) cualquier otro asunto razonablemente*	**Clause 7. <u>Amendment to Clauses 14.1, 14.2 and to the second paragraph of Clause 14.3 of the Novation Agreement</u>.** The parties agree to modify clauses 14.1, 14.2 and the second paragraph of clause 14.3 of the Novation Agreement, highlighting in bold letters, the text added and/or modified, for the purposes that from this date such clauses establish the following: *"14.1 <u>Transfers, Charges and Levies</u>.* ***(i) Fasemex, and (ii) the Gils*** *reserve the right to transfer, charge and/or encumber the Leased Property to (**a**) Affiliates, or (**b**) following an initial period of 5 (five) years, to third parties upon consent of **FCA**, which shall not be unreasonable withheld (provided that transfer to competitors and affiliates thereof, whose primary business is the manufacture of railcars and parts thereof, shall be consider reasonable reasons for withholding such consent).* *In all cases, **Fasemex or the Gils, as the case may be,** shall give **FCA** in writing with thirty (30) calendar days prior to the date on which it shall take effect the transaction. In those cases, set forth in parentheticals (a), the written notice shall suffice for **Fasemex or the Gils, as the case may be,** to enter into the transaction. In the event set forth in parenthetical (**b**), within that term, **FCA** shall grant its consent or deny it properly supporting the reasons of its denial.* *In those cases that the transaction takes place, **Fasemex or the Gils, as the case may be,** shall include in the corresponding instrument documenting the transaction a provision recognizing the existence and the duration of this Agreement.* *If requested by **Fasemex or the Gils, as the case may be**, **FCA** shall, within ten (10) business days following the **Fasemex or the Gils, as the case may be** written request, execute, acknowledge and deliver to **the Gils, as appropriate** a document certifying that (a) a true and correct copy of this Agreement is attached to such document; (b) this Agreement*

requerido por **Fasemex los Señores Gil,** cualquier acreedor o posible acreedor de **Fasemex o de los Señores Gil** o posible adquirente de la Propiedad Arrendada.	is in full force and effect without amendment (or, where applicable, specifying the nature of the change and attaching a copy thereof); (c) the last date of payment of Rent by **FCA**; (d) the absence of uncured defaults by **the Gils** (or, where appropriate, a specification of such breaches, if any); and (e) any other matter reasonably required by **Fasemex or the Gils,** any creditor or potential creditor of **Fasemex or the Gils** or potential purchaser of the Leased Property.
Así mismo, **FCA** conviene, a solicitud de **los Señores Gil**, en subordinar este Contrato en términos mutuamente aceptables para las partes a toda garantía constituida sobre la Propiedad Arrendada (o cualquier parte de la misma), y deberá celebrar un convenio de subordinación razonablemente aceptable para **los Señores Gil,** según lo solicite por escrito cualquier acreedor o beneficiario de dicha garantía, dentro de los 15 (quince) días hábiles siguientes a dicha solicitud; en el entendido que dicho acreedor o beneficiario convenga en reconocer los derechos de **FCA** conforme a este Contrato, así como en no interrumpir la posesión, el uso y el goce de **FCA** respecto de la Propiedad Arrendada, en los términos del presente Contrato, sujeto a la condición consistente en que **FCA** esté en total cumplimiento de sus obligaciones conforme a este Contrato.	**In addition FCA** agrees, at the request of **the Gils**, to subordinate this Agreement under mutually acceptable terms to the parties to any guarantee placed upon the Leased Property (or any portion thereof), and shall execute into a subordination agreement reasonably acceptable to **the Gils** as requested in writing by any creditor or beneficiary of said guarantee, within 15 (fifteen) business days following said request; provided that such creditor or beneficiary agrees to recognize the **FCA**s rights under this Agreement and to not disturb the possession, use and enjoyment of **FCA** with respect to the Leased Property, under this Agreement subject to the condition that **FCA** continues to perform its obligations hereunder.
En todo caso, las partes quedan en el entendido que, de conformidad con las Leyes, este Contrato subsistirá en pleno vigor y efecto sobre cualquier transmisión de propiedad respecto de la Propiedad Arrendada o la ejecución de cualquier gravamen, a cargo de **Fasemex y/o los Señores Gil**, sobre la misma, y cualquier incumplimiento de pago de dichos gravámenes no afectará de modo alguno los términos de este Contrato. En caso que algún acreedor o beneficiario de garantía o cualquier otra Persona adquiera la Propiedad Arrendada derivado de algún procedimiento de ejecución o de cualquier otra forma, el acreedor, beneficiario o la Persona correspondiente deberá asumir las obligaciones de **los Señores Gil** conforme al presente Contrato y **FCA** conviene en reconocer al nuevo propietario de la Propiedad Arrendada.	In any case, the parties are in the understanding that in accordance with the Laws, this Agreement shall remain in full force and effects regarding any transfer of ownership of the Leased Property or the execution of any charge, by **Fasemex and/or the Gils,** thereon, and any default on those charges shall not affect in any way the terms of this Agreement. If any creditor or beneficiary of a guarantee or any other Person acquires the Leased Property as a result of an enforcement proceeding or otherwise, the creditor, beneficiary or Person concerned must assume the obligations of **the Gils** hereunder and **FCA** agrees to recognize the new owner of the Leased Property.
En relación con el Contrato de Arrendamiento Financiero y para efectos de claridad, las partes reconocen que (i) una vez que los Señores Gil hayan ejercido la Opción de Compra del Arrendamiento Financiero y	

