UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

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

For the fiscal year ended December 31, 2022

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 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.

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

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

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant as of June 30, 2022 was $45.0 million, based on the closing price of $3.64 per share on the Nasdaq Global Market.

As of March 16, 2023, there were 17,702,459 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 2023 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, 2022	Part III

FREIGHTCAR AMERICA, INC.

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PART I

Item 1. Business.

OVERVIEW

FreightCar America, Inc., a Delaware corporation ("FCA") and its subsidiaries (the "Company", "we", "us", and "our" refers to FCA and its subsidiaries) 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 reduced costs and aligned our manufacturing capacity with the current railcar market. We ceased production at the Shoals Facility in February 2021.

We lease freight cars through our leasing entities, including JAIX Leasing Company, and FreightCar America Leasing 1, LLC. 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 shippers, railroads, and financial institutions which represented 38%, 36% and 22%, respectively, of our total sales attributable to each type of customer for the year ended December 31, 2022. In the year ended December 31, 2022, we delivered 3,184 railcars, including 2,281 new railcars and 903 rebuilt railcars, compared to 1,731 railcars, including 1,354 new railcars and 377 rebuilt railcars, delivered in the year ended December 31, 2021. Our total backlog of firm orders for railcars increased from 2,323 railcars as of December 31, 2021 to 2,445 railcars as of December 31, 2022. Our backlog as of December 31, 2022 includes a variety of railcar types and the estimated sales value of the backlog is $288 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 our Board of Directors (the "Board") 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 seven years, we have added 22 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; (longitudinal trough and 5, 7, 9, and 10 transverse trough) coil gondolas; woodchip 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. 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 rebuilds to transforming unused railcars into the latest designs, we deliver customer-focused solutions. We have completed over 14,000 total conversions and rebuilds 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 shippers, railroads, and financial institutions. 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 2022, revenue from three customers, Union Pacific Railroad, Vulcan Materials Company and Infinity Transportation, accounted for approximately 20%, 19% and 16%, respectively, of total revenue. In 2022, sales to our top five customers accounted for approximately 76% of total revenue. 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. We did not have any railcar sales to customers outside the United States in 2022 and 2021. Many of our customers do not purchase railcars every year because 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 ("VPs"), contract administrators, a manager of customer service, a director of field support, and support staff. The VPs 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 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,	
	2022	**2021**
Railcar backlog at start of period	2,323	1,389
Net railcar orders received	3,306	2,665
Railcars delivered	(3,184)	(1,731)
Railcar backlog at end of period (1)	2,445	2,323
Estimated revenue from backlog at end of period (in thousands) (2)	$ 287,969	$ 240,160

(1) Railcar backlog includes 423 and 605 rebuilt railcars as of December 31, 2022 and 2021, 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, 2022 includes $40.6 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 Ryerson 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. Our primary steel suppliers are Feralloy Corporation and Reibus International. Steel prices generally are not fixed at the time a railcar order is accepted due to fluctuations in market prices. In 2022 we primarily bought fabrications from local suppliers, with Fasemex being the largest of the local suppliers. In the third quarter of 2022, we initiated the process of opening our fabrication shop at our Castaños Facility. However, we continued to buy fabrications from our local suppliers during this time.

Our primary component suppliers include Wabtec, Amsted, Standard Steel, SKF, 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 53% and 20% of our new railcars produced in 2022 and 2021, 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 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 62% and 80% of our total purchases in 2022 and 2021, 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. Our key patent includes our hopper railcar with automatic individual door system. The protection of our intellectual property is important to our business.

HUMAN CAPITAL

Employees

As of December 31, 2022, we had 1,435 employees, of which 319 were salaried and 1,116 were hourly wage earners. As of December 31, 2022, 1,381 of our employees were based in Mexico, 52 were based in the U.S. and 2 were based in China. 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, 54 were based in the U.S. 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 including 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. Our Nominating and Corporate Governance Committee has undertaken a comprehensive review of our governance policies in light of recent trends relating to environmental, social and governance ("ESG") topics and disclosure. The Nominating and Corporate Governance Committee meets periodically with senior management 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 than other modes of transportation to fuel the North American supply chain. 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 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 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. 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, the costs of such activities 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, 2022:

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	488,725 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 16, 2023, there were approximately 65 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 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 considers to be relevant. The ability of our Board 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. 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.

In September 2020, we announced our plan to permanently close the Shoals Facility in light of the cyclical industry downturn, which was magnified by the global pandemic. The closure reduced costs and aligned our manufacturing capacity with the current railcar 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.

Railcar deliveries totaled 3,184 railcars, consisting of 2,281 new railcars and 903 rebuilt railcars, for the year ended December 31, 2022, compared to 1,731 railcars delivered in the year ended December 31, 2021, consisting of 1,354 new railcars and 377 rebuilt railcars. Our total backlog of firm orders for railcars increased from 2,323 railcars as of December 31, 2021 to 2,445 railcars as of December 31, 2022. The estimated sales value of the backlog was $288 million and $240 million, respectively, as of December 31, 2022 and 2021.

The Company recognized an increase in revenue compared to the corresponding prior year which we attribute primarily to improvement in the railcar market in 2022.

Since the COVID-19 pandemic first being reported in December 2019, the Company continues to monitor and assess the impact of the COVID-19 pandemic, as well as the impact on the global economy, government reactions to the pandemic, and disruptions in global supply chain. Our management is focused on mitigating the impact of the COVID-19 pandemic on our business and the risk to our employees.

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, 2022 are fixed-rate contracts. Therefore, if material costs were to increase as a result of changes in economic conditions, imposition of tariffs or other governmental regulations, 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 pension settlement, and selling, general and administrative expenses.

RESULTS OF OPERATIONS

Year Ended December 31, 2022 compared to Year Ended December 31, 2021

Revenues

Our consolidated revenues for the year ended December 31, 2022 were $364.8 million compared to $203.1 million for the year ended December 31, 2021. Manufacturing segment revenues for the year ended December 31, 2022 were $352.9 million compared to $192.8 million for the year ended December 31, 2021. The increase in Manufacturing segment revenues for 2022 compared to 2021 reflects an increase in the number of railcars delivered from 1,731 railcars in 2021 to 3,184 railcars in 2022, as well as a higher average selling price for new railcars. Corporate and Other revenues for the year ended December 31, 2022 were $11.9 million compared to $10.2 million for the year ended December 31, 2021, reflecting higher parts sales.

Gross Profit

Our consolidated gross profit for the year ended December 31, 2022 was $25.8 million compared to $11.5 million for the year ended December 31, 2021. Our consolidated gross margin was 7.1% for the year ended December 31, 2022 compared to 5.6% for the year ended December 31, 2021. Manufacturing segment gross profit for the year ended December 31, 2022 was $22.2 million compared to $8.5 million for the year ended December 31, 2021. The $14.3 million increase in consolidated gross profit and $13.7 million increase in Manufacturing segment gross profit reflect a favorable volume variance and improved margins per car.

Selling, General and Administrative Expenses

Consolidated selling, general and administrative expenses for the year ended December 31, 2022 were $28.2 million compared to $27.5 million for the year ended December 31, 2021. Consolidated selling, general and administrative expenses for the year ended December 31, 2022 included increases in insurance expenses of $1.0 million, corporate incentive plan bonus expenses of $0.7 million, and bad debt expenses of $0.6 million, which were partially offset by a decrease in legal expenses of $1.5 million. Consolidated selling, general and administrative expenses for the year ended December 31, 2022 were 7.7% of revenue, compared to 13.6% of revenue for the year ended December 31, 2021. Manufacturing segment selling, general and administrative expenses for the year ended December 31, 2022 were $2.8 million compared to $2.6 million for the year ended December 31, 2021. Manufacturing segment selling, general and administrative expenses for the year ended December 31, 2022 were 0.8% of revenue compared to 1.3% of revenue for the year ended December 31, 2021. Corporate and Other selling, general and administrative expenses were $25.4 million for the year ended December 31, 2022 compared to $24.9 million for the year ended December 31, 2021. Corporate and Other selling, general and administrative expenses for the year ended December 31, 2022 included increases in insurance expenses of $1.0 million and corporate incentive plan bonus expenses of $0.9 million, which were partially offset by decreases in legal expenses of $1.4 million.

Impairment on Leased Railcars

For the year ended December 31, 2022, we recorded a pre-tax non-cash impairment charge related to our small cube covered hopper railcars of $4.5 million due to a proposal to purchase a portion of the railcars in the first quarter of 2023. 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 the renegotiation of certain leases and our settlement agreement with the lender for our leasing companies. See Note 7 – Leased Railcars and Note 22 - Subsequent Event to our consolidated financial statements.

Restructuring and Impairment Charges

There were no restructuring and impairment charges for the year ended December 31, 2022. Restructuring and impairment charges of $6.5 million for the year ended December 31, 2021 related to relocating some of the former Shoals facility's equipment to Castaños as well as shutting down the Shoals facility.

Operating Income (Loss)

Our consolidated operating loss for the year ended December 31, 2022 was $15.0 million compared to $22.8 million for the year ended December 31, 2021. Operating income for the Manufacturing segment was $14.8 million for the year ended December 31, 2022 compared to operating loss of $0.8 million for the year ended December 31, 2021. Corporate and Other operating loss was $29.8 million for the year ended December 31, 2022 compared to $22.0 million for the year ended December 31, 2021.

Interest Expense

Interest expense was $25.4 million for the year ended December 31, 2022 compared to $13.3 million for the year ended December 31, 2021 reflecting increased borrowings on our revolving line of credit and modification of lease classification on the Castaños Facility from an operating to a finance lease.

Gain (loss) on Change in Fair Market Value of Warrant Liability

Gain on change in fair market value of warrant liability was $1.5 million for the year ended December 31, 2022 compared to loss on change in fair market value of warrant liability of $14.9 million for the year ended December 31, 2021. The increase in the gain was primarily driven by depreciation in the Company's stock price during the year ended December 31, 2022 which is the primary driver in the valuation of the warrants.

Gain on Extinguishment of Debt

There were no gains or losses on extinguishment of debt in the year ended December 31, 2022. 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 $2.3 million for the year ended December 31, 2022 compared to $1.4 million for the year ended December 31, 2021. Our income tax provision for the year ended December 31, 2022 reflects pre-tax income for our Mexico subsidiary. Our effective tax rate for the year ended December 31, 2022 was (6.3)% compared to (3.5)% for the year ended December 31, 2021.

Net Loss

As a result of the foregoing, our net loss was $38.8 million for the year ended December 31, 2022, compared to a net loss of $41.4 million for the year ended December 31, 2021. For the year ended December 31, 2022 our net loss per share was $1.56 compared to net loss per share of 2.00 for the year ended December 31, 2021.

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.

Credit Agreement

In October 2020, the Company entered into a $40.0 million Credit Agreement (as amended from time to time, the "Credit Agreement") by and among FCA, as guarantor, FreightCar North America, LLC ("Borrower" and together with FCA 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"). The $40.0 million term loan under the Credit Agreement closed and was funded on November 24, 2020.

The Company incurred $2.9 million in deferred financing costs that are presented as a reduction of the long-term debt balance and amortized to interest expense over the term of the Credit Agreement.

The term loan outstanding under the Credit Agreement bears interest, at Borrower's option and subject to the provisions of the Credit Agreement, at Base Rate (as defined in the Credit Agreement) or Eurodollar Rate (as defined in the Credit Agreement) plus the Applicable Margin (as defined in the Credit Agreement) for each such interest rate set forth in the Credit Agreement. As of December 31, 2022, the interest rate on the original advance under the Credit Agreement was 17.2%.

In May 2021, the Loan Parties entered into Amendment No. 2 to the Credit Agreement (the "Second Amendment") with Lender and the Agent, pursuant to which the principal amount of the Credit Agreement was increased by $16.0 million to a total of $56.0 million (the "Additional Loan"). 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. As of December 31, 2022, the interest rate on the Second Amendment under the Credit Agreement was 17.2%. The Credit Agreement contains customary affirmative and negative covenants and events of default, and is secured by a pledge of all assets of the Loan Parties.

Pursuant to the Second Amendment, in the event that the Additional Loan was not repaid in full by March 31, 2022, the Company was to issue to the Lender and/or a Lender affiliate, a warrant (the "2022 Warrant") to purchase a number of shares of Common Stock equal to 5% of the Company's outstanding Common Stock on a fully-diluted basis at the time the 2022 Warrant is exercised. The Company believed it was probable that the 2022 Warrant would be issued and recorded an additional Warrant liability of $7.4 million during the third quarter of 2021. The 2022 Warrant was issued on April 4, 2022 with an exercise price of $0.01 and a term of ten (10) years. As of December 31, 2022 and 2021, the 2022 Warrant was exercisable for an aggregate of 1,473,726 and zero (0) shares of Common Stock, respectively with a per share exercise price of $0.01.

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 by no later than August 31, 2021. The Company has met each of the aforementioned obligations. The Form S-3 registering Company securities was filed with the Securities and Exchange Commission on August 27, 2021 and became effective on September 9, 2021.

In July 2021, the Loan Parties entered into Amendment No. 3 to Credit Agreement (the "Third Amendment") 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 $25.0 million for the account of the Company and for the benefit of the Revolving Loan Lender (as defined below).

In December 2021, the Loan Parties entered into Amendment No. 4 to Credit Agreement (the "Fourth Amendment") with the 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 had the option to draw on the Delayed Draw Loan through January 31, 2023. The Delayed Draw Loan, if funded, would bear the same interest rate as the original term loan.

In January 2023, the Loan Parties entered into an Amendment No. 6 to Credit Agreement (the "Sixth Amendment") to extend the date for the Company to draw on the delayed draw loan of $15.0 million from January 31, 2023 to March 3, 2023. See Note 22 - Subsequent Event.

In February 2023, the Loan Parties entered into Amendment No. 7 to Credit Agreement (the "Seventh Amendment") to extend the date for the Company to draw on the delayed draw loan of $15.0 million from March 3, 2023 to April 3, 2023. See Note 22 - Subsequent Events.

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.

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 designee thereof a fee (the "Equity Fee") payable in shares of Common Stock. The Equity Fee shall be calculated by dividing $1.0 million by the volume weighted average price of the Common Stock on the Nasdaq Global Market for the ten (10) trading days ending on the last business day of the applicable Measurement Period. The Company may pay the Equity Fee in cash if certain conditions are met.

The Equity Fee shall no longer be paid once the Company has issued 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, or 1,547,266 shares of Common Stock (the "Maximum Equity"). Through December 31, 2022, the Company has paid Equity Fees totaling 1,388,388 shares of Common Stock.

Cash Fee

The Company shall pay to the Agent, for the account of the Lender or a designee thereof 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 Credit Agreement, the Company issued to an affiliate of the Lender (the "Warrantholder") a warrant (the "2020 Warrant"), pursuant to that certain warrant acquisition agreement, dated as of October 13, 2020, by and between the Company and the Lender, to purchase a number of shares of Common Stock equal to 23% of the outstanding Common Stock on a fully-diluted basis at the time the 2020 Warrant is exercised (after giving effect to such issuance). The 2020 Warrant was issued on November 24, 2020 and is exercisable for a term of ten (10) years from the date of the issuance of the 2020 Warrant. As of December 31, 2022 and 2021, the 2020 Warrant was exercisable for an aggregate of 6,799,139 and 6,098,217 shares, respectively, of Common Stock with a per share exercise price of $0.01. The Company determined that the 2020 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 2020 Warrant in a variable number of shares of Common Stock. The 2020 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 Credit Agreement and included in interest expense.

Pursuant to the Fourth Amendment and a warrant acquisition agreement, dated as of December 30, 2021, the Company issued to the Lender a warrant (the "2021 Warrant") to purchase a number of shares of Common Stock equal to 5% of the outstanding Common Stock on a fully-diluted basis at the time the 2021 Warrant is exercised. The 2021 Warrant has an exercise price of $0.01 and a term of ten years. As of December 31, 2022 and 2021, the 2021 Warrant was exercisable for an aggregate of 1,473,726 and 1,325,699 shares of Common Stock, respectively with a per share exercise price of $0.01.

The 2022 Warrant was issued on April 4, 2022 with an exercise price of $0.01 and a term of ten (10) years. As of December 31, 2022 and 2021, the 2022 Warrant was exercisable for an aggregate of 1,473,726 and zero (0) shares of Common Stock, respectively with a per share exercise price of $0.01.

The 2020 Warrant, 2021 Warrant, and 2022 Warrant collectively are referred to herein as the "Warrant". The following schedule shows the change in fair value of the Warrant as of December 31, 2022.

Warrant liability as of December 31, 2021	$	32,514
Change in fair value		(1,486)
Warrant liability as of December 31, 2022	$	31,028

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

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 Common Stock equal to 3% of the 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

In October 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 "Revolving Loan Parties"), and Siena Lending Group LLC, as lender ("Revolving Loan Lender"). Pursuant to the Siena Loan Agreement, the Revolving Loan Lender 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 provided for a revolving credit facility with maximum availability of $20.0 million, subject to certain borrowing base requirements set forth in the Siena Loan Agreement.

In July 2021, the Revolving Loan Parties and the Revolving Loan Lender 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, including, among other things, an increase of $25.0 million to the Maximum Revolving Facility Amount.

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). The Amended and Restated Loan and Security Agreement contains customary affirmative and negative covenants and events of default, and is secured by a pledge of all assets of the Revolving Loan Parties.

In February 2022, the Revolving Loan Parties and 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 $35.0 million.

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" (as defined in 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 1.5% per annum in excess of the Base Rate (as defined in the Amended and Restated Loan and Security Agreement). As of December 31, 2022, the interest rate on outstanding debt under the Amended and Restated Loan and Security Agreement was 9.00% and under the First Amendment to Amended and Restated Loan and Security Agreement was 9.50%.

As of December 31, 2022, the Company had $33.8 million in outstanding debt under the Siena Loan Agreement and remaining borrowing availability of zero. 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. The Company incurred $1.1 million in deferred financing costs related to the Siena Loan Agreement during the fourth quarter of 2020 and incurred $1.0 million in additional deferred financing costs related to the Amended and Restated Loan and Security Agreement during the third quarter of 2021. 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 April 2020, the Company received a loan from BMO Harris Bank N.A. in the amount of $10.0 million pursuant to the Paycheck Protection Program (the "PPP Loan") of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). In July 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

In April 2019, FreightCar America Leasing 1, LLC, an indirect wholly-owned subsidiary of FCA ("FreightCar Leasing Borrower"), entered into a Credit Agreement (the "M&T Credit Agreement") with M & T Bank, N.A., as lender ("M&T"), with a term that initially ended on April 16, 2021 (the "Term End"). 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 to be leased to third parties. In connection with the M&T Credit Agreement, (i) FreightCar Leasing LLC, a wholly owned subsidiary of FCA and parent of FreightCar Leasing Borrower ("FreightCar Leasing Guarantor"), entered into a Guaranty Agreement (the "M&T Guaranty Agreement") and Pledge Agreement (the "M&T Pledge Agreement") with M&T and (ii) FreightCar Leasing Borrower 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.

The Loans outstanding 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), and 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).

Between August 2020 and April 2021, FreightCar Leasing Borrower received notices from M&T that various Events of Default (as defined in the M&T Credit Agreement) had occurred, including a notice in April 2021 that an Event of Default had occurred due to all amounts outstanding under the M&T Credit Agreement having not been paid by the Term End.

In December 2021 (the "Execution Date"), FreightCar Leasing Borrower, FreightCar Leasing Guarantor (together with FreightCar Leasing Borrower, the "Obligors"), the Company, FreightCar America Railcar Management, LLC ("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 Company turned over to M&T certain rents in the amount of $0.7 million that it had previously collected as servicing agent for FreightCar Leasing Borrower and 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 FreightCar Leasing Borrower to M&T pursuant to the M&T Security Agreement (the "Collateral")) and all the provisions of the M&T Security Agreement.

On December 1, 2023, or sooner if requested by the Lender (the "Turnover Date"), FreightCar Leasing 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 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.

As of December 31, 2022 and December 31, 2021, FreightCar Leasing Borrower had $6.9 million and $7.9 million, respectively, in outstanding debt under the M&T Credit Agreement, which was collateralized by leased railcars with a carrying value of $4.1 million and $6.6 million, respectively. As of December 31, 2022, the interest rate on outstanding debt under the M&T Credit Agreement was 8.50%.

Additional Liquidity Factors

Our restricted cash, restricted cash equivalents and restricted certificates of deposit balances were $4.1 million and $5.0 million as of December 31, 2022 and 2021, respectively. Restricted deposits of $0.3 million as of each of December 31, 2022 and 2021, respectively, relate to a customer deposit for purchase of railcars. Restricted deposits of $3.6 million and $4.7 million as of December 31, 2022 and 2021, respectively, are used to collateralize standby letters of credit with respect to performance guarantees. The standby letters of credit outstanding as of December 31, 2022 are a requirement as long as the performance guarantees are in place.

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 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.

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 equity or debt and through long-term borrowings. 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 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, 2022, our benefit obligation under our defined benefit pension plan was $12.4 million, which exceeded the fair value of plan assets by $1.0 million. We made no contributions to our defined benefit pension plan during 2022 and are not required to make any contributions to our defined benefit pension plan in 2023. During 2022, the Company purchased a non-participating annuity contract and transferred about 67.7% of its future benefit obligations to OneAmerica. See Note 14 - Employee Benefit Plans. 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, 2022 and 2021:

	2022	2021
	(In thousands)	
Net cash (used in) provided by:		
Operating activities	$ 11,503	$ (55,397)
Investing activities	(7,816)	(1,675)
Financing activities	7,985	29,265
Total	$ 11,672	$ (27,807)

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 provided by operating activities for the year ended December 31, 2022 was $11.5 million compared to net cash used in operating activities of $55.4 million for the year ended December 31, 2021. Our net cash provided by operating activities for the year ended December 31, 2022 reflects changes in working capital, including a decrease in VAT receivable of $24.9 million due to the Company's receipt of VAT refunds, partially offset by an increase in inventory of $8.5 million to meet production needs for the start-up of several new railcar orders. 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 production needs for the start-up of several new railcar orders.

Investing Activities. Net cash used in investing activities for the year ended December 31, 2022 was $7.8 million primarily as a result of capital expenditures. 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.

Financing Activities. Net cash provided by financing activities for the year ended December 31, 2022 was $8.0 million and included net borrowings on revolving line of credit of $8.8 million and principal payments on the finance lease of $0.7 million. Net cash provided by financing activities for the year ended December 31, 2021 was $29.3 million and primarily represented proceeds from the 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.

Capital Expenditures

Our capital expenditures were $8.5 million for the year ended December 31, 2022 compared to $2.3 million for the year ended December 31, 2021 and primarily related to the expansion of the Castaños Facility. We anticipate capital expenditures during 2023 to be between approximately $11.0 million and $12.0 million.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States ("GAAP"). 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.

For the fourth quarter of 2022, we performed a cash flow recoverability test of our small cube covered hopper railcars because we believed it to be more likely than not that a portion of the leased railcars would be sold or disposed of in 2023, before the end of the estimated useful life. 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 $7.8 million, in comparison to the asset group's carrying amount of $12.3 million. As a result of this analysis we recorded a pre-tax non-cash impairment charge of $4.5 million related to our small cube covered hopper railcars during the fourth quarter of 2022.

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 2022, 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, 2022:

	1% Increase	1% Decrease
	(in thousands)	
Effect on net periodic benefit cost	$ (329)	$ 329
Effect on pension settlement	183	(183)

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, 2022, we determined this rate on our pension plan to be 5.22%, an increase of 2.38% from the 2.84% rate used at December 31, 2021. A change of one hundred basis points in the discount rates used during the year ended December 31, 2022 would have the following effect:

	1% Increase	1% Decrease
	(in thousands)	
Effect on net periodic benefit cost	$ 41	$ (78)
Effect on pension settlement	(698)	798

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-2021 with COVID adjustment), which reflects additional data that the Social Security Administration has released since prior assumptions (MP-2020) were developed. The Company used the base mortality table Pri-2012 projected generationally using a modified MP-2021 with Endemic COVID adjustment for purposes of measuring its pension obligations at December 31, 2022.

For the years ended December 31, 2022 and 2021, we recognized consolidated pre-tax pension benefit cost (income) of $(0.6) million and $(0.8) million, respectively. We are not required to make any contributions to our pension plan during 2023. 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, 2022 and 2021, 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, 2022, we had deferred tax assets of $82.6 million for which there was a valuation allowance of $67.8 million and we had total net deferred tax assets of $0.07 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 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, delays in the delivery of raw materials, the risk of lack of acceptance of our new railcar offerings, the potential financial and operational impacts of the COVID-19 pandemic, 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 sheets of FreightCar America Inc. (a Delaware corporation) and subsidiaries (the "Company") as of December 31, 2022 and 2021, the related consolidated statements of operations, comprehensive loss, stockholders' deficit, and cash flows for each of the two years in the period ended December 31, 2022, 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, 2022 and 2021, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2022, 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 audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. 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 audits 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 audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical audit matters
The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of 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 matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Pension Remeasurement

As described within Note 14 to the consolidated statements, as of December 31, 2022, the Company's projected benefit obligation under its defined pension plan was $12.4 million. In the third quarter of 2022, the Company purchased a non-participating group annuity contract to transfer 67.7% of the obligation to pay remaining retirement benefits of certain retirees and beneficiates from its defined benefit pension plan and transferred approximately $27.6 million in both benefit obligations and plan assets. As a result, the Company remeasured its defined benefit pension plan and recognized a $8.1 million settlement loss. As disclosed by management, the remeasurement of its defined benefit pension plan was performed using actuarial methodologies and incorporated significant assumptions, including the discount rate, expected long-term rate of return on plan assets, and several assumptions relating to the employee workforce, including mortality rates. We identified the pension remeasurement as a critical audit matter.

The principal considerations for our determination that the pension remeasurement is a critical audit matter are (i) the significant judgment by management in determining the valuation of the pension remeasurement, as well as their consideration of the accounting for the non-recurring nature of the pension remeasurement; (ii) a high degree of auditor judgment, subjectivity, and effort in performing procedures and evaluating audit evidence relating to the accounting for the pension remeasurement, participants transferred, and significant assumptions related to the discount rate, expected long-term rate of return on plan assets, and mortality rate used in determining the valuation of the pension remeasurement; and (iii) the audit effort involved the use of professionals with specialized skill and knowledge.

Our audit procedures related to the pension remeasurement included the following, among others, (i) testing management's process for determining the valuation of the pension remeasurement; (ii) testing the participants transferred, the settlement loss recognized, and the completeness and accuracy of the underlying data used in the valuation of the pension remeasurement; and (iii) the involvement of professionals with specialized skill and knowledge to assist in (a) evaluating the appropriateness of the actuarial methodology used by management; and (b) evaluating the reasonableness of the discount rate, expected long-term rate of return on plan assets, and mortality rate assumptions.

/s/ GRANT THORNTON LLP

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

Chicago, Illinois
March 27, 2023

FreightCar America, Inc.
Consolidated Balance Sheets
(In thousands, except for share data)

	December 31, 2022	December 31, 2021
Assets		
Current assets		
Cash, cash equivalents and restricted cash equivalents	$ 37,912	$ 26,240
Accounts receivable, net of allowance for doubtful accounts of $126 and $323 respectively	9,571	9,571
VAT receivable	4,682	31,136
Inventories, net	64,317	56,012
Assets held for sale	3,675	—
Related party asset	3,261	8,680
Prepaid expenses	5,470	5,087
Total current assets	128,888	136,726
Property, plant and equipment, net	23,248	18,236
Railcars available for lease, net	11,324	20,160
Right of use asset operating lease	1,596	16,669
Right of use asset finance lease	33,093	—
Other long-term assets	1,589	8,873
Total assets	$ 199,738	$ 200,664
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts and contractual payables	$ 48,449	$ 41,185
Related party accounts payable	3,393	8,870
Accrued payroll and other employee costs	4,081	2,912
Reserve for workers' compensation	841	1,563
Accrued warranty	1,940	2,533
Customer deposits	—	3,300
Deferred income state and local incentives, current	—	1,291
Current portion of long-term debt	40,742	—
Other current liabilities	6,539	7,666
Total current liabilities	105,985	69,320
Long-term debt, net of current portion	51,494	79,484
Warrant liability	31,028	32,514
Accrued pension costs	1,040	35
Deferred income state and local incentives, long-term	—	1,216
Lease liability operating lease, long-term	1,780	16,617
Lease liability finance lease, long-term	33,245	—
Other long-term liabilities	3,750	3,134
Total liabilities	228,322	202,320
Stockholders' deficit		
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, 2022 and December 31, 2021)	—	—
Common stock, $0.01 par value, 50,000,000 shares authorized, 17,223,306 and 15,947,228 shares issued and outstanding at December 31, 2022 and December 31, 2021, respectively	203	190
Additional paid-in capital	89,104	83,742
Accumulated other comprehensive income (loss)	1,022	(5,522)
Accumulated deficit	(118,913)	(80,066)
Total stockholders' deficit	(28,584)	(1,656)
Total liabilities and stockholders' deficit	$ 199,738	$ 200,664

See Notes to Consolidated Financial Statements.

FreightCar America, Inc.
Consolidated Statements of Operations
(In thousands, except for share and per share data)

	Year Ended December 31,	
	2022	**2021**
Revenues	$ 364,754	$ 203,050
Cost of sales	338,931	191,592
Gross profit	25,823	11,458
Selling, general and administrative expenses	28,227	27,532
Impairment on leased railcars	4,515	158
Loss on pension settlement	8,105	—
Restructuring and impairment charges	—	6,530
Operating loss	(15,024)	(22,762)
Interest expense	(25,423)	(13,317)
Gain (loss) on change in fair market value of Warrant liability	1,486	(14,894)
Gain on extinguishment of debt	—	10,122
Other income	2,426	817
Loss before income taxes	(36,535)	(40,034)
Income tax provision	2,312	1,413
Net loss	$ (38,847)	$ (41,447)
Net loss per common share - basic	$ (1.56)	$ (2.00)
Net loss per common share - diluted	$ (1.56)	$ (2.00)
Weighted average common shares outstanding – basic	24,838,399	20,766,398
Weighted average common shares outstanding – diluted	24,838,399	20,766,398

See Notes to Consolidated Financial Statements.

FreightCar America, Inc.
Consolidated Statements of Comprehensive Loss
(In thousands)

	Year Ended December 31,	
	2022	**2021**
Net loss	$ (38,847)	$ (41,447)
Other comprehensive income, net of tax:		
Loss on pension settlement	8,105	—
Reclassification adjustment for amortization of net loss (pre-tax other income)	(1,561)	6,241
Comprehensive loss	$ (32,303)	$ (35,206)

See Notes to Consolidated Financial Statements.

FreightCar America, Inc.
Consolidated Statements of Stockholders' Deficit
(In thousands, except for share data)

	FreightCar America Stockholders							
	Common Stock		Additional Paid In	Treasury Stock		Accumulated Other Comprehensive	Retained	Total Stockholders'
	Shares	Amount	Capital	Shares	Amount	Income (Loss)	Deficit	Deficit
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)
Net loss	-	-	-	-	-	-	(38,847)	(38,847)
Other comprehensive income	-	-	-	-	-	6,544	-	6,544
Restricted stock awards	386,908	4	(4)	-	-	-	-	-
Stock options exercised	5,292	-	-	-	-	-	-	-
Employee stock settlement	(15,158)	-	(57)	-	-	-	-	(57)
Forfeiture of restricted stock awards	(81,394)	(1)	(68)	-	-	-	-	(69)
Exercise of stock appreciation rights	-	-	-	-	-	-	-	-
Stock-based compensation recognized	-	-	1,501	-	-	-	-	1,501
Equity Fees	980,430	10	3,990	-	-	-	-	4,000
Balance, December 31, 2022	17,223,306	$ 203	$ 89,104	-	$ -	$ 1,022	$ (118,913)	$ (28,584)

See Notes to Consolidated Financial Statements.

FreightCar America, Inc.
Consolidated Statements of Cash Flows
(In thousands)

	Year Ended December 31,	
	2022	**2021**
Cash flows from operating activities		
Net loss	$ (38,847)	$ (41,447)
Adjustments to reconcile net loss to net cash flows used in operating activities:		
Restructuring and impairment charges	—	6,530
Depreciation and amortization	4,135	4,304
Non-cash lease expense on right-of-use assets	2,325	1,483
Recognition of deferred income from state and local incentives	(2,507)	(2,215)
(Gain) loss on change in fair market value for Warrant liability	(1,486)	14,894
Impairment on leased railcars	4,515	158
Loss on pension settlement	8,105	—
Stock-based compensation recognized	2,106	2,977
Non-cash interest expense	16,563	5,502
Gain on extinguishment of debt	—	(10,122)
Other non-cash items, net	20	529
Changes in operating assets and liabilities, net of acquisitions:		
Accounts receivable	—	(150)
VAT receivable	24,946	(24,675)
Inventories	(8,476)	(12,369)
Related party asset, net	(58)	(624)
Accounts and contractual payables	8,181	7,878
Lease liability	(3,006)	(2,106)
Other assets and liabilities	(5,013)	(5,944)
Net cash flows provided by (used in) operating activities	11,503	(55,397)
Cash flows from investing activities		
Maturity of restricted certificates of deposit	—	182
Purchase of property, plant and equipment	(7,816)	(2,290)
Proceeds from sale of property, plant and equipment	—	433
Net cash flows used in investing activities	(7,816)	(1,675)
Cash flows from financing activities		
Proceeds from issuance of long-term debt	—	16,000
Deferred financing costs	—	(1,688)
Borrowings on revolving line of credit	133,652	48,400
Repayments on revolving line of credit	(124,852)	(33,378)
Employee stock settlement	(57)	(12)
Payment for stock appreciation rights exercised	(20)	(57)
Financing lease payments	(738)	—
Net cash flows provided by financing activities	7,985	29,265
Net increase (decrease) in cash and cash equivalents	11,672	(27,807)
Cash, cash equivalents and restricted cash equivalents at beginning of period	26,240	54,047
Cash, cash equivalents and restricted cash equivalents at end of period	$ 37,912	$ 26,240
Supplemental cash flow information		
Interest paid	$ 8,849	$ 6,537
Income tax refunds received, net of payments	$ —	$ 5
Non-cash transactions		
Change in unpaid construction in process	$ 715	$ 122
Accrued PIK interest paid through issuance of PIK Note	$ 1,467	$ 1,278
Issuance of warrants	$ 8,560	$ 4,891
Issuance of equity fee	$ 4,000	$ 2,000

See Notes to 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").

The Company ceased operations at its Roanoke, Virginia manufacturing facility (the "Roanoke Facility") and vacated the facility in March 2020. In September 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 was magnified by the COVID-19 pandemic. The closure reduced costs and helped align the Company's manufacturing capacity with the current railcar market. The Company ceased production at the Shoals Facility in February 2021. The closure reduced costs and helped align the Company's manufacturing capacity with the current railcar market. See Note 8–Restructuring and Impairment Charges.

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 (collectively, the "Company"). 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

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, 2022 and 2021, 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 net realizable value. Cost is determined on a first-in, first-out basis and includes material, labor and manufacturing overhead. The Company's inventory consists of raw materials, 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.

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

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,	
	2022	**2021**
Railcar sales	$ 349,556	$ 189,579
Parts sales	11,941	10,228
Revenues from contracts with customers	361,497	199,807
Leasing revenues	3,257	3,243
Total revenues	$ 364,754	$ 203,050

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 had no contract assets as of December 31, 2022 and 2021. 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, 2022 and 2021 were $219 and $4,807, 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, 2022 with expected duration of greater than one year of $40,635.

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 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

Recent accounting pronouncements issued by the Financial Accounting Standards Board, its Emerging Issues Task Force, the American Institute of Certified Public Accountants, and the Securities and Exchange Commission did not or are not believed by management to have a material impact on the Company's present or future financial statements.