hayan adquirido la propiedad del Primer Terreno y el Edificio, se convertirán automáticamente en arrendadores, y FCA en arrendataria, respecto de los mismos, reconociendo la existencia, términos y duración del presente Contrato; y (ii) en caso de que el Contrato de Arrendamiento Financiero se dé por terminado de manera anticipada por incumplimiento, o bien por cualquier razón los Señores Gil no ejerzan la Opción de Compra del Arrendamiento Financiero, o por cualquier otra razón la propiedad del Primer Terreno y el Edificio no sea transferida a los Señores Gil, el presente Contrato subsistirá en sus términos y duración convirtiéndose Fasemex en Arrendador y FCA en Arrendatario respecto del Primer Terreno y el Edificio.	***In connection with the Financial Lease Agreement and for clarity purposes, the parties acknowledge that (i) once the Gils have exercised the Financial Lease Purchase Option have acquired the property of the First Plot and the Building, will automatically become lessors and FCA will become lessee, with respect to them, acknowledging the existence, terms and duration of this Agreement; and (ii) in the event that the Financial Lease Agreement is early terminated due to an event of default, or the Gils do not exercise the Financial Lease Purchase Option for any reason, or for any other reason the property of the First Plot and the Building is not transferred to the Gils, this Agreement shall subsist in its terms and duration, becoming Fasemex the Lessor and FCA the Lessee with respect to the First Plot and the Building.***
*14.2 Cesión de **los Señores Gil**. **Los Señores Gil** se reserva**n** el derecho de ceder, en todo o en parte, sus derechos bajo este Contrato a **(a)** Filiales, o **(b)** después de un periodo de 5 (cinco) años, a terceros, incluyendo sin limitar fideicomisos patrimoniales, con el consentimiento de **FCA,** el cual no deberá ser negado sin razón (en el entendido que transmisiones de propiedad a competidores y sus filiales, cuyo negocio principal es la manufactura de carros de tren y partes para los mismos, deberá considerarse razón suficiente para negar dicho consentimiento).*	*14.2 Assignment by **the Gils**. **the Gils** reserves the right to assign, in whole or in part, its rights under this Agreement to (**a**) Affiliates, or (**b**) following an initial period of 5 (five) years, to third parties, including without limitation, estate trusts, upon consent of **FCA**, which shall not be unreasonable withheld (provided that transfer to competitors and affiliates thereof, whose primary business is the manufacture of railcars and parts thereof, shall be consider reasonable reasons for withholding such consent).*
*En todos los casos, **los Señores Gil** notificará**n** por escrito a **FCA** con 30 (treinta) días naturales de anticipación a la fecha en que surtirá efectos la transacción. En **el** caso señalado en **el** inciso (a), la notificación bastará para que **los Señores Gil** ejecute**n** la operación. En el caso del inciso **(b)**, dentro de ese plazo, **FCA** deberá otorgar su consentimiento o negarlo sustentando fundadamente las razones de su negativa.*	*In all cases, **the Gils** shall give **FCA** in writing with thirty (30) calendar days prior to the date on which it shall take effect the transaction. In this case set forth in parenthetical (a), the written notice shall suffice for **the Gils** to enter into the transaction. In the event set forth in parenthetical (**b**) above, within that term, **FCA** shall grant its consent or deny it properly supporting the reasons of its denial.*
14.3 Cesión y Subarrendamiento del Arrendatario. *(…)* *El Arrendatario en este acto renuncia, de manera expresa e irrevocable, a sus derechos de subarrendar la Propiedad Arrendada o solicitar*	