Note 3 – Leases

The Company determines if an arrangement is a lease at inception of a contract. The Company's lease portfolio includes manufacturing sites, component warehouses and corporate offices. The remaining lease terms on the majority of the Company's leases are between 0.3 and 17.8 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.

In 2021, substantially all of the Company's leases were operating leases. In April 2022, the Company and the lessors of the Company's leased facility in Castaños (the "Castaños Facility") amended the original lease to incorporate additional square footage into the lease. The modification resulted in a lease classification modification from operating to finance.

Operating and finance lease ROU assets are presented separately in long term assets, the current portion of operating and finance lease liabilities are presented within other current liabilities, and the non-current portion of operating and finance lease liabilities are presented separately 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. The Company revalued the incremental borrowing rate used in determining the present value of lease payment for the Castaños Facility lease as a result of the lease modification in April 2022. Operating lease expense is recognized on a straight-line basis over the lease term. Finance lease ROU asset amortization expense is recognized on a straight-line basis over the lease term, while interest expense on finance lease liabilities is recognized using the interest method.

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

The components of the lease costs were as follows:

	Year Ended December 31, 2022	Year Ended December 31, 2021
Operating lease costs:		
Fixed	$ 1,735	$ 3,710
Short-term	505	761
Total operating lease costs	$ 2,240	$ 4,471
Finance lease costs:		
Amortization of leased assets	$ 1,182	$ -
Interest on lease liabilities	1,355	-
Total finance lease costs	$ 2,537	$ -
Total lease cost	$ 4,777	$ 4,471

Supplemental balance sheet information related to leases were as follows:

	December 31, 2022	December 31, 2021
Right of use assets:		
Right of use operating lease assets	$ 1,596	$ 16,669
Right of use finance lease assets	33,093	-
Total	$ 34,689	$ 16,669
Lease liabilities:		
Operating lease liabilities:		
Current	$ 897	$ 1,955
Long-term	1,780	16,617
Total operating lease liabilities	$ 2,677	$ 18,572
Finance lease liabilities:		
Current	605	$ -
Long-term	33,245	-
Total finance lease liabilities	$ 33,850	$ -
Total	$ 36,527	$ 18,572

Supplemental cash flow information is as follows:

	Year Ended December 31, 2022	Year Ended December 31, 2021
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$ 2,630	$ 4,315
Operating cash flows from finance leases	1,355	-
Financing cash flows from finance leases	738	-
Total	$ 4,723	$ 4,315
Right of use assets obtained in exchange for new lease obligations:		
Operating leases	$ -	$ -
Finance leases	20,344	-
Total	$ 20,344	$ -

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

The aggregate future lease payments for leases as of December 31, 2022 are as follows:

	Operating leases	Finance leases
2023	$ 992	$ 3,298
2024	250	3,298
2025	256	3,354
2026	263	3,523
2027	271	3,523
Thereafter	1,085	48,139
Total lease payments	3,117	65,135
Less: interest	(440)	(31,285)
Total	$ 2,677	$ 33,850

Weighted-average remaining lease term (years)	
Operating leases	7.9
Finance leases	17.8
Weighted-average discount rate	
Operating leases	4.5%
Finance leases	8.0%

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, 2022**			
	Level 1	**Level 2**	**Level 3**	**Total**
Liabilities:				
Warrant liability	$ -	$ 31,028	$ -	$ 31,028

Non-recurring Fair Value Measurements	**During the Year Ended December 31, 2022**			
	Level 1	**Level 2**	**Level 3**	**Total**
Assets:				
Railcars available for lease, net	$ -	$ 4,116	$ -	$ 4,116
Assets held for sale	$ -	$ 3,675	$ -	$ 3,675

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

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, 2022 and 2021, is a Level 2 measurement.

See Note 7 - Leased Railcars for more information regarding the non-recurring fair value measurement considerations during the years ended December 31, 2022 and 2021, for the impairment charges related to our leased small cube covered hopper railcars.

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

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, 2022	December 31, 2021
Restricted cash from customer deposit	$ 282	$ 282
Restricted cash to collateralize standby letters of credit	103	1,133
Restricted cash equivalents to collateralize standby letters of credit	3,542	3,542
Restricted cash equivalents - other	151	-
Total restricted cash and restricted cash equivalents	$ 4,078	$ 4,957

Note 6 – Inventories

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

	December 31, 2022	December 31, 2021
Raw materials	46,421	34,885
Work in process	4,527	11,306
Finished railcars	8,783	4,696
Parts inventory	4,586	5,125
Total inventories, net	$ 64,317	$ 56,012

Inventory on the Company's consolidated balance sheets includes reserves of $1,672 and $1,621 relating to excess or slow-moving inventory for parts and work in process at December 31, 2022 and 2021, respectively.

Note 7 – Leased Railcars

Railcars available for lease at December 31, 2022 were $11,324 (cost of $14,995 and accumulated depreciation of $3,671) and at December 31, 2021 were $20,160 (cost of $23,717 and accumulated depreciation of $3,557). Depreciation expense on railcars available for lease was $616 and $646 for the years ended December 31, 2022 and 2021, respectively.

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

Future minimum rental revenues on leases at December 31, 2022 are as follows:

Year ending December 31, 2023	$ 1,297
Year ending December 31, 2024	$ 300
Year ending December 31, 2025	$ 100
Year ending December 31, 2026	$ -
Year ending December 31, 2027	$ -
Thereafter	-
	$ 1,697

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

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

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 a market approach, which we believe most accurately reflects a market participant's viewpoint in valuing these railcars. The Company used known selling prices for a portion of the cars, and a weighted average selling price was applied to the remaining cars in the asset group (Level 2 observable inputs). The results of our analysis indicated an estimated fair value of the asset group of approximately $7,791, in comparison to the asset group's carrying amount of $12,306. As a result, we recorded a pre-tax non-cash impairment charge of $4,515 related to our small cube covered hopper railcars into the fourth quarter of 2022. The portion of these assets intended to be sold were reclassified as assets held for sale as of December 31, 2022 and are no longer depreciated. The impairment is reflected in the impairment of leased railcars line of our consolidated statements of operations for the year ended December 31, 2022.

Note 8 – Restructuring and Impairment Charges

In September 2020, the Company announced its plan to permanently close its Shoals Facility in light of the ongoing cyclical industry downturn, which had been magnified by the COVID-19 pandemic. In October 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. Property, plant and equipment with an estimated fair value of $10,148 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 (benefits) related to the plant closure for 2021 were primarily due 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, 2022 and 2021, and are detailed below:

	Year Ended December 31,	
	2022	**2021**
Impairment and loss on disposal of machinery and equipment	$ -	$ 1,591
Employee severance and retention	-	(5)
Other charges related to facility closure	-	4,944
Total restructuring and impairment costs	$ -	$ 6,530

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

	Accrued as of December 31, 2021	**Cash Charges**	**Non-cash charges**	**Cash payments**	**Accrued as of December 31, 2022**
Impairment and loss on disposal of machinery and equipment	$ -	$ -	$ -	$ -	$ -
Employee severance and retention	163	-	-	(163)	-
Other charges related to facility closure	-	-	-	-	-
Total restructuring and impairment costs	$ 163	$ -	$ -	$ (163)	$ -

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

	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

Note 9 – Property, Plant and Equipment

Property, plant and equipment consists of the following:

	December 31,	
	2022	2021
Buildings and improvements	$ 162	$ 162
Leasehold improvements	4,072	3,954
Machinery and equipment	37,468	33,808
Software	8,744	8,560
Construction in process	4,969	401
Total cost	55,415	46,885
Less: Accumulated depreciation and amortization	(32,167)	(28,649)
Total property, plant and equipment, net	$ 23,248	$ 18,236

Depreciation expense for the years ended December 31, 2022 and 2021 was $3,519 and $3,658, 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, 2022 and 2021, are as follows:

	December 31,	
	2022	2021
Balance at the beginning of the year	$ 2,533	$ 5,216
Current year provision	3,462	200
Reductions for payments, costs of repairs and other	(3,365)	(1,358)
Adjustments to prior warranties	(690)	(1,525)
Balance at the end of the year	$ 1,940	$ 2,533

Adjustments to prior warranties include 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

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

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 year ended December 31, 2022 employment levels dropped below the minimum targeted levels of employment. The incentives paid back did not exceed the deferred liability balance at December 31, 2021.

The changes in deferred income from these incentives for the years ended December 31, 2022 and 2021, are as follows:

	December 31, 2022	December 31, 2021
Balance at the beginning of the year	$ 2,507	$ 4,722
Recognition of state and local incentives as a reduction of cost of sales	(1,857)	(2,215)
State and local incentives paid during the year	(650)	-
Balance at the end of the year, including current portion	$ —	$ 2,507

Note 12 – Debt Financing and Revolving Credit Facilities

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

	December 31, 2022	December 31, 2021
M&T Credit Agreement outstanding	$ 6,917	$ 7,917
Siena Loan Agreement outstanding	33,825	24,026
Credit Agreement outstanding	58,745	57,278
Total debt	99,487	89,221
Less Credit Agreement discount	(5,262)	(7,077)
Less Credit Agreement deferred financing costs	(1,989)	(2,660)
Total debt, net of discount and deferred financing costs	92,236	79,484
Less amounts due within one year	(40,742)	-
Long-term debt, net of current portion	$ 51,494	$ 79,484

The fair value of long-term debt approximates its carrying value as of December 31, 2022 and 2021.

Credit Agreement

In October 2020, the Company entered into a $40,000 Credit Agreement (as amended from time to time, the "Credit Agreement") by and among FCA, as guarantor, FreightCar North America, LLC ("Borrower" and together with FCA 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"). The $40,000 term loan under the Credit Agreement closed and was funded on November 24, 2020.

The Company incurred $2,872 in deferred financing costs that are presented as a reduction of the long-term debt balance and amortized to interest expense over the term of the Credit Agreement.

The term loan outstanding under the Credit Agreement bears interest, at Borrower's option and subject to the provisions of the Credit Agreement, at Base Rate (as defined in the Credit Agreement) or Eurodollar Rate (as defined in the Credit Agreement) plus the Applicable Margin (as defined in the Credit Agreement) for each such interest rate set forth in the Credit Agreement. As of December 31, 2022, the interest rate on the original advance under the Credit Agreement was 17.2%.

In May 2021, the Loan Parties entered into Amendment No. 2 to the Credit Agreement (the "Second Amendment") with Lender and the Agent, pursuant to which the principal amount of the Credit Agreement was increased by $16,000 to a total of $56,000 (the "Additional Loan"). 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. As of December 31, 2022, the interest rate on the Second Amendment under the Credit Agreement was 17.2%. The Credit Agreement contains customary affirmative and negative covenants and events of default, and is secured by a pledge of all assets of the Loan Parties.

Pursuant to the Second Amendment, in the event that the Additional Loan was not repaid in full by March 31, 2022, the Company was to issue to the Lender and/or a Lender affiliate, a warrant (the "2022 Warrant") to purchase a number of shares of Common Stock equal to 5% of the Company's outstanding Common Stock on a fully-diluted basis at the time the 2022 Warrant is exercised. The Company believed it was probable that the 2022 Warrant would be issued and recorded an additional Warrant liability of $7,351 during the third quarter of 2021. The 2022 Warrant was issued on April 4, 2022 with an exercise price of $0.01 and a term of ten (10) years. As of December 31, 2022 and 2021, the 2022 Warrant was exercisable for an aggregate of 1,473,726 and zero (0) shares of Common Stock, respectively with a per share exercise price of $0.01.

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 by no later than August 31, 2021. The Company has met each of the aforementioned obligations. The Form S-3 registering Company securities was filed with the Securities and Exchange Commission on August 27, 2021 and became effective on September 9, 2021.

In July 2021, the Loan Parties entered into Amendment No. 3 to Credit Agreement (the "Third Amendment") 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 the Revolving Loan Lender (as defined below).

In December 2021, the Loan Parties entered into Amendment No. 4 to Credit Agreement (the "Fourth Amendment") 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 had the option to draw on the Delayed Draw Loan through January 31, 2023. The Delayed Draw Loan, if funded, would bear the same interest rate as the original term loan.

In January 2023, the Loan Parties entered into Amendment No. 6 to Credit Agreement (the "Sixth Amendment") to extend the date for the Company to draw on the delayed draw loan of $15,000 from January 31, 2023 to March 3, 2023. See Note 22 - Subsequent Events.

In February 2023, the Loan Parties entered into Amendment No. 7 to Credit Agreement (the "Seventh Amendment") to extend the date for the Company to draw on the delayed draw loan of $15,000 from March 3, 2023 to April 3, 2023. See Note 22 - Subsequent Events.

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.

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 designee thereof a fee (the "Equity Fee") payable in shares of Common Stock. The Equity Fee shall be calculated by dividing $1,000 by the volume weighted average price of the Common Stock on the Nasdaq Global Market for the ten (10) trading days ending on the last business day of the applicable Measurement Period. The Company may pay the Equity Fee in cash if certain conditions are met.

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

The Equity Fee shall no longer be paid once the Company has issued 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, or 1,547,266 shares of Common Stock (the "Maximum Equity"). Through December 31, 2022, the Company has paid Equity Fees totaling 1,388,388 shares of Common Stock.

Cash Fee

The Company shall pay to the Agent, for the account of the Lender or a designee thereof 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 Credit Agreement, the Company issued to an affiliate of the Lender (the "Warrantholder") a warrant (the "2020 Warrant"), pursuant to that certain warrant acquisition agreement, dated as of October 13, 2020, by and between the Company and the Lender, to purchase a number of shares of Common Stock equal to 23% of the outstanding Common Stock on a fully-diluted basis at the time the 2020 Warrant is exercised (after giving effect to such issuance). The 2020 Warrant was issued on November 24, 2020 and is exercisable for a term of ten (10) years from the date of the issuance of the 2020 Warrant. As of December 31, 2022 and 2021, the 2020 Warrant was exercisable for an aggregate of 6,799,139 and 6,098,217 shares, respectively, of Common Stock with a per share exercise price of $0.01. The Company determined that the 2020 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 2020 Warrant in a variable number of shares of Common Stock. The 2020 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 Credit Agreement and included in interest expense.

Pursuant to the Fourth Amendment and a warrant acquisition agreement, dated as of December 30, 2021, the Company issued to the Lender a warrant (the "2021 Warrant") to purchase a number of shares of Common Stock equal to 5% of the outstanding Common Stock on a fully-diluted basis at the time the 2021 Warrant is exercised. The 2021 Warrant has an exercise price of $0.01 and a term of ten years. As of December 31, 2022 and 2021, the 2021 Warrant was exercisable for an aggregate of 1,473,726 and 1,325,699 shares of Common Stock, respectively with a per share exercise price of $0.01.

The 2020 Warrant, 2021 Warrant, and 2022 Warrant collectively are referred to herein as the "Warrant". The following schedule shows the change in fair value of the Warrant as of December 31, 2022.

Warrant liability as of December 31, 2021	$	32,514
Change in fair value		(1,486)
Warrant liability as of December 31, 2022	$	31,028

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

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 Common Stock equal to 3% of the 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

In October 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 "Revolving Loan Parties"), and Siena Lending Group LLC, as lender ("Revolving Loan Lender"). Pursuant to the Siena Loan Agreement, the Revolving Loan Lender 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 provided for a revolving credit facility with maximum availability of $20,000, subject to certain borrowing base requirements set forth in the Siena Loan Agreement.

In July 2021, the Revolving Loan Parties and the Revolving Loan Lender 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, including, among other things, an increase of $25,000 to the Maximum Revolving Facility Amount.

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). The Amended and Restated Loan and Security Agreement contains customary affirmative and negative covenants and events of default, and is secured by a pledge of all assets of the Revolving Loan Parties.

In February 2022, the Revolving Loan Parties and 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.

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" (as defined in 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 1.5% per annum in excess of the Base Rate (as defined in the Amended and Restated Loan and Security Agreement). As of December 31, 2022, the interest rate on outstanding debt under the Amended and Restated Loan and Security Agreement was 9.00% and under the First Amendment to Amended and Restated Loan and Security Agreement was 9.50%.

As of December 31, 2022, the Company had $33,825 in outstanding debt under the Siena Loan Agreement and remaining borrowing availability of zero. As of December 31, 2021, the Company had $24,026 in outstanding debt under the Siena Loan Agreement and remaining borrowing availability of $122. The Company incurred $1,101 in deferred financing costs related to the Siena Loan Agreement during the fourth quarter of 2020 and incurred $1,037 in additional deferred financing costs related to the Amended and Restated Loan and Security Agreement during the third quarter of 2021. 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 April 2020, the Company received a loan from BMO Harris Bank N.A. in the amount of $10.0 million pursuant to the Paycheck Protection Program (the "PPP Loan") of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). In July 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

In April 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"), with a term that ended on April 16, 2021 (the "Term End"). 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 to be leased to third parties. In connection with the M&T Credit Agreement, (i) FreightCar Leasing LLC, a wholly owned subsidiary of the Company and parent of FreightCar Leasing Borrower ("FreightCar Leasing Guarantor"), entered into a Guaranty Agreement (the "M&T Guaranty Agreement") and Pledge Agreement (the "M&T Pledge Agreement") with M&T and (ii) FreightCar Leasing Borrower 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.

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

The Loans outstanding 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), and 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).

Between August 2020 and April 2021, FreightCar Leasing Borrower received notices from M&T that various Events of Default (as defined in the M&T Credit Agreement) had occurred, including a notice in April 2021 that an Event of Default had occurred due to all amounts outstanding under the M&T Credit Agreement having not been paid by the Term End.

In December 2021 (the "Execution Date"), FreightCar Leasing Borrower, FreightCar Leasing Guarantor (together with FreightCar Leasing Borrower, the "Obligors"), the Company, FreightCar America Railcar Management, LLC ("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 FreightCar Leasing Borrower to M&T pursuant to the M&T Security Agreement (the "Collateral")) and all the provisions of the M&T Security Agreement.

On December 1, 2023, or sooner if requested by the Lender (the "Turnover Date"), FreightCar Leasing 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, and the Company shall turn over to M&T certain rents in the amount of $715 that it had previously collected as servicing agent for FreightCar Leasing Borrower.

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.

As of December 31, 2022 and December 31, 2021, FreightCar Leasing Borrower had $6,917 and $7,917, respectively, in outstanding debt under the M&T Credit Agreement, which was collateralized by leased railcars with a carrying value of $4,116 and $6,638, respectively. As of December 31, 2022, the interest rate on outstanding debt under the M&T Credit Agreement was 8.50%.

Estimated annual maturities of long-term debt, including the current portion at December 31, 2022 are as follows based on the most recent debt agreements.

2023	$	40,742
2024		-
2025		58,745
2026		-
2027		-
Thereafter		-
	$	99,487

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

Note 13 – Accumulated Other Comprehensive Income (Loss)

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

	Pre-Tax	Tax	After-Tax
Year ended December 31, 2022			
Pension liability activity:			
Loss on pension settlement	$ 8,105	$ -	$ 8,105
Reclassification adjustment for amortization of net loss (pre-tax other income)	(1,561)	-	(1,561)
	$ 6,544	$ -	$ 6,544

	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

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

	December 31, 2022	December 31, 2021
Unrecognized pension income (cost), net of tax of $6,282 and $6,282, respectively	$ 1,022	$ (5,522)

Note 14 – Employee Benefit Plans

The Company has a qualified, defined benefit pension plan (the "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 assets are held by an independent trustee 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, 2022 and 2021, are as follows:

	Pension Benefits	
	2022	2021
Change in benefit obligation		
Benefit obligation – Beginning of year	$ 50,938	$ 55,359
Interest cost	867	944
Actuarial (gain) loss	(8,985)	(2,098)
Benefits paid	(2,730)	(3,267)
Annuity purchase	(27,647)	-
Benefit obligation – End of year	12,443	50,938
Change in plan assets		
Plan assets – Beginning of year	50,903	48,314
Return on plan assets	(9,123)	5,856
Annuity purchase	(27,647)	-
Benefits paid	(2,730)	(3,267)
Plan assets at fair value – End of year	11,403	50,903
Funded status of plans – End of year	$ (1,040)	$ (35)

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

	Pension Benefits	
	2022	2021
Amounts recognized in the Consolidated Balance Sheets		
Current liabilities	$ -	$ -
Noncurrent liabilities	(1,040)	(35)
Net amount recognized at December 31	$ (1,040)	$ (35)

Amounts recognized in accumulated other comprehensive income (loss) but not yet recognized in earnings at December 31, 2022 and 2021, are as follows:

	Pension Benefits	
	2022	2021
Net actuarial loss	$ 5,260	$ 11,803
	$ 5,260	$ 11,803

Components of net periodic benefit cost (income) for the years ended December 31, 2022 and 2021, are as follows:

	Pension Benefits	
	2022	2021
Components of net periodic benefit cost		
Interest cost	$ 867	$ 944
Expected return on plan assets	(1,650)	(2,335)
Amortization of unrecognized net loss (gain)	228	621
Total net periodic (income) benefit cost	$ (555)	$ (770)

The increase (decrease) in accumulated other comprehensive income (loss) (pre-tax) for the years ended December 31, 2022 and 2021, are as follows:

	Pension Benefits	
	2022	2021
Net actuarial (gain) loss	$ 1,789	$ (5,620)
Amortization of:		
Actuarial loss from settlement	(8,105)	-
Net actuarial loss	(228)	(621)
Total recognized in accumulated other comprehensive loss	$ (6,544)	$ (6,241)

The following benefit payments, which reflect expected future service, as appropriate, are expected to be paid as of December 31, 2022:

	Pension Benefits
2023	$ 760
2024	765
2025	789
2026	804
2027	796
2028 through 2032	4,196

The Company is not required to make any contributions to its pension plan in 2023 to meet its minimum funding requirements.

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

	Pension Benefits	
	2022	2021
Discount rates	5.22%	2.84%

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

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-2021 with COVID adjustment), which reflects additional data that the Social Security Administration has released since prior assumptions (MP-2020) were developed. The Company used the base mortality table Pri-2012 projected generationally using a modified MP-2021 with Endemic COVID adjustment for purposes of measuring its pension obligations at December 31, 2022.

The 2022 actuarial gain of $8,985 was largely the result of the change in mortality improvement scale MP-2021 with Endemic COVID adjustment to reflect anticipated slow recovery from COVID. The 2021 actuarial gain of $2,098 was largely the result of the change in the yield curve to Pri-2012 with MP-2021. The impact of the mortality improvement scale MP-2021 also created a slight actuarial gain for 2021.

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

	Pension Benefits	
	2022	**2021**
Discount rate for benefit obligations	5.22%	2.48%
Expected return on plan assets	3.00%	5.00%
Rate for interest on benefit obligations	5.10%	1.77%
Discount rate for service cost	N/A	N/A

The Company's pension plan's weighted average asset allocations at December 31, 2022 and 2021, and target allocations for 2023, by asset category, are as follows:

	Plan Assets at December 31,		Target Allocation
	2022	**2021**	**2023**
Asset Category			
Cash and cash equivalents	1%	2%	0% - 5%
Equity securities	0%	54%	0%
Fixed income securities	99%	33%	95%-100%
Real estate	0%	11%	0%
	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.

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

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, 2022 and 2021:

Pension Plan Assets	As of December 31, 2022			
	Level 1	Level 2	Level 3	Total
Mutual funds:				
Fixed income funds	$ 11,268	$ -	$ -	$ 11,268
Large cap funds	-	-	-	-
Small cap funds	-	-	-	-
International funds	-	-	-	-
Real estate funds	-	-	-	-
Cash and equivalents	135	-	-	135
Total	$ 11,403	$ -	$ -	$ 11,403

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

The Company entered into a commitment agreement (the "OneAmerica Agreement") with OneAmerica Financial Partners, Inc. ("OneAmerica") during the year ended December 31, 2022. Under the OneAmerica Agreement, the Company purchased a non-participating group annuity contract (the "Annuity Contract") from OneAmerica and transferred to OneAmerica about 67.7% of its future benefit obligations under the Plan. Upon payment of the premium to OneAmerica and the closing of the OneAmerica Agreement, the applicable pension benefit obligations were irrevocably transferred from the Plan to OneAmerica. By transferring the future benefit obligations and annuity administration to OneAmerica, the Company reduced its gross Plan liabilities by $27.6 million during the year ended December 31, 2022. The purchase of the Annuity Contract was funded by the assets of the Plan. As a result of the OneAmerica Agreement, the Company recognized a non-cash pre-tax pension settlement loss of $8.1 million during the year ended December 31, 2022.

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 $289 for the year ended December 31, 2022.

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	
	2022	2021
Current Tax Expense/(Benefit)		
Federal	$ -	$ (10)
Foreign	2,285	1,533
State	40	26
	2,325	1,549
Deferred Tax Expense/(Benefit)		
Federal	1	-
Foreign	(14)	(136)
	(13)	(136)
Total	$ 2,312	$ 1,413

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

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	
	2022	2021
Statutory U.S. federal income tax rate	21.0 %	21.0 %
State income taxes, net of federal tax benefit	0.4 %	0.7 %
Valuation allowance	(5.8) %	(20.4) %
Provision to return	(0.2) %	0.0 %
Foreign rate differential	(1.5) %	(1.0) %
Foreign tax adjustments	(1.1) %	0.0 %
Deferred tax adjustments	(17.9) %	0.4 %
Nondeductible expenses and other	(1.2) %	(4.2) %
Effective income tax rate	(6.3) %	(3.5) %

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, 2022		December 31, 2021	
Description	Assets	Liabilities	Assets	Liabilities
Accrued post-retirement and pension benefits	$ 360	$ -	$ 149	$ -
Intangible assets	-	(26)	-	(22)
Accrued expenses	2,326	-	1,367	-
Accrued warranty costs	-	-	-	-
Prepaid expenses	-	(1,155)	-	-
Deferred state and local incentive revenue	-	-	537	-
Accrued severance	-	-	-	-
Inventory valuation	1,219	-	496	-
Property, plant and equipment and railcars on operating leases	-	(1,166)	103	-
Net operating loss, tax credit, and interest carryforwards	65,218	-	62,536	-
Stock-based compensation expense	1,715	-	1,539	-
Other	371	(1,448)	99	-
Right of use asset	-	(10,902)	-	(4,780)
Lease liability	11,376	-	5,175	-
	82,585	(14,697)	72,001	(4,802)
Valuation Allowance	(67,881)	-	(67,204)	-
Deferred tax assets (liabilities)	$ 14,704	$ (14,697)	$ 4,797	$ (4,802)
Increase (decrease) in valuation allowance	$ 677		$ 7,591	

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 US and China operating losses, we will not more likely than not realize the benefit of the US and China deferred tax assets. The Company has certain pretax state net operating loss carryforwards of $220,406 which will expire between 2023 and 2042, for which a full valuation allowance has been recorded. The Company also has federal net operating loss carryforwards, tax credits, and interest carryforwards of $210,223, $2,016, and $33,392, respectively, which will begin to expire in 2032, for which a full valuation allowance also has been recorded. The Company has Chinese net operating loss carryforwards of $356 which will expire between 2023 and 2027 for which a full valuation allowance also has been recorded.

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

As of December 31, 2022, the Company has released a valuation allowance in Mexico to realize its deferred tax assets of $0.1 as a result of significant positive evidence, most notably three years of cumulative income in Mexico and management expectations of continued profitability.

The Company does not have any unrecognized tax benefit that, if recognized, would affect the Company's effective tax rate as of December 31, 2022 and 2021. The Company's income tax provision included $0 of expenses related to interest and penalties for the years ended December 31, 2022 and 2021. 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 2022 and 2021, the Company has zero penalties or interest accrued at December 31, 2022 and 2021, 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	2019
States:	
Pennsylvania	2001
Texas	2019
Illinois	2010
Virginia	2019
Colorado	2010
Indiana	2019
Nebraska	2016
Alabama	2016
Foreign:	
China	2019
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 “Prior LTIPs”), were terminated and replaced by the Company's new incentive compensation plan, titled “The FreightCar America, Inc. 2022 Long Term Incentive Plan” (the “2022 Plan” or “Incentive Plan”). The 2022 Plan was approved by the Company’s Board of Directors and ratified by the stockholders on May 12, 2022. Awards previously granted under the Prior LTIPs were unaffected by the adoption of the 2022 Plan, and they remain outstanding under the terms pursuant to which they were previously granted. The Incentive Plan provides 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 2022 Plan will terminate as to future awards on May 12, 2032. Upon approval of the 2022 Plan, 880,000 shares of common stock were registered and made available for issuance, together with 494,977 shares of common stock that were available under the Prior LTIPs on May 12, 2022. Under the 2022 Plan, 1,374,977 shares of common stock have been reserved for issuance (from either authorized but unissued shares or treasury shares), of which 1,285,806 were available for issuance at December 31, 2022.

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

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

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
2022	1/17/2022	6 years	74.32%	0.00%	1.60%	$ 2.63
2022	2/4/2022	6 years	74.27%	0.00%	1.81%	$ 2.30
2022	3/21/2022	6 years	74.45%	0.00%	2.33%	$ 2.90
2022	4/19/2022	6 years	75.31%	0.00%	2.91%	$ 3.87
2022	7/11/2022	6 years	77.95%	0.00%	3.04%	$ 2.41
2022	7/18/2022	6 years	77.92%	0.00%	3.04%	$ 2.51
2022	8/29/2022	6 years	78.17%	0.00%	3.24%	$ 3.10
2022	9/6/2022	6 years	78.19%	0.00%	3.41%	$ 2.81
2022	12/1/2022	6 years	78.20%	0.00%	3.65%	$ 2.60

A summary of the Company's time-vested stock options activity and related information at December 31, 2022 and 2021, and changes during the years then ended, is presented below:

	December 31,			
	2022		2021	
	Options Outstanding	Weighted-Average Exercise Price (per share)	Options Outstanding	Weighted-Average Exercise Price (per share)
Outstanding at the beginning of the year	733,967	$ 5.66	211,361	$ 11.68
Granted	513,518	3.95	608,485	4.04
Exercised	(102,850)	3.98	-	-
Forfeited or expired	(255,821)	4.76	(85,879)	9.02
Outstanding at the end of the year	888,814	$ 5.12	733,967	$ 5.66
Exercisable at the end of the year	227,056	$ 8.39	111,516	$ 13.86

A summary of the Company's time vested stock options outstanding as of December 31, 2022 is presented below:

	Options Outstanding	Weighted-Average Remaining Contractual Term (in years)	Weighted-Average Exercise Price (per share)	Aggregate Intrinsic Value
Options outstanding	888,814	8.3	$ 5.12	$ -
Vested or expected to vest	888,814	8.3	$ 5.12	$ -
Options exercisable	227,056	6.5	$ 8.39	$ -

The Company issued 5,292 shares of common stock as a result of cashless exercise of 102,850 time-vested stock options during the year ended December 31, 2022. There were no time-vested stock options exercised during 2021. As of December 31, 2022, there was

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

$1,178 of total unrecognized compensation expense related to time-vested stock options, which will be recognized over the average remaining requisite service period of 23 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, 2022 was $3,021. Stock-based compensation for cash settled stock appreciation rights was $632 and $2,145 for the year ended December 31, 2022 and 2021, respectively.

The fair value of cash settled stock appreciation rights as of December 31, 2022 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	3.6 years	94.35%	0.00%	4.19%	$ 2.44
2020	9/14/2020	4.2 years	89.86%	0.00%	4.10%	$ 2.38
2020	11/30/2020	4.4 years	87.88%	0.00%	4.07%	$ 2.28
2021	1/5/2021	4.3 years	89.36%	0.00%	4.09%	$ 2.31

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

A summary of the Company's cash settled stock appreciation rights activity and related information at December 31, 2022 and 2021 and changes during the year is presented below:

	December 31,			
	2022		2021	
	SARS Outstanding	Weighted-Average Exercise Price (per share)	SARS Outstanding	Weighted-Average Exercise Price (per share)
Outstanding at the beginning of the year	2,163,339	$ 2.20	853,967	$ 1.69
Granted	-	-	1,735,500	2.38
Exercised	(11,592)	2.16	(42,652)	1.64
Forfeited or expired	(19,634)	2.31	(383,476)	1.92
Outstanding at the end of the year	2,132,113	$ 2.20	2,163,339	$ 2.20
Exercisable at the end of the year	909,313	$ 2.10	192,387	$ 1.71

A summary of the Company's cash settled stock appreciation rights outstanding as of December 31, 2022 is presented below:

	SARS Outstanding	Weighted-Average Remaining Contractual Term (in years)	Weighted-Average Exercise Price (per share)	Aggregate Intrinsic Value
SARS outstanding	2,132,113	7.8	$ 2.20	$ 2,124,866
Vested or expected to vest	2,132,113	7.8	$ 2.20	$ 2,124,866
SARS exercisable	909,313	7.7	$ 2.10	$ 997,916

Restricted Shares

A summary of the Company's nonvested restricted shares as of December 31, 2022 and 2021, and changes during the years then ended is presented below:

	December 31,			
	2022		2021	
	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	491,239	$ 3.50	849,723	$ 2.86
Granted	386,908	3.93	213,465	4.23
Vested	(113,886)	6.16	(311,128)	2.26
Forfeited	(74,399)	4.44	(260,821)	3.49
Nonvested at the end of the year	689,862	$ 3.20	491,239	$ 3.50
Expected to vest	689,862	$ 3.20	491,239	$ 3.50

The fair value of stock awards vested during the years ended December 31, 2022 and 2021, was $427 and $1,942, respectively, based on the value at vesting date. As of December 31, 2022, there was $1,065 of unrecognized compensation expense related to nonvested restricted stock awards, which will be recognized over the average remaining requisite service period of 20 months.

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

Stock-based compensation expense of $2,106 and $2,977 is included within selling, general and administrative expense for the years ended December 31, 2022 and 2021, 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.

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 no reserve with respect to these matters at December 31, 2022 as they are neither probable nor estimable.

Note 18 – Loss Per Share

The weighted average common shares outstanding are as follows:

	Year Ended December 31,	
	2022	**2021**
Weighted average common shares outstanding	16,052,920	15,023,853
Issuance of Warrants	8,785,479	5,742,545
Weighted average common shares outstanding - basic	24,838,399	20,766,398
Weighted average common shares outstanding - diluted	24,838,399	20,766,398

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, 2022 and 2021, 1,658,605 and 1,321,396 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,	
	2022	**2021**
Railcar sales	$ 349,556	$ 189,579
Parts sales	11,941	10,228
Revenues from contracts with customers	361,497	199,807
Leasing revenues	3,257	3,243
Total revenues	$ 364,754	$ 203,050

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 20%, 19% and 16%, respectively, of revenues for the year ended December 31, 2022. Sales to the Company's top three customers accounted for 46%, 12% and 8%, respectively, of revenues for the

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

year ended December 31, 2021. The Company had no sales to customers outside the United States in 2022 and 2021. As of December 31, 2022, 35% of the accounts receivable balance of $9,571 reported on the consolidated balance sheet was receivable from one customer and 29% was receivable from a second customer. 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.

Note 20 – Segment Information

The Company's operations consist of 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,	
	2022	**2021**
Revenues:		
Manufacturing	$ 352,827	$ 192,807
Corporate and Other	11,927	10,243
Consolidated revenues	$ 364,754	$ 203,050
Operating loss:		
Manufacturing (1)	$ 14,801	$ (757)
Corporate and Other (2)	(29,825)	(22,005)
Consolidated operating loss	(15,024)	(22,762)
Consolidated interest expense	(25,423)	(13,317)
Gain (loss) on change in fair market value of Warrant liability	1,486	(14,894)
Gain on extinguishment of debt	-	10,122
Consolidated other income	2,426	817
Consolidated loss before income taxes	$ (36,535)	$ (40,034)
Depreciation and amortization:		
Manufacturing	$ 3,491	$ 3,648
Corporate and Other	644	656
Consolidated depreciation and amortization	$ 4,135	$ 4,304
Capital expenditures:		
Manufacturing	$ 7,327	$ 1,880
Corporate and Other	489	410
Consolidated capital expenditures	$ 7,816	$ 2,290

(1) There were no restructuring and impairment charges for the year ended December 31, 2022. Results for the year ended December 31, 2021 include restructuring and impairment charges of $6,530.
(2) Results for the year ended December 31, 2022 include a pension settlement loss of $8,105. There were no pension settlement losses in the year ended December 31, 2021.

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

	December 31, 2022	December 31, 2021
Assets:		
Manufacturing	$ 149,014	$ 154,068
Corporate and Other	50,631	46,417
Total operating assets	199,645	200,485
Consolidated income taxes receivable	93	179
Consolidated assets	$ 199,738	$ 200,664

	Geographic Information			
	Revenues		Long Lived Assets(a)	
	Year Ended December 31,			
	2022	2021	December 31, 2022	December 31, 2021
United States	$ 364,740	$ 202,978	$ 15,018	$ 24,967
Mexico	14	72	54,243	30,098
Total	$ 364,754	$ 203,050	$ 69,261	$ 55,065

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

Note 21 – Related Parties

The following persons are owners of Fabricaciones y Servicios de México, S.A. de C.V. ("Fasemex"): Jesus Gil, VP Operations and a director of the Company; and Alejandro Gil and Salvador Gil, siblings of Jesus Gil. Fasemex owns approximately 11.3% of the outstanding shares of Common Stock as of December 31, 2022. Fasemex provides steel fabrication services to the Company. Commencing November 2021, the lessors of the Company's leased facility in Castaños (the "Castaños Facility") have been Jesus Gil, Alejandro Gil, and Salvador Gil. Previously, Fasemex was the lessor of the Castaños Facility. The Company paid $28,669 and $89,984 to Fasemex during the years ended December 31, 2022 and 2021, respectively, related to rent payment, security deposit, fabrication services and royalty payments. Distribuciones Industriales JAS S.A. de C.V. ("DI") is owned by Alejandro Gil and Salvador Gil. The Company paid $2,709 and $1,735 during the years ended December 31, 2022 and 2021, respectively, to DI related to material and safety supplies. Maquinaria y equipo de transporte Jova S.A. de C.V ("METJ") is owned by Jorge Gil, sibling of Jesus Gil. The Company paid $2,436 and $1,163 during the years ended December 31, 2022 and 2021, respectively, to METJ related to trucking services.

Related party asset on the condensed balance sheet of $3,261 as of December 31, 2022 includes prepaid inventory of $2,014 and other receivables of $1,247 from Fasemex. Related party accounts payable on the condensed balance sheet of $3,393 as of December 31, 2022 includes $2,475 payable to Fasemex, $572 payable to DI, and $346 payable to METJ. 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 DI and $288 payable to METJ.

The Warrantholder beneficially owns approximately 41.3% of the outstanding shares of Common Stock (as disclosed by the Warrantholder in its Schedule 13D/A No. 5 filed with the SEC on November 8, 2022). The Company paid $8,652 and $7,533 to the Warrantholder during the years ended December 31, 2022 and 2021, respectively, for term loan interest, of which $7,185 and $6,255 was paid in cash during the years ended December 31, 2022 and 2021, respectively, and $1,467 and $1,278 was payment in kind during the years ended December 31, 2022 and 2021, respectively. Additionally, the Company paid $4,000 and $1,870 in equity fees during the years ended December 31, 2022 and 2021, respectively, to the Warrantholder related to the standby letter of credit described in Note 12 Debt Financing and Revolving Credit Facilities.

Note 22 – Subsequent Events

On January 30, 2023, FreightCar North America, LLC, FreightCar America, Inc. (the "Company"), certain other subsidiary guarantors of the Company, CO Finance LVS VI LLC and OC III LFE II LP (collectively, the "Loan Parties") entered into Amendment No. 6 to Credit Agreement (the "Sixth Amendment"), with respect to that certain Credit Agreement dated as of October 13, 2020 by and among the Loan Parties (as amended, restated, supplemented or otherwise modified from time to time, and together with the Amendment, the "Term Loan Credit Agreement). The Sixth Amendment amends the Term Loan Credit Agreement to extend the date for the Company to draw on the delayed draw loan of $15,000 from January 31, 2023 to March 3, 2023.

On February 27, 2023, the Loan Parties entered into Amendment No. 7 to Credit Agreement (the "Seventh Amendment"), with respect to the Term Loan Credit Agreement. The Seventh Amendment amends the Term Loan Credit Agreement to extend the date for the Company to draw on the delayed draw loan of $15,000 from March 3, 2023 to April 3, 2023.

On March 23, 2023, the Company entered into a Securities Purchase Agreement (the "Purchase Agreement") by and among the Company and OC III LFE II LP (the "Purchaser") pursuant to which the Company will issue approximately 85,000 shares of new non-convertible Series C Preferred Stock of the Company, par value $0.01 (the "Preferred Stock") at an initial stated value of $1,000 per share. The total purchase price and aggregate number of shares will depend on the total debt outstanding under the Term Loan Credit Agreement as of the closing date. Upon closing of the transactions contemplated by the Purchase Agreement (the "Closing"), the Purchaser will receive a detached warrant to purchase up to an estimated 3% shares of Common Stock of the Company outstanding as of the Closing, for an exercise price equal to the average price of the Company's Common Stock thirty (30) days prior to the date of announcement of the contemplated transaction.

The Company expects to use the proceeds from the issuance of the Preferred Stock to repay in-full, in-cash all of the principal amount of the outstanding Term Loan Credit Agreement, together with all accrued unpaid interest, fees, penalties, and other obligations under the Term Loan Credit Agreement. Any excess proceeds will be used for general corporate purposes. In connection with the Closing, the Purchaser has agreed to extend the maturity date of the Third Amendment Letter of Credit for two (2) years and reduce the Letter of Credit Fee paid by the Company to $375 per quarter.

On March 23, 2023, the Loan Parties, the Purchaser, and the designated disbursing and collateral agent (the "Agent") entered into Amendment No. 8 to Credit Agreement (the "Eighth Amendment"), with respect to the Term Loan Credit Agreement. The Eighth Amendment amends the Term Loan Credit Agreement to provide the Company the option to pay all interest during the period between signing of the Purchase Agreement and the Closing (the "Pre-Closing Period") in kind.

On March 23, 2023, the Company, the Purchaser, the Agent, and the designated calculation agent entered into Amendment No. 1 to Amended and Restated Reimbursement Agreement, pursuant to which the parties have agreed the Letter of Credit Fee, Equity Fee or Cash Fee that would otherwise be due and payable for the Pre-Closing Period will accrue and become payable and be paid on the date the Pre-Closing Period terminates.

Item 9A. Controls and Procedures.

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, 2022 (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 2022 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, 2022.

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING

There has been no change in our internal control over financial reporting during the last fiscal quarter of 2022 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.

Purchase Agreement

On March 23, 2023, the "Company" entered into a Securities Purchase Agreement (the "Purchase Agreement") by and among the Company and OC III LFE II LP (the "Purchaser"), pursuant to which the Purchaser agreed to acquire an estimated aggregate of 85,000 shares of to be created Series C Preferred Stock of the Company, par value $0.01 (the "Preferred Stock") at an initial stated value of

$1,000 per share. The total purchase price and aggregate number of shares will depend on the total debt outstanding under the Term Loan Credit Agreement as of the closing date. Upon closing of the transactions contemplated by the Purchase Agreement (the "Closing"), (i) the Purchaser will receive a warrant to purchase up to an estimated 3% shares of Common Stock of the Company outstanding as of the Closing, for an exercise price equal to the average price of the Company's Common Stock thirty (30) days prior to the date of announcement of the contemplated transaction (the "2023 Warrant"), and (ii) the Certificate of Designation (as defined and described below) will be filed with the Delaware Secretary of State and will contain other rights, terms and provisions applicable to the Preferred Stock.

The Purchase Agreement contains customary representations, warranties and covenants. Closing of the transactions contemplated by the Purchase Agreement is subject to a number of conditions, all of which must be satisfied on or prior to May 22, 2023. In connection with the Closing, the Purchaser has agreed to extend the maturity date of the Third Amended Letter of Credit (as defined in the Purchase Agreement) for two (2) years and reduce the Letter of Credit Fee (as defined in the Purchase Agreement) paid by the Company to $375,000 per quarter.

The Company expects to use the proceeds from the issuance of the Preferred Stock to repay in-full, in-cash all of the principal amount of the outstanding term loan debt, together with all accrued unpaid interest, fees, penalties and other obligations under the Company's Term Loan Credit Agreement (as defined in the Purchase Agreement), as amended, and all related fees and expenses. Any excess proceeds will be used for general corporate purposes.

The issuance of the Preferred Stock pursuant to the Purchase Agreement and the other documents below is exempt from registration provided under Rule 506 of Regulation D promulgated under the Securities Act of 1933 (the "Act"). The offering was made only to accredited investors as that term is defined in Rule 501(a) of Regulation D under the Act.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Purchase Agreement, a copy of which is filed as Exhibit 10.30 and is incorporated herein by reference.

The Company issued a press release announcing the signing of the Purchase Agreement on March 27, 2023. A copy of the press release is filed herewith as Exhibit 99.1.

Certificate of Designation

The certificate of designation filed as Exhibit A to Exhibit 10.30 of this Annual Report on Form 10-K (the "Certificate of Incorporation") will be filed with the Delaware Secretary of State at Closing and will contain rights, terms and provisions applicable to the Preferred Stock. The Preferred Stock will rank senior to the Common Stock (as defined in the Purchase Agreement) with respect to the payment of dividends and distribution of assets upon liquidation, dissolution and winding up. Dividends will accrue on the Preferred Stock at a rate of 17.5% per annum (the "Dividend Rate") on the then existing Stated Value and Accrued Dividends (each as defined in the Certificate of Designation) and will be payable quarterly in cash or in-kind at the Company's option. The Preferred Stock will not participate in any dividends paid to the holders of shares of Common Stock.

The Company may redeem the outstanding Preferred Stock at any time by payment of the Stated Value plus all accrued dividends (the "Redemption Price"). If the Company has not redeemed the Preferred Stock on or prior to the fourth (4^{th}) anniversary of the Closing, the Dividend Rate will increase by 0.5% for every quarter thereafter until the Preferred Stock is redeemed in full. The Purchaser has the right to request the Company redeem the Preferred Stock at any time after sixth (6^{th}) anniversary of the Closing. If the Company does not redeem the Preferred Stock within six (6) months after receipt of a redemption request from the Purchaser, the holders of the Preferred Stock will be entitled to certain limited voting rights as described in the Certificate of Designation.

The Purchaser will be entitled to designate for nomination to the Board one (1) director (the "Preferred Director") and one (1) non-voting Board observer. The Certificate of Designation contains customary protective provisions requiring the approval of the Purchaser prior to engaging in certain actions. Prior approval of a majority of the Board, which majority must include the Preferred Director, is required for certain other actions outlined in the Certificate of Designation. The Preferred Stock is not convertible.

The foregoing description of the Certificate of Designation does not purport to be complete and is qualified in its entirety by reference to the full text of the form of Certificate of Designation, a copy of which is filed as Exhibit A to Exhibit 10.30 and is incorporated herein by reference.

2023 Warrant

The Preferred Stock will be issued with a detached warrant, exercisable for a term of ten (10) years from the date of issuance of the 2023 Warrant. The 2023 Warrant represents the right to purchase up to an estimated 3% shares of Common Stock of the Company outstanding

as of the closing of the issuance of the Preferred Stock, for an exercise price equal to the average price of the Company's Common Stock thirty (30) days prior to the date of announcement of the contemplated transaction. The 2023 Warrant includes customary anti-dilution protection for stock splits, reverse stock splits, and dividends paid in Common Stock.

The foregoing description of the 2023 Warrant does not purport to be complete and is qualified in its entirety by reference to the full text of the form of 2023 Warrant, a copy of which is filed as Exhibit B to Exhibit 10.30 and is incorporated herein by reference.

Amendment No. 8 to the Credit Agreement

On March 23, 2023, the Loan Parties entered into Amendment No. 8 to the Term Loan Credit Agreement ("Amendment No. 8") with the Purchaser and U.S. Bank National Association, as disbursing agent and collateral agent (the "Agent"). Pursuant to Amendment No. 8, Borrower will have the option of paying all interest during the period between signing of the Purchase Agreement and closing of the Purchase Agreement (the "Pre-Closing Period") in kind ("PIK Interest").

The foregoing description of Amendment No. 8 does not purport to be complete and is qualified in its entirety by reference to the full text of Amendment No. 8, a copy of which is filed as Exhibit 10.22.8 and is incorporated herein by reference.

Amendment No. 1 to the Amended and Restated Reimbursement Agreement

On March 23, 2023 the Company, the Purchaser, Alter Domus (US) LLC, as calculation agent, and the Agent entered into an amendment to the Amended and Restated Reimbursement Agreement ("Amendment No. 1"), pursuant to which the parties have agreed that the Letter of Credit Fee, Equity Fee or Cash Fee that would otherwise be due and payable for the Pre-Closing Period will accrue and become payable and be paid on the date that the Pre-Closing Period terminates (including the date of the Closing, if applicable).

The foregoing description of Amendment No. 1 does not purport to be complete and is qualified in its entirety by reference to the full text of Amendment No. 1, a copy of which is filed as Exhibit 10.25.1 and is incorporated herein by reference.

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, 2022.

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, 2022.

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, 2022.

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, 2022.

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, 2022.

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
   - Consolidated Balance Sheets as of December 31, 2022 and 2021.
   - Consolidated Statements of Operations for the years ended December 31, 2022 and 2021.
   - Consolidated Statements of Comprehensive Income (Loss) for the years ended December 31, 2022 and 2021.
   - Consolidated Statements of Stockholders’ Equity for the years ended December 31, 2022 and 2021.
   - Consolidated Statements of Cash Flows for the years ended December 31, 2022 and 2021.
   - 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.

EXHIBIT INDEX

Exhibit Number	Exhibit Description
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†	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 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).
10.2.1*	Letter agreement regarding Terms of Employment dated March 18, 2022 by and between FreightCar America, Inc. and Michael A. Riordan (incorporated by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q filed with the Commission on May 10, 2022).
10.3*	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 fiscal year ended December 31, 2020).
10.4*	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).
10.5	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).
10.6	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 22, 2009).
10.7*	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).
10.8*	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*	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).
10.10*	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).
10.11*	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).
10.12*	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).
10.13*	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).
10.14.*	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).
10.14.1*	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).

10.15*	FreightCar America, Inc. 2022 Long Term Incentive Plan (incorporated by reference to Appendix A to the Company's Proxy Statement for the annual meeting of stockholders held on May 12, 2022 filed with the Commission on April 1, 2022).
10.15.1*†	Amendment No. 1 to FreightCar America, Inc. 2022 Long Term Incentive Plan dated as of March 27, 2023.
10.16	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).
10.16.1*	FreightCar America, Inc. Executive Severance Plan (As Amended and Restated January 17, 2022) (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed with the Commission on May 10, 2022).
10.17*	FreightCar America, Inc. Successful Transaction Severance Plan, dated November 20, 2019 (incorporated by reference to Exhibit 10.18 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2019).
10.18	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).
10.19	Novation Agreement and Restated 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).
10.19.1	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. (incorporated by reference to Exhibit 10.62 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021).
10.20	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).
10.20.1	Amended Royalty Agreement, dated as of February 8, 2022, 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 10.3 to the Company's Quarterly Report on Form 10-Q filed with the Commission on May 10, 2022).
10.21	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).
10.21.1	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 (incorporated by reference to Exhibit 10.61 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021).
10.22**	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).
10.22.1†	Amendment No. 1 to the Term Loan Credit Agreement dated as of January 30, 2021.
10.22.2	Amendment No. 2 to the Term Loan Credit Agreement dated as of May 14, 2021 (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).
10.22.3	Amendment No. 3 to the Term Loan Credit Agreement dated as of July 30, 2021 (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).
10.22.4	Amendment No. 4 to the Term Loan Credit Agreement dated as of December 30, 2021 (incorporated by reference to Exhibit 10.57 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021).
10.22.5	Amendment No. 5 to the Term Loan Credit Agreement dated as of March 1, 2022 (incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q filed with the Commission on May 10, 2022).
10.22.6†	Amendment No. 6 to the Term Loan Credit Agreement dated as of January 30, 2023.
10.22.7†	Amendment No. 7 to the Term Loan Credit Agreement dated as of February 27, 2023.

10.22.8†	Amendment No. 8 to the Term Loan Credit Agreement, dated March 23, 2023, by and among FreightCar America, Inc., FreightCar North America, LLC, CO Finance LVS VI LLC and U.S. Bank National Association.
10.23**	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).
10.23.1	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).
10.23.2	Amended and Restated Warrant to Purchase Common Stock of FreightCar America, Inc. dated as of March 1, 2022, by and between the Company and OC III LVS XII LP (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed with the Commission on May 10, 2022).
10.23.3	Amended and Restated Warrant to Purchase Common Stock of FreightCar America, Inc. dated as of March 1, 2022, by and between the Company and OC III LVS XXVIII LP (incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q filed with the Commission on May 10, 2022).
10.24	Form of Registration Rights Agreement 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).
10.25	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).
10.25.1†	Amendment No. 1 to the Reimbursement Agreement, dated March 23, 2023, by and among FreightCar America, Inc., CO Finance LVS VI LLC, Alter Domus (US) LLC, as calculation agent, and U.S. Bank National Association.
10.26	Registration Rights Agreement dated as of December 30, 2021, by and between the Company and CO Finance LVS VI LLC (incorporated by reference to Exhibit 10.60 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021).
10.27	Warrant to Purchase Common Stock of FreightCar America, Inc. dated as of December 30, 2021, by and between the Company and CO Finance LVS VI LLC (incorporated by reference to Exhibit 10.59 to the Company's Annual Report on Form 10-K filed with the Commission for the fiscal year ended December 31, 2021).
10.28	Warrant Acquisition Agreement, dated as of April 4, 2022, by and among the Company and OC III LVS XXVIII LP (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed with the Commission on August 8, 2022).
10.28.1	Warrant issued by the Company to OC III LVS XXVIII LP dated as of April 4, 2022 (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed with the Commission on August 8, 2022).
10.29	Registration Rights Agreement dated as of April 4, 2022, by and between the Company and OC III LVS XXVIII LP (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed with the Commission on August 8, 2022).
10.30†	Securities Purchase Agreement dated as of March 23, 2023 by and between the Company and OC III LFE II LP.
10.31	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).
10.31.1	First Amendment to Amended and Restated Loan and Security Agreement dated as of February 23, 2022, 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 Quarterly Report on Form 10-Q filed with the Commission on May 10, 2022).
10.31.2†	Second Amendment to Amended and Restated Loan and Security Agreement dated as of November 22, 2022, by and Company and certain of its subsidiaries and Siena Lending Group, LLC.
21†	Subsidiaries of FreightCar America, Inc.
23.1†	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 27, 2023.
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).

* Management compensatory arrangement.
** Portions of this document have been redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K.
† Filed herewith.

(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 27, 2023

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 27, 2023
/s/ MICHAEL A. RIORDAN **Michael A. Riordan**	Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer)	March 27, 2023
/s/ JUAN CARLOS FUENTES SIERRA **Juan Carlos Fuentes Sierra**	Corporate Controller and Chief Accounting Officer (Principal Accounting Officer)	March 27, 2023
/s/ WILLIAM D. GEHL **William D. Gehl**	Chairman of the Board and Director	March 27, 2023
/s/ ELIZABETH K. ARNOLD **Elizabeth K. Arnold**	Director	March 27, 2023
/s/ JESUS SALVADOR GIL BENAVIDES **Jesus Salvador Gil Benavides**	Director	March 27, 2023
/s/ MALCOLM F. MOORE **Malcolm F. Moore**	Director	March 27, 2023
/s/ RODGER L. BOEHM **Rodger L. Boehm**	Director	March 27, 2023
/s/ TRAVIS D. KELLY **Travis D. Kelly**	Director	March 27, 2023
/s/ JOSÉ DE NIGRIS FELÁN **José De Nigris Felán**	Director	March 27, 2023

Exhibit 4.1

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, 2023, there were 17,702,459 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 10.15.1

AMENDMENT NO. 1
TO
FREIGHTCAR AMERICA, INC. 2022 LONG TERM INCENTIVE PLAN

AMENDMENT NO. 1, dated as of March 27, 2023 (this "Amendment"), to the 2022 Long Term Incentive Plan (as amended, the "Plan") of FreightCar America, Inc., a Delaware corporation (the "Corporation").

WHEREAS, the Corporation maintains the Plan, effective as of May 12, 2022;and

WHEREAS, pursuantto Section 9(d) of the Plan, the Board of Directors of the Corporation is authorized to amend the Plan.

NOW, THEREFORE, BE IT RESOLVED,that the Plan is herebyamended as follows:

I. Section 5(b)(iii) of the Plan is amended to delete the final proviso of the Section (that commences with "provided, however, that, unless the Committee determines otherwise,... " and continues through the end of that Plan Section) therefrom.

2. Section 5(g)(i) of the Plan is amended to delete the last sentenceof the Section therefrom.

3. ThisAmendment shall be effective as of the date first set forth above.

4. In all respects not amended, the Plan is hereby ratified and confirmed and remains in full force and effect.

FREIGHTCAR AMERICA, INC.

By: /s/ Michael A. Riordan
Name: Michael A. Riordan
Title: VicePresident, Finance, Chief Financial Officer and Treasurer

EXHIBIT 10.22.6
EXECUTION VERSION

AMENDMENT NO. 6 TO CREDIT AGREEMENT

THIS AMENDMENT NO. 6 TO CREDIT AGREEMENT (this "Amendment"), dated as of January 30, 2023, 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 party hereto, and the LC Provider party hereto.

R E C I T A L S**:**

WHEREAS, the Borrower, Holdings, the Lenders party hereto, the LC Provider party hereto, and certain other entities 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 (i) desire to revise the definition of "Fourth Amendment Availability Period" (as used in the Credit Agreement and any Loan Documents related thereto) and (ii) subject to the terms and conditions set forth herein, hereby agree to 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. The definition of "Fourth Amendment Availability Period" in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety as set forth below:

> ""Fourth Amendment Availability Period" shall mean the period commencing on the Fourth Amendment Effective Date and ending on March 3, 2023."

SECTION 3. Effectiveness. This Amendment shall become effective on the date upon which the Lenders shall have received this Amendment, executed and delivered by a duly authorized officer of Holdings, the Borrower, the other Loan Parties, and the Required Lenders, in form and content acceptable to the Lenders.

SECTION 4. 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 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 Lender, under or with respect to any such documents.

SECTION 5. 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 6. 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 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 Lenders with respect thereto and with respect to advising the Lenders as to their rights and responsibilities hereunder and thereunder.

SECTION 7. 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 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 8. 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 9. 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 10. 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 11. 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 11. 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 12. Loan Document. This Amendment shall constitute a Loan Document for all purposes of the Credit Agreement and the other Loan Documents.

[Signature page follows.]

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/ Michael A. Riordan
Name: Michael A. Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

HOLDINGS:

FREIGHTCAR AMERICA, INC.

By: /s/ Michael A. Riordan
Name: Michael A. Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

OTHER LOAN PARTIES:

JAC OPERATIONS, INC.

By: /s/ Michael A. Riordan
Name: Michael A. Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

FREIGHT CAR SERVICES, INC.

By: /s/ Michael A. Riordan
Name: Michael A. Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

JAIX LEASING COMPANY

By: /s/ Michael A. Riordan
Name: Michael A. Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

FREIGHTCAR SHORT LINE, INC.

By: /s/ Michael A. Riordan
Name: Michael A. Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

JOHNSTOWN AMERICA, LLC

By: /s/ Michael A. Riordan
Name: Michael A. Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

FREIGHTCAR ALABAMA, LLC

By: /s/ Michael A. Riordan
Name: Michael A. Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

FREIGHTCAR RAIL SERVICES, LLC

By: /s/ Michael A. Riordan
Name: Michael A. Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

FREIGHTCAR RAIL MANAGEMENT SERVICES, LLC

By: /s/ Michael A. Riordan
Name: Michael A. Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

FCA-FASEMEX, LLC

By: /s/ Michael A. Riordan
Name: Michael A. Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

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

By: /s/ Michael A. Riordan
Name: Michael A. Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

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

By: /s/ Michael A. Riordan
Name: Michael A. Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

LENDER:

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

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

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

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

OC III LFE II LP, as a Lender

By: /s/ Adam L. Gubner
Name: Adam L. Gubner
Title: Authorized Person

EXHIBIT 10.22.7
EXECUTION VERSION

AMENDMENT NO. 7 TO CREDIT AGREEMENT

THIS AMENDMENT NO. 7 TO CREDIT AGREEMENT (this "Amendment"), dated as of February 27, 2023, 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 party hereto, and the LC Provider party hereto.

R E C I T A L S**:**

WHEREAS, the Borrower, Holdings, the Lenders party hereto, the LC Provider party hereto, and certain other entities 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 (i) desire to revise the definition of "Fourth Amendment Availability Period" (as used in the Credit Agreement and any Loan Documents related thereto) and (ii) subject to the terms and conditions set forth herein, hereby agree to 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. The definition of "Fourth Amendment Availability Period" in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety as set forth below:

> ""Fourth Amendment Availability Period" shall mean the period commencing on the Fourth Amendment Effective Date and ending on April 3, 2023."

SECTION 3. Effectiveness. This Amendment shall become effective on the date upon which the Lenders shall have received this Amendment, executed and delivered by a duly authorized officer of Holdings, the Borrower, the other Loan Parties, and the Required Lenders, in form and content acceptable to the Lenders.

SECTION 4. 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 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 Lender, under or with respect to any such documents.

SECTION 5. 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 6. 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 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 Lenders with respect thereto and with respect to advising the Lenders as to their rights and responsibilities hereunder and thereunder.

SECTION 7. 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 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 8. 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 9. 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 10. 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 11. 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 11. 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 12. Loan Document. This Amendment shall constitute a Loan Document for all purposes of the Credit Agreement and the other Loan Documents.

[Signature page follows.]

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/ Michael Riordan
Name: Michael Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

HOLDINGS:

FREIGHTCAR AMERICA, INC.

By: /s/ Michael Riordan
Name: Michael Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

OTHER LOAN PARTIES:

JAC OPERATIONS, INC.

By: /s/ Michael Riordan
Name: Michael Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

FREIGHT CAR SERVICES, INC.

By: /s/ Michael Riordan
Name: Michael Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

JAIX LEASING COMPANY

By: /s/ Michael Riordan
Name: Michael Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

FREIGHTCAR SHORT LINE, INC.

By: /s/ Michael Riordan
Name: Michael Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

JOHNSTOWN AMERICA, LLC

By: /s/ Michael Riordan
Name: Michael Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

FREIGHTCAR ALABAMA, LLC

By: /s/ Michael Riordan
Name: Michael Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

FREIGHTCAR RAIL SERVICES, LLC

By: /s/ Michael Riordan
Name: Michael Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

FREIGHTCAR RAIL MANAGEMENT SERVICES, LLC

By: /s/ Michael Riordan
Name: Michael Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

FCA-FASEMEX, LLC

By: /s/ Michael Riordan
Name: Michael Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

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

By: /s/ Michael Riordan
Name: Michael Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

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

By: /s/ Michael Riordan
Name: Michael Riordan
Title: VP Finance, Chief Financial Officer & Treasurer

LENDER:

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

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

OC III LFE II LP, as a Lender

By: OC III GP LLC, its general partner

By: /s/ Adam L. Gubner
Name: Adam L. Gubner
Title: Authorized Person

AMENDMENT NO. 8 TO CREDIT AGREEMENT

THIS AMENDMENT NO. 8 TO CREDIT AGREEMENT (this "Amendment"), dated as of March 23, 2023, 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 party hereto, the LC Provider and U.S. Bank National Association, as disbursing agent (the "Disbursing Agent").

R E C I T A L S:

WHEREAS, the Borrower, Holdings, the Lenders party hereto, and certain other entities 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 Lenders party hereto constitute Lenders having Loans and unused Fourth Amendment Commitments representing 100% of the sum of all Loans outstanding and unused Fourth Amendment Commitments;

WHEREAS, on or about the date hereof, Holdings and certain funds affiliated with the Lenders have entered into that certain Preferred Purchase Agreement (the "Purchase Agreement") pursuant to which the purchasers thereunder are agreeing to purchase newly-issued preferred securities of Holdings, the proceeds of which will be used to pay the Obligations in full in cash;

WHEREAS, the parties (i) desire to extend the Fourth Amendment Availability Period and make other amendments to the Credit Agreement as set forth herein and (ii) subject to the terms and conditions set forth herein, hereby agree to 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. Amendments to Credit Agreement.

2.1 The definition of Fourth Amendment Availability Period in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety as set forth below:

> "Fourth Amendment Availability Period" shall mean the period commencing on the Fourth Amendment Effective Date and ending on the last day of the Closing Period.

2.2 Section 1.01 of the Credit Agreement is hereby amended to add the following defined terms:

""Closing Period" means the period commencing on March 23, 2023 and ending on the earliest to occur of (i) May 22, 2023, (ii) payment of the Obligations in full in cash at the Closing (as such term is defined in the Purchase Agreement) and (iii) the termination of the Purchase Agreement, including, but not limited to, any termination due to Holdings accepting a Superior Offer (as such term is defined in the Purchase Agreement). The Borrower shall promptly notify the Disbursing Agent in writing of the end of the Closing Period."

""Eighth Amendment" shall mean that certain Amendment No. 8 to Credit Agreement, dated as of March 23, 2023, by and among Holdings, the Borrower, the other Loan Parties and the Lenders party thereto."

""Purchase Agreement" shall have the meaning assigned to such term in the Eighth Amendment."

2.3 Section 2.11(d) of the Credit Agreement is hereby amended and restated in its entirety as set forth below:

"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 kind ("PIK Interest") by capitalizing such amount and adding it to the principal amount of the Loans; *provided* that all interest due during the Closing Period shall be paid as PIK Interest, and notwithstanding anything herein to the contrary, any such PIK Interest capitalized during the Closing Period shall not be subject to any Make-Whole Amount. If the Borrower elects to make payments of interest in kind 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."

SECTION 3. Effectiveness. This Amendment shall become effective on the date upon which each of the following conditions is satisfied:

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, and each Lender, in form and content acceptable to the Disbursing Agent and the Lenders.

3.2 Amendment to Reimbursement Agreement. The Disbursing Agent, the Calculation Agent and LC Provider shall have received a duly executed and delivered Amendment No. 1 to Amended and Restated Reimbursement Agreement, in form and content acceptable to the Disbursing Agent, the Calculation Agent and the LC Provider.

SECTION 4. 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 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 Lender, under or with respect to any such documents.

SECTION 5. 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 6. 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 Lenders, the Disbursing Agent 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 Lenders and the Disbursing Agent with respect thereto and with respect to advising the Lenders and the Disbursing Agent as to their rights and responsibilities hereunder and thereunder.

SECTION 7. 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 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 8. Acknowledgement 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, and (c) 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. 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 10. 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 11. 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 12. 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 12. 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 13. Loan Document. This Amendment shall constitute a Loan Document for all purposes of the Credit Agreement and the other Loan Documents.

SECTION 14. 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 all Loans outstanding and all unused Fourth Amendment Commitments, and the LC Provider is authorizing and directing (i) the Disbursing Agent to execute this Amendment, and (ii) the Disbursing Agent and Alter Domus (US) LLC, as Calculation Agent, to execute that certain Amendment No. 1 to Amended and Restated Reimbursement Agreement dated as of the date hereof among Holdings, the LC Provider, the Disbursing Agent and the Calculation Agent, in the form attached hereto as Annex A.

[Signature pages follow]

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/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

HOLDINGS:
FREIGHTCAR AMERICA, INC.

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

OTHER LOAN PARTIES:

JAC OPERATIONS, INC.

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

FREIGHT CAR SERVICES, INC.

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

JAIX LEASING COMPANY

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person r

FREIGHTCAR SHORT LINE, INC.

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

JOHNSTOWN AMERICA, LLC

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

FREIGHTCAR ALABAMA, LLC

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

FREIGHTCAR RAIL SERVICES, LLC

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

FREIGHTCAR RAIL MANAGEMENT SERVICES, LLC

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

FCA-FASEMEX, LLC

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

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

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

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

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

LENDERS:

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

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

OC III LFE II LP, as a Lender

By: /s/ Adam L. Gubner
Name: Adam L. Gubner
Title: Authorized Person

DISBURSING AGENT:

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

By: /s/ James A. Hanley
Name: James A. Hanley
Title: Vice President

Annex A

See attached.

Execution Version

AMENDMENT NO. 1 TO
AMENDED AND RESTATED REIMBURSEMENT AGREEMENT

THIS AMENDMENT NO. 1 TO AMENDED AND RESTATED REIMBURSEMENT AGREEMENT (this "Amendment"), dated as of March 23, 2023, is made by and among FREIGHTCAR AMERICA, INC., a Delaware corporation ("Company"), CO FINANCE LVS VI LLC, a Delaware limited liability company ("LC Provider"), U.S. BANK, NATIONAL ASSOCIATION ("Disbursing Agent"), and ALTER DOMUS (US) LLC, as calculation agent for LC Provider (in such capacity, "Calculation Agent", and together with the Disbursing Agent, the "Agents" and each, an "Agent").

R E C I T A L S:

WHEREAS, certain of the parties have previously entered into that certain Credit Agreement, dated as of October 13, 2020, by and among Company, FreightCar North America, LLC ("Borrower"), the several financial institutions or other entities from time to time parties thereto including LC Provider (the "Lenders"), the Disbursing Agent and U.S. Bank National Association, as collateral agent for the Secured Parties (as defined therein) (as amended, restated, supplemented or otherwise modified from time to time, the "Amended Credit Agreement"). All capitalized undefined terms used in this Amendment shall have the meanings assigned thereto in the Amended Credit Agreement;

WHEREAS, Company has requested, and LC Provider has obtained, a standby letter of credit (as may be amended from time to time, the "Credit") from Wells Fargo Bank, N.A. ("Issuer"), in the principal sum of $25,000,000 (TWENTY-FIVE MILLION AND 00/100 DOLLARS) (the "Principal Amount") for the account of Company and for the benefit of SIENA LENDING GROUP LLC ("Beneficiary");

WHEREAS, Company has agreed to reimburse Disbursing Agent, for the account of LC Provider, in the event of any drawings under the Credit by Beneficiary;

WHEREAS, in connection with the aforementioned recitals, Company, LC Provider, Disbursing Agent and Calculation Agent entered into that certain Reimbursement Agreement dated as of July 30, 2021 (the "Original Reimbursement Agreement");

WHEREAS, Company, LC Provider, Disbursing Agent and Calculation Agent entered into that certain Amended and Restated Reimbursement Agreement dated as of December 30, 2021 (the "Reimbursement Agreement");

WHEREAS, on or about the date hereof, the Company and certain funds affiliated with the LC Provider have entered into that certain Preferred Purchase Agreement (the "Purchase Agreement") pursuant to which the purchasers thereunder are agreeing to purchase newly-issued preferred securities of the Company, the proceeds of which will be used to pay the Obligations (other than the Reimbursement Obligations in respect of the Third Amendment Letter of Credit) in full in cash; and

WHEREAS, Company, LC Provider, Disbursing Agent and Calculation Agent desire to amend the Reimbursement Agreement on the terms 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 Reimbursement Agreement, as hereby amended, or the Amended Credit Agreement, as applicable.

SECTION 2. Amendment to Reimbursement Agreement.