la rescisión del presente Contrato si el Arrendador se opone a que el Arrendatario otorgue en subarrendamiento la misma, previstos en el Código Civil Federal. En ese sentido, a menos que la cesión o subarrendamiento sea de los autorizados en el primer párrafo de esta cláusula 14.3, la Arrendataria no podrá ceder los derechos derivados de este contrato y/o subarrendar la Propiedad Arrendada a terceros sin el consentimiento del Arrendador otorgado por escrito ***el cual no podrá ser negado injustificadamente.*** *En caso que el Arrendador lo autorice* ***(a)*** *la Arrendataria se obliga a incluir en el documento donde se haga constar la transacción una disposición que reconozca la existencia y Plazo del presente Contrato,* ***(b) la relación contractual entre los Señores Gil y el Arrendatario se mantendrá en pleno vigor y la nueva subarrendataria no sustituirá a la Arrendataria en su relación contractual con los Señores Gil, y (c) la Arrendataria se compromete en mantener en paz y salvo e indemnizar a los Señores Gil por cualquier reclamación, demanda, acción, daño o perjuicio en contra de los Señores Gil causado directa o indirectamente por la nueva subarrendataria.*** *(...)"* **Cláusula 8. <u>Modificación a la Cláusula 15 del Contrato de Novación</u>.** Las partes acuerdan modificar la cláusula 15 del Contrato de Novación resaltando el texto agregado y/o modificado en negrillas, para efectos de que a partir de esta fecha dicha cláusula establezca lo siguiente: *"Cláusula 15. <u>Derecho de Preferencia por el Tanto</u>.* ***FCA reconoce que por virtud del Contrato de Arrendamiento Financiero los Señores Gil tendrán el derecho de realizar la compra del Primer Terreno y el Edificio, en copropiedad, al finalizar la vigencia de dicho contrato o cuando las partes acuerden el vencimiento anticipado del mismo y una vez que se hayan cumplido todas y cada una de las obligaciones***	*14.3 <u>Assignment and Subletting by Lessee.</u> (...)* *Lessee hereby, expressly and irrevocably waives its right to sublease the Leased Property or request the termination of this Agreement if Lessor opposes to the sublease by Lessee established in the Federal Civil Code. In that regard, unless the assignment or sublease is authorized per the first paragraph of this clause 14.3, Lessee shall not assign the rights under this contract and/or sublease the Leased Property to third parties without the written consent of Lessor* ***which shall not be unreasonably withheld.*** *If authorized by Lessor* ***(a)*** *Lessee shall include in the document where the transaction shall be executed, a provision recognizing the existence and the Term of this Agreement****, (b) the legal relationship between the Gils and Lessee shall remain in full force and effect and the new sublessee shall not substitute Lessee in its legal relationship with the Gils, and (c) Lessee shall hold harmless and indemnify the Gils for any claim, demand, lawsuit o damage against the Gils derived directly or indirectly from the new sublessee.*** *(...)"* **Clause 8. <u>Amendment to Clause 15 of the Novation Agreement</u>.** The parties agree to modify clause 15 of the Novation Agreement, highlighting in bold letters, the text added and/or modified, for the purposes that from this date such clause establish the following: *"Clause 15. <u>Right of First Refusal</u>.*

de dicho contrato (la "<u>Opción de Compra del Arrendamiento Financiero</u>"). ***Derivado de lo anterior**, **FCA** en este acto mantiene expresamente el derecho de preferencia por el tanto**, respecto del Primer Terreno y el Edificio solo en caso de que los Señores Gil no ejerzan la Opción de Compra del Arrendamiento Financiero y Fasemex** enajene **el Primer Terreno y/o el Edificio respectivamente,** total o parcialmente, a tercero alguno.* ***En caso de que los Señores Gil ejerzan la Opción de Compra del Arrendamiento Financiero, y se conviertan en arrendadores puros con respecto a FCA sobre el Primer Terreno y el Edificio, en este acto los Señores Gil aceptan y reconocen que en ese momento FCA adquirirá el derecho de preferencia por el tanto cuando los Señores Gil enajenen el Primer Terreno y/o el Edificio, total o parcialmente, a tercero alguno. Lo anterior, en el entendido que este derecho de preferencia por el tanto no aplicará si los Señores Gil enajenan el Primer Terreno y/o el Edificio, total o parcialmente entre ellos o a alguna de sus Filiales.*** ***Respecto del Segundo Terreno, FCA en este acto mantiene expresamente el derecho de preferencia por el tanto cuando los Señores Gil enajenen el Segundo Terreno, total o parcialmente, a tercero alguno. Lo anterior, en el entendido que este derecho de preferencia por el tanto no aplicará si los Señores Gil enajenan el Segundo Terreno, total o parcialmente entre ellos o a alguna de sus Filiales.**"* **Cláusula 9. <u>Modificación a la Cláusula 20.1 del Contrato de Novación</u>.** Las partes acuerdan modificar la cláusula 20.1 del Contrato de Novación resaltando el texto agregado y/o modificado en negrillas, para efectos de que a partir de esta fecha dicha cláusula establezca lo siguiente: *"20.1 <u>Fianza Solidaria</u>. Simultáneamente con la firma **del Primer Convenio, los Señores Gil, FCA** y el Garante firmarán la **modificación***	***FCA acknowledges that by virtue of the Financial Lease Agreement, the Gils shall have the right to purchase the First Plot and the Building, in co-ownership, at the end of the term of such agreement or when the parties agree upon the early termination of such agreement and once each and every obligation under such agreement has been fulfilled (the "<u>Financial Lease Purchase Option</u>").*** ***As a result of the foregoing, FCA** hereby expressly retains the right of first refusal**, with respect to the First Plot and the Building,** if the **Gils do not exercise the Financial Lease Purchase Option and Fasemex transfer the First Plot and the Building and/or the Second Plot, respectively,** in whole or in part, to a third party.* ***In the event that the Gils exercise the Financial Lease Purchase Option and become lessors of FCA with respect to the First Plot and the Building, the Gils hereby accept and acknowledge that in such time FCA will have the right of first refusal if the Gils transfer the First Plot and/or the Building, in whole or in part, to a third party. The foregoing, in the understanding that this right of first refusal will therefore not apply if the Gils transfer the First Plot and / or the Building, in whole or in part, between them or to any of their Affiliates.*** ***With respect to the Second Plot, FCA hereby expressly retains the right of first refusal if the Gils transfer the Second Plot, in whole or in part, to a third party. The foregoing, in the understanding that this right of first refusal will therefore not apply if the Gils transfer the Second Plot, in whole or in part, between them or to any of their Affiliates."*** **Clause 9. <u>Amendment to Clause 20.1 of the Novation Agreement</u>.** The parties agree to