2.1 Section 2(a)(ii) of the Reimbursement Agreement is hereby amended and restated in its entirety as set forth below:

"Company shall pay to Disbursing Agent, for the account of LC Provider, the Letter of Credit Fee (as defined below), which shall be due and payable quarterly beginning on August 2, 2021 and thereafter on each three month anniversary thereof for so long as the Credit remains outstanding; *provided*, that any Letter of Credit Fee that would otherwise be due and payable during the Closing Period, shall accrue and become payable and be paid on the date that the Closing Period terminates (for the avoidance of doubt, any such accrued Letter of Credit Fee and any other amounts then due with respect to the Letter of Credit Fee will be paid upon Closing (as such term is defined in the Purchase Agreement)); *provided further* that the Company shall provide no less than two (2) Business Days prior written notice to the Disbursing Agent and the Calculation Agent of the date of Closing. The Letter of Credit Fee shall be fully earned when paid and shall not be refundable for any reason whatsoever. Calculation Agent shall determine the Letter of Credit Fee one Business Day prior to the date it is required to be paid and shall notify Disbursing Agent and Company of such amount on such determination date;"

2.2 Section 2(a)(iii) of the Reimbursement Agreement is hereby amended by adding the following sentence at the end thereof:

"Notwithstanding anything to the contrary set forth herein, any Equity Fee that would otherwise be due and payable during the Closing Period, shall accrue and become payable and be paid on the date that the Closing Period terminates (for the avoidance of doubt, any such accrued Equity Fee and any other amounts then due with respect to the Equity Fee will be paid upon Closing (as such term is defined in the Purchase Agreement));"

2.3 Section 2(a)(iv) of the Reimbursement Agreement is hereby amended and restated in its entirety as set forth below:

"(iv) Company shall pay to Disbursing Agent, for the account of LC Provider (or, so long as CO Finance LVS VI LLC is the LC Provider, to OC III LVS XII LP if such LC Provider has notified Company and Disbursing Agent in writing of such designation at least one Business Day prior to the date the Cash Fee is payable) the Cash Fee (as defined below), 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 for so long as the Credit remains outstanding; *provided* that any Cash Fee that would otherwise be due and payable during the Closing Period, shall accrue and become payable and be paid on the date that the Closing Period terminates (for the avoidance of doubt, such accrued Cash Fee and any other amounts then due with respect to the Cash Fee will be paid upon Closing (as such term is defined in the Purchase Agreement)). The Cash Fee shall be fully earned when paid and shall not be refundable for any reason whatsoever. Calculation Agent shall determine the Cash Fee on the last day of the Measurement Period and shall notify Disbursing Agent and Company of such amount on such determination date;"

2.4 Section 2(b) of the Reimbursement Agreement is hereby amended to add the following defined term:

""Closing Period" means the period commencing on March 23, 2023 and ending on the earliest to occur of (i) May 22, 2023, (ii) payment of the Obligations in full in cash at the Closing (as such term is defined in the Purchase Agreement) and (iii) the termination of the Purchase Agreement, including, but not limited to, any termination due to the Company accepting a Superior Offer (as such term is defined in the Purchase Agreement). The Company shall promptly notify the Calculation Agent in writing of the end of the Closing Period."

SECTION 3. Effectiveness. This Amendment shall become effective on the date upon which each of the following conditions is satisfied:

3.1 This Amendment. The Disbursing Agent, the Calculation Agent and LC Provider shall have received this amendment, duly executed and delivered by the Disbursing Agent, LC Provider, Calculation Agent and Company, in form and content acceptable to the Disbursing Agent, the Calculation Agent and the LC Provider.

3.2 Amendment to Credit Agreement. The Lenders and the Disbursing Agent shall have received a duly executed and delivered Amendment No. 8 to Credit Agreement, in form and content acceptable to the Disbursing Agent and the Lenders.

SECTION 4. Limited Effect. Except as expressly provided herein, the Reimbursement Agreement 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 Reimbursement Agreement or a waiver of any other Default or Event of Default (except as expressly provided herein), (b) to prejudice any right or rights the LC Provider or any Agent may now have or may have in the future under or in connection with the Reimbursement Agreement, 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 Company or any other Person with respect to any waiver, amendment, modification or any other change to the Reimbursement Agreement or any rights or remedies arising in favor of any Agent or the

LC Provider, under or with respect to any such documents.

SECTION 5. Representations and Warranties. Company 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 by it, (d) this Amendment constitutes a legal, valid and binding obligation of the Company, enforceable against the Company 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 the Company in Section 5 of the Reimbursement Agreement 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 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 and Amendment No. 8 to Credit Agreement, no Default or Event of Default has occurred and is continuing as of the date hereof or after giving effect hereto.

SECTION 6. Costs and Expenses. The Company agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by the LC Provider and each Agent 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 LC Provider and each Agent with respect thereto and with respect to advising the LC Provider and each Agent as to its rights and responsibilities hereunder and thereunder.

SECTION 7. 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 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 8. 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 9. 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 10. 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 11. 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 11. 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 12. LC Provider Direction. By its execution and delivery of its signature page hereto, the LC Provider is authorizing and directing each of the Disbursing Agent and the Calculation Agent to execute this Amendment.

[Signature pages follow]

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.

COMPANY:
FREIGHTCAR AMERICA, INC.

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

LC PROVIDER:

CO FINANCE LVS VI LLC

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

DISBURSING AGENT:

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

By: /s/ James A. Hanley
Name: James A. Hanley
Title: Vice President

CALCULATION AGENT:

ALTER DOMUS (US) LLC, solely in its capacity as Calculation Agent and not in its individual capacity

By: /s/ Winnalynn N. Kantaris
Name: Winnalynn N. Kantaris
Title: Associate General Counsel

AMENDMENT NO. 1 TO CREDIT AGREEMENT

THIS AMENDMENT NO. 1 TO CREDIT AGREEMENT (this "**Amendment**") is entered into as of January 30, 2021, by and among FreightCar North America, LLC, a Delaware limited liability company (the "**Borrower**"), FreightCar America, Inc., a Delaware corporation ("**Holdings**"), and the Lender party hereto (the "**Lender**").

RECITALS:

WHEREAS, the Borrower, Holdings, the Lender and U.S. Bank National Association, as Disbursing Agent and Collateral Agent, are parties to that certain Credit Agreement, dated as of October 13, 2020 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the "**Credit Agreement**");

WHEREAS, the Borrower has requested that the Lender consent to the delivery of (i) the budget and other documents required to be delivered pursuant to Section 5.01(d) of the Credit Agreement and (ii) an updated Perfection Certificate required to be delivered pursuant to Section 5.02(k) of the Credit Agreement, in each case no later than February 28, 2021, and that the Lender make certain other modifications to the Credit Agreement as contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Capitalized Terms. All capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Credit Agreement, as amended by this Amendment.

Section 2. Amendment to the Credit Agreement. Subject to satisfaction of the conditions precedent set forth in Section 6 below, upon the Effective Date (as hereinafter defined), Section 5.01(d)(ii) of the Credit Agreement is hereby amended and restated as follows:

> "(ii) 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 3. Consent. The Lender hereby consents to the delivery by the Borrower of (i) the budget and other documents required to be delivered pursuant to Section 5.01(d) of the Credit Agreement and (ii) an updated Perfection Certificate required to be delivered pursuant to Section 5.02(k) of the Credit Agreement, in each case no later than February 28, 2021, and agrees that their delivery on or before such date will not constitute a Default or an Event of Default under the terms of the Credit Agreement, including, without limitation, under Section 7.01(d). This consent shall apply in this instance only and, except as expressly provided herein, shall not relieve the Loan Parties of their obligations to comply with the terms of the Credit Agreement.

Section 4. No Other Amendments, Consents or Waivers. Except as otherwise expressly provided herein, this Amendment shall not operate as a consent to any other action by any Loan Party or waiver of any right, power or remedy of the Lender under the Credit Agreement or any of the other Loan Documents, nor constitute a waiver of any provision of the Credit Agreement or any of the other Loan Documents. Except as amended hereby, the text of the Credit Agreement and all other Loan Documents shall remain unchanged and in full force and effect, and each of the Borrower and Holdings hereby ratifies and confirms its obligations thereunder, including, without limitation, the Liens on the Collateral granted by the Borrower and Holdings to the Collateral Agent. This Amendment shall not constitute a modification of the Credit Agreement or a course of dealing with the Lender at variance with the Credit Agreement such as to require further notice by the Lender to require strict compliance with the terms of the Credit Agreement and the other Loan Documents in the future. Each of the Borrower and Holdings acknowledges and expressly agrees that the Lender reserves the right to, and does in fact, require strict compliance with all terms and provisions of the Credit Agreement and the other Loan Documents.

Section 5. Representations and Warranties. Each of the Borrower and Holdings represents and warrants as follows as of the date hereof:

(a) The execution, delivery and performance by the Borrower and Holdings of this Amendment are within the Borrower's and Holdings' organizational powers, have been duly authorized by all necessary organizational action, and do not (i) require any consent or approval of any of the holders of the equity interests of the Borrower or Holdings (which have not already been obtained); (ii) contravene the organizational documents of the Borrower or Holdings; (iii) violate, or cause the Borrower or Holdings to be in default under, any provision of any Requirement of Law, order, writ, judgment, injunction, decree, determination or award in effect having applicability to the Borrower or Holdings or violate any agreement to which either of them is a party as to which no consent, approval, waiver, or amendment is obtained; or
(iv) result in, or require, the creation or imposition of any Lien (other than Permitted Liens) upon or with respect to any of the property of the Borrower or Holdings.

(b) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or any other third party is required for the due execution, delivery or performance by the Borrower or Holdings of this Amendment.

(c) This Amendment has been duly executed and delivered by the Borrower and Holdings, and constitutes the legal, valid and binding obligation of the Borrower and Holdings, enforceable against the Borrower and Holdings in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and subject to principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) After giving effect to this Amendment, no Default and/or Events of Default exist under the Credit Agreement and the other Loan Documents.

Section 6. Conditions Precedent to Effectiveness. This Amendment shall be effective as of the date (the "**Effective Date**") that the Lender shall have received this Amendment, duly executed by the Borrower, Holdings and the Lender.

Section 7. Costs, Expenses and Taxes. To the extent required by Section 9.05(a) of the Credit Agreement, the Borrower agrees to pay on demand all costs and expenses of the Lender incurred in

connection with the preparation, execution and delivery of this Amendment and the other instruments and documents to be delivered hereunder (including, without limitation, the reasonable and documented fees and out-of-pocket expenses of counsel for the Lender with respect thereto).

Section 8. Counterparts; Integration. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which will constitute an original, but all of which when taken together shall constitute a single contract. This Amendment constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Amendment.

Section 9. Governing Law. This Amendment shall be governed by and construed in accordance with Section 9.12 of the Credit Agreement.

Section 10. Loan Document. This Amendment shall constitute a Loan Document for all purposes.

Section 11. Severability. Any provision of this Amendment held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 12. Modification. This Amendment may not be amended, waived or modified in any manner without the written consent of the party against whom the amendment, waiver or modification is sought to be enforced.

Section 13. No Novation. This Amendment is not intended by the parties to be, and shall not be construed to be, a novation of the Credit Agreement or an accord and satisfaction in regard thereto. Each of the Borrower and Holdings hereby reconfirms all of its Obligations and undertakings under the Credit Agreement and other Loan Documents, as amended hereby.

Section 14. Binding Nature. This Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective successors, successors-in-titles, and assigns.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

BORROWER:

FREIGHTCAR NORTH AMERICA, LLC
By: /s/ JAMES R. MEYER
Name: JAMES R. MEYER
Title: President and Chief Executive Officer

HOLDINGS:

FREIGHTCAR AMERICA, INC.
By: /s/ JAMES R. MEYER
Name: JAMES R. MEYER
Title: President and Chief Executive Officer

LENDER:

CO FINANCE LVS VI LLC
By: /s/ CHRISTOPHER NEUMEYER
Name: CHRISTOPHER NEUMEYER
Title: Authorized Person

AMENDMENT NO. 1 TO
AMENDED AND RESTATED REIMBURSEMENT AGREEMENT

THIS AMENDMENT NO. 1 TO AMENDED AND RESTATED REIMBURSEMENT AGREEMENT (this "Amendment"), dated as of March 23, 2023, is made by and among FREIGHTCAR AMERICA, INC., a Delaware corporation ("Company"), CO FINANCE LVS VI LLC, a Delaware limited liability company ("LC Provider"), U.S. BANK, NATIONAL ASSOCIATION ("Disbursing Agent"), and ALTER DOMUS (US) LLC, as calculation agent for LC Provider (in such capacity, "Calculation Agent", and together with the Disbursing Agent, the "Agents" and each, an "Agent").

R E C I T A L S:

WHEREAS, certain of the parties have previously entered into that certain Credit Agreement, dated as of October 13, 2020, by and among Company, FreightCar North America, LLC ("Borrower"), the several financial institutions or other entities from time to time parties thereto including LC Provider (the "Lenders"), the Disbursing Agent and U.S. Bank National Association, as collateral agent for the Secured Parties (as defined therein) (as amended, restated, supplemented or otherwise modified from time to time, the "Amended Credit Agreement"). All capitalized undefined terms used in this Amendment shall have the meanings assigned thereto in the Amended Credit Agreement;

WHEREAS, Company has requested, and LC Provider has obtained, a standby letter of credit (as may be amended from time to time, the "Credit") from Wells Fargo Bank, N.A. ("Issuer"), in the principal sum of $25,000,000 (TWENTY-FIVE MILLION AND 00/100 DOLLARS) (the "Principal Amount") for the account of Company and for the benefit of SIENA LENDING GROUP LLC ("Beneficiary");

WHEREAS, Company has agreed to reimburse Disbursing Agent, for the account of LC Provider, in the event of any drawings under the Credit by Beneficiary;

WHEREAS, in connection with the aforementioned recitals, Company, LC Provider, Disbursing Agent and Calculation Agent entered into that certain Reimbursement Agreement dated as of July 30, 2021 (the "Original Reimbursement Agreement");

WHEREAS, Company, LC Provider, Disbursing Agent and Calculation Agent entered into that certain Amended and Restated Reimbursement Agreement dated as of December 30, 2021 (the "Reimbursement Agreement");

WHEREAS, on or about the date hereof, the Company and certain funds affiliated with the LC Provider have entered into that certain Preferred Purchase Agreement (the "Purchase Agreement") pursuant to which the purchasers thereunder are agreeing to purchase newly-issued preferred securities of the Company, the proceeds of which will be used to pay the Obligations (other than the Reimbursement Obligations in respect of the Third Amendment Letter of Credit) in full in cash; and

WHEREAS, Company, LC Provider, Disbursing Agent and Calculation Agent desire to amend the Reimbursement Agreement on the terms 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 Reimbursement Agreement, as hereby amended, or the Amended Credit Agreement, as applicable.

SECTION 2. Amendment to Reimbursement Agreement.

2.1 Section 2(a)(ii) of the Reimbursement Agreement is hereby amended and restated in its entirety as set forth below:

> "Company shall pay to Disbursing Agent, for the account of LC Provider, the Letter of Credit Fee (as defined below), which shall be due and payable quarterly beginning on August 2, 2021 and thereafter on each three month anniversary thereof for so long as the Credit remains outstanding; *provided*, that any Letter of Credit Fee that would otherwise be due and payable during the Closing Period, shall accrue and become payable and be paid on the date that the Closing Period terminates (for the avoidance of doubt, any such accrued Letter of Credit Fee and any other amounts then due with respect to the Letter of Credit Fee will be paid upon Closing (as such term is defined in the Purchase Agreement)); *provided further* that the Company shall provide no less than two (2) Business Days prior written notice to the Disbursing Agent and the Calculation Agent of the date of Closing. The Letter of Credit Fee shall be fully earned when paid and shall not be refundable for any reason whatsoever. Calculation Agent shall determine the Letter of Credit Fee one Business Day prior to the date it is required to be paid and shall notify Disbursing Agent and Company of such amount on such determination date;"

2.2 Section 2(a)(iii) of the Reimbursement Agreement is hereby amended by adding the following sentence at the end thereof:

> "Notwithstanding anything to the contrary set forth herein, any Equity Fee that would otherwise be due and payable during the Closing Period, shall accrue and become payable and be paid on the date that the Closing Period terminates (for the avoidance of doubt, any such accrued Equity Fee and any other amounts then due with respect to the Equity Fee will be paid upon Closing (as such term is defined in the Purchase Agreement));"

2.3 Section 2(a)(iv) of the Reimbursement Agreement is hereby amended and restated in its entirety as set forth below:

> "(iv) Company shall pay to Disbursing Agent, for the account of LC Provider (or, so long as CO Finance LVS VI LLC is the LC Provider, to OC III LVS XII LP if such LC Provider has notified Company and Disbursing Agent in writing of such designation at least one Business

Day prior to the date the Cash Fee is payable) the Cash Fee (as defined below), 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 for so long as the Credit remains outstanding; *provided* that any Cash Fee that would otherwise be due and payable during the Closing Period, shall accrue and become payable and be paid on the date that the Closing Period terminates (for the avoidance of doubt, such accrued Cash Fee and any other amounts then due with respect to the Cash Fee will be paid upon Closing (as such term is defined in the Purchase Agreement)). The Cash Fee shall be fully earned when paid and shall not be refundable for any reason whatsoever. Calculation Agent shall determine the Cash Fee on the last day of the Measurement Period and shall notify Disbursing Agent and Company of such amount on such determination date;"

2.4 Section 2(b) of the Reimbursement Agreement is hereby amended to add the following defined term:

""Closing Period" means the period commencing on March 23, 2023 and ending on the earliest to occur of (i) May 22, 2023, (ii) payment of the Obligations in full in cash at the Closing (as such term is defined in the Purchase Agreement) and (iii) the termination of the Purchase Agreement, including, but not limited to, any termination due to the Company accepting a Superior Offer (as such term is defined in the Purchase Agreement). The Company shall promptly notify the Calculation Agent in writing of the end of the Closing Period."

SECTION 3. Effectiveness. This Amendment shall become effective on the date upon which each of the following conditions is satisfied:

3.1 This Amendment. The Disbursing Agent, the Calculation Agent and LC Provider shall have received this amendment, duly executed and delivered by the Disbursing Agent, LC Provider, Calculation Agent and Company, in form and content acceptable to the Disbursing Agent, the Calculation Agent and the LC Provider.

3.2 Amendment to Credit Agreement. The Lenders and the Disbursing Agent shall have received a duly executed and delivered Amendment No. 8 to Credit Agreement, in form and content acceptable to the Disbursing Agent and the Lenders.

SECTION 4. Limited Effect. Except as expressly provided herein, the Reimbursement Agreement 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 Reimbursement Agreement or a waiver of any other Default or Event of Default (except as expressly provided herein), (b) to prejudice any right or rights the LC Provider or any Agent may now have or may have in the future under or in connection with the Reimbursement Agreement, 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 Company or any other Person

with respect to any waiver, amendment, modification or any other change to the Reimbursement Agreement or any rights or remedies arising in favor of any Agent or the LC Provider, under or with respect to any such documents.

SECTION 5. Representations and Warranties. Company 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 by it, (d) this Amendment constitutes a legal, valid and binding obligation of the Company, enforceable against the Company 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 the Company in Section 5 of the Reimbursement Agreement 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 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 and Amendment No. 8 to Credit Agreement, no Default or Event of Default has occurred and is continuing as of the date hereof or after giving effect hereto.

SECTION 6. Costs and Expenses. The Company agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by the LC Provider and each Agent 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 LC Provider and each Agent with respect thereto and with respect to advising the LC Provider and each Agent as to its rights and responsibilities hereunder and thereunder.

SECTION 7. 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 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 8. 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 9. 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 10. 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 11. 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 11. 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 12. LC Provider Direction. By its execution and delivery of its signature page hereto, the LC Provider is authorizing and directing each of the Disbursing Agent and the Calculation Agent to execute this Amendment.

[Signature pages follow]

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.

COMPANY:
FREIGHTCAR AMERICA, INC.

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

LC PROVIDER:

CO FINANCE LVS VI LLC

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

DISBURSING AGENT:

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

By: /s/ James A. Hanley
Name: James A. Hanley
Title: Vice President

CALCULATION AGENT:

ALTER DOMUS (US) LLC, solely in its capacity as Calculation Agent and not in its individual capacity

By: /s/ Winnalynn N. Kantaris
Name: Winnalynn N. Kantaris
Title: Associate General Counsel

EXHIBIT 10.30

Execution Version

SECURITIES PURCHASE AGREEMENT

among

FREIGHTCAR AMERICA, INC.

and

THE PURCHASER PARTY HERETO

March 23, 2023

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SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT, dated as of March 23, 2023 (this "Agreement"), is entered into by and among FreightCar America, Inc., a Delaware corporation (the "Company"), and the purchaser set forth in Schedule A hereto (the "Purchaser" and, collectively with the Company, the "Parties", and each, a "Party").

WHEREAS, the Company desires to issue and sell to the Purchaser, and the Purchaser desire to purchase from the Company, the Purchased Securities (as defined below), in accordance with the provisions of this Agreement; and

WHEREAS, the Board has approved and declared advisable this Agreement, including the execution, delivery, and performance thereof, and the consummation of the transactions contemplated by this Agreement, including the Contemplated Transactions, upon the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Definitions. As used in this Agreement, the following terms have the meanings indicated. All capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed to such terms in the Certificate of Designation.

"Action" means any claim, counterclaim, action, cause of action, suit, audit, litigation, controversy, dispute, assessment, grievance, arbitration, investigation, opposition, interference, hearing, mediation, charge, complaint, demand, notice or proceeding of any kind whatsoever to, from, by, heard before, or otherwise involving any Governmental Authority.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Person in question. As used herein, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. For the avoidance of doubt, for purposes of this Agreement, (a) the Company Entities, on the one hand, and Purchaser or its Affiliates, on the other, shall not be considered Affiliates and (b) and any fund or account managed, advised or subadvised, directly or indirectly, by Purchaser or its Affiliates, shall be considered an Affiliate of the Purchaser.

"Agreement" has the meaning set forth in the introductory paragraph of this Agreement.

"Anti-Corruption Laws" means, collectively, (a) the U.S. Foreign Corrupt Practices Act; (b) the UK Bribery Act 2010; and (c) any other applicable Laws related to combatting bribery or corruption.

"Anti-Money Laundering Laws" means all applicable Laws, rules, or regulations relating to terrorism, financial crime or money laundering, including without limitation the United States Bank Secrecy Act, as amended by the USA PATRIOT Act of 2001, the United States Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956 and 1957), the Anti-Money Laundering Act of 2020, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 as amended including pursuant to the Money Laundering and Terrorist Financing (Amendment) Regulations 2019, Proceeds of Crime Act 2002, as amended and the rules and regulations (including those issued by any governmental or regulatory authority) thereunder.

"Beneficial Owner" means any Person who shall be deemed to "beneficially own", to have "beneficial ownership" of, or to be "beneficially owning" any securities (which securities shall also be deemed "beneficially owned" by such Person) that such Person is deemed to "beneficially own" within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act; provided that any Person shall be deemed to beneficially own any securities that such Person has the right to acquire, whether or not such right is exercisable within sixty (60) days or thereafter.

"Board" means the board of directors of the Company.

"Business" means the businesses conducted by the Company Entities and proposed to be conducted by the Company Entities as of the date hereof.

"Business Day" means any day other than a Saturday, Sunday, any federal legal holiday or day on which banking institutions in the State of New York are authorized or required by Law or other governmental action to close.

"Certificate of Designation" has the meaning specified in Section 6.02(c).

"Closing" has the meaning specified in Section 2.02.

"Closing Date" means the date on which the Closing occurs.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the common stock, par value $0.01 per share, of the Company.

"Common Stock Deemed Outstanding" shall mean the number of shares of Common Stock deemed to be outstanding for purposes of calculating the shares of voting Common Stock to be issuable upon exercise of the Purchased Warrant, which shall be determined as of the Closing Date in accordance with the following formula:

$$\text{Common Stock Deemed Outstanding} = A \div (1 - B)$$

For purposes of the foregoing formula, the following definitions shall apply:

"A" shall mean, as of any time of determination, the sum of, without duplication, (i) the number of shares of Common Stock actually outstanding at such time, plus (ii) the

number of shares of Common Stock reserved for issuance at such time under any equity incentive plans approved by the Board of the Company, regardless of whether the shares of Common Stock are actually subject to outstanding options or other rights to acquire shares, plus (iii) the number of shares of Common Stock issuable upon exercise of any other options, warrants or rights to acquire shares of Common Stock actually outstanding at such time (excluding the shares of Common Stock issuable upon exercise of the Purchased Warrant and each other warrant (such other warrants, together with the Purchased Warrant, the "CSDO Warrants") that has a definition of "Common Stock Deemed Outstanding" substantially similar to this definition), plus (iv) the number of shares of Common Stock issuable upon conversion or exchange of Convertible Securities (excluding all CSDO Warrants) actually outstanding at such time, in each case, regardless of whether the options, warrants, or Convertible Securities are actually exercisable at such time; plus (v) 774,407 shares of Common Stock, which represents 5.0% of the total number of shares of Common Stock outstanding as of July 30, 2021, to the extent such shares of Common Stock have not already been issued as an equity fee and are not currently outstanding.

"B" shall mean, as of any time of determination, the sum of 0.03 plus the number (expressed as a decimal value) set forth immediately following clause (a) in the first paragraph of each other CSDO Warrant; provided that, for the avoidance of doubt, as of the date hereof "B" equals 0.36.

"Company" has the meaning set forth in the introductory paragraph of this Agreement.

"Company Entities" means, collectively, the Company and its Subsidiaries.

"Company SEC Documents" means the Company's forms, registration statements, reports, schedules and statements or other document (including exhibits) filed with, or furnished to, the Commission and publicly available after March 1, 2022 and prior to the date hereof.

"Consent" has the meaning specified in Section 3.06.

"Contemplated Transactions" means the transactions contemplated by this Agreement and the Transaction Documents, including (a) the purchase and sale of the Series C Preferred Stock, (b) the issuance of the Warrant, (c) the execution, delivery and performance of the Transaction Documents, (d) the payment of fees and expenses relating to such transaction and (e) any other transactions contemplated herein.

"Contract" means any contract, agreement, indenture, note, bond, mortgage, deed of trust, loan, instrument, lease, license, commitment or other arrangement, understanding, undertaking, commitment or obligation, in each case that is legally binding, whether written or oral.

"Convertible Securities" means any securities (directly or indirectly) convertible into or exchangeable for the Common Stock, but excluding any warrants or other rights or options to subscribe for, acquire, purchase or otherwise be issued Common Stock or convertible securities.

"Credit Agreement" means the Credit Agreement among the Company, FreightCar North America, LLC, the lenders party thereto and U.S. Bank, National Association, dated as of October 13, 2020, and amended as of January 30, 2021, May 14, 2021, July 30, 2021, December 30, 2021, and March 1, 2022 (as amended, restated, amended and restated, supplemented, extended, refinanced or otherwise modified from time to time).

"DGCL" means the Delaware General Corporation Law, as may be amended or revised from time to time.

"Draft 10-K" means the draft 10-K made available to the Purchaser on March 17, 2023.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

"Existing Warrants" means (a) that certain warrant to purchase Common Stock dated as of October 13, 2020, (b) that certain warrant to purchase Common Stock dated as of December 30, 2021 and (c) that certain warrant to purchase Common Stock dated as of April 4, 2022.

"GAAP" means generally accepted accounting principles in the United States 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.

"Governmental Authority" means the government of the United States 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.

"Indebtedness" means, without duplication, all Liabilities imposed on the Company and the Company Entities, in respect of principal, accrued interest, penalties, fees, "breakage" costs and premiums (a) for borrowed money (including amounts outstanding under overdraft facilities), (b) evidenced by notes, bonds, debentures or other similar Contracts, (c) in respect of the maximum amount of any "earnout" payments or similar amounts owing as deferred purchase price for property, goods or services in respect of which the Company or the Company Entities are liable, contingently or otherwise (other than trade payables or accruals incurred in the Ordinary Course of Business to the extent included in current liabilities), (d) in the nature of payment obligations due and owing under any interest rate, currency or other hedging agreement, (e) for obligations under any surety or performance bonds, bank guarantees, bankers' acceptances or letters of credit, but only to the extent drawn, (f) for leases classified as a capital or financial lease in the Financial Statements or required to be capitalized in accordance with GAAP (disregarding ASC 842) and the aggregate amount of unpaid obligations under all equipment operating leases, (g) in the nature of guarantees with respect to any Indebtedness of any other Person of a type described in clauses (a) through (f) above, (h) for all unpaid income Taxes of the Company and/or any of the Company Entities for any Tax period (or portion thereof) ending on or before the

Closing, determined in accordance with GAAP which are overdue and not being contested in good faith, and, without duplication, any unsatisfied Tax imposed on Company and any Company Entities under the relevant provisions of the state and local Tax Laws that are analogous to Section 965 of the Code, (i) of another Person (other than Company or the Company Entities) secured by a Lien on any asset or property of the Company or any Company Entities and (j) any intercompany payables that are payable by Company to its Affiliates (other than Company and the Company Entities). Indebtedness shall not include (i) transaction expenses or (ii) any intracompany Indebtedness between Company and any Company Subsidiary or between any of the Company Entities.

"Law" means collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Letter of Credit" means the standby letter of credit from Wells Fargo Bank, N.A. for the account of the Company and for the benefit of Siena Lending Group LLC (as amended, restated, amended and restated, supplemented, extended, refinanced or otherwise modified from time to time).

"Liability" means any debt, loss, damage, adverse claim, fines, penalties, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, determined or determinable, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability or otherwise), and including all costs and expenses relating thereto including all fees, disbursements and expenses of legal counsel, experts, engineers and consultants and costs of investigation.

"Lien" means any mortgage, pledge, lien (statutory or otherwise), security interest, security agreement, or other encumbrance upon or with respect to any property of any kind.

"Material Adverse Effect" means a change, event, circumstance, effect, condition, occurrence or development (each an "Effect"), which, individually or together with any other Effect or Effects, has had or would reasonably be expected to have (A) a material adverse effect on, the operations, business, properties, assets, or financial condition of the Company Entities, taken as a whole or (B) the ability of the Company Entities to consummate the Contemplated Transactions; provided, however, that any Effect to the extent resulting from, relating to or arising out of any of the following shall not be taken into account in determining whether a "Material Adverse Effect" has occurred for purposes of clause (A) of the definition hereof: (1) the execution or delivery of this Agreement or the satisfaction of the obligations set forth herein, (2) a general deterioration in the industry in which the Company operates, (3) general economic conditions (including changes in the economy, credit, securities or financial or capital markets, in the United States or elsewhere in the world, including changes in interest, credit availability and liquidity or exchange rates), (4) changes in the political, regulatory or business conditions, in the United States or elsewhere in the world, (5) any change in market price or trading volume of the capital stock or

other securities of the Company (provided that the underlying causes of such changes may be considered in determining whether a Material Adverse Effect has occurred to the extent not otherwise excluded by the exceptions set forth in this proviso), (6) any change, event, occurrence or effect resulting from acts of war (whether or not declared), civil disobedience, hostilities, sabotage, terrorism, military actions, cyber-attacks, expropriation, nationalization or the escalation of any of the foregoing, any hurricane, flood, tornado, earthquake or other natural disaster, changes in weather conditions, epidemic, plague, pandemic (including COVID-19) or any other outbreak of illness or other public health event or any other force majeure event, whether or not caused by any Person, or any national or international calamity or crisis, (7) any failure by the Company and its Subsidiaries to meet any internal or public plans, projections or forecasts or estimates of revenues or earnings or other financial, operating or performance metrics for any period; provided that the exception in this clause (7) shall not prevent or otherwise affect a determination that any change, event, occurrence or effect underlying such failure has resulted in, or contributed to, a Material Adverse Effect or (8) any change or proposed change in accounting requirements or principles imposed upon any Company Entity or their respective businesses or any change or proposed change in applicable Law, or the interpretation thereof; provided that in the cases of clauses (2), (3), (4), (7) or (8), any such change to the extent that it disproportionately and adversely affects the Company Entities, taken as a whole, relative to other similarly situated participants in the industries in which the Company Entities operate, in which case such change may be taken into account to the extent of such disproportionate effect in determining whether a "Material Adverse Effect" has occurred.

"NASDAQ" means the Nasdaq Global market, Nasdaq Global select market or any successor.

"Ordinary Course of Business" means an action taken by any Person in the ordinary course of such Person's business that is consistent with the past customs and practices of such Person (including past practice with respect to quantity, amount, magnitude and frequency, standard employment and payroll policies and past practice with respect to management of working capital and the making of capital expenditures) and that is taken in the ordinary course of the normal day-to-day operations of such Person.

"Organizational Documents" means (a) (i) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (ii) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (iii) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, and, in the case of each of (i)-(iii) any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its incorporation, formation or organization, or (b) with respect to entities incorporated in any non-U.S. jurisdiction, equivalent or comparable constitutive documents.

"Outside Date" has the meaning specified in Section 7.01(d).

"Pay Off Letter" has the meaning specified in Section 2.03(a)(ii).

"Permitted Liens" means (a) Liens for taxes that are not yet due or are being contested in good faith, in each case, for which adequate reserves have been included on the books and records of the Company; (b) mechanic's, materialman's, carrier's, repairer's and other similar Liens arising or incurred in the Ordinary Course of Business or that are not yet due and payable or are being contested in good faith; (c) any Lien, in existence on the date hereof, securing payments under capital lease agreements; (d) Liens, in existence on the date hereof, arising under that Loan and Security Agreement dated as of October 8, 2020, as amended, among Siena Lending Group LLC as Lender, FreightCar North America, LLC, JAC Operations, Inc., Freight Car Services, Inc., JAIX Leasing Company, Freightcar Short Line, Inc., Johnstown America, LLC, Freightcar Alabama, LLC, Freightcar Rail Services, LLC, and Freightcar Rail Management Services, LLC as Borrowers, and Freightcar America, Inc. as Guarantor; and (e) Liens, in existence on the date hereof, arising under the letter of credit from Wells Fargo Bank, N.A. for the account of the Company and for the benefit of Siena Lending Group LLC.

"Permitted Transferee" means with respect to Purchaser: (a) any Affiliate of the Purchaser and (b) with respect to Purchaser that is an investment fund or a vehicle of an investment fund (or investment funds), any other investment fund or vehicle of which the Purchaser or an Affiliate thereof serves as the general partner or discretionary manager or advisor (so long as such investment fund or vehicle was not established for the purpose of acquiring Series C Preferred Stock, Warrants or Underlying Shares) and in which the Purchaser or Affiliate thereof retains sole voting and dispositive power; provided, that a portfolio company of Purchaser or its Affiliates shall not be a Permitted Transferee.

"Person" means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, unincorporated organization, government or any agency, instrumentality or political subdivision thereof or any other form of entity.

"Purchased Preferred Stock" means a number of shares equal to (a) the product of (i) Total Purchase Price *multiplied by* (ii) 101% and divided by (b) $1000.

"Purchased Securities" means the Purchased Preferred Stock and the Purchased Warrant, collectively.

"Purchased Warrant" means the Warrant to purchase 3% of Common Stock Deemed Outstanding calculated as of the Closing Date.

"Purchaser" has the meaning specified in the introductory paragraph of this Agreement.

"Reimbursement Agreement" means the Amended and Restated Reimbursement Agreement dated as of December 30, 2021 among the Company, CO Finance LVS VI LLC, U.S Bank National Association and Alter Domus (US) LLC (as amended, restated, amended and restated, supplemented, extended, refinanced or otherwise modified from time to time).

"Representatives" means, with respect to a specified Person, the Affiliates, officers, directors, managers, shareholders, partners, officers, employees, agents, advisors, counsel, accountants, investment bankers and other representatives of such Person.