***a la** Garantía **para incluir a los Señores Gil como partes garantizadas**, en los términos del instrumento **que se adjunta al presente como <u>Anexo "A"</u> y que a partir de la firma del presente instrumento formara parte del <u>Anexo "D"</u> del Contrato de Novación**. Dicha Garantía deberá ser exigible hasta la Fecha de Terminación."*	modify clause 20.1 of the Novation Agreement, highlighting in bold letters, the text added and/or modified, for the purposes that from this date such clause establish the following: *"20.1 <u>Guarantee</u>. Simultaneously with the execution of the **First Amendment, the Gils, FCA** and Guarantor shall sign the **amendment to the** Guaranty **to include the Gils as guaranteed parties, in the terms of the document attached hereto as <u>Exhibit "A"</u> and that as of the execution of this First Amendment, it shall form part of <u>Exhibit "D"</u> of the Novation Agreement.** This guarantee shall be enforceable up to the Termination Date."*
Cláusula 10. <u>Modificación a la Cláusula 21.2 del Contrato de Novación, inciso (e)</u>. Las partes acuerdan modificar el inciso (e) de la cláusula 21.1. resaltando el texto agregado y/o modificado en negrillas, para efectos de que a partir de esta fecha dichas cláusulas establezcan lo siguiente: *"21.2 <u>Incumplimiento del Arrendatario</u>. (…)* *(e) Si el Arrendatario subarrienda la Propiedad Arrendada a terceros **en contravención a lo establecido en el presente Contrato**."*	**Clause 10. <u>Amendment to Clause 21.2, section (e) of the Novation Agreement</u>.** The parties agree to modify section (e) of clause 21.2 of the Novation Agreement, highlighting in bold letters, the text added and/or modified, for the purposes that from this date such clauses establish the following: *"21.2 Defaults by Lessee. (…)* *(e) If Lessee subleases the Leased Property to third parties, **in contravention to the provisions of this Agreement**."*
Cláusula 11. <u>Modificación a las Cláusulas 23.4 y 23.12 del Contrato de Novación</u>. Las partes acuerdan modificar las cláusulas 23.4 y 23.12 del Contrato de Novación resaltando el texto agregado y/o modificado en negrillas, para efectos de que a partir de esta fecha dichas cláusulas establezcan lo siguiente: *"23.4 <u>Notificaciones</u>. Las partes señalan como sus respectivos domicilios convencionales para toda clase de avisos y notificaciones, incluyendo sin limitar interpelaciones judiciales y emplazamientos a juicio relacionados o derivados de este Contrato, mismas que solamente surtirán efectos si se efectúan en persona, por correo certificado con acuse de recibido o de manera fehaciente por conducto de un fedatario público o de la autoridad judicial competente, los siguientes:* ***Los Señores Gil:*** ***Jesús Salvador Gil Benavides, Alejandro Gil Benavides y Salvador Gil Benavides*** ***Carretera 57 Km 178*** ***Castaños, Coahuila, 25780 México*** ***FCA:***	**Clause 11. <u>Amendment to Clauses 23.4 and 23.12 of the Novation Agreement</u>.** The parties agree to modify clauses 23.4 and 23.12 of the Novation Agreement, highlighting in bold letters, the text added and/or modified, for the purposes that from this date such clauses establish the following: *"23.4 <u>Notices</u>. The parties hereby provide as their conventional domicile for any kind of communications and notices, including but not limited to judicial inquiries and emplacements to trial related or under this Agreement, which shall only be binding if delivered in person, by certified mail return receipt requested, or evidenced by a "Fedatario Público" or competent judicial authority, the following:*