"Restricted Party" means any Person (a) included on one or more of the Restricted Party Lists; (b) located, organized, or ordinarily resident in a jurisdiction that is the subject of country- or territory-wide sanctions (for example, Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk People's Republic, Luhansk People's Republic, Kherson and Zaporizhzhia regions of Ukraine); (c) owned or controlled by, or acting on behalf of, any of the foregoing; (d) with whom U.S. persons are otherwise prohibited from transacting under Sanctions and Export Control Laws; or (e) with whom any of the Company Entities is otherwise prohibited from dealing under applicable Sanctions and Export Control Laws.

"Restricted Party Lists" means sanctioned and other restricted party lists maintained by the United Nations, the United Kingdom, the United States, or the European Union, and any other relevant jurisdiction including but not limited to the following lists: the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, the Sectoral Sanctions Identifications List, and any other lists administered by OFAC, as amended from time to time; the U.S. Denied Persons List, the U.S. Entity List, and the U.S. Unverified List, all administered by the U.S. Department of Commerce; the consolidated list of Persons, Groups and Entities Subject to EU Financial Sanctions, as implemented by the EU Common Foreign & Security Policy; and similar lists of restricted parties maintained by other relevant governmental authorities.

"Revolving Loan Agreement" shall mean that certain Loan and Security Agreement dated as of October 8, 2020 by and among Siena Lending Group LLC and the Company related parties thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Sanctions and Export Control Laws" means any applicable law related to (a) import and export controls, including the U.S. Export Administration Regulations; (b) economic sanctions, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"), the U.S. Department of State, the European Union, any European Union Member State, the United Nations, His Majesty's Treasury of the United Kingdom, or any other jurisdiction applicable to any of the Company Entities; or (c) anti-boycott measures (in each case except to extent inconsistent with U.S. law).

"Securities Act" means the Securities Act of 1933, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

"Series C Preferred Stock" means the Series C Preferred Stock having the terms set forth in the Certificate of Designation.

"Siena Consent" means that certain letter agreement dated as of the date hereof by and among the Company, Siena Lending Group LLC and the Loan Parties (as defined therein) thereto.

"Solvent" and "Solvency" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person, on a consolidated basis with its Subsidiaries, exceeds its debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, (b) the present fair saleable value of the property of such Person, on a

consolidated basis with its Subsidiaries, is greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such debts and other liabilities become absolute and matured, (c) such Person, on a consolidated basis with its Subsidiaries, is able to pay its debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such liabilities become absolute and matured and (d) such Person, on a consolidated basis with its Subsidiaries, is not engaged in, and is not about to engage in, business for which it has unreasonably small capital. For the purposes of this definition, it is assumed the indebtedness and other obligations incurred under and in connection with the Contemplated Transactions will come due at their respective maturities. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

"Stockholder Agreement" shall mean the stockholder agreement to be entered into at Closing between the Company and Purchaser in form and substance satisfactory to the Company and Purchaser.

"Subsidiary" means, as to any Person, any corporation or other entity of which: (a) at least a majority of the outstanding equity interest having by the terms thereof ordinary voting power to elect a majority of the board of directors or similar governing body of such corporation or other entity (irrespective of whether or not at the time any equity interest of any other class or classes of such corporation or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more of its Subsidiaries; (b) such Person or a Subsidiary of such Person is a general partner or, in the case of a limited liability company, the sole or managing member or manager thereof; or (c) any corporation or other entity as to which such Person consolidates for accounting purposes.

"Superior Offer" means an unsolicited, *bona fide* written offer made by a third party to purchase Series C Preferred Stock, proceeds of which are sufficient to pay-down, in full, the outstanding obligations under the Credit Agreement, or otherwise pay-down, in full, the outstanding obligations under the Credit Agreement, on terms that the Board of the Company determines, in its reasonable good faith judgment, including but not limited to the written advice of its financial advisor, to be materially more favorable (considering both economic and non-economic factors) to the Company's shareholders than the terms of the Contemplated Transactions and which the fiduciary duties of the Board requires the Board to accept, such transaction described in the offer is reasonably capable of being consummated on or prior to May 22, 2023 and is consummated by such time; provided, however, that any such offer shall not be deemed to be a "Superior Offer" if any financing required to consummate the transaction contemplated by such offer is not committed.

"Tax Return" means any return, report or similar filing (including the attached schedules) filed or required to be filed with respect to Taxes (and any amendments thereto), including any information return, claim for refund or declaration of estimated Taxes.

"Taxes" means 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.

"Total Purchase Price" means (i) the total amount payable as set forth in the Payoff Letter, including, for the avoidance of doubt, all principal, accrued interest, any make-whole, fees or premiums (including any prepayment premium) (the "Payoff Amount") *plus* (ii) $15,000,000.

"Transaction Documents" means, collectively, this Agreement, the Certificate of Designation, the Warrant and any and all other agreements or instruments executed and delivered to the Purchaser by the Company hereunder or thereunder, as applicable.

"Transaction Litigation" means any actions, suits, proceedings, claims or disputes or other litigation brought by a stockholder of the Company (a "Stockholder") or former Stockholder that is (1) related to this Agreement or the Contemplated Transactions, or (2) for breach of fiduciary duties owed by any officer, director or shareholder of the Company Entities or to such Stockholder and resulting from actions taken (or omitted to be taken) prior to or in connection with the consummation of the Closing and the Contemplated Transactions.

"Transfer" or "Transferred" means any direct or indirect transfer, sale, gift, assignment, exchange, mortgage, pledge, hypothecation, encumbrance or any other disposition (whether voluntary or involuntary or by operation of law) of any Series C Preferred Stock, Warrants or Underlying Shares (or any interest (pecuniary or otherwise) therein or rights thereto) beneficially owned by a Person. In the event that Purchaser ceases to be controlled by the Person or group of Persons controlling the Purchaser or any Permitted Transferee or Permitted Transferees of such Person or group of Persons, such event shall be deemed to constitute a "Transfer" subject to the restrictions on Transfer contained or referenced herein. For the avoidance of doubt, any direct or indirect transfer, sale, assignment, exchange or any other disposition by a partner, member or other equity holder of a Stockholder to another Person, of any partnership or membership interest or other equity security of such Stockholder that does not result in the Person or group of Persons controlling such Stockholder or a Permitted Transferee or Permitted Transferees of such Person or group of Persons to cease to control such Stockholder, shall not be deemed to constitute a "Transfer" subject to the restrictions on Transfer contained or referenced herein.

"Underlying Shares" has the meaning set forth in Section 3.02(d).

"VAT Certification" means Registro en el Esquema de Certificacion de Empresas, Modalidad IVA IEPS, published by the Tax Governmental Authorities in Mexico, in effect and valid in Mexico, as may be amended, substituted or replaced from time to time.

"Warrant" shall mean the warrant substantially in the form attached as Exhibit B, with such changes thereto as may be consented to by the parties prior to the Closing.

Section 1.02 Accounting Procedures and Interpretation. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements of the Company and certificates and reports as to financial matters required to be furnished to the Purchaser hereunder shall be prepared, in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q or other rules or regulations promulgated by the

Commission) and in compliance as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the Commission with respect thereto.

ARTICLE II
AGREEMENT TO SELL AND PURCHASE

Section 2.01 Sale and Purchase.

(a) Subject to the terms and conditions hereof, at the Closing, Purchaser hereby agrees to purchase from the Company the Purchased Securities, free and clear of any Liens, other than transfer restrictions under the Certificate of Designation or Warrant, as applicable, and applicable federal and state securities Laws and those created by the Purchaser, and Purchaser agrees to pay the Company its Total Purchase Price with respect to such Purchased Securities.

(b) Subject to the terms and conditions hereof, at the Closing, the Company hereby agrees to issue and sell to Purchaser the Purchased Securities free and clear of any Liens, other than transfer restrictions under the Certificate of Designation or Warrant, as applicable, and applicable federal and state securities Laws and those created by the Purchaser.

Section 2.02 Closing. The consummation of the purchase and sale of the Purchased Securities hereunder (the "Closing") shall take place at 9:00 a.m. Eastern Time on the date that is two (2) Business Days following the satisfaction or waiver (by the Party entitled to benefit of such conditions) at the Closing of the conditions set forth Article VI (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver (by the Party entitled to the benefit of such conditions) of those conditions at such time), by remote means (via conference call and electronic (*i.e.*, email/ PDF) exchange of the applicable documents and signatures) or at such other place, time or date as may be mutually agreed upon in writing by the Company and the Purchaser; provided, that without the prior written consent of the Company, the Closing shall not occur prior to May 22, 2023.

Section 2.03 Deliveries at the Closing.

(a) **Deliveries of the Company**. At the Closing, the Company shall deliver, or cause to be delivered, to the Purchaser:

(i) an original copy of the duly executed Warrant shall have been delivered to the Purchaser (or its Affiliated designee) in escrow no later than two (2) Business Days prior to Closing Date;

(ii) a duly executed pay-off letter detailing in accordance with the terms of the Credit Agreement the repayment in-full, in-cash of 100% of the principal amount of outstanding term loan debt, together with all accrued unpaid interest, fees and penalties and other obligations under the Credit Agreement using the proceeds of the purchase of the Purchased Preferred Stock (the "Payoff Letter") and payment of all such amounts substantially simultaneously with the Closing;

(iii) a certificate representing the Purchased Preferred Stock to each of the Purchaser (or its Affiliated designee) in escrow no later than two (2) Business Days

prior to Closing Date, bearing a restrictive notation meeting the requirements of the Securities Act, free and clear of any Liens, other than transfer restrictions under this Agreement and applicable federal and state securities Laws and those created by the Purchaser;

(iv) a certificate of a duly authorized officer of the Company, on behalf of the Company, dated as of the Closing Date, certifying, in his or her applicable capacity, to the effect that the conditions set forth in Section 6.02(a), Section 6.02(b) and Section 6.02(d) have been satisfied;

(v) without limiting Section 8.02, payment of all fees and reasonable and documented out-of-pocket expenses of the Purchaser, to the extent invoiced prior to the Closing Date.

(vi) a cross-receipt executed by the Company and delivered to each of the Purchaser certifying as to the amounts that it has received from the Purchaser;

(vii) a certificate of the Delaware Secretary of State, dated within five (5) days of the Closing Date, to the effect that the Company is in good standing under the laws of the State of Delaware;

(viii) a copy of the consent executed by Board approving the Contemplated Transactions for all purposes under applicable Law;

(ix) a duly executed Stockholder Agreement in form and substance acceptable to the Purchaser; and

(x) an amendment to (a) the Reimbursement Agreement, (b) the Guarantee and Collateral Agreement dated as of November 24, 2020 among the Company, FreightCar North America, LLC, the Grantor parties thereto and U.S. Bank National Association as Collateral Agent and (c) the associated intercreditor agreement, each in form and substance reasonably acceptable to the Parties.

(b) **Deliveries of Purchaser**. At the Closing, Purchaser shall deliver or cause to be delivered to the Company:

(i) payment by the Purchaser of the Total Purchase Price payable by wire transfer of immediately available funds to an account designated by the Company in writing to the Purchaser no later than two (2) Business Days prior the Closing Date;

(ii) a properly executed Internal Revenue Service Form W-9 from the Purchaser;

(iii) a certificate of a duly authorized officer or other authorized signatory of the Purchaser, on behalf of the Purchaser, dated the Closing Date, certifying, in his or her applicable capacity, to the effect that the conditions set forth in Section 6.03(a) and Section 6.03(b) have been satisfied;

(iv) a duly executed copy of the Payoff Letter; and

(v) a duly executed Stockholder Agreement in form and substance acceptable to the Company.

Section 2.04 Further Assurances. From time to time after the date hereof, without further consideration, the Company shall use its commercially reasonable efforts to take, or cause to be taken, all actions necessary, appropriate or advisable to consummate the Contemplated Transactions.

ARTICLE III
REPRESENTATIONS AND WARRANTIES RELATED TO THE COMPANY

Except as disclosed in the Company SEC Documents (excluding, in each case, any disclosures set forth in the risk factors, "forward-looking statements" or other cautionary or forward-looking sections of such reports), the Company represents and warrants to the Purchaser as follows:

Section 3.01 Existence, Qualification and Power. Each of the Company Entities (a) is duly organized or formed, 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 (i) own or lease its assets and to conduct its Business as currently conducted and (ii) execute, deliver and perform its obligations under this Agreement and the Transaction Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its Business requires such qualification or license, except where the failure to so qualify solely with respect to this Section 3.01(c) has not had and would not reasonably be expected to have a Material Adverse Effect.

Section 3.02 Capitalization and Valid Issuance of Securities.

(a) As of March 11, 2023, (a) the authorized capital stock of the Company is 52,500,000 shares, consisting of 50,000,000 shares of common stock, par value $0.01 per share, and 2,500,000 shares of preferred stock, par value $0.01 per share; (b) the number of shares of capital stock issued and outstanding is 17,702,459 shares of Common Stock and 0 shares of preferred stock; (c) 9,780,688 shares underlying warrants; (d) 1,315,031 shares underlying outstanding stock options; (e) 793,724 non-vested restricted shares and (f) there are no shares of capital stock issuable and reserved for issuance pursuant to other securities exercisable for, convertible into, or exchangeable for, any shares of capital stock of the Company. All of the issued and outstanding shares of the Company's capital stock have been duly authorized and validly issued and are fully paid and nonassessable and were issued in compliance with applicable state and federal securities law and any rights of third parties.

(b) The Purchased Securities have been, or prior to the Closing will be, duly and validly authorized and, when issued and paid for pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and shall be free and clear of all Liens and restrictions on transfer, except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable

securities laws. The Board, by resolutions duly adopted by a unanimous vote, not subsequently rescinded or modified in any way, has: (i) determined that this Agreement and the Contemplated Transactions, upon the terms and subject to the conditions set forth herein, are fair to, and in the best interests of, the Company and the Company's stockholders and (ii) approved and declared advisable this Agreement, including the execution, delivery, and performance thereof, and the consummation of the Contemplated Transactions, upon the terms and subject to the conditions set forth herein. The Company and the Board have taken all actions so that this Agreement and the Contemplated Transactions, including the purchase of the Purchased Securities, the issuance of voting Common Stock upon exercise of the Warrant and the Transfer of the Purchased Securities (or the voting Common Stock issued upon exercise of the Warrant) to any Permitted Transferees of the Purchaser, are fully authorized and approved for all purposes under all applicable Law and the Company's Organizational Documents.

(c) No Person is entitled to pre-emptive or similar statutory or contractual rights with respect to any securities of the Company Entities. Other than as contemplated by this Agreement, there are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character under which any Company Entity is or may be obligated to issue any equity securities of any kind, other than options granted under the Company's stock plans. Other than as contemplated by this Agreement, there are no stockholders agreements, voting agreements, buy-sell agreements, option or right of first purchase agreements or other agreements of any kind among the Company and any of the securityholders of the Company relating to the securities of the Company held by them or, to the Company's knowledge, between or among any of the Company's stockholders. Other than the Registration Rights Agreement dated as of December 30, 2021 by and among the Company and each of the signatories thereto, no Person has the right to require the Company to register any securities of the Company under the Securities Act, whether on a demand basis or in connection with the registration of securities of the Company for its own account or for the account of any other Person. The issuance and sale of the Purchased Securities hereunder will not obligate the Company to issue Common Stock or other securities to any other Person (other than the Purchaser) and will not result in the adjustment of the exercise, conversion, exchange or reset price of any outstanding security. The Company does not have outstanding stockholder purchase rights or "poison pill" or any similar arrangement in effect giving any Person the right to purchase any equity interest in the Company upon the occurrence of certain events.

(d) All shares of voting Common Stock issuable upon exercise of the Warrants (the "Underlying Shares") have been duly authorized and reserved pursuant to the Company's certificate of incorporation (the "Certificate of Incorporation"), the Certificate of Designation and the Warrants and, upon issuance and delivery by the Company to the Purchaser in accordance with this Agreement and the terms of the Warrants, will be duly authorized, validly issued, fully paid and non-assessable and will be free of any preemptive rights or any Liens and restrictions on transfer, other than (i) restrictions on transfer under the Warrants and under applicable state and federal securities laws and (ii) such Liens as are created by the Purchaser or its Affiliates.

(e) No Registration Required. Assuming the accuracy of the representations and warranties of the applicable Purchaser contained in Article IV, the issuance and sale of the Purchased Securities to the Purchaser pursuant to this Agreement is exempt from registration requirements of the Securities Act, and neither the Company nor, to the knowledge of the Company

Entities, any Person acting on its behalf, has taken nor will take any action hereafter that would cause the loss of such exemption.

Section 3.03 **Ownership of the Subsidiaries**. All of the outstanding shares of capital stock or other equity interests of each Subsidiary owned, directly or indirectly, by the Company (a) have been validly issued and are fully paid and nonassessable, and (b) are wholly-owned, directly or indirectly, by the Company, free and clear of all Liens and other Contract, except for Liens under the Company's Indebtedness as set forth on Item 7 of the Draft 10-K and for restrictions on transferability in the Organizational Documents of such Subsidiary. All of the issued and outstanding equity interests of the Company's Subsidiaries have been duly authorized, validly issued, fully paid and non-assessable and none of such equity interests are subject to or were issued in violation of any applicable Laws and are not subject to and have not been issued in violation of any stockholders agreement, proxy, voting trust or similar agreement, or any preemptive rights, rights of first refusal or similar rights of any Person. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the Subsidiaries listed in the Company SEC Documents.

Section 3.04 **No Conflicts**. The issuance and sale by the Company of the Purchased Securities, the authorization, execution, delivery and performance of the Transaction Documents and the consummation of the Contemplated Transactions by any Company Entity do not and will not, whether by lapse of time or otherwise, (a) conflict with or result in any violation of the provisions of the terms of any of the Company Entity's Organizational Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien upon or forfeiture of any of the rights, properties or assets of any Company Entity under, or result in termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or require any action by (including any authorization, consent or approval) or notice to any Person, or require any payment to be made under any of the terms, conditions or provisions of (i) any security issued by any Company Entity, (ii) any other agreement, instrument or other undertaking to which such Company Entity is a party or by which it or any of its property or assets is subject or (iii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which any Company Entity or its property is subject; (c) violate any Law or any rule or regulation of any self-regulatory organization or other non-governmental regulatory authority (including the rules and regulations of NASDAQ); except in the case of clauses (b) and (c) for such violations which would not reasonably be expected to be material to the Company Entities, taken as a whole.

Section 3.05 **Authority; Enforceability**.

(a) The execution, delivery and performance by the Company of each of the Transaction Documents and the consummation by it of the Contemplated Transactions have been duly and validly authorized by all necessary corporate action. The Company has all requisite power and authority to issue, sell and deliver the Purchased Securities, in accordance with and upon the terms and conditions set forth in this Agreement. On or prior to the Closing Date, all action required to be taken by any Company Entity for the authorization, issuance, sale and delivery of the Purchased Securities, the execution and delivery of the Transaction Documents and the consummation of the Contemplated Transactions shall have been validly taken.

(b) Each of the Transaction Documents has been or, when delivered hereunder, will have been, duly executed and delivered by each Company Entity that is, or will be, at Closing a party thereto. Each of the Transaction Documents constitutes, or will constitute, a legal, valid and binding obligation of each such Company Entity, enforceable in accordance with its terms; provided that, with respect to each such agreement, the enforceability thereof may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar Laws from time to time in effect affecting the enforcement of creditors' rights and remedies generally and by general principles of equity (regardless of whether such principles are considered in a proceeding in equity or at law) (the "Enforceability Exceptions").

Section 3.06 Approvals. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person (each, a "Consent"), is necessary or required in connection with the issuance and sale of the Purchased Securities by the Company, the execution, delivery and performance of this Agreement and the other Transaction Documents by any Company Entity and the consummation by the Company Entities of the Contemplated Transactions, other than (i) the filing of the Certificate of Designation with the Delaware Secretary of State, (ii) the applicable requirements under the state securities or "blue sky" Laws and (iii) the other executed approval with the revolving lender under the Revolving Loan Agreement that has been obtained in writing on the date hereof, a true, complete and accurate copy of which has been made available to Purchaser.

Section 3.07 Company SEC Documents. Since March 1, 2020, the Company's forms, registration statements, reports, schedules and statements required to be filed or furnished (as applicable) by it under the Exchange Act have been filed with or furnished to (as applicable) the Commission on a timely basis (it being understood that the Company's Report on Form 10-K for the year ended December 31, 2022 will be timely filed if filed within the period provided by Form 12b-25 or as otherwise provided by applicable regulatory relief). The Company SEC Documents, at the time filed (or in the case of registration statements, solely on the dates of effectiveness), except to the extent corrected by a subsequent Company SEC Document, (a) did not contain any untrue statement of a material fact or omit 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 in the case of any such documents other than a registration statement, not misleading and (b) complied as to form in all material respects with the applicable requirements of the Exchange Act and the Securities Act, as the case may be. The Draft 10-K is true, complete and accurate in all material respects other than the description of the Contemplated Transactions to be included in such Draft 10-K.

Section 3.08 Financial Statements; Controls.

(a) Financial Statements. The historical financial statements (including the related notes and supporting schedules) contained or incorporated by reference in the Company SEC Documents (the "Financial Statements"): (i) comply as to form in all material respects with the applicable accounting requirements under the Securities Act and the Exchange Act (except that certain supporting schedules are omitted), (ii) fairly present in all material respects the consolidated financial condition of the Company and its Subsidiaries as of the date thereof and the consolidated statements of income, members' (or stockholders') equity, and cash flows for the respective periods (subject, in the case of unaudited quarterly financial statements, to normal

year-end adjustments that are not, individually or in the aggregate, material) and (iii) have been prepared in all material respects in accordance with GAAP (except, in the case of unaudited quarterly statements, as permitted by Form 10-Q of the Commission or other rules and regulations of the Commission) consistently applied throughout the periods involved, (except (y) as may be indicated in the notes thereto or (z) as permitted by Regulation S-X). No Company Entity has any liabilities of any nature (whether accrued, absolute, contingent or otherwise) that would be required under GAAP, as in effect on the date hereof, to be reflected on a consolidated balance sheet of the Company (including the notes thereto) except for (A) liabilities specifically reflected or reserved against in the Financial Statements including in the Draft 10-K (the "Most Recent Financial Statements"), (B) liabilities that have been incurred in the Ordinary Course of Business since the date of the Most Recent Financial Statements and that do not arise from any material breach of a Contract or (C) liabilities as contemplated by the Transaction Documents or otherwise incurred in connection with the Transaction Documents or the Contemplated Transactions.

(b) Internal Controls. The Company Entities, taken as a whole, maintain a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-5(f) of the Exchange Act) sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, consistently applied, and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization, (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences and (v) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Company SEC Documents is in compliance in all material respects with the SEC's published rules, regulations and guidelines applicable thereto. Except as described in the Company SEC Documents, since the first day of the Company's most recent fiscal year for which audited financial statements are included in the Company SEC Documents, there has been (x) no material weakness (as defined in Rule 1-02 of Regulation S-X of the SEC) in the Company's internal control over financial reporting (whether or not remediated), and (y) no fraud, whether or not material, involving management or other employees who have a role in the Company's internal control over financial reporting and, since the end of the Company's most recent fiscal year for which audited financial statements are included in the Company SEC Documents, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company's independent public accountants and the Company's Board have been advised of all material weaknesses, if any, and significant deficiencies (as defined in Rule 1-02 of Regulation S-X of the SEC), if any, in the Company's internal control over financial reporting or of all fraud, if any, whether or not material, involving management or other employees who have a role in the Company's internal controls over financial reporting, in each case that occurred or existed, or was first detected, at any time during the three most recent fiscal years covered by the audited financial statements of the Company or at any time subsequent thereto.

(d) Disclosure Controls and Procedures. (i) To the extent required by Rule 13a-15 under the Exchange Act, each of the Company Entities has established and maintains disclosure controls and procedures (to the extent required by and as such term is defined in Rule 13a-15(e) under the Exchange Act), (ii) such disclosure controls and procedures are designed to provide

reasonable assurance that that the information required to be disclosed by the Company in the reports to be filed or submitted under the Exchange Act is accumulated and communicated to management of the Company, as appropriate, to allow timely decisions regarding required disclosure to be made and (iii) to the extent required by Rule 13a-15 under the Exchange Act, such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

Section 3.09 Required Disclosures and Descriptions.

(a) There are no Actions (including an audit or examination by any taxing authority) pending or, to the knowledge of the Company Entities, threatened, against any of the Company Entities, or to which any of the Company Entities is a party, or to which any of their respective properties is subject, that are required to be described in the Company SEC Documents but are not described as required, and there are no Contracts that are required to be described in the Company SEC Documents or to be filed as an exhibit to the Company SEC Documents that are not described or filed as required by the Securities Act or the Exchange Act.

(b) No Company Entity is a party to, or has entered into any Contract to become a party to, any joint venture, off-balance sheet partnership or any similar Contract (including any Contract relating to any transaction or relationship between or among the Company Entities, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand), or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K of the SEC), where the purpose or effect of such Contract is to avoid disclosure of any material transaction involving, or material liabilities of, the Company in the Company's audited financial statements or other Company SEC Documents.

(c) Except as permitted by the Exchange Act, including Sections 13(k)(2) and (3), neither the Company nor any of its Affiliates acting on behalf of any of the Company Entities has since March 1, 2020, made any personal loans to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Company Entities.

Section 3.10 Indebtedness; Guarantees; Solvency. The Company Entities have no Liabilities in respect of Indebtedness other than (i) as specifically set forth in in Item 7 of the Draft 10-K or (ii) Indebtedness not required to be disclosed in the Company SEC Documents in an amount not to exceed, in the aggregate, $1,000,000. Except as set forth on Item 7 of the Draft 10-K, no Company Entity has any Liability in respect of a guarantee of any Indebtedness or other Liability of any other Person (other than another Company Entity). No Company Entity is in default under, or reasonably expected to be in default under, any such Indebtedness or guarantees as of the date hereof and as of the Closing, including in connection with the consummation of Contemplated Transactions. As of the date hereof and on the Closing Date after giving effect to the Contemplated Transactions, each of the Company Entities are Solvent.

Section 3.11 Subsequent Events. Since March 22, 2022, except for the execution and performance of this Agreement, the Company Entities have conducted their respective businesses in the Ordinary Course of Business and, except as required or contemplated by this Agreement, there has not been any action that, if taken after the date of this Agreement without Purchaser's consent by any Company Entity, would constitute a breach of Section 5.02.

Since March 22, 2022, there has been no event or circumstance, either individually or in the aggregate, that has had a Material Adverse Effect.

Section 3.12 Litigation. There are no Actions pending or, to the knowledge of the Company Entities, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against any of the Company Entities or any key employee, officer or director of any of the Company Entities arising out of their employment or board relationship with a Company Entity or against any of their properties, or before or by any self-regulatory organization or other non-government regulatory authority, that (a) purport to affect or pertain to this Agreement or any other Transaction Document, or any of the Contemplated Transactions, or (b) either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. There are no Actions which a Company Entity presently intends to initiate.

Section 3.13 Compliance with Law. The Company and each Subsidiary thereof is, and since March 1, 2020, each Company has been, in compliance, in all material respects with the requirements of all Laws, and any rule or regulation of any self-regulatory organization or other non-governmental regulatory authority (including the rules and regulations of NASDAQ), and all orders, writs, injunctions and decrees applicable to it or to its properties. The Company Entities each possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not reasonably be expected to be material to the Company, such certificates, authorizations and permits are valid and in full force and effect, to the Company's knowledge, no Company Entity is, in any material respect, in breach or violation of, or default under, any such certificate, authorization or permit, and none of the Company Entities has received any notice of Actions relating to the revocation or modification of any such certificate, authorization or permit, except where such potential revocation or modification would not reasonably be expected to be material to the Company.

Section 3.14 Compliance with Economic Sanctions, Anti-Corruption Laws, and Anti-Money Laundering Laws.

(a) Neither the Company Entities nor any of their Representatives or any other Persons acting for or on behalf of any of the foregoing is or has been (a) a Restricted Party; or (b) engaged in any transactions with or for the benefit of a Restricted Party. Neither the Company Entities nor any of their Representatives or any other Persons acting for or on behalf of any of the foregoing has, in violation of Anti-Corruption Laws, (i) made, offered, promised, paid, or received any unlawful bribes, kickbacks, or other similar payments to or from any Person; (ii) made or paid any contributions, directly or indirectly, to a domestic or foreign political party or candidate; or (iii) otherwise made, offered, received, authorized, promised, or paid any improper payment under any Anti-Corruption Laws. Each of the Company Entities is in compliance with all Sanctions and Export Control Laws, Anti-Corruption Laws, and Anti-Money Laundering Laws. There is no pending or threatened Action before any court or other Governmental Authority against any of the Company Entities or their respective Representatives that relates to an alleged or potential violation of Sanctions and Export Control Laws, Anti-Corruption Laws, or Anti-Money Laundering Laws. Each of the Company Entities has implemented and maintains in effect appropriate controls reasonably designed to promote compliance by each Company Entity and its

respective Representatives with Sanctions and Export Control Laws, Anti-Corruption Laws, and Anti-Money Laundering Laws.

(b) TID U.S. Business. None of the Company or its Subsidiaries is, or has any current intention of, engaging in activities that would cause any of them to become in the future, a "TID U.S. business," as that term is defined at 31 C.F.R. 800.248. For avoidance of doubt, none of the Company Entities does (i) produce, design, test, manufacture, fabricate or develop any "critical technologies," as defined at 31 C.F.R. 800.215; (ii) perform any functions related to "covered investment critical infrastructure" as defined at 31C.F.R. 800.212 and as set forth in Appendix A to 31 C.F.R. Part 800; or (iii) maintain or collect, directly or indirectly, any "sensitive personal data" of U.S. citizens as defined at 31 C.F.R. 800.241.

Section 3.15 Securities Matters.

(a) Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to, or which, to the knowledge of the Company Entities, is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Common Stock is listed on the NASDAQ, and the Company has not received any notice of delisting that is in effect as of the date of this Agreement. The Company is in compliance in all material respects with the listing and listing maintenance requirements of the NASDAQ applicable to it for the continued trading of its Common Stock on the NASDAQ.

(b) No Directed Selling Efforts or General Solicitation. Neither the Company nor any Person acting on its behalf has conducted any general solicitation or general advertising (as those terms are used in Regulation D of the Securities Act) in connection with the offer or sale of any of the Purchased Securities.

(c) No Integrated Offering. Neither the Company nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any security, under circumstances that would adversely affect reliance by the Company on Section 4(a)(2) of the Securities Act for the exemption from registration for the Contemplated Transactions or would require registration of the Purchased Securities under the Securities Act.

(d) The Purchased Securities will not, on the date they are issued, be of the same class as securities listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted on a U.S. automated interdealer quotation system.

Section 3.16 Tax Returns; Taxes.

(a) The Company is classified as a corporation for U.S. federal income tax purposes. Except as would not reasonably be expected to have a Material Adverse Effect, the Company and its Subsidiaries have timely filed all Tax Returns required to be filed, and have timely paid all Taxes that are due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP, applied on a consistent basis during the periods involved in

the Company SEC Documents. There are no Liens with respect to Taxes upon any Company Entity's assets other than Permitted Liens. There is no written proposed Tax assessment or, to the knowledge of the Company Entities, any other proposed Tax assessment against the Company or any Subsidiary that would, if made, be reasonably expected to be material to the Company Entities, taken as a whole. The Company is not and has never been a United States real property holding corporation within the meaning of Code Section 897 ("USRPHC").

(b) There are no pending tax audits or other administrative proceedings or any currently pending court Actions, in each case, concerning any Tax liability of the Company Entities for which written notice has been received.

(c) Each of the Company Entities is not a party to any Tax sharing or Tax allocation agreement, other than agreements (i) to which the Company Entities are the only parties or (ii) entered into in the Ordinary Course of Business the primary purpose of which is not Taxes. Each of the Company Entities has no liability for the Taxes of any Person (other than the Company Entities) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract or otherwise (except for agreements entered into in the Ordinary Course of Business the primary purpose of which is not Taxes).

(d) No closing agreements, private letter rulings, Tax holidays, technical advice memoranda or similar agreements or rulings related to Taxes have been entered into, issued by or requested from any Governmental Authority with or in respect of the Company Entities, in each case, with respect to any taxable period for which the statute of limitations has not expired.

(e) One or more Subsidiaries of the Company is a company operating under an IMMEX Program, pursuant to the applicable provisions of the Mexican Income Tax Act applicable to maquiladora companies, with a VAT Certification modality AAA, and other applicable provisions and regulations specific to *maquiladoras*, in accordance with Mexican customs and foreign trade regulations. Such Company Entity is in all material respects compliant and in good standing with its IMMEX Program, and VAT Certification, including without limitation, periodic reports, inventory control system, wastes and disposals. At Closing, the IMMEX Program, VAT Certification, permit to import steel to Mexico and other material permits, authorizations, registries and licenses required to conduct the operations of such Company Entity in Mexico are valid, in force and to the best of the Company's knowledge not threatened with revocation or cancellation. Such Company Entity is not in possession of any other personal tangible property and assets, except for those owned by the Company Entity and that are duly registered in its accounting books, and those assets that are imported into Mexico under the Company Entity's IMMEX Program.

Section 3.17 **Material Contracts**. The Company has made available to the Purchaser accurate and complete copies of, or a written summary setting forth all of the material terms and conditions of, (a) Contracts for the Company Entities' that contains payment obligations to or from a Company Entity in excess of $5,000,000 during the fiscal year ended on December 31, 2022, all Contracts relating to material Indebtedness of the Company (b) all Contracts between a Company Entity, on the one hand, and any officer, director or Affiliate of a Company Entity, on the other hand (except in the case of this sub-clause (b), any such Contract that has been filed with the Company SEC Documents), in each case, as amended or otherwise modified and in effect and (c) any other Contract that the Company Entities believe to be or reasonably expect to be material

to the Business. Each such Contract and each other Contract that is described or referred to in, or filed with, the Company SEC Documents (all such Contracts collectively, "Material Contracts") is in full force and effect and is valid and enforceable by and against the Company Entities parties thereto and, to the Company's knowledge, any other party thereto in accordance with its terms except as the enforceability thereof may be limited by the Enforceability Exceptions. No Company Entity nor, to the Company's knowledge, any other party is in default in any material respect in the observance or performance of any material term or obligation to be performed by it under any Material Contract.

Section 3.18 Customers and Suppliers.

(a) As of the date hereof, no Material Customer has canceled, terminated, materially altered or materially reduced its relationship with the Business, or notified any Company Entity of any intention to do any of the foregoing. No Company Entity is, or has been, involved in any material dispute with any Material Customer. For purposes of this Section 3.18(a), "Material Customer" means the five (5) largest customers (measured by revenue) of the Business for each of the fiscal years ended December 31, 2022 and December 31, 2021.

(b) As of the date hereof, no Material Supplier has canceled, terminated, materially altered or materially reduced its relationship with the Business, or notified any Company Entity of any intention to do any of the foregoing. No Company Entity is, or has been, involved in any material dispute with any Material Supplier. For purposes of this Section 3.18(b), "Material Supplier" means the five (5) largest vendors and suppliers (measured by fees paid or payable) of the Business for each of the fiscal years ended December 31, 2022 and December 31, 2021 and Roll Form Group, to the extent not otherwise one of the five largest suppliers by fees paid or payable.

Section 3.19 Labor Matters.

(a) Each Company Entity is in compliance in all material respects with all applicable Law (including any legal obligation to engage in affirmative action), and Contracts relating to employment practices, terms and conditions of employment, and the employment of former, current, and prospective employees, individual independent contractors and "leased employees" (within the meaning of Section 414(n) of the Code in the United States and other appliable Law in any jurisdiction in which any Company Entity employs interim employees), including all such applicable Law and Contracts relating to wages, hours, collective bargaining, employment discrimination, immigration, disability, civil rights, fair labor standards, occupational safety and health, workers' compensation, and pay equity, and have timely prepared and, as applicable, filed all employment-related forms (including United States Citizenship and Immigration Services Form I-9) to the extent required by any relevant Governmental Authority. No executive (including division director and vice president level positions) of any Company Entity is employed under a non-immigrant work visa or other work authorization or foreign work permit that is limited in duration. Each Company Entity has properly completed all reporting and verification requirements pursuant to Law relating to immigration control for all employees and contractors of the Company Entities.

(b) Except as would not be material to the Company Entities, (i) each employee of the Company Entities is properly classified as exempt or nonexempt from the overtime requirements of the Fair Labor Standards Act, the Mexican Federal Labor Law Act and applicable state wage and hour laws and (ii) each individual service provider classified as an independent contractor of the Company Entities is properly classified as such.

(c) No written notice has been received within the prior three (3) years by any Company Entity of the intent of any federal, state, local or foreign agency responsible for the enforcement of labor or employment laws to conduct an investigation of a Company Entity with respect to its employees or individual independent contractors, and, to the Company's knowledge, no such investigation is in progress.

Section 3.20 Product Warranties; Product Liability.

(a) Product Warranties. The suppliers of products to the Company Entities provide warranties with respect to such products and permit the Company Entities to "pass through" such warranties to their customers upon the sale, distribution or delivery of such products by the Company Entities and no Company Entity has taken any action (or failed to take any action) that would reasonably be expected to negate the availability to their respective customers of any "pass through" warranties from the applicable suppliers. There are no claims or other Actions outstanding, pending or, to the Company's knowledge, threatened, and during the previous three (3) years no claims or other Actions have been submitted or asserted, relating to breach of any guarantee, warranty or indemnity relating to any products designed, sold, manufactured, distributed or delivered by, or services provided by, the Company Entities, which have not been resolved between the Company Entities and any customer without any Liability to the Company Entities, and, to the Company's knowledge, there is no reasonable basis for any present or future claim or other Action that would reasonably be expected to give rise to any such Liability. To the Company's knowledge there is no material design defect, nor any failure to warn, with respect to any products now or previously designed, tested, sold, manufactured, distributed or delivered by, or services now or previously provided by, any Company Entities.

(b) Product Liability. There are no claims or other Actions pending, or, to the Company's knowledge, threatened, and during the previous three (3) years no claims or other Actions have been submitted or asserted, alleging that any Company Entity has any Liability (whether in negligence, breach of warranty, strict liability, failure to warn, or otherwise) arising out of or relating to any claimed injury or damage to individuals or property as a result of the claimed ownership, possession or use of any products allegedly designed, tested, sold, manufactured, distributed or delivered by any Company Entity, and, to the Company's knowledge, there is no reasonable basis for any present or future claim or other Action that would reasonably be expected to give rise to any such Liability.

Section 3.21 Insurance. The Company Entities are 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 they are engaged; all policies of insurance and any fidelity or surety bonds insuring the Company Entities or their respective businesses, assets, employees, officers and directors are in full force and effect in all material respects; the Company Entities are in compliance with the terms of such policies and instruments in all material respects;

there are no material claims by any Company Entity under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; no Company Entity has been refused any insurance coverage sought or applied for; and no Company Entity 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 at a cost that would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 3.22 **No Restrictions on Dividends**. Other than pursuant to the executed approval with the revolving lender under the Revolving Loan Agreement that has been obtained in writing on the date hereof, a true, complete and accurate copy of which has been made available to Purchaser, Company Entity is a party to or otherwise bound by any instrument or agreement that limits or prohibits or could limit or prohibit, directly or indirectly, the Company from redeeming the Purchased Preferred Stock pursuant to its terms or paying any dividends or making other distributions on the Purchased Preferred Stock, and no Company Entity is a party to or otherwise bound by any instrument or agreement that limits or prohibits or could limit or prohibit, directly or indirectly, any Company Entity from paying any dividends or making other distributions on its limited or general partnership interests, limited liability company interests, or other equity interest, as the case may be, or from repaying any loans or advances from, or (except for instruments or agreements that by their express terms prohibit the transfer or assignment thereof or of any rights thereunder) transferring any of its properties or assets to, the Company or any other Subsidiary of the Company.

Section 3.23 **Related Party Transactions**. Except as set forth in the Company SEC Documents, and except for compensation or other employment arrangements in the Ordinary Course of Business, there are no transactions, agreements, arrangements or understandings between the Company Entities, on the one hand, and any Affiliate (including any director or officer) thereof, but not including any wholly owned Subsidiary of the Company, on the other hand, that would be required to be disclosed pursuant to Item 404 of Regulation S-K of the SEC in the Company's Annual Report on Form 10-K that have not been so disclosed.

Section 3.24 **Disclosure**. The Company has made available to the Purchaser all the information reasonably available to the Company that the Purchaser have requested for deciding whether to acquire the Purchased Securities. No representation or warranty of any Company Entity contained in this Agreement and no certificate furnished or to be furnished to Purchaser at the Closing contains any untrue statement of a material fact or, to the Company's knowledge, omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

Section 3.25 **Certain Fees**. Except for Armory Group LLC, the Company has no liability or obligation to pay any brokerage, finder's or other fee or commission or similar payment to any broker, finder, investment banker or other agent with respect to the sale of any of the Purchased Securities or the consummation of the Contemplated Transactions.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES
OF THE PURCHASER

Each of the Purchaser, severally but not jointly or jointly and severally, represents and warrants to the Company as follows:

Section 4.01 **Existence**. The Purchaser is duly organized and validly existing and in good standing under the Laws of its jurisdiction of organization or formation, with all necessary power and authority to own or lease its assets and to conduct its business as currently conducted.

Section 4.02 **Authorization, Enforceability**. The Purchaser has all necessary corporate, limited liability company, trust or partnership power and authority to execute, deliver and perform its obligations under the Transaction Documents to which it is a party. The execution, delivery and performance of such Transaction Documents by the Purchaser and the consummation by it of the Contemplated Transactions have been duly and validly authorized by all necessary corporate action, and no further consent or authorization of the Purchaser is required. Each of the Transaction Documents to which the Purchaser is a party has been or, when delivered hereunder, will have been, duly executed and delivered by the Purchaser, where applicable, and constitutes, or will constitute, a legal, valid and binding obligation of the Purchaser, enforceable in accordance with its terms, subject to the Enforceability Exceptions.

Section 4.03 **No Breach**. The execution, delivery and performance of the Transaction Documents to which the Purchaser is a party by the Purchaser and the consummation by the Purchaser of the Contemplated Transactions will not, whether by lapse of time or otherwise, (a) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any material agreement to which the Purchaser is a party or by which the Purchaser is bound or to which any of the property or assets of the Purchaser is subject, (b) conflict with or result in any violation of the provisions of the Organizational Documents of the Purchaser, or (c) violate any Law of any Governmental Authority or body having jurisdiction over the Purchaser or the property or assets of the Purchaser, except in the case of clauses (a) and (c), for such conflicts, breaches, violations or defaults as would not prevent the consummation of the Contemplated Transactions.

Section 4.04 **Certain Fees**. No fees or commissions or similar payments are or will be payable by the Purchaser to brokers, finders, investment bankers or other agent with respect to the purchase of any of the Purchased Securities or the consummation of the Contemplated Transactions, except for fees or commissions for which the Company is not responsible.

Section 4.05 **Unregistered Securities**.

(a) Accredited Purchaser Status; Sophisticated Purchaser. The Purchaser is (a) an "accredited investor" within the meaning of Rule 501(a) (1), (2), (3) or (7) under the Securities Act, as amended, and (b) an "Institutional Account" as defined in FINRA Rule 4512(c) and (c) a sophisticated institutional investor, experienced in investing in private equity transactions and capable of evaluating investment risks independently, both in general and with regard to all

transactions and investment strategies involving a security or securities, including the Purchaser's participation in the Contemplated Transactions. The Purchaser has determined based on its own independent review and such professional advice as it deems appropriate that its purchase of the Purchased Securities and participation in the Contemplated Transactions (i) are fully consistent with its financial needs, objectives and condition, (ii) comply and are fully consistent with all investment policies, guidelines and other restrictions applicable to the Purchaser, (iii) have been duly authorized and approved by all necessary action, and (iv) are a fit, proper and suitable investment for the Purchaser, notwithstanding the substantial risks inherent in investing in or holding the Purchased Securities. The Purchaser is able to bear the substantial risks associated with its purchase of the Purchased Securities, including but not limited to loss of its entire investment therein.

(b) Information. The Purchaser and its Representatives have had the opportunity to ask questions of and receive answers from the Company directly and review the Company SEC Documents. Based on such information as the Purchaser has deemed appropriate, the Purchaser has independently made its own judgment concerning the Company and its businesses, operations and prospects and analysis and decision to enter into this Agreement and the Contemplated Transactions. Except for the representations, warranties and agreements of the Company expressly set forth in this Agreement or any Transaction Document, the Purchaser is relying exclusively on its own investment analysis and due diligence (including professional advice it deems appropriate) with respect to the Contemplated Transactions, the Purchased Securities and the business, condition (financial and otherwise), management, operations and properties of the Company, including all business, legal, regulatory, accounting, credit and tax matters. Neither any inquiries nor any other due diligence investigations conducted at any time by the Purchaser and its Representatives shall modify, amend or affect the Purchaser' right to rely on the Company's representations and warranties contained in Article III above. The Purchaser understands that its purchase of the Purchased Securities involves a high degree of risk.

(c) Legends. The Purchaser understands that, until such time as the Purchased Securities or the Underlying Shares have been sold pursuant to an effective registration statement under the Securities Act, or the Purchased Securities or Underlying Shares are eligible for resale pursuant to Rule 144 promulgated under the Securities Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, the Purchased Securities or the Underlying Shares (as applicable) will bear a restrictive legend substantially as follows: "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT UNDER ANY CIRCUMSTANCES BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF WITHOUT AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY OTHER APPLICABLE SECURITIES LAWS OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE SECURITIES LAWS." Additionally, if required by the authorities of any state in connection with the issuance or sale of the Purchased Securities or Underlying Shares, such Purchased Securities or Underlying Shares (as applicable) shall bear the legend required by such state authority.

(d) Acquisition for Investment Purposes. The Purchaser is acquiring its entire beneficial ownership interest in the Purchased Securities for its own account for investment purposes only and not with a view to any distribution of the Purchased Securities in any manner that would violate the securities laws of the United States or any other jurisdiction. The Purchaser has been advised and understands that the Purchased Securities have not been registered under the Securities Act, the "blue sky" laws of any jurisdiction or the laws of any other jurisdiction and may be resold only if registered pursuant to the provisions of the Securities Act (or if eligible, pursuant to the provisions of Rule 144 promulgated under the Securities Act or pursuant to another available exemption from the registration requirements of the Securities Act) and in compliance with the restrictions on transfer set forth in the Transaction Documents. The Purchaser has been advised and understands that the Company, in issuing the Purchased Securities, is relying upon, among other things, the representations and warranties of the Purchaser contained in this Article IV in concluding that such issuance is a "private offering" and is exempt from the registration provisions of the Securities Act.

(e) Rule 144. The Purchaser understands that the Purchased Securities must be held indefinitely unless and until the Purchased Securities are registered under the Securities Act or an exemption from registration is available. The Purchaser has been advised of and is aware of the provisions of Rule 144 promulgated under the Securities Act.

(f) Reliance by the Company. The Purchaser understands that the Purchased Securities are being offered and sold in reliance on a transactional exemption from the registration requirements of federal and state securities Laws and that the Company is relying upon the truth and accuracy of the representations, warranties, agreements, acknowledgments and understandings of the Purchaser set forth herein in order to determine the applicability of such exemptions and the suitability of the Purchaser to acquire the Purchased Securities.

Section 4.06 Sufficient Funds. The Purchaser will have available to it at the Closing sufficient funds to enable the Purchaser to pay in full at the Closing the entire amount of the Total Purchase Price in immediately available cash funds.

Section 4.07 Ownership. As of the date of this Agreement, the Purchaser beneficially owns, directly or indirectly, only the number of shares of Common Stock as described opposite its name on Schedule B and Schedule B includes all Affiliates of the Purchaser that own any securities of the Company beneficially or of record and reflects all shares of Common Stock in which the Purchaser or its Affiliates has any interest or right to acquire, whether through derivative securities, voting agreements or otherwise (whether or not such Common Stock can be acquired within sixty (60) days).

Section 4.08 No General Solicitation. The Purchaser did not learn of the investment in the Purchased Securities as a result of any general solicitation or general advertising.

ARTICLE V
COVENANTS

Section 5.01 Cooperation; Further Assurances. The Company shall use its commercially reasonable efforts to promptly obtain all approvals and consents required by,

necessary or advisable to consummate the Contemplated Transactions. The Company agrees to execute and deliver all such documents or instruments, to take all commercially reasonable action and to do all other commercially reasonable things it determines to be necessary, proper or advisable under applicable Laws and regulations or as otherwise reasonably requested by the Purchaser to consummate the Contemplated Transactions.

Section 5.02 Conduct of Business.

(a) Conduct of the Business Generally. From the date hereof until the Closing, or the earlier termination of this Agreement in accordance with Article VII, except as expressly contemplated by this Agreement or the other Transaction Documents or required by applicable Law, without the prior written consent of the Purchaser, the Company shall cause the other Company Entities to:

(i) conduct the Business only in the Ordinary Course of Business and in all material respects in accordance with all applicable Law;

(ii) use commercially reasonable efforts to maintain the value of the Business as a going concern;

(iii) maintain in effect the insurance coverage described in Section 3.21 (or equivalent replacement coverage);

(iv) use commercially reasonable efforts to preserve intact its business organization and relationships with third parties (including lessors, licensors, suppliers, distributors and customers) and employees;

(v) pay, discharge or otherwise satisfy as the same shall become due and payable, all of its obligations and liabilities, including federal and material state and local Tax liabilities, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Company or other Company Entities; and

(vi) consult with the Purchaser prior to taking any action or entering into any transaction that may be of strategic importance to a Company Entity.

(b) Specific Prohibitions. Without limiting the generality or effect of Section 5.02(a), from the date of this Agreement until the Closing, or the earlier termination of this Agreement in accordance with Article VII, without the prior written consent of the Purchaser, the Company shall not, and the Company shall not cause or permit any of the other Company Entities to, take any of the following actions:

(i) establish a record date for, declare, set aside, make or pay any distribution in respect of the equity interests of the Company or repurchase, redeem or otherwise acquire any outstanding equity interests or other securities of, or other ownership interests in, the Company other than pursuant to its equity incentive plans;

(ii) transfer, issue, sell or dispose of any equity interests of the Company or its Subsidiaries or grant options, warrants, calls, phantom shares, profit participation or other rights to purchase or otherwise acquire equity interests of the Company other than pursuant to its equity incentive plans;

(iii) except in connection with a merger of wholly owned Subsidiaries, effect any recapitalization, reclassification, stock split or like change in the capitalization of the Company or its Subsidiaries;

(iv) amend any Organizational Document of the Company or its Subsidiaries;

(v) effect any split, combination, reclassification or similar action with respect to its capital stock or other equity interests or adopt or carry out any plan of complete or partial liquidation or dissolution;

(vi) make any material change in the Company's or its Subsidiaries' financial accounting principles, except as required by changes in GAAP (or any interpretation thereof) or in applicable Law;

(vii) except in connection with a merger of wholly owned Subsidiaries, merge or consolidate with any other Person, or acquire capital stock or assets of any other Person;

(viii) incur any Indebtedness for borrowed money or guarantee any such indebtedness of another Person (other than (A) Indebtedness for borrowed money between the Company and its Subsidiaries or (B) accrual of interests under the instruments of indebtedness existing as of the date hereof);

(ix) (A) merge or consolidate with any Person; (B) acquire any material assets, except for acquisitions of inventory, equipment and raw materials in the Ordinary Course of Business; or (C) make any loan, advance or capital contribution to, acquire any equity interests in, or otherwise make any investment in, any Person (other than loans and advances to employees in the Ordinary Course of Business, and other than loans or advances to, or investments in, wholly owned Subsidiaries of the Company existing on the date of this Agreement that are made in the Ordinary Course of Business);

(x) sell, lease, license or otherwise dispose of any of its material assets, other than sales of inventory in the Ordinary Course of Business;

(xi) settle, agree to settle, waive or otherwise compromise any pending or threatened Actions (A) involving potential payments by or to any Company Entity of more than $1,000,000 in aggregate, (B) that admit liability or consent to non-monetary relief, or (C) that otherwise are or would reasonably be expected to be material to the Company Entities, taken as a whole, or the Business;

(xii) make, change or revoke any material Tax election; elect or change any method of accounting for Tax purposes; settle any Action in respect of Taxes; or enter into any Contract in respect of Taxes with any Governmental Authority;

(xiii) enter into, adopt, terminate, modify, renew or amend in material respect (including by accelerating material rights or benefits under) any Material Contracts;

(xiv) write up or write down any of its material assets or revalue its inventory;

(xv) take or omit to take any other action that would cause any of the representations and warranties in Article III to be untrue at, or as of any time prior to, the Closing; or

(xvi) agree or commit in writing to do any of the foregoing

Section 5.03 Superior Offer. If the Board of the Company receives a Superior Offer after the date of this Agreement but prior to the Closing or earlier termination of this Agreement, the Board of the Company may terminate this Agreement and accept the Superior Offer; provided, that the proceeds resulting from the transactions contemplated by the Superior Offer shall be used first to pay the outstanding term loan debt under the Credit Agreement as outlined in Section 5.05 and to pay, on the date of closing of such Superior Offer, all reasonable expenses and fees (including legal fees) incurred by the Purchaser and their respective Affiliates and Representatives in connection with the review, due diligence, negotiation, documentation and closing of the Contemplated Transactions.

Section 5.04 Transaction Litigation. In the event that any Transaction Litigation is brought, or, to the Company's knowledge, threatened in a writing delivered to any Company Entity, against the Company Entities from and following the date of this Agreement, (a) the Company shall promptly notify the Purchaser of such Transaction Litigation, (b) timely consult with the Purchaser with respect to the defense and/or settlement of any Transaction Litigation and (c) consider in good faith the Purchaser' advice and recommendations with respect to such Transaction Litigation. The Company shall not agree to settle or offer to settle any Transaction Litigation without the prior written consent of the Purchaser if such settlement or offer to settle would (x) involve any criminal or regulatory enforcement Action with respect to the Purchaser, their Affiliates or any Nonparty Affiliates, (y) result in any material reputational harm to the Purchaser, their Affiliates or any Nonparty Affiliates or (z) involve payments by the Purchaser, their Affiliates or any Nonparty Affiliates that will not actually be covered in full by the Company pursuant to Section 8.02. In the event that any Transaction Litigation is brought, or, to the knowledge of Purchaser, threatened in a writing delivered to the Purchaser or an Affiliate thereof, against Purchaser from and following the date of this Agreement in addition to the Company's obligation pursuant to Section 8.02, (i) the Purchaser shall promptly notify the Company of such Transaction Litigation, (ii) timely consult with the Company with respect to the defense and/or settlement of any Transaction Litigation and (iii) consider in good faith the Company's advice and recommendations with respect to such Transaction Litigation. No Purchaser shall agree to settle or offer to settle any Transaction Litigation without the prior written consent of the Company (such consent not to be unreasonably conditioned, withheld or delayed).

Section 5.05 **Use of Proceeds**. As of the date of this Agreement, the Company shall use the proceeds of the offering of the Purchased Securities to repay in-full, in-cash all of the principal amount of outstanding term loan debt, together with all accrued unpaid interest, fees and penalties and other obligations under the Credit Agreement and all fees and expenses (including all fees and expenses) incurred by the Purchaser. After the use of proceeds pursuant to the foregoing, the remaining balance of the proceeds of the offering of the Purchased Securities may be used by the Company for general working capital expenses. The Company shall not use the proceeds transferred pursuant to this Agreement, directly or knowingly indirectly, in any manner that would cause the Purchaser to be in violation of applicable Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions and Export Control Laws.

Section 5.06 **Subsequent Equity Sales**. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that will be integrated with the offer or sale of the Purchased Securities in a manner that would require the registration under the Securities Act of the sale of the Purchased Securities to the Purchaser, or that will be integrated with the offer or sale of the Purchased Securities for purposes of the rules and regulations of any trading market such that it would require stockholder approval prior to the closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction.

Section 5.07 **Certificate of Designation**. Prior to the Closing, the Company shall file the Certificate of Designation in the form attached as Exhibit A hereto with the Delaware Secretary of State; provided that if the Delaware Secretary of State is closed due to an extraordinary event, then the Certificate of Designation, substantially in the form attached as Exhibit A hereto, shall be delivered to or positioned with the Delaware Secretary of State or a representative thereof or otherwise prepared by the Company for filing, in each case in a manner reasonably acceptable to the Purchaser, so that it can be subsequently filed, and deemed effective as of a date no later than the Closing Date, in accordance with the guidelines and procedures of the Delaware Secretary of State following the reopening of the Delaware Secretary of State after the extraordinary event has ended (such that the Certificate of Designation shall be deemed filed and effective as of a date no later than the Closing Date as if the Delaware Secretary of State had not been closed due to an extraordinary event notwithstanding that the administrative act of filing the Certificate of Designation on the applicable systems of the Delaware Secretary of State and the acceptance of such filing by the Delaware Secretary of State will not occur until the Delaware Secretary of State is reopened after the extraordinary event has ended).

Section 5.08 **Tax Matters**.

(a) Tax Status. The Company covenants and agrees to use commercially reasonable efforts to (i) avoid becoming a USRPHC, (ii) monitor whether it is likely to become a USRPHC and (iii) provide a written notice to Purchaser at least twenty (20) Business Days prior to any event, as a result of which, the Company expects to be determined as a USRPHC while the Purchaser owns an equity interest in the Company. For the avoidance of doubt, the Company may rely on the advice of an accounting firm of national standing in determining whether it is a USRPHC. At Purchaser's request from time to time, the Company shall promptly provide to the requesting Purchaser a statement in accordance with Treasury regulations Section 1.897-2(h)(1)

where it determines the interest being sold is not a United States real property interest within the meaning of Code Section 897. The Company also covenants and agrees to not, either directly or indirectly by amendment, merger, consolidation or otherwise, change the entity classification of the Company from a corporation to a partnership for U.S. federal income tax purposes.

(b) Tax Treatment. The Company and Purchaser (i) shall treat the Purchased Securities as security that is not "preferred stock" within the meaning of Section 305 of the Code and the Treasury Regulations issued thereunder, (ii) agree that no Purchaser shall be required to include in income as a dividend (including any deemed dividends) for U.S. federal, state and local income tax purposes any income or gain in respect of the Purchased Securities unless and until dividends are declared and paid in cash in respect of such Purchased Securities (iii) shall not treat any portion of the proceeds received by Purchaser from a redemption or a sale of the Purchased Securities as a dividend for U.S. federal income tax purposes under Section 302 of the Code or otherwise (together the "Tax Treatment") and (iv) agree to take no positions or actions inconsistent with the Tax Treatment, including on any IRS Form 1099, unless otherwise required pursuant to a final "determination" as defined under Section 1313(a) of the Code or if the Company or Purchaser concludes, after consultation with its applicable tax advisors, that a change in applicable Law after the Closing would cause the intended Tax Treatment to not qualify for a "more likely than not" confidence level, in which case the applicable party shall deliver written notice of such conclusion and the legal basis therefor to the other parties, and each such other party shall have a reasonable period to notify the applicable party if it agrees or disagrees with such conclusion and the legal basis therefor; provided, the Parties shall cooperate to resolve any such disagreement in good faith.

(c) Purchase Price Allocation. Parties will agree upon an allocation of the Total Purchase Price among the Purchased Securities for U.S. federal income Tax purposes and any other applicable Tax purposes within sixty (60) days after the Closing and to use such purchase price allocation for all income tax and financial accounting purposes with respect to this transaction; provided that, if they do not reach a final agreement, a mutually agreed upon independent accounting firm (the cost of which will be split equally between the Purchaser, on one hand, and the Company, on the other hand) shall determine such allocation which shall be set forth in writing and shall be final and binding on the Parties.

Section 5.09 Disclosure; Public Filings; Public Announcements. The Company may, (a) file the Transaction Documents as exhibits to Exchange Act reports and (b) disclose such information with respect to the Purchaser as required by applicable Law or the rules or regulations of the NASDAQ or other exchange on which securities of the Company are listed or traded; provided, that the Company shall provide copies of any such filings and disclosures no later than two (2) Business Days prior to any such filing or disclosure for review and comment by the Purchaser and will revise any such filing or disclosure to account for any reasonable comments of the Purchaser. The Company shall, on or before the second (2nd) Business Day following the date hereof, file one or more current reports on Form 8-K with the SEC (the "8-K Filing") describing the terms of the transactions contemplated by the Transaction Document and including as exhibits to such 8-K Filing, the Transaction Documents in the form required by the Exchange Act. Except with respect to the 8-K Filing, no Party shall issue any press release or make any other public announcement with respect to this Agreement, the Transaction Documents or the Contemplated Transactions without the prior written consent of the other Party.

Section 5.10 **Compliance with Other Agreements**. The Company and certain Affiliates of the Purchaser are party to certain other agreements (the "Other Agreements"), including the Credit Agreement, the Letter of Credit, the Reimbursement Agreement and the Existing Warrants. The Parties acknowledge and agree that, except as otherwise agreed in writing between the parties to such Other Agreements, this Agreement and the Contemplated Transactions does not amend or alter the terms of such Other Agreements. The Company acknowledges and agrees that the Existing Warrants are warrants to purchase voting Common Stock. The Company agrees, and agrees to cause its Subsidiaries, to perform under and comply with, in all respects, the terms and conditions of such Other Agreements. This Section 5.10 shall survive termination of this Agreement and Closing of the Contemplated Transactions.

ARTICLE VI
CONDITIONS PRECEDENT

Section 6.01 **Mutual Conditions**. The respective obligations of each Party to consummate the purchase and sale of the Purchased Securities at the Closing shall be subject to the satisfaction, on or prior to the Closing, of each of the following conditions (any or all of which may be waived by a Party on behalf of itself in writing, in whole or in part, to the extent permitted by applicable Law):

(a) no statute, rule, order, decree or regulation shall have been enacted or promulgated, and no Action shall have been taken, by any Governmental Authority which temporarily, preliminarily or permanently restrains, precludes, enjoins or otherwise prohibits the consummation of the Contemplated Transactions or makes the Contemplated Transactions illegal; and

(b) there shall not be pending any Action by any Governmental Authority seeking to restrain, preclude, enjoin or prohibit the Contemplated Transactions.

Section 6.02 **Conditions to Purchaser's Obligations**. The obligation of Purchaser to consummate its purchase of Purchased Securities shall be subject to the satisfaction on or prior to the Closing of each of the following conditions (any or all of which may be waived by the applicable Purchaser with respect to itself in writing, in whole or in part, to the extent permitted by applicable Law):

(a) the representations and warranties of the Company contained in this Agreement that are not qualified by materiality or Material Adverse Effect shall be true and correct in all material respects (other than those representations and warranties contained in Section 3.01, Section 3.02, Section 3.03, Section 3.04, Section 3.05, Section 3.22, or the representations and warranties contained in Section 3.11 or Section 3.12 or any other representations and warranties that are qualified by materiality or Material Adverse Effect, which, in each case, shall be true and correct in all respects) when made and as of the Closing (except that representations and warranties made as of a specific date shall be required to be so true and correct as of such date only);

(b) the Company shall have performed and complied in all material respects with all of the covenants and agreements contained in this Agreement that are required to be performed or complied with by it on or prior to the Closing;

(c) the Company shall have duly adopted and filed with the Delaware Secretary of State the Certificate of Designation in the form attached hereto as Exhibit A (the "Certificate of Designation"), with such changes thereto as may be consented to by the parties hereto prior to the Closing and such filing shall have been accepted by the Delaware Secretary of State;

(d) since the date of this Agreement, there shall not have been a Material Adverse Effect;

(e) since the date of this Agreement, there shall not have been any default or event of default under the Credit Agreement that is continuing;

(f) the repayment of the outstanding Indebtedness under the Credit Agreement shall occur substantially simultaneously with the Closing in accordance with the terms of the Payoff Letter;

(g) all conditions to effectiveness to the Siena Consent have been satisfied and the Siena Consent in the form delivered to Purchaser as of the date hereof is in full force and effect;

(h) the listing of the Common Stock on NASDAQ shall not have been terminated and no notice to such effect shall have been received; and

(i) the Company shall have delivered, or caused to be delivered, to the Purchaser the Company's closing deliveries described in Section 2.03(a), as applicable.

Section 6.03 Conditions to the Company's Obligations. The obligation of the Company to consummate the sale and issuance of the Purchased Securities to Purchaser shall be subject to the satisfaction on or prior to the Closing of each of the following conditions (any or all of which may be waived by the Company in writing, in whole or in part, to the extent permitted by applicable Law):

(a) the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects (other than those representations and warranties that are qualified by materiality or Material Adverse Effect, which, in each case, shall be true and correct in all respects) when made and as of the Closing (except that representations and warranties made as of a specific date or for a specific period shall be required to be true and correct as of such date or for such specific period only);

(b) the Purchaser shall have performed and complied in all material respects with all of the covenants and agreements contained in this Agreement that are required to be performed or complied with by it on or prior to the Closing; and

(c) the Purchaser shall have delivered, or caused to be delivered, to the Company the Purchaser's closing deliveries described in Section 2.03(b), as applicable.

ARTICLE VII
TERMINATION

Section 7.01 **Termination**. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written consent of the Company and the Purchaser;

(b) by written notice from either the Company or the Purchaser, if any Governmental Authority with lawful jurisdiction shall have issued a final order, decree or ruling or taken any other final action restraining, enjoining or otherwise prohibiting the Contemplated Transactions and such order, decree, ruling or other action is or shall have become final and non-appealable;

(c) by written consent from the Company upon receipt and acceptance of a Superior Offer in accordance with Section 5.03; or

(d) by written notice from either the Company or Purchaser, with respect to itself but not any other Purchaser, if Closing does not occur by 11:59 p.m. New York time on May 26, 2023 (the "Outside Date"); provided, however, that no Party may terminate this Agreement pursuant to this Section 7.01(c) if such Party is, at the time of providing such written notice, in breach of any of its obligations under this Agreement.

Section 7.02 **Certain Effects of Termination**. In the event that this Agreement is terminated pursuant to Section 7.01, this Agreement (other than the provisions of this Section 7.02 and Sections 3.25 and 4.04 (Certain Fees), Sections 5.03 and 5.05 (Superior Offer; Use of Proceeds) and Article VIII (Miscellaneous), which shall survive such termination) shall become null and void and have no further force or effect and there shall be no Liability on the part of the Company or Purchaser or any of their respective Representatives in connection with this Agreement, except that no such termination shall relieve any party from Liability for damages to another Party resulting for a willful and material breach of this Agreement prior to the date of termination or from fraud; provided that, notwithstanding any other provision set forth in this Agreement, except in the case of fraud, the Company shall not have any such Liability in excess of the Total Purchase Price and the Purchaser shall not have any Liability in excess of the Total Purchase Price.

ARTICLE VIII
MISCELLANEOUS

Section 8.01 **Survival of Provisions**. The representations and warranties set forth herein shall survive until the date that is sixty (60) days following the filing of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023, regardless of any investigation made by or on behalf of the Company or any of the Purchaser. The covenants made in this Agreement or any other Transaction Document that by their terms are to be performed following the Closing shall survive the Closing and remain operative and in full force and effect until fully performed. Regardless of any purported general termination of this Agreement, this Article VII shall remain operative and in full force and effect as between the Company and

Purchaser, unless the Company and the applicable Purchaser execute a writing that expressly terminates such rights and obligations as between the Company and such consenting Purchaser.

Section 8.02 **Expenses; Indemnity**. Regardless of whether or not the Contemplated Transactions close, all reasonable and documented costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with the Transaction Documents and the Contemplated Transactions shall be paid by the Company (including, for the avoidance of doubt, with respect to the repayment of the amounts outstanding under the Credit Agreement and the interim amendments to the Credit Agreement and Reimbursement Agreement and review, due diligence, negotiation, documentation and closing of the Transaction Documents and the Contemplated Transactions). The Company agrees that it will indemnify and hold harmless the Purchaser from and against any and all claims, demands, or Liabilities for broker's, finder's, placement, or other similar fees or commissions incurred by the Company or any other Company Entity in connection with the sale of the Purchased Securities or the consummation of the Contemplated Transactions. The Company shall indemnify and hold the Purchaser and their respective Affiliates (including any Nonparty Affiliates) harmless (which indemnification shall include advancement of expenses and reasonable attorneys' fees), from any damages suffered by Purchaser or its Affiliates (including any Nonparty Affiliates) arising from or related to any claims or Action related to the Series C Preferred Stock, the Warrant or the Other Agreements, including, but not limited to, any claim or Action arising from or relating to any breach of fiduciary duty to the Company or its stockholders or enforcement thereof or any Transaction Litigation.

Section 8.03 **Interpretation**. Article, Section, Schedule and Exhibit references in this Agreement are references to the corresponding Article, Section, Schedule or Exhibit to this Agreement, unless otherwise specified. All Exhibits and Schedules to this Agreement are hereby incorporated and made a part hereof as if set forth in full herein and are an integral part of this Agreement. All references to instruments, documents, Contracts and agreements are references to such instruments, documents, Contracts and agreements as the same may be amended, supplemented and otherwise modified from time to time, unless otherwise specified. The word "including" shall mean "including but not limited to" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it. The word "knowledge" shall mean "knowledge after due inquiry." Any reference in this Agreement to "$" shall mean U.S. dollars. Whenever any determination, consent or approval is to be made or given by any party to this Agreement, such action shall be in such party's sole discretion, unless otherwise specified in this Agreement. If any provision in the Transaction Documents is held to be illegal, invalid, not binding or unenforceable, (a) such provision shall be fully severable and the Transaction Documents shall be construed and enforced as if such illegal, invalid, not binding or unenforceable provision had never comprised a part of the Transaction Documents, and the remaining provisions shall remain in full force and effect, and (b) the Parties shall negotiate in good faith to modify the Transaction Documents so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Contemplated Transactions are consummated as originally contemplated to the greatest extent possible. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to the Transaction Documents, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day. Whenever this Agreement

refers to a number of days, such number shall refer to calendar days, unless such reference is specifically to "Business Days," and the terms "year" and "years" mean and refer to calendar year(s). Any words imparting the singular number only shall include the plural and vice versa. The words such as "herein," "hereinafter," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The term "or" has the inclusive meaning represented by the phrase "and/or". The word "will" shall be construed to have the same meaning as the word "shall". The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. This Agreement is the product of negotiations among the parties, each of which is represented by legal counsel, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. Rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Agreement and are expressly waived by each Party. For purposes of this Agreement, the phrase "made available," when used in reference to anything made available to the Purchaser or its Representatives means made available via email to the Purchaser and its Representatives prior to 5:00 p.m. ET on the date hereof.

Section 8.04 No Waiver: Modifications in Writing.

(a) Delay. No failure or delay on the part of any Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to a Party at law or in equity or otherwise.