FCA-Fasemex, S. de R.L. de C.V *Tepic 1100, Colonia California,* ***Castaños,** Coahuila, México* ***Fasemex:*** *Fabricaciones y Servicios de México SA de CV.* *Carretera 57 Km 178* *Castaños, Coahuila, 25780 México* *(…)* *23.12 <u>Lugar de Cumplimiento de Obligaciones</u>. Las partes señalan como lugar de cumplimiento de las obligaciones pactadas en este Contrato, los domicilios convencionales mencionados en la cláusula 23.4; en el entendido que **FCA** deberá cumplir sus obligaciones en **los** domicilios de **los Señores Gil y de Fasemex, los Señores Gil** deberá**n** cumplir sus obligaciones en **los** domicilio**s** de **FCA y de Fasemex** y **Fasemex deberá cumplir sus obligaciones en los domicilios de los Señores Gil y de FCA,** sin necesidad de requerimiento o interpelación judicial."* **Cláusula 12. <u>Apéndice 4.5 (b)</u>.** Las partes acuerdan dejar sin efectos el apéndice 4.5 (b) del presente Contrato. **Cláusula 13. <u>Disposiciones Generales</u>**. 13.1 <u>Relación de las Partes</u>. Salvo por lo dispuesto en el presente Primer Convenio las partes acuerdan que la relación entre las mismas continuará regida por las disposiciones del Contrato de Novación en todas sus partes. 13.2 <u>No Novación</u>. Las partes acuerdan que la celebración del presente Primer Convenio no significa Novación del Contrato de Novación. 13.3 <u>Encabezados</u>. Las partes convienen en que los encabezados contenidos en este Primer Convenio se insertan exclusivamente para referencia y no se considerarán como parte del	***The Gils:*** ***Jesús Salvador Gil Benavides, Alejandro Gil Benavides y Salvador Gil Benavides*** ***Carretera 57 Km 178*** ***Castaños, Coahuila, 25780 México*** ***FCA:*** *FCA-Fasemex, S. de R.L. de C.V* *Tepic 1100, Colonia California,* ***Castaños,** Coahuila, México* ***Fasemex:*** *Fabricaciones y Servicios de México SA de CV.* *Carretera 57 Km 178* *Castaños, Coahuila, 25780 México* *(…)* *23.12 <u>Place to Fulfill Obligations</u>. The parties hereby designate as a place of fulfillment of the obligations agreed herein, the conventional addresses mentioned in clause 23.4; in the understanding that **FCA** shall fulfill its obligations at the address of **the Gils and Fasemex**, **the Gils** shall fulfill its obligations at the address of **FCA and Fasemex** and **Fasemex shall fulfill its obligations in the address of the Gils and FCA**, without request or judicial interpellation."* **Clause 12. <u>Schedule 4.5 (b).</u>** The parties agree to cancel Schedule 4.5 (b) of this Agreement. **Clause 13. <u>Miscellaneous</u>.** 13.1 <u>Relationship of the Parties</u>. Except as provided in this First Amendment, the parties hereby agree that the relationship between them shall continue to be governed by the provisions of the Novation Agreement in all its parts.

mismo ni se utilizarán para definir, interpretar o limitar el contenido del Contrato. 13.4 Ley Aplicable. Este Contrato estará sujeto y se regirá por la legislación federal mexicana, incluyendo sin limitar el Código Civil Federal. 13.5 Obligaciones de Fasemex. Nada de lo pactado en el presente instrumento libera al arrendador original (Fasemex) de sus obligaciones y se mantendrá como obligado solidario de los Señores Gil. Lo dispuesto en el presente instrumento no constituye liberación de reclamación alguna que exista a esta fecha en contra del Arrendador. El presente Primer Convenio se firma el día 5 de noviembre de 2021, en la ciudad de Castaños, Coahuila.	13.2 No Novation. The parties hereby agree that the execution of this First Amendment shall not constitute a novation of the Novation Agreement. 13.3 Headings. The parties hereby agree that the headings contained herein are provided for convenience only and they shall not be deemed to be part, define, interpret or limit the content of the First Agreement. 13.4 Governing Law. This First Amendment shall be subject to and governed by the Mexican federal law, including the Federal Civil Code. 13.5 Fasemex Continuing Obligations. Nothing herein shall release original Lessor (Fasemex) from any obligations and it shall remain joint and severally liable with the Gils. Nothing herein shall constitute a waiver of any claims existing as of the date hereof against Lessor. This First Amendment is executed on November 5, 2021, in the city of Castaños, Coahuila.