(b) Specific Waiver; Amendment. Except as otherwise provided herein or as specifically provided otherwise in any other Transaction Document with respect thereto, no amendment, waiver, consent, modification or termination of any provision of any Transaction Document shall be effective unless signed by (i) before Closing, each of the Parties affected by such amendment, waiver, consent, modification or termination and (ii) after Closing, Purchaser (or their respective Permitted Transferees) holding a majority of the Purchased Securities then held by the Purchaser; provided that (A) any amendment, waiver, consent, modification or termination pursuant to clause (ii) that materially or adversely impacts Purchaser (or its Permitted Transferees) shall require the written consent of the Purchaser (or Permitted Transferee) and (B) no consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration is also offered to all of the parties to the Transaction Documents (for clarification purposes, this clause (B) constitutes a separate right granted to Purchaser (or Permitted Transferee) by the Company and negotiated separately by Purchaser (or Permitted Transferee), and shall not in any way be construed as the Purchaser (or Permitted Transferees) acting in concert or as a group with respect to the purchase, disposition or voting of Purchased Securities or otherwise). Any amendment, supplement or modification of or to any provision of any Transaction Document, any waiver of any provision of any Transaction Document and any consent to any departure by the Company or Purchaser from the terms of any provision of any Transaction Document shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement, no notice to or demand on the Company

or Purchaser in any case shall entitle the Company or the Purchaser to any other or further notice or demand in similar or other circumstances. Any investigation by or on behalf of any Party shall not be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein.

Section 8.05 **Binding Effect; Assignment**.

(a) This Agreement shall be binding upon the Company, each of the Purchaser and their respective successors and permitted assigns.

(b) Neither this Agreement not any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of Law or otherwise, by Purchaser without the prior written consent of the Company (such consent not to be unreasonably withheld); provided, however, Purchaser may transfer or assign its rights hereunder to a Permitted Transferee in connection with the transfer to such Permitted Transferee of the Purchased Preferred Stock or the Purchased Warrants, in accordance with the terms thereof, and subject to Purchaser providing written notice of any such assignment to the Company promptly after such assignment is effected and that the transferee agrees to assume all of the Purchaser's rights and obligations in connection with such transfer and be bound by, and entitled to the benefits of, this Agreement as an original party hereto.

Section 8.06 **Notices**. All notices and demands provided for hereunder shall be in writing and shall be given by registered or certified mail, return receipt requested, telecopy, electronic mail, air courier guaranteeing overnight delivery or personal delivery to the following addresses:

(a) If to the Purchaser, to the addresses set forth on Schedule A.

(b) If to the Company, to:

FreightCar America, Inc.
2 North Riverside Plaza, Suite 1300
Chicago, Illinois 60606
Attention: General Counsel

or, if sent by electronic mail, to such electronic mail address as the Company shall have designated in writing to the Purchaser.

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

Winston & Strawn LLC

35 W. Wacker Drive

Chicago, Illinois 60601

Attention: Oscar David

James Brown

Email: odavid@winston.com
jrbrown@winston.com

or to such other address as the Company or the Purchaser may designate in writing. All notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; upon actual receipt if sent by certified or registered mail, return receipt requested, or regular mail, if mailed; upon actual receipt of the facsimile, if sent via facsimile; when sent, if sent by electronic mail prior to 5:00 pm New York time on a Business Day, or on the next succeeding Business Day, if not; and upon actual receipt when delivered to an air courier guaranteeing overnight delivery.

Section 8.07 **Entire Agreement**. This Agreement, the other Transaction Documents and the other agreements and documents referred to herein are intended by the Parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the Parties in respect of the subject matter contained herein and therein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to in this Agreement or the other Transaction Documents with respect to the rights granted by the Company or any of its Affiliates or the Purchaser or any of their respective Affiliates. This Agreement, the other Transaction Documents and the other agreements and documents referred to herein or therein supersede all prior agreements and understandings among the Parties with respect to such subject matter.

Section 8.08 **Governing Law; Submission to Jurisdiction**. This Agreement, and all Actions (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any Action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement), will be construed in accordance with and governed by the Laws of the State of Delaware without regard to principles of conflicts of laws that would result in the application of the law of any other jurisdiction. Any Action against any Party relating to the foregoing shall be brought in any federal or state court of competent jurisdiction located within the State of Delaware, and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of any federal or state court located within the State of Delaware over any such Action. The Parties irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

Section 8.09 **Waiver of Jury Trial**. THE PARTIES TO THIS AGREEMENT EACH HEREBY WAIVES, AND AGREES TO CAUSE ITS AFFILIATES TO WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL

TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. THE PARTIES TO THIS AGREEMENT EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 8.10 **Specific Performance**. Each of the Parties acknowledges and agrees that the other Parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each of the Parties agrees that, without posting a bond or other undertaking, the other parties will be entitled to an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any Action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter in addition to any other remedy to which it may be entitled, at law or in equity. Each Party further agrees that, in the event of any action for specific performance in respect of such breach or violation, it will not assert that the defense that a remedy at law would be adequate. The remedies available to each Party pursuant to this Section 8.10 will be in addition to any other remedy to which it is entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit any Party from, in the alternative, seeking to terminate this Agreement in accordance with Article VII. To the extent that any Party brings an Action in court to enforce specifically the performance of the terms and provisions of this Agreement (other than an Action to enforce specifically any provision that expressly survives termination of this Agreement) when expressly available to such Party pursuant to the terms of this Agreement, the Outside Date will automatically be extended to: (i) the twentieth (20^{th}) Business Day following the final, nonappealable resolution of such Action; or (ii) such other time period established by the court presiding over such Action.

Section 8.11 **No Recourse Against Others**. All claims, Actions obligations, Liabilities or causes of action (whether in contract or in tort, in law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with or relate in any manner to this Agreement, or the negotiation, execution or performance of this Agreement (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement), may be made only against (and are expressly limited to) the Company and the Purchaser. No Person other than the Company or the Purchaser, including no member, partner, stockholder, Affiliate or Representative thereof, nor any member, partner, stockholder, Affiliate or Representative of any of the foregoing (collectively, "Nonparty Affiliates"), shall have any Liability (whether in contract or in tort, in law or in equity, or granted by statute) for any claims, Actions, causes of action, obligations or Liabilities arising under, out of, in connection with or related in any manner to this Agreement or based on, in respect of or by reason of this Agreement or its negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each of the Company and the Purchaser hereby waives and releases all such Liabilities, claims, Actions, causes of action and obligations against any such third Person.

Section 8.12 **No Third-Party Beneficiaries**. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person, other than the Company and the Purchaser and their respective permitted assigns any rights or remedies hereunder, except that the Nonparty Affiliates shall be third party beneficiaries of Section 8.11.

Section 8.13 **Certain Company Acknowledgements**. The Company acknowledges on its behalf and on behalf of its Subsidiaries that:

(a) The Purchaser and its Affiliates may be full service securities or investment firms engaged, either directly or through its Affiliates, in various activities, including securities trading, commodities trading, investment management, investment banking, financial advisory, financing and brokerage activities and financial planning and benefits counseling for both companies and individuals. In the ordinary course of such activities, the Purchaser and Affiliates may actively engage in commodities trading or trade the debt and equity securities (or related derivative securities) and financial instruments (including bank loans and other obligations) of the Company and other Subsidiaries of the Company for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and financial instruments. The Purchaser or its Affiliates may also co-invest with, make direct investments in, and invest or coinvest client monies in or with funds or other investment vehicles managed by other parties, and such funds or other investment vehicles may trade or make investments in securities of the Company or other Subsidiaries of the Company or engage in commodities trading with any thereof.

(b) The Purchaser and its Affiliates are involved in a broad range of transactions and may have economic interests that conflict with those of the Company and its Subsidiaries. The Purchaser is and will act under this Agreement as an independent contractor. Nothing in this Agreement or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty of the Purchaser to the Company, any of its Subsidiaries or any Affiliate or equity holder thereof. The Contemplated Transactions are arm's-length commercial transactions between the Purchaser, on the one hand, and the Company on the other hand. In connection with the Contemplated Transactions and with the process leading to the Contemplated Transactions the Purchaser is acting solely as a principal and not as agent or fiduciary of the Company or any of its Subsidiaries or member of management, equity holders or creditors thereof or any other Person. The Purchaser has not assumed an advisory or fiduciary responsibility or any other obligation in favor of the Company or any of its Subsidiaries with respect to the Contemplated Transactions or the process leading thereto (irrespective of whether the Purchaser or any of its Affiliates has advised or is currently advising the Company or any of its Affiliates or equity holders on other matters), except for the obligations expressly set forth in this Agreement. The Company has consulted its own legal, tax, accounting, regulatory and financial advisors to the extent it has deemed appropriate. The Company is responsible for making its own independent judgment with respect to the Contemplated Transactions and the process leading thereto.

(c) The Company acknowledges and agrees that (i) no statements, whether written or oral, made by Purchaser or its Representatives on or after the date of this Agreement shall create an obligation, commitment or agreement to provide or assist the Company in obtaining any financing or investment, (ii) the Company shall not rely on any such statement by Purchaser or its Representatives, and (iii) an obligation, commitment or agreement to provide or assist the

Company in obtaining any financing or investment may only be created by a written agreement, signed by the Purchaser and the Company, setting forth the terms and conditions of such financing or investment and stating that the parties intend for such writing to be a binding obligation or agreement. Purchaser shall have the right, in its sole and absolute discretion, to refuse or decline to participate in any other financing of or investment in the Company, and shall have no obligation to assist or cooperate with the Company in obtaining any financing, investment or other assistance.

Section 8.14 **Execution in Counterparts**. This Agreement may be executed in any number of counterparts (including .pdf or other electronic signature) and by different parties hereto in separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same agreement.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto execute this Agreement, effective as of the date first above written.

FREIGHTCAR AMERICA, INC.

By: /s/ James R. Meyer
Name: James R. Meyer
Title: Authorized Person

PURCHASER:

OC III LFE II LP

By: OC III GP LLC, its general partner

By: /s/ Adam L. Gubner
Name: Adam L. Gubner
Title: Authorized Person

[Signature Page to Purchase Agreement]

Schedule A

Purchaser and Address

OC III LFE II LP
650 Newport Center Drive
Newport Beach, CA 92660
Attn: Chris Neumeyer

Schedule B

Name of Purchaser (or Affiliate)	Number of shares of Common Stock
OC III LFE II LP	0
OC III LVS XII LP	407,958 shares of Common Stock
OC III LVS XXVIII LP ("OC III")	1,139,308 shares of Common Stock Warrant No.1 exercisable for an indeterminate number of shares of Common Stock equal to 23.0% of the Common Stock Deemed Outstanding (as defined in a warrant acquisition agreement entered into with the Issuer on October 13, 2020, as amended) Warrant No. 2 exercisable for an indeterminate number of shares of Common Stock equal to 5.0% of the Common Stock Deemed Outstanding (as defined in a warrant acquisition agreement entered into with the Issuer on December 30, 2021, as amended) Warrant No. 3 exercisable for an indeterminate number of shares of Common Stock equal to 5.0% of the Common Stock Deemed Outstanding (as defined in a warrant acquisition agreement entered into with the Issuer on April 4, 2022) CO Finance LVS VI LLC and OC III may be entitled to receive additional shares of Common Stock, subject to certain conditions under the Reimbursement Agreement

Exhibit A

Form of Certificate of Designation for the Series C Preferred Stock

FORM OF

CERTIFICATE OF DESIGNATION OF
PREFERENCES, RIGHTS AND LIMITATIONS
OF SERIES C PREFERRED STOCK

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

Pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware (the "DGCL"), FreightCar America, Inc., a corporation organized and existing under the DGCL (hereinafter called the "Company"), in accordance with the provisions of Section 103 thereof, does hereby submit the following:

WHEREAS, the Certificate of Incorporation of the Company (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Certificate") authorizes the issuance of Preferred Stock, par value $0.01 per share, of the Company in one or more series; and expressly authorizes the Board of Directors of the Company (the "Board" or "Board of Directors"), subject to limitations prescribed by the Requirements of Law, to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock, and, with respect to each such series, to establish and fix the number of shares to be included in any series of Preferred Stock and the designations, rights and preferences of the shares of such series; and

WHEREAS, on [●], 2023, the Board of Directors approved and adopted the following Certificate of Designation for purposes of issuing Preferred Stock.

NOW THEREFORE, BE IT RESOLVED, that, pursuant to authority conferred upon the Board of Directors by the Certificate, the Board of Directors hereby creates as a series of Preferred Stock and authorizes for issuance [●] shares of Preferred Stock, par value $0.01 per share, of the Company, herein designated as "Series C Preferred Stock," and hereby fixes the designations, preferences and other rights, of such shares, as follows:

SECTION 1. Designation. The shares of such series of Preferred Stock shall be classified as "Series C Preferred Stock" (the "Series C Preferred Stock"). The number of authorized shares constituting the Series C Preferred Stock shall be [●].[1] Subject to the provisions of Section 9, that number from time to time may be increased or decreased (but not below the number of shares of Series C Preferred Stock then outstanding) by (a) further resolution duly adopted by the Board, or any duly authorized committee thereof, and (b) the filing of an amendment to this Certificate of Designation pursuant to the provisions of the DGCL stating that such increase or decrease, as applicable, has been so authorized.

[1] **NTD**: Equal to the number of shares of Series C Preferred Stock to be issued.

SECTION 2. Ranking. The Series C Preferred Stock will rank, with respect to dividend rights, rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company and redemption rights:

(a) on a parity basis with each other class or series of Capital Stock of the Company now existing or hereafter authorized, classified or reclassified, the terms of which expressly provide that such class or series ranks on a parity basis with the Series C Preferred Stock as to dividend rights, rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company or other Deemed Liquidation Event and redemption rights (such Capital Stock, "Parity Stock");

(b) junior to each other class or series of Capital Stock of the Company now existing or hereafter authorized, classified or reclassified, the terms of which expressly provide that such class or series ranks senior to the Series C Preferred Stock as to dividend rights, rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company or other Deemed Liquidation Event and redemption rights (such Capital Stock, "Senior Stock"); and

(c) senior to the Common Stock and each other class or series of Capital Stock of the Company now existing or hereafter authorized, classified or reclassified, the terms of which do not expressly provide that such class or series ranks on a parity basis with, or senior to, the Series C Preferred Stock as to dividend rights, rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company or other Deemed Liquidation Event and redemption rights (such Capital Stock, "Junior Stock").

The Company's ability to issue Parity Stock and Senior Stock shall be subject in all respects to the provisions of Section 9, and the Company shall not, and shall not be permitted to, issue any Parity Stock or Senior Stock in violation thereof. The respective definitions of Parity Stock, Senior Stock and Junior Stock shall also include any securities, rights or options exercisable or exchangeable or convertible into Parity Stock, Senior Stock or Junior Stock, as the case may be.

SECTION 3. Definitions. As used herein with respect to Series C Preferred Stock:

"Accrued Dividends" means, as of any date, with respect to any share of Series C Preferred Stock, all Dividends that have accrued on such share through the most recent Dividend Payment Date on or prior to such date pursuant to Section 4(b), whether or not declared, but that have not, as of such date, been paid in cash.

"Affiliate" means, with respect to any specified Person, any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Anti-Corruption Laws" means, collectively, (a) the U.S. Foreign Corrupt Practices Act; (b) the UK Bribery Act 2010; and (c) any other applicable laws related to combatting bribery or corruption.

"Anti-Money Laundering Laws" means all applicable laws, rules, or regulations relating to terrorism, financial crime or money laundering, including without limitation the United States Bank Secrecy Act, as amended by the USA PATRIOT Act of 2001, the United States Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956 and 1957), the Anti-Money Laundering Act of 2020, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 as amended including pursuant to the Money Laundering and Terrorist Financing (Amendment) Regulations 2019, Proceeds of Crime Act 2002, as amended and the rules and regulations (including those issued by any governmental or regulatory authority) thereunder.

"Applicable Margin" means, with respect to any Secured Debt, the applicable interest rate, either as an increase to a base interest rate (including LIBOR or SOFR) or the stand-alone interest rate.

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

"Board" and "Board of Directors" has the meaning set forth in the recitals above.

"Borrowing Base" means the sum of (i) 85% of outstanding accounts receivable determined as of the closing of any applicable financing or refinancing of the Company or applicable Subsidiary borrower, (ii) 65% of the book value of inventory as set forth on the most recent (prior to the closing of the applicable financing or refinancing) monthly balance sheet of the Company or applicable Subsidiary borrower, and (iii) 50% of the book value of fixed assets as set forth on the most recent (prior to the closing of the applicable financing or refinancing) monthly balance sheet of the Company or applicable Subsidiary borrower.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

"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" 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.

"Capital Stock" means, of any Person, any and all shares of, rights to purchase, warrants or options for, or other rights exercisable, exchangeable or convertible into equity interests, or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock.

"Certificate" has the meaning set forth in the recitals above.

"Certificate of Designation" means this Certificate of Designation of Rights, Preferences and Limitations of the Series C Preferred Stock.

"Change of Control" means: (a) 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; (b) 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; (c) 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 (d) 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 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, at any and all times, 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.

"Close of Business" means 5:00 p.m. (New York City time).

"Closing Date" means [●], 2023.

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

"Common Stock" means the common stock, par value $0.01 per share, of the Company.

"Company" has the meaning set forth in the recitals above.

"Contractual Obligation" means, as to any Person, any provision of any material security issued by such Person or of any material agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Disqualified Stock" means, with respect to any Person, any Equity Capital Stock that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) or upon the happening of any event (other than following the occurrence of a Change of Control or other similar event described under such terms as a "change of control," or an "asset sale" or other disposition) (i) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, (ii) is convertible or exchangeable for Indebtedness or Disqualified Stock or (iii) is redeemable at the option of the holder thereof (other than following the occurrence of a Change of Control or other similar event described under such terms as a "change of control," or an "asset sale" or other disposition), in whole or in part; provided that Equity Capital Stock issued to any Plan, or by any such Plan to any employees of the Company or any Subsidiary thereof, shall not constitute Disqualified Stock solely because it may be required to be repurchased or otherwise acquired or retired in order to satisfy applicable statutory or regulatory obligations.

"Dividend Payment Date" means March 31, June 30, September 30, and December 31 of each year, commencing on [●][2], 2023 (the "Initial Dividend Payment Date"); provided that if any such Dividend Payment Date is not a Business Day, then the applicable Dividend shall be payable on the Business Day immediately preceding such Dividend Payment Date.

"Dividend Payment Period" means the period from and including the applicable Issuance Date to, but excluding, the applicable Initial Dividend Payment Date and, subsequent to such Initial Dividend Payment Date, the period from and including any Dividend Payment Date to, but excluding, the next Dividend Payment Date.

"Dividend Rate" means 17.50% per annum, or such other rate as specified in Section 4(a) and/or as may be increased pursuant to Section 6(a).

"Dividend Record Date" has the meaning set forth in Section 4(d).

"Dividends" has the meaning set forth in Section 4(a).

"EBITDA" means EBITDA as reported in the Company's quarterly financial statements published on Form 10-Q or, if not including in the Company's quarterly financial statements, the Company's consolidated net income or loss for such period before extraordinary items and before the cumulative effect of any change in accounting principles plus (a) the following to the extent deducted in calculating such consolidated net income or loss: (i) consolidated interest expense, (ii) all income tax expense deducted in arriving at such consolidated net income or loss, (iii) depreciation and amortization expense, (iv) non-cash impairment of assets (tangible and intangible) and related non-cash charges, (v) charges and expenses related to stock based compensation awards, (vi) net non-cash reorganization expenses and charges and (vii) other non-recurring expenses reducing such consolidated net income or loss which do not represent a cash item in such period or any future period (including losses attributable to the sale of assets other

[2] **NTD**: Most recent quarter to the closing date (i.e., if closing occurs May 22nd, June 30, 2023).

than in the Ordinary Course of Business) and minus (b) the following to the extent included in calculating such consolidated net income or loss: (x) income tax credits for such period, (y) all gains arising in relation to the sale of assets other than in the Ordinary Course of Business and (z) all non-cash items increasing such consolidated net income or loss for such period.

"Eligible Cash" shall mean, with respect to any Person, unrestricted cash and cash equivalents of such Person in each case that is on deposit in a domestic deposit account or securities account, as applicable, that is (i) established with a depositary bank that is insured by the Federal Deposit Insurance Corporation, and (ii) not subject to any Liens other than statutory liens in favor of a depository bank arising by operation of law.

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

"Equity Capital Stock" means Capital Stock other than any debt securities convertible into equity 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 Person, 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 shall continue to be considered an ERISA Affiliate within the meaning of this definition with respect to the period such entity was an ERISA Affiliate and with respect to liabilities arising after such period for which any Person 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 Person 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 Person 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 Person 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 Person 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 Person; (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 Person 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 Person 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.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time; provided that for purposes of the definitions of Change of Control, "Exchange Act" means the Securities Exchange Act of 1934 as in effect on the Closing Date.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including the European Union.

"Holder" means a Person in whose name the shares of the Series C Preferred Stock are registered, which Person shall be treated by the Company and Transfer Agent as the absolute owner of the shares of Series C Preferred Stock for the purpose of making payment and for all other purposes; provided that, to the fullest extent permitted by Requirements of Law, no Person that has received shares of Series C Preferred Stock in violation of the Securities Purchase Agreement or this Certificate of Designation shall be a Holder and the Transfer Agent shall not, unless directed otherwise by the Company, recognize any such Person as a Holder and the Person in whose name the shares of the Series C Preferred Stock were registered immediately prior to such transfer shall remain the Holder of such shares.

"Indebtedness" means, with respect to any Person on any date of determination (without duplication): (i) all obligations in respect of indebtedness of such Person for borrowed money; (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (iii) all reimbursement obligations of such

Person in respect of letters of credit, bankers' acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit, bankers' acceptances or other instruments plus the aggregate amount of drawings thereunder that have not then been reimbursed) (except to the extent such reimbursement obligations relate to trade payables and such obligations are expected to be satisfied within thirty (30) days of becoming due and payable); (iv) all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; (v) all guarantees by such Person of Indebtedness of other Persons, to the extent so guaranteed by such Person; (vi) monetary obligations under any receivables factoring, receivable sales or similar transactions and all monetary obligations under any Capital Lease Obligations, tax ownership/operating lease, off-balance sheet financing or similar financing; (vii) the redemption, repayment or other repurchase amount of such Person with respect to any Disqualified Stock of such Person or (if such Person is a Subsidiary of the Company) Preferred Stock of such Subsidiary, but excluding, in each case, any accrued dividends (the amount of such obligation to be equal at any time to the maximum fixed involuntary redemption, repayment or repurchase price for such Equity Capital Stock, or if less (or if such Equity Capital Stock has no such fixed price), to the involuntary redemption, repayment or repurchase price therefor calculated in accordance with the terms thereof as if then redeemed, repaid or repurchased, and if such price is based upon or measured by the fair market value of such Equity Capital Stock, such fair market value shall be as determined in good faith by the Company) and (viii) all accrued interest, penalties, fees and premiums with respect to any obligations in clauses (i)-(vii). The Indebtedness of any Person shall include the Indebtedness of any partnership of or joint venture in which such Person is a general partner or a joint venturer.

"IRS" shall mean the U.S. Internal Revenue Service.

"Issuance Date" means, with respect to any share of Series C Preferred Stock, the date of issuance of such share.

"Junior Stock" has the meaning set forth in Section 2(c).

"Lien" means any pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, servitude, right-of-way, lien (statutory or other), mortgage, security interest, or other security arrangement and any other preference, priority, or preferential arrangement in the nature of a security interest of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any Synthetic Lease or other financing lease having substantially the same economic effect as any of the foregoing.

"Liquidation Event" means a liquidation, dissolution or winding up, voluntary or involuntary, of the Company or a Change of Control of the Company, except to the extent such Change of Control results from any Transfer by or to the Series C Investor or any of its Affiliates.

"LTM EBITDA" means EBITDA of the Company and its Subsidiaries on a consolidated basis for the most recently ended four fiscal quarters for which financial statements are available immediately preceding the date on which such LTM EBITDA is being calculated.

"Material Adverse Effect" means any circumstance or condition that would materially adversely affect (1) the business, operations, property or condition (financial or otherwise) of the Company and its Subsidiaries taken as a whole, (2) the validity or enforceability as to the Company of this Certificate of Designation, (3) the ability of the Company to perform its payment obligations under this Certificate of Designation or (4) the material rights or remedies (taken as a whole) of the Holders under this Certificate of Designation.

"Materials of Environmental Concern" means 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, ureaformaldehydeinsulation, per- or poly-fluoroalkyl substances, asbestos or asbestos-containing material.

"Multiemployer Plan" shall mean a Plan that is a "multiemployer plan" as defined in Section 3(37) or Section 4001(a)(3) of ERISA.

"Non-Compliance Event" shall mean:

(i) failure by the Company and its Subsidiaries to comply with Section 9 or Section 15(a)(i)-(iii) hereof;

(ii) the Company or any Subsidiary breaches any covenant or other agreement contained in this Certificate of Designation, the Certificate or the by-laws, and such breach shall continue unremedied for a period of ten (10) Business Days after the date on which written notice thereof shall have been given to the Company by the Preferred Majority Holders;

(iii) any representation or warranty made by the Company or any of its Subsidiaries in the Securities Purchase Agreement (or in any amendment, modification or supplement thereto) or which is contained in any certificate furnished at any time by or on behalf of the Company or any of its Subsidiaries pursuant to the Securities Purchase Agreement or this Certificate of Designation shall prove to have been incorrect in any material respect on or as of the date made or deemed made and the circumstances giving rise to such misrepresentation are not altered so as to make such representation or warranty correct in all material respects by the date falling ten (10) Business Days after the date on which written notice thereof shall have been given to the Company by the Preferred Majority Holders (or, if the circumstances giving rise to such misrepresentation are not capable of alteration, on the date on which written notice thereof shall have been given to the Company by the Preferred Majority Holders);

(iv) the Company or any Subsidiary breaches any covenant or other agreement in the Securities Purchase Agreement (or in any amendment, modification or supplement thereto) and such breach shall continue unremedied for a period of ten (10) Business Days after the date on which written notice thereof shall have been given to the Company by the Preferred Majority Holders;

(v) (1) the commencement by the Company or any of its Subsidiaries of any Proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts or (B) seeking appointment of a receiver, interim receiver, receivers, receiver and manager, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Company, any of its Subsidiaries shall make a general assignment for the benefit of its creditors; or (2) the commencement against the Company or any of its Subsidiaries of any Proceeding or other action of a nature referred to in clause (1) above which (x) results in the entry of an order for relief or any such adjudication or appointment or (y) remains undismissed, undischarged, unstayed or unbonded for a period of sixty (60) days; or (3) the commencement against the Company or any of its Subsidiaries of any Proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (4) the Company or any of its Subsidiaries shall take any corporate or other organizational action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (1), (2), or (3) above; or (5) the Company or any of its Subsidiaries shall be generally unable to, or shall admit in writing its general inability to, pay its debts as they become due; or

(vi) the entry of one or more judgments or decrees against the Company or any of its Subsidiaries involving in the aggregate at any time a liability (net of any insurance or indemnity payments actually received in respect thereof prior to or within sixty (60) days from the entry thereof, or committed to be received in respect thereof in the event any appeal thereof shall be unsuccessful) in excess of $5,000,000, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof.

"Notice of Optional Redemption" has the meaning set forth in Section 6(b).

"Optional Redemption" has the meaning set forth in Section 6(a).

"Ordinary Course of Business" means an action taken by any Person in the ordinary course of such Person's business that is consistent with the past customs and practices of such Person (including past practice with respect to quantity, amount, magnitude and frequency, standard employment and payroll policies and past practice with respect to management of working capital and the making of capital expenditures) and that is taken in the ordinary course of the normal day-to-day operations of such Person.

"Organizational Documents" means collectively, with respect to any Person, (i) in the case of any corporation, the certificate of incorporation (including any certificate of designation) 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 Capital Stock of such Person.

"Parity Stock" has the meaning set forth in Section 2(a).

"PBGC" shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

"Permitted Transferee" means with respect to each Holder, (a) any Affiliate of such Holder and (b) with respect to any Holder that is an investment fund or a vehicle of an investment fund (or investment funds), any other investment fund or vehicle of which such Holder or an Affiliate thereof serves as the general partner or discretionary manager or advisor (so long as such investment fund or vehicle was not established for the purpose of acquiring Series C Preferred Stock) and in which such Holder or Affiliate thereof retains voting and dispositive power; provided, that a portfolio company of a Holder or its Affiliates shall not be a Permitted Transferee.

"Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"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, the Company or any of its respective ERISA Affiliates or with respect to which the Company or any of its respective ERISA Affiliates has or could reasonably be expected to have liability, contingent or otherwise, under ERISA.

"Preferred Majority Holders" means, at any time of determination, the Holders of a majority of outstanding shares of Series C Preferred Stock, as modified by Section 9(c).

"Preferred Stock" means, as applied to the Equity Capital Stock of any corporation or company, Equity Capital Stock of any class or classes (however designated) that by its terms is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation or company, over shares of Equity Capital Stock of any other class of such corporation or company.

"Prohibited Transferees" means with respect to each Holder, any competitor of the Company and its Subsidiaries that is in the same line of business as the Company and its Subsidiaries, in each case designated in writing by the Company to the Holders from time to time; provided, that no such update shall apply retroactively to disqualify any Transfer to the extent such Transfer was made to a party (or its Affiliates) that was not a Prohibited Transferee at the time of such Transfer. For the avoidance of doubt, a Prohibited Transferee shall only include an applicable competitor operating company and its Subsidiaries and shall not include any investor in or lender to any such operating company.

"Redemption Date" means with respect to the redemption of shares of Series C Preferred Stock pursuant to this Certificate of Designation, the date set forth in the applicable Notice of Optional Redemption in accordance with Section 6(b).

"Redemption Price" has the meaning set forth in Section 6(a).

"Requirement of Law" means, as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, statute, ordinance, code, decree, 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 material property or to which such Person or any of its material property is subject, including laws, ordinances and regulations pertaining to zoning, occupancy and subdivision of real properties; provided that the foregoing shall not apply to any non-binding recommendation of any Governmental Authority.

"Responsible Officer" means, as to any Person, any of the following officers of such Person: (a) the chief executive officer or the president and, with respect to financial matters, the chief financial officer, the treasurer or the controller, (b) any executive vice president or, with respect to financial matters, any treasurer or controller, who has been designated in writing to the Holders as a Responsible Officer by such chief executive officer or president or, with respect to financial matters, such chief financial officer, treasurer or controller, (c) 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 and (d) with respect to Section 11 and without limiting the foregoing, the general counsel.

"Restricted Party" means any Person (a) included on one or more of the Restricted Party Lists; (b) located, organized, or ordinarily resident in a jurisdiction that is the subject of country- or territory-wide sanctions (for example, Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk People's Republic, Luhansk People's Republic, Kherson and Zaporizhzhia regions of Ukraine); (c) owned or controlled by, or acting on behalf of, any of the foregoing; (d) with whom U.S. persons are otherwise prohibited from transacting under Sanctions and Export Control Laws; or (e) with whom any of the Company or its Subsidiaries is otherwise prohibited from dealing under applicable Sanctions and Export Control Laws.

"Restricted Party Lists" means sanctioned and other restricted party lists maintained by the United Nations, the United Kingdom, the United States, or the European Union, and any other relevant jurisdiction including but not limited to the following lists: the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, the Sectoral Sanctions Identifications List, and any other lists administered by OFAC, as amended from time to time; the U.S. Denied Persons List, the U.S. Entity List, and the U.S. Unverified List, all administered by the U.S. Department of Commerce; the consolidated list of Persons, Groups and Entities Subject to EU Financial Sanctions, as implemented by the EU Common Foreign & Security Policy; and similar lists of restricted parties maintained by other relevant Governmental Authorities.

"Revolving Loan Agreement" shall mean that certain Loan and Security Agreement dated as of October 8, 2020 by and among Siena Lending Group LLC and the Company related parties

thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Sale and Leaseback" means, with respect to any Person, any arrangement to sell or transfer any real property and thereafter rent or lease such real property or other real property which such Person intends to use for substantially the same purpose or purposes as the real property being sold or transferred.

"Sale of the Company" means the first to occur of (i) any sale or transfer by the Company or its Subsidiaries of all or substantially all of the assets of the Company and its Subsidiaries on a consolidated basis, or (ii) (A) any consolidation, merger or reorganization of the Company or any of its Subsidiaries with or into any other entity or entities or (B) any sale or transfer of the Company's or any material Subsidiaries' equity interests by the holders thereof, as a result of which, in the case of clause (ii) (x) with respect to the Company, a Change of Control occurs or (y) with respect to any Subsidiary, would result in 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 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 such Subsidiary, 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 equity interests of such Subsidiary, more than 50% of the combined voting power of such Subsidiary or otherwise results in such Persons or group of Persons controlling such Subsidiary.

"Sanctions and Export Control Laws" means any applicable law related to (a) import and export controls, including the U.S. Export Administration Regulations; (b) economic sanctions, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"), the U.S. Department of State, the European Union, any European Union Member State, the United Nations, His Majesty's Treasury of the United Kingdom, or any other jurisdiction applicable to any of the Company or its Subsidiaries; or (c) anti-boycott measures (in each case except to extent inconsistent with U.S. law).

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

"Secured Debt" means Indebtedness that is secured by any Lien of any kind upon any of the propertied or assets of the Company or any Subsidiary.

"Securities Purchase Agreement" means that certain Securities Purchase Agreement dated as of March 23, 2023, by and among the Company and the purchasers party thereto.

"Senior Stock" has the meaning set forth in Section 2(b).

"Series C Investor" means the Person who, together with its investment funds, separate accounts, and other entities owned (in whole or in part), controlled, managed, and/or advised by it or its Affiliates, held on the Closing Date the majority of the Series C Preferred Stock issued on the Closing Date, together with such Holder's investment funds, separate accounts, and other entities owned (in whole or in part), controlled, managed, and/or advised by it or its Affiliates.

"Series C Preferred Stock" has the meaning set forth in the preamble hereto.

"Single Employer Plan" shall mean any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

"Stated Value" means, with respect to any share of Series C Preferred Stock, as of any date, $1,000 per share (adjusted as appropriate in the event of any shares or securities dividend, shares or securities sub-division, shares or securities distribution, recapitalization or combination).

"Subsidiary" means, as to any Person, any corporation, association, partnership or other business entity of which more than 50% of the Total Voting Power of shares of Equity Capital Stock or other equity interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (if any) or otherwise more than 50% of the total voting power of equity interests is at the time owned or controlled, directly or indirectly, by (i) such Person or (ii) one or more Subsidiaries of such Person.

"Synthetic Lease" means 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 the Bankruptcy Code or under any other bankruptcy or insolvency law of a foreign jurisdiction to such Person, would be characterized as the Indebtedness of such Person (without regard to accounting treatment).

"Total Leverage" means, with respect to any Company and its Subsidiaries for any period, the ratio of (a) all Indebtedness as of the end of such period, less the amount of Eligible Cash as of the end of such period to (b) LTM EBITDA for such period, in each case, determined on a *pro forma* basis for incurrence or refinancing of any applicable Unsecured Debt.

"Total Voting Power" shall mean, with respect to any entity, at the time of determination, the total number of votes which may be cast in the general election of directors of such entity (or, in the event the entity is not a corporation, the governing members, Board or other similar body of such entity).

"Transfer" means any direct or indirect sale, transfer, gift, assignment, exchange, mortgage, pledge, hypothecation, encumbrance or any other disposition (whether voluntary or involuntary) of any Series C Preferred Stock (or any interest (pecuniary or otherwise) therein or rights thereto) beneficially owned by a Person. In the event that any Holder that is a corporation, partnership, limited liability company or other legal entity (other than an individual, trust or estate) ceases to be controlled by the Person or group of Persons controlling such Holder or any Permitted Transferee or Permitted Transferees of such Person or group of Persons, such event shall be deemed to constitute a "Transfer" subject to the restrictions on Transfer contained or referenced herein. For the avoidance of doubt, any direct or indirect transfer, sale, assignment, exchange or any other disposition by a partner, member or other Holder to another Person, of any partnership or membership interest or other equity security of such Holder that does not result in the Person or

group of Persons controlling such Holder or a Permitted Transferee or Permitted Transferees of such Person or group of Persons to cease to control such Holder, shall not be deemed to constitute a "Transfer" subject to the restrictions on Transfer contained or referenced herein.

"Transfer Agent" means the transfer agent and registrar of the Company with respect to the Series C Preferred Stock duly appointed from time to time.

"Unsecured Debt" means Indebtedness which is not secured by any Lien of any kind upon any of the properties or the assets of the Company or any Subsidiary.

"Warrant" means the warrant issued pursuant to that Warrant to Purchase Common Stock, by and between the Company and [●], dated [●], 2023.

"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.

SECTION 4. Dividends.

(a) Dividends. Holders shall be entitled to receive dividends of the type and in the amount determined as set forth in this Section 4 (such dividends, "Dividends"); provided that the Dividend Rate (i) shall increase by two percent (2%) upon the occurrence of, and shall remain at 19.5% (such rate, the "Default Rate") during the continuation of, any Non-Compliance Event and (ii) may also be increased as set forth in Section 6(a).

(b) Accrual of Dividends. Dividends on each share of Series C Preferred Stock shall accrue daily at a rate equal to the Dividend Rate on the Stated Value plus any Accrued Dividends, from and including the Issuance Date of such share, whether or not declared and whether or not the Company has assets legally available to make payment thereof, as further specified below, and shall be cumulative. Dividends on the Series C Preferred Stock shall accrue on the basis of a 365-day year based on actual days elapsed. The amount of Dividends payable with respect to any share of Series C Preferred Stock for any Dividend Payment Period shall equal the sum of the daily Dividend amounts accrued in accordance with the prior sentence of this Section 4(b) with respect to such share during such Dividend Payment Period.

(c) Arrearages; Payment of Dividends.

(i) Except as described in this Section 4(c), Dividends shall be payable in cash.

(ii) Dividends shall be payable quarterly in arrears on each Dividend Payment Date, commencing on the first Dividend Payment Date following the Issuance Date of such share, and shall be paid in cash if, as and when authorized by the Board, or any duly authorized committee thereof, and declared by the Company, to the extent not prohibited by Requirements of Law.

(iii) If the Company fails to declare and pay pursuant to this Section 4(c) a full Dividend in cash on the Series C Preferred Stock on or prior to any Dividend Payment

Date, then the amount of the unpaid portion of such Dividend shall automatically be added to the amount of Accrued Dividends on such share on the applicable Dividend Payment Date without any action on the part of the Company or any other Person.

(d) Record Date. The record date for payment of Dividends on any relevant Dividend Payment Date will be the Close of Business on the fifteenth (15th) day of the calendar month that contains the relevant Dividend Payment Date (each, a "Dividend Record Date"), whether or not such day is a Business Day.

SECTION 5. Liquidation Rights.

(a) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, the Holders shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Company may be made to or set aside for the holders of any Junior Stock, and subject to the rights of the holders of any Senior Stock or Parity Stock issued in accordance with this Certificate of Designation and the rights of the Company's existing and future creditors, to receive in full a liquidating distribution in cash and in the amount per share of Series C Preferred Stock equal to the Redemption Price as of the date of such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company. Holders shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company after receiving in full what is expressly provided for in this Section 5, and will have no right or claim to any of the Company's remaining assets.

(b) Partial Payment. If in connection with any distribution described in Section 5(a) above, the assets of the Company or proceeds therefrom are not sufficient to pay in full the aggregate liquidating distributions required to be paid pursuant to Section 5(a) to all Holders and the liquidating distributions payable to all holders of any Parity Stock issued in accordance with this Certificate of Designation, the amounts distributed to the Holders and to the holders of all such Parity Stock shall be paid pro rata in proportion to the respective aggregate liquidating distributions to which they would otherwise be entitled Section 5(a) if all amounts payable with respect thereto were paid in full.

SECTION 6. Redemption at the Option of the Company; Redemption at the Option of the Holder; Other Repurchases.

(a) Optional Redemption. Subject to the provisions of this Section 6, the Company, at its option, may redeem for cash all or a portion of the outstanding shares of Series C Preferred Stock (each, an "Optional Redemption") at a price per share of Series C Preferred Stock (the "Redemption Price") equal to the sum of (i) the Stated Value per share of Series C Preferred Stock to be redeemed *plus* (ii) an amount equal to the Accrued Dividends with respect to such share *plus* (iii) accrued and unpaid dividends since the most recent Dividend Payment Date with respect to such share as of the applicable Redemption Date. The Company shall not be required to redeem any shares of Series C Preferred Stock at any time other than pursuant to Section 6(d); provided, that, if the Company has not redeemed all of the outstanding shares of Series C Preferred Stock in full in cash on or prior to the 48-month anniversary of the Closing Date, the then-applicable Dividend Rate (which, for the avoidance of doubt, may be the Default Rate,) shall

increase by adding 0.5% (*i.e.*, 18.0%, 18.5%, etc.) to such Dividend Rate (or Default Rate, as applicable) for each quarter after such anniversary until the Company redeem all of the outstanding shares of Series C Preferred Stock in full in cash.

(b) Exercise of Optional Redemption. If the Company elects to effect an Optional Redemption, the Company shall send to the Holders a written notice in accordance with Section 16 (i) notifying the Holders of the election of the Company to redeem all shares of Series C Preferred Stock and the Redemption Date, and (ii) stating the place or places at which the shares of Series C Preferred Stock shall, upon presentation and surrender of the certificates evidencing such shares of Series C Preferred Stock, be redeemed (and other instructions a Holder must follow to receive payment), and the Redemption Price therefor (such notice, a "Notice of Optional Redemption"). The Redemption Date selected by the Company shall be no less than ten (10) Business Days and no more than thirty (30) Business Days after the date on which the Company provides the Notice of Optional Redemption to the Holders. The Notice of Optional Redemption shall state the Redemption Date selected by the Company. Any full or partial redemption of shares of Series C Preferred Stock pursuant to Section 6(a) shall be on a *pro rata* basis from the Holders based on the Redemption Price of Capital Stock held by them.

(c) Effect of Redemption. Upon surrender, in accordance with said notice, of the certificates, if any, for the Series C Preferred Stock (to the extent applicable, properly endorsed or assigned for transfer, if the Company shall so require and the notice shall so state), such shares shall be redeemed by the Company by payment of the applicable Redemption Price in full in cash to the Holder thereof on the applicable Redemption Date (of if such the certificate (if any) for such shares of Series C Preferred Stock is not surrendered on the applicable Redemption Date, on the date of surrender of such certificate). To the fullest extent permitted by law, if any shares of Series C Preferred Stock are not redeemed on the applicable Redemption Date by payment in full in cash (or such amounts have not been irrevocably deposited or set aside for payment in full in cash) of the applicable Redemption Price to the Holder thereof, for any reason, all such unredeemed shares shall remain outstanding and entitled to all of the designations, rights, preferences, powers, restrictions and limitations of the Capital Stock set forth in this Certificate of Designation, including the right to accrue and receive any Dividends thereon as provided in Section 4 until the date on which the Company actually redeems and pays in full the Redemption Price for such shares. The Company shall reasonably promptly issue new certificates, as applicable, to reflect any unredeemed shares of Series C Preferred Stock.

(d) Redemption at the Option of the Holders. At any time from and after the sixth (6^{th}) anniversary of the Closing Date, if any shares of Series C Preferred Stock remain outstanding, the Holders (by action of the Preferred Majority Holders) shall have the right to require the Company redeem all, but not less than all, of the then-outstanding shares of Series C Preferred Stock in full in cash for a price equal to the then-applicable Redemption Price calculated in accordance with Section 6(a). If the Holders (as determined by the Preferred Majority Holders) elect to exercise their Redemption Demand rights, the Holders shall send to the Company a written notice in accordance with Section 16 (any such notice, a "Redemption Demand"). If the Company (i) does not redeem the shares of Series C Preferred Stock by payment in full in cash of the Redemption Price for such shares, calculated as of the date the Company redeems such shares, for any reason, on or prior to the date that is six (6) months after the delivery of the Redemption Demand and (ii) the Board, or any duly authorized committee thereof, recommends a Sale of the

Company, each share of Series C Preferred Stock shall thereafter have the right to vote on such Sale of the Company and, except as otherwise provided by law, the Holders of Series C Preferred Stock and the holders of Common Stock shall vote together as a single class with the Holders of Series C Preferred Stock being entitled to a cast a number of vote per share of Series C Preferred Stock equal to the quotient of: (i) ten percent (10%) of the Total Voting Power of all outstanding voting shares of the Company (subject to such aggregate voting rights of the Series C Preferred Stock not exceeding 19.99% of the Total Voting Power of the Company as of Closing Date when combined with the voting rights of any shares of Common Stock acquired upon exercise of the Warrant) and (ii) the number of outstanding shares of Series C Preferred Stock.

(e) Repurchases or Other Acquisitions. The Company and its Subsidiaries shall not redeem, repurchase or otherwise acquire any shares of Series C Preferred Stock other than through procedures open to all Holders on a *pro rata* basis in accordance with customary procedures to be agreed between the Company and the Preferred Majority Holders.

(f) Status of Shares. Shares of Series C Preferred Stock redeemed, repurchased or otherwise acquired in accordance with this Section 6, shall return to the status of and constitute authorized but unissued shares of Preferred Stock, without classification as to series until such shares are once more classified as a particular series by the Board pursuant to the provisions of the Certificate. For the avoidance of doubt, any subsequent classification of Preferred Stock redeemed, repurchased or otherwise acquired pursuant to this Section 6 shall be subject to the limitations set forth in Section 9(b)(iii) hereof.

SECTION 7. Deemed Liquidation.

(a) Generally. In the event of the occurrence of (i) a Change of Control or (ii) any voluntary or involuntary bankruptcy, liquidation, dissolution or winding up of the Company or any material Subsidiary (each of (i) and (ii), a "Deemed Liquidation Event"), the Company shall redeem all of the outstanding shares of Series C Preferred Stock on the applicable date of a Deemed Liquidation Event (the "Deemed Liquidation Date"), for cash, to the extent permitted by law, at a price per share of Series C Preferred Stock equal to the applicable Redemption Price on such Deemed Liquidation Date; provided that in the case of any event specified in clause (ii) of the definition of Deemed Liquidation Event, all shares of Series C Preferred Stock outstanding held by the Holders shall be automatically and immediately subject to redemption at the applicable Redemption Price. If on the Deemed Liquidation Date the Company is not so permitted by law to redeem all of the outstanding shares of Series C Preferred Stock, then the Company shall redeem such shares to the fullest extent permitted by law on a *pro rata* basis from the Holders based on the Redemption Price of shares of Series C Preferred Stock held by them. Any shares of Series C Preferred Stock that are not redeemed pursuant to the immediately preceding sentence shall remain outstanding and entitled to all of the designations, rights, preferences, powers, restrictions and limitations of the shares of Series C Preferred Stock set forth herein, including the right to continue to accrue and receive Dividends as set forth in Section 4; provided that such redemption shall not be required in connection with a Deemed Liquidation Event where the shares of Series C Preferred Stock are purchased (at the then applicable Redemption Price) for cash by any Person other than the Company in connection with such Deemed Liquidation Event.

(b) Deemed Liquidation Mechanics.

(i) In the event that, pursuant to Section 7(a), the Company is required to redeem the shares in connection with a Deemed Liquidation Event, at least five (5) Business Days prior to any anticipated Deemed Liquidation Event, the Company shall send a notice to each of the Holders, which shall state that (A) the Deemed Liquidation Event is expected to occur and that the shares of Series C Preferred Stock are expected to be redeemed pursuant to this section and that all such shares will be redeemed, in each case, subject to the occurrence of such Deemed Liquidation Event; (B) the expected Redemption Price; and (C) the expected Deemed Liquidation Date.

(ii) On or before any Deemed Liquidation Date, the Company shall, to the extent permitted by law, redeem the shares of Series C Preferred Stock and pay the applicable Redemption Price to the account(s) designated by the Holder(s) of such shares.

(iii) Upon payment in full of the amounts owing under Section 7(a) to any Holder that has its shares of Series C Preferred Stock redeemed, the Dividends with respect to such shares shall cease to accrue after the date of such payment in full and all rights with respect to such redeemed shares shall forthwith terminate.

(iv) From and after the Close of Business on the Deemed Liquidation Date or, with respect to all shares of Series C Preferred Stock not redeemed on such date, the date on which such shares are redeemed following the Deemed Liquidation Date, as contemplated in Section 7(a), which shares of Series C Preferred Stock shall be deemed to be redeemed on the date on which the Company sends payment in full therefor, in cash, as provided in Section 7(a), to the Holders being so redeemed (each a "Delayed Deemed Liquidation Date"), all rights of the Holders being so redeemed shall cease with respect to such shares on such Deemed Liquidation Date or Delayed Deemed Liquidation Date, as applicable, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever. Any shares of Series C Preferred Stock not redeemed in full in cash on the applicable Deemed Liquidation Date shall continue to accrue Dividends at the Default Rate until the date of payment in full in cash on the applicable Delayed Deemed Liquidation Date.

SECTION 8. Transfer of Series C Preferred Stock.

(a) Subject to compliance with applicable U.S. federal and state Requirements of Law governing the Transfer of securities, at any time, shares of the Series C Preferred Stock shall be transferable by the Holders (i) to any Permitted Transferee or (ii) to any Person with the prior consent of the Board, and the Company shall recognize and register any such Transfer on its books. From and after the fifth (5^{th}) anniversary of the Closing Date, shares of Series C Preferred Stock shall be transferable by the Holders to any Person who is not a Prohibited Transferee and the Company shall recognize and register any such Transfer on its books; provided, that, except as otherwise agreed by the Board, upon any such Transfer to a Person who is not a Permitted Transferee, (x) any Series C Designee or Series C Observer shall immediately resign from the Board, (y) such transferee shall not have the right to designate a Series C Designee or Series C Observer as set forth in Section 10 below or to unliterally or join with other Holders in delivering a Redemption Demand pursuant to Section 6(d); provided, that such transferee shall not be counted in determining the Preferred Majority Holders for purposes of making a Redemption Demand (but

not for any other purpose pursuant to Section 6), and (z) the Board protective provisions as set forth in Section 9(c) below shall be null and void. In addition, upon any Transfer to a Person which is not a Permitted Transferee, the Series C Investor shall, and shall cause such transferee to, agree with the Company to amend this Certificate of Designation to eliminate Section 9(c) and Section 10 of this Certificate of Designation and to take all required actions to file such amendment with the Delaware Secretary of State. Any Transfer not in accordance with this Section 8(a) shall be void *ab initio*.

(b) The Company shall use its commercially reasonable efforts to cooperate with the Holders of the Series C Preferred Stock in connection with any Transfer to be consummated in accordance with this Section 8, including providing reasonable and customary information (i) in connection with any such Holder's marketing efforts or any such potential transferee's due diligence (subject to customary confidentiality restrictions) or (ii) in order to comply with applicable U.S. federal and state Requirements of Law governing the Transfer of securities.

(c) Notwithstanding anything to the contrary in this Certificate of Designation, the following shall not be considered a Transfer: (i) the incurrence of any Lien on or grant of any indirect or direct interest in the Company of any Holder with respect to its Series C Preferred Stock provided in favor of back-leverage lenders or other financing sources to such Holder and (ii) a direct or indirect voluntary or involuntary sale, assignment, transfer, gift, surrender for cancellation, exchange, pledge or other disposition, or the direct or indirect grant, transfer or other disposition in connection with the foreclosure, acceptance of an assignment in lieu of foreclosure or other exercise of remedies or enforcement action with respect to such Liens or interests incurred in accordance with the foregoing clause (i) pursuant to which all or any portion of such Series C Preferred Stock is directly or indirectly transferred, sold or assigned to such back-leverage lenders or other financing sources, the agents designated by such lenders or financing sources or designees of such lenders or financing sources, it being understood that upon such Transfer, any such lender or financing source, such agents, or such designees, as applicable, shall thereafter be a Holder for all purposes of this Certificate of Designation.

SECTION 9. Voting; Protective Provisions.

(a) Voting. Except as expressly set forth herein (including Section 6(d)) or required by applicable law, the Series C Preferred Stock shall be non-voting. On any matter on which Holders are entitled to vote, the Holders shall vote separately as a single class with respect to the Series C Preferred Stock, in person or by proxy, at a meeting called for such purpose or by written consent without a meeting. Each Holder of Series C Preferred Stock will have one vote per share of Series C Preferred Stock on any matter on which Holders of Series C Preferred Stock are entitled to vote. The approval of any matter or action by the Holders under this Certificate of Designation, unless otherwise specified, shall require the affirmative vote or consent of the Preferred Majority Holders.

(b) Preferred Protective Provisions. So long as any Series C Preferred Stock is outstanding, the Company will not, and will cause its Subsidiaries not to, either directly or indirectly (whether or not such approval is required pursuant to the DGCL), do any of the following without the affirmative vote or written consent of the Preferred Majority Holders, constituting or

voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent shall be null and void *ab initio* and of no force or effect:

(i) amend, alter, waive or repeal any provisions of the Company's Organizational Documents in a manner that adversely affects the rights, preferences, privileges or power of the Series C Preferred Stock (for the avoidance of doubt, the filing in accordance with applicable law of a certificate of designations or any similar document setting forth or changing the designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications or other terms of any class or series of stock of the Company shall be deemed an amendment to the Company's Organizational Documents);

(ii) increase the authorized number of the Series C Preferred Stock;

(iii) create, authorize or issue (by reclassification or otherwise) additional shares of Series C Preferred Stock, any Parity Stock, any Senior Stock (including, for the avoidance of doubt, any voting Preferred Stock or non-voting Preferred Stock, as such terms are defined in the Certificate) or any securities, options or rights convertible or exchangeable into, or exercisable for the foregoing;

(iv) declare, pay or set aside for payment any dividend or distribution, or redeem or acquire any Capital Stock of the Company, other than Dividends on the Series C Preferred Stock;

(v) create, incur, assume or refinance or have its direct or indirect Subsidiaries create, incur, assume or refinance any Secured Debt (which shall include issuing letters of credit), other than Secured Debt (A) (1) not to exceed 110% of the applicable Borrowing Base and which would not increase the Applicable Margin in a manner that would result in the total yield on such Secured Debt being more than three percentage points per annum higher than the Applicable Margin set forth in the Revolving Loan Agreement in effect as of the Closing Date; (B) in respect of Capital Lease Obligations and purchase money obligations in an aggregate principal amount not to exceed $10,000,000 at any one time outstanding; (C) incurred in the Ordinary Course of Business or (D) statutory liens of landlords, mechanics, materialmen, workmen, warehousemen and other similar persons arising or incurred in the Ordinary Course of Business;

(vi) create, incur, assume or refinance or have its direct or indirect Subsidiaries create, incur, assume or refinance any Unsecured Debt, except Unsecured Debt (A) incurred in the Ordinary Course of Business, (B) in an aggregate amount under this clause (vi) of less than $3,000,000, the proceeds of which are used for general corporate overhead expenses, including professional fees and expenses and other operational expenses of the Company related to the ownership or operation of the business of the Company or any of its Subsidiaries; or (C) if (x) (1) incurrence of such Unsecured Debt is approved by the majority of the Board and (2) the Total Leverage (*pro forma* for such incurrence of Unsecured Debt) is less than 2.5 and (y) the proceeds from such incurrence of Unsecured Debt are used first to repay the Series C Preferred Stock;

(vii) (A) create, or hold Capital Stock in, any direct or indirect Subsidiary that is not wholly owned (either directly or through one or more other direct or indirect Subsidiaries) by the Company, (B) permit any direct or indirect Subsidiary to create, or authorize the creation of, or issue or obligate itself to issue, any shares of any class or series of Capital Stock, (C) sell, transfer or otherwise dispose (by way of merger, consolidation or otherwise) of any Capital Stock of any direct or indirect Subsidiary of the Company, or (D) permit any direct or indirect Subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such Subsidiary;

(viii) permit any Liquidation Event or Deemed Liquidation Event unless the Holders of Series C Preferred Stock actually receive proceeds of at least equal to 1.2x the Stated Value; or

(ix) enter into any agreement or make any commitment to do or take any action described in this Section 9(b).

(c) Board Protective Provisions. So long as any Series C Preferred Stock is outstanding and subject to the terms of Section 8(a), the Company will not, and will cause its Subsidiaries not to, either directly or indirectly (whether or not such approval is required pursuant to the DGCL), do any of the following without the affirmative vote or written consent of the majority of the Board, which such majority must include the Series C Designee (as defined below);

(i) enter into any joint venture or other similar transaction outside the Ordinary Course of Business;

(ii) negotiate or conduct any acquisition of any business (whether by stock or asset purchase, merger, consolidation or otherwise) other than acquisitions with an aggregate purchase price payable less than or equal to $10,000,000;

(iii) make any investment in any Person (or group of related Persons) other than investments in Subsidiaries or investments with an aggregate investment commitment of less than or equal to $10,000,000;

(iv) enter into, amend, make any material changes to or waive any material rights under any transaction between the Company or any of its Subsidiaries, on the one hand, and any officer, director, employee or equity holder (of any Affiliates of such Person) or any Affiliate of the Company of any of its Subsidiaries, on the other hand;

(v) conduct any disposal of assets in excess of $10,000,000, other than non-core assets or disposals in the Ordinary Course of Business;

(vi) enter into any new lines of business, other than those relating to (A) the current line of business of the Company and its Subsidiaries or (B) additional lines of business of the Company or its Subsidiaries approved under the rights contained in this Section 9;

(vii) hire, fire or change the auditor without replacing the auditor with a nationally recognized audit firm; or

(viii) enter into any agreement or make any commitment to do or take any action described in this Section 9(c);

For the avoidance of doubt, the breach of any of the foregoing covenants contained in this Section 9 shall be a Non-Compliance Event.

SECTION 10. Board Designation Rights.

(a) Director Designation Rights. For so long as the Series C Investor continues to hold the Series C Preferred, the Series C Investor shall be entitled to designate for recommendation by the Nominating and Corporate Governance Committee to the Board and, upon such recommendation, nomination by the Board, one (1) director from time to time as set forth below (any individual designated by the Series C Investor, the "Series C Designee"), and one (1) observer (the "Series C Observer").

(b) Series C Designee. As soon as reasonably practicable following the Closing, the size of the Board shall be increased by one member and the Board shall appoint such individual designated in writing by the Series C Investor as the initial Series C Designee (the "Initial Series C Designee") to fill a vacancy on the Board as a Class III director.

(c) Series C Observer. As soon as reasonably practicable following the Closing, the Board shall appoint such individual designated in writing by the Series C Investor as the initial Series C Observer. The Company shall permit the Series C Observer to attend and participate (in the capacity of a non-voting observer) in all meetings of the Board and any of its committees (save for meetings of any committee that is required to be composed solely of independent directors), whether in person, by telephone or otherwise. The Company shall provide the Series C Observer the same notice of all such meetings and copies of all materials distributed to members of the Board and any of its committees, as applicable, concurrently with provision of such notice and materials to the Board and any of its committees, as applicable; provided, however, that the Series C Observer (i) shall hold all information and materials disclosed or delivered to the Series C Observer in confidence and (ii) may be excluded from access to any material or meeting or portion thereof if the Board determines in good-faith, with advice from legal counsel, that such exclusion is reasonably necessary to preserve the attorney-client privilege or if the Series C Observer's access or attendance could materially and adversely affect the Board's fiduciary duties.

(c) Compliance with Nominating Guidelines. Each Series C Designee, including the Initial Series C Designee, shall comply with the requirements of the charter for, and related guidelines of, the Nominating and Corporate Governance Committee of the Board, and the Company bylaws.

(d) Additional Obligations. The Company agrees to take all necessary actions to cause the individual designated in accordance with this Section 10, to be included in the slate of nominees to be elected to the Board at the next annual or special meeting of stockholders of the Company at which directors are to be elected, in accordance with the Company's certificate of incorporation

and bylaws and the Delaware General Corporation Law, and at each annual meeting of stockholders of the Company thereafter at which Class III directors are up for election, and to recommend that the Company's stockholders vote affirmatively for each such nominee.

(e) Vacancies of Series C Designee. In the event that a vacancy is created at any time by the death, disability, retirement, resignation or removal of any Series C Designee, the Company shall take at any time and from time to time all necessary action to cause the vacancy created thereby to be filled in accordance with the terms hereof as promptly as practicable by a new Series C Designee designated by the Series C Investor to the Board seat that has become vacant.

(f) Benefits. During the period that Series C Designee is a director of the Board, such director shall be entitled to the same compensation and benefits as any other non-employee director of the Board, including cash and non-cash compensation for director service and benefits under any director and officer indemnification or insurance policy maintained by the Company.

SECTION 11. Information Rights and Inspection Rights.

(a) The Company shall provide to the Holders, or promptly give written notice to the Holders of, in form and detail reasonably satisfactory to the Holders, the following:

(i) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Company, a copy of the consolidated balance sheet of Company and its 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 Grant Thornton LLP or any other independent certified public accounting firm of nationally recognized standing reasonably acceptable to the Holders, 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;

(ii) as soon as available, but in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company, a copy of the consolidated balance sheet of the Company and its 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 the Company as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of the Company and its Subsidiaries in accordance with GAAP (subject only to normal year-end audit adjustments and the absence of footnotes);

(iii) as soon as available, but in any event within thirty (30) days after the end of each of the first two (2) months of each fiscal quarter of the Company, a copy of the consolidated balance sheet of the Company and its 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 the Company;

(iv) as soon as available, and in any event within thirty (30) days after the end of each fiscal year of the Company, a budget in form reasonably satisfactory to the Holders (including budgeted statements of income for each of the Company's and its Subsidiaries' business units and sources and uses of cash and balance sheets) prepared by the Company for (x) each fiscal quarter of such fiscal year prepared in detail and (y) each fiscal year in the five (5) years immediately following such fiscal year prepared in summary form, in each case, of the Company and its 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;

(v) concurrently with the delivery of the financial statements pursuant to Section 11(a)(i) and Section 11(a)(ii), a copy of management's discussion and analysis of the financial condition and results of operations of the Company and its 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 the Company and its 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);

(vi) promptly after any request by the Holders, copies of any detailed audit reports, management letters or recommendations submitted to the Board (or the audit committee of the Board) of the Company or its Subsidiaries by independent accountants in connection with the accounts or books of the Company or its Subsidiaries or any audit of any of them;

(vii) 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 the Company, and copies of all annual, regular, periodic and special reports and registration statements which the Company 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 Holders pursuant hereto;

(viii) promptly after the same are available, copies of any Borrowing Base certificates delivered under the Revolving Loan Agreement;

(ix) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of the Company or its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Holders pursuant to this Certificate of Designation;

(x) as soon as available, but in any event within thirty (30) days after the end of each fiscal year of the Company, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for the Company and its Subsidiaries and containing such additional information as the Holders may reasonably specify;

(xi) promptly, and in any event within five (5) Business Days after receipt thereof by the Company or any of its 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 the Company or any Subsidiary;

(xii) promptly, and in any event within five (5) Business Days after receipt thereof by the Company or its 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 the Company or its Subsidiaries and, from time to time upon request by the Holders, such information and reports regarding such instruments, indentures and loan and credit and similar agreements as the Holders may reasonably request;

(xiii) promptly, (x) such additional information regarding the business, financial, legal or corporate affairs of the Company or its Subsidiaries, or compliance with the terms of this Certificate of Designation or the Securities Purchase Agreement as any Holder may from time to time reasonably request and (y) information and documentation reasonably requested by any Holder for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act or other applicable Anti-Money Laundering Laws;

(xiv) within five Business Days after the same are filed, copies of all registration statements and any amendments and exhibits thereto, which the Company may file with the SEC or any successor or analogous Governmental Authority;

(xv) a copy of any material notice provided to the lenders or any other creditors under the Revolving Loan Agreement or to any other holder of debt securities in respect thereof at the same time as such lenders or other creditors receive such notice;

(xvi) subject to a customary confidentiality agreement, promptly upon request by the Series C Investor, any information regarding the Company provided to the Board;

(xvii) as soon as possible after a Responsible Officer of the Company knows thereof, the occurrence of any Non-Compliance Event;

(xviii) as soon as possible after a Responsible Officer of the Company knows thereof, any default or event of default under any Contractual Obligation of the Company or any of its Subsidiaries, other than as previously disclosed in writing to the Holders;

(xix) as soon as possible after a Responsible Officer of the Company knows thereof, any development or event that has had, or could reasonably be expected to have, a Material Adverse Effect, including without limitation (A) any breach or non-performance of, or any default under, a Contractual Obligation of the Company or its Subsidiaries; (B) any dispute, Proceeding or suspension between the Company or its Subsidiaries and any Governmental Authority; (C) the commencement of, or any material development in, any Proceeding affecting the Company or its Subsidiary or (D) any Proceeding by any Governmental Authority against the Company or any Subsidiary in relation to alleged or potential violations of Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions and Export Control Laws ;

(xx) as soon as possible after a Responsible Officer of the Company knows or has reason to know there thereof, the occurrence of any of the following events: (A) any ERISA Event with respect to the Company or any of its Subsidiaries, (B) the adoption of any new Single Employer Plan by the Company or any of its Subsidiaries or any of their respective ERISA Affiliates, (C) the adoption of an amendment to a Single Employer Plan if such amendment results in a material increase in benefits or unfunded liabilities or (D) the commencement of contributions by the Company or any of its Subsidiaries 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 (A) through (D), shall specify the nature thereof, what action the Company or such Subsidiary, as applicable, 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;

(xxi) promptly after the occurrence thereof, any material change in accounting policies or financial reporting practices by the Company or any Subsidiary thereof;

(xxii) promptly after the occurrence thereof, any Liquidation Event or Deemed Liquidation Event;

(xxiii) promptly after the assertion or occurrence thereof, notice of any action or Proceeding against, or of any noncompliance by, the Company or any of its 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 used by the business to be subject to any material restrictions on ownership, occupancy, use or transferability under any Environmental Law;

(xxiv) promptly after the occurrence thereof, the termination (other than in accordance with its terms) or amendment in any manner materially adverse to the interests of the holders of any material contract;

(xxv) promptly after the occurrence thereof, any breach under the Securities Purchase Agreement;

(xxvi) as soon as possible after the Company or any Subsidiary (including any Responsible Officer thereof) knows, or has reason to believe that, any of the representations and warranties set forth in Section 3.14 or Section 3.17 of the Securities Purchase Agreement are no longer true, complete or accurate; and

(xxvii) subject to clause (b) below, such additional financial and other information regarding the Company as the Series C Investor may from time-to-time reasonably request.

(b) Each notice pursuant to Section 11(a) shall be accompanied by a statement of a Responsible Officer of the Company setting forth details of the occurrence referred to therein and stating what action the Company has taken or proposes to take with respect thereto. Each notice pursuant to Section 11(a) shall describe with particularity any and all provisions of this Certificate of Designation and any other related document (including the Securities Purchase Agreement) that have been breached.

(c) The Company and its Subsidiaries shall (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 the Company and any of its 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 the Company or any of its Subsidiary, as the case may be. The Company shall permit the Holders (and their respective representatives) to visit and inspect any of its properties and examine its corporate, financial and operating records, and to make copies thereof or abstracts therefrom, and to discuss its and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, in each case at any reasonable time, upon reasonable notice, and as often as may reasonably be desired; provided that representatives of the Company may be present during any such visits, discussions and inspections; provided, further that if the Company is in material breach of any provision of this Certificate of Designation (including following any Non-Compliance Event), Holders (or any of their representatives) may do any of the foregoing at the expense of the Company at any time during normal business hours as often as may be desired and without advance notice.

(d) Documents required to be delivered pursuant to this Section 11 may at the Company's option be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) on which the Company posts such documents, or provides a link thereto on the Company's website on the Internet at the website address specified by written notice to the Holders from time to time; or (ii) on which such documents are posted on the Company's behalf on an Internet website or virtual data site to which each Holder has access (whether a commercial

or third-party website); provided, that the Company shall notify the Holders of the posting of any information on in such website virtual datasite.

SECTION 12. Transfer Agent. The Transfer Agent shall initially be Computershare Trust Company, N.A. The Company may, in its sole discretion, appoint any other Person to serve as Transfer Agent for the Series C Preferred Stock and thereafter may remove or replace such other Person at any time. Upon any such appointment or removal, the Company shall send notice thereof to the Holders.

SECTION 13. Replacement Certificates. If physical certificates evidencing the Series C Preferred Stock are issued, the Company shall replace any mutilated certificate at the Holder's expense upon surrender of that certificate to the Transfer Agent. The Company shall replace certificates that become destroyed, stolen or lost at the Holder's expense upon delivery to the Company and the Transfer Agent of evidence satisfactory to the Company and the Transfer Agent that the certificate has been destroyed, stolen or lost, together with any indemnity that may be required by the Transfer Agent and the Company.

SECTION 14. Taxes.

(a) Withholding. The Company shall be entitled to deduct and withhold taxes on all payments and distributions (or deemed distributions) on the Series C Preferred Stock to the extent required by applicable law. To the extent that any amounts are so deducted or withheld, such deducted or withheld amounts shall be treated for all purposes of this Certificate of Designation as having been paid to the Person in respect of which such deduction or withholding was made. In the event the Company previously remitted any amounts to a Governmental Authority on account of taxes required to be deducted or withheld in respect of any payment or distribution (or deemed distribution) with respect to a share of Series C Preferred Stock, the Company shall provide evidence of such remittance to such Person in respect of which such remittance was made and be entitled (i) to offset any such amounts against any amounts otherwise payable in respect of such share of Series C Preferred Stock or (ii) to require the Person in respect of whom such deduction or withholding was made to reimburse the Company for such amounts (and such Person shall promptly so reimburse the Company upon demand).

(b) Transfer Taxes. The Company shall pay any and all documentary, stamp and similar issue or transfer tax ("Transfer Tax") due on the issue of shares of Series C Preferred Stock or certificates representing such shares or securities. However, the Company shall not be required to pay any Transfer Tax imposed on any Person other than the Holder that may be payable in respect of the issue or delivery (or any transfer involved in the issue or delivery) of Series C Preferred Stock to a Person other than the Holder, and no such issue or delivery shall be made unless and until such Person requesting such issue or delivery has paid or reimbursed the Company the amount of any such Transfer Tax (to the extent the Company bore such Transfer Tax) or has established to the satisfaction of the Company that such Transfer Tax has been paid or is not payable.

(c) Tax Status. The Company covenants and agrees to use commercially reasonable efforts to (i) avoid becoming a United States real property holding corporation within the meaning of Code Section 897 ("USRPHC"), (ii) monitor whether it is likely to become a

USRPHC, and (iii) provide a written notice to each Holder at least twenty (20) business days prior to any event, as a result of which, the Company expects to be determined as a USRPHC while such Holder owns an equity interest in the Company. For the avoidance of doubt, the Company may rely on the advice of an accounting firm of national standing in determining whether it is a USRPHC. At any Holder's request from time to time, the Company shall promptly provide to the requesting Holder a statement in accordance with Treasury regulations Section 1.897-2(h)(1) where it determines the interest being sold is not a United States real property interest within the meaning of Code Section 897. The Company also covenants and agrees to not, either directly or indirectly by amendment, merger, consolidation or otherwise, change the entity classification of the Company from a corporation to a partnership for U.S. federal income tax purposes.

(d) Tax Treatment. The Company and each Holder (i) shall treat the Series C Preferred Stock as stock that is not "preferred stock" within the meaning of Section 305 of the Code and the Treasury Regulations issued thereunder, (ii) agree that no Purchaser shall be required to include in income as a dividend (including any deemed dividends) for U.S. federal, state, and local income tax purposes any income or gain in respect of the Series C Preferred Stock unless and until dividends are declared and paid in cash in respect of such Series C Preferred Stock and (iii) shall not treat any portion of the proceeds received by any Holder from a redemption or a sale of the Series C Preferred Stock as a dividend for U.S. federal income tax purposes under Section 302 of the Code or otherwise (together the "Tax Treatment"). The Company and each Holder