/s/ Alejandro Gil Benavides	/s/ Jesus Salvador Gil Benavides	/s/ Salvador Gil Benavides
ALEJANDRO GIL BENAVIDES	**JESUS SALVADOR GIL BENAVIDES**	**SALVADOR GIL BENAVIDES**

/s/ James R. Meyer

FCA FASEMEX, S. DE R.L. DE C.V.
REPRESENTADA POR: JAMES R. MEYER

/s/ Alejandro Gil Benavides

FABRICACIONES Y SERVICIOS
DE MEXICO, S.A. DE C.V.
REPRESENTADA POR: ALEJANDRO GIL BENAVIDES

TESTIGOS:

/s/ Alberto Delgadillo Prado	/s/ Cinthia Eloísa Chacón Gutiérrez
Alberto Delgadillo Prado	**Cinthia Eloísa Chacón Gutiérrez**

Exhibit 21

SUBSIDIARIES OF FREIGHTCAR AMERICA, INC.

Name of Subsidiary	Percent Ownership by Registrant
JAC Operations Inc.	100%
Johnstown America, LLC	100%
Freight Car Services, Inc.	100%
JAIX Leasing Company	100%
FreightCar Roanoke, LLC	100%
FreightCar Rail Services, LLC	100%
FreightCar Rail Management Services, LLC	100%
FreightCar Short Line, Inc.	100%
FreightCar Mauritius Ltd.	100%
FreightCar Alabama, LLC	100%
FreightCar (Shanghai) Trading Co., Ltd.	100%
FreightCar America Leasing, LLC	100%
FreightCar America Railcar Management, LLC	100%
FreightCar America Capital Leasing LLC	100%
FreightCar America Leasing 1, LLC	100%
FreightCar North America, LLC	100%
FCA-FASEMEX, LLC	100%
FCA-FASEMEX, S. de R.L., de C.V.	100%
FCA-FASEMEX Enterprise, S. de R.L., de C.V.	100%

All subsidiaries are Delaware corporations or Delaware limited liability companies except FreightCar Mauritius Ltd., which is incorporated in Mauritius, FreightCar (Shanghai) Trading Co., Ltd., which is organized in the People's Republic of China and FCA-FASEMEX, S. de R.L., de C.V. and FCA-FASEMEX Enterprise, S. de R.L., de C.V. which are organized in Mexico.

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated March 21, 2022, with respect to the consolidated financial statements included in the Annual Report of FreightCar America, Inc. on Form 10-K for the year ended December 31, 2021. We consent to the incorporation by reference of said report in the Registration Statement of FreightCar America, Inc. on Form S-8 (File Nos. 333-131981, 333-184820, 333-225886 and 333-238297) and on Form S-3 (File No. 333-259124).

/s/ GRANT THORNTON LLP

Chicago, Illinois
March 21, 2022

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement No. 333-259124 on Form S-3 and Registration Statement Nos. 333-131981, 333-184820, 333-225886 and 333-238297 on Form S-8 of our report dated March 24, 2021, relating to the consolidated financial statements of FreightCar America, Inc. and subsidiaries (the “Company”), appearing in this Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ Deloitte & Touche LLP

Chicago, Illinois

March 21, 2022

Exhibit 31.1

Certification of Chief Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, James R. Meyer, certify that:

1. I have reviewed this Annual Report on Form 10-K of FreightCar America, Inc.;

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

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

4. The registrant’s other certifying 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 by 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 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 21, 2022

By: /s/ JAMES R. MEYER
James R. Meyer
President and Chief Executive Officer

Exhibit 31.2

Certification of Chief Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Michael A. Riordan, certify that:

1. I have reviewed this Annual Report on Form 10-K of FreightCar America, Inc.;

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

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

4. The registrant's other certifying 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 by 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 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 21, 2022

By: /s/ MICHAEL A. RIORDAN
Michael A. Riordan
Vice President,
Chief Financial Officer and Treasurer

Exhibit 32

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 of FreightCar America, Inc. (the "Company") on Form 10-K for the year ending December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, James R. Meyer, President and Chief Executive Officer, and Michael A. Riordan, Vice President, Chief Financial Officer and Treasurer, respectively, of the Company, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to our knowledge:

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

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

Date: March 21, 2022

By: /s/ JAMES R. MEYER
James R. Meyer
President and Chief Executive Officer

Date: March 21, 2022

By: /s/ MICHAEL A. RIORDAN
Michael A. Riordan
Vice President,
Chief Financial Officer and Treasurer

A signed copy of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Exhibit 99.1

Press Release

FreightCar America, Inc. Announces CFO Transition

Company promotes Michael Riordan to Chief Financial Officer

CHICAGO, March 21, 2022 -- FreightCar America, Inc. (Nasdaq: RAIL) ("FreightCar America" or the "Company") announced the promotion of Michael A. (Mike) Riordan to Chief Financial Officer (CFO) effective today. Mr. Riordan has served as the Company's Corporate Controller and Chief Accounting Officer since November 2020 and replaces Terence R. (Terry) Rogers, who joined FreightCar America in early 2021 and will leave the Company after a transition period.

"On behalf of the entire FreightCar America team, I want to thank Terry for his many contributions to our successes during the past year," said Jim Meyer, President and Chief Executive Officer of FreightCar America. "Terry joined us on short notice last year at a critical time for the Company. He has been an integral part of the team and we wish him all the very best."

Meyer added, "We are thrilled to have Mike become part of FreightCar America's executive leadership team. Mike has been instrumental in everything that we have accomplished over the past couple of years and has provided leadership through both his financial expertise and comprehensive knowledge of our operations. He is an operating partner in every sense."

Mr. Riordan concluded, "I am excited to have the opportunity to lead the Company as its CFO as we pivot to our next phase which includes sustainable growth. I also want to thank Terry for his support and mentorship during the past year as I prepared for this role."

Mr. Riordan joined FreightCar America in November 2020 and has over 15 years of experience in finance, accounting, and operations. Prior to joining FreightCar America, Mr. Riordan was Controller at InnerWorkings from 2017 to 2020. Prior to joining InnerWorkings, Mr. Riordan served in several financial management positions at Wheatland Tube, LLC which is a subsidiary of Zekelman Industries from 2013 to 2017. Mr. Riordan also held various positions at PricewaterhouseCoopers. He holds a Bachelor's Degree in Accounting & Finance from Miami University and is a Certified Public Accountant.

About FreightCar America

FreightCar America, Inc. is a diversified manufacturer of railroad freight cars, that also supplies railcar parts and leases freight cars through its FreightCar America Leasing Company subsidiaries. FreightCar America designs and builds high-quality railcars, including open top hopper cars, covered hopper cars, intermodal and non-intermodal flat cars, mill gondola cars, coil steel cars, boxcars, and coal cars, and also specializes in the conversion of railcars for repurposed use. FreightCar America is headquartered in Chicago, Illinois and has facilities in the following locations: Castaños, Mexico; Johnstown, Pennsylvania; and Shanghai, People's Republic of

China. More information about FreightCar America is available on its website at www.freightcaramerica.com.

Forward-Looking Statements

This press release may contain statements relating to our expected financial performance and/or future business prospects, events and plans that are "forward-looking statements" as defined under the Private Securities Litigation Reform Act of 1995. Forward-looking statements represent our estimates and assumptions only as of the date of this press release. Our actual results may differ materially from the results described in or anticipated by our forward-looking statements due to certain risks and uncertainties. These potential risks and uncertainties include, among other things: risks relating to the potential financial and operational impacts of the COVID-19 pandemic; the cyclical nature of our business; adverse economic and market conditions; fluctuating costs of raw materials, including steel and aluminum, and delays in the delivery of raw materials; our ability to maintain relationships with our suppliers of railcar components; our reliance upon a small number of customers that represent a large percentage of our sales; the variable purchase patterns of our customers and the timing of completion, delivery and customer acceptance of orders; the highly competitive nature of our industry; the risk of lack of acceptance of our new railcar offerings by our customers; and other competitive factors. We expressly disclaim any duty to provide updates to any forward-looking statements made in this press release, whether as a result of new information, future events or otherwise.

INVESTOR/MEDIA CONTACT Lisa Fortuna or Stephen Poe
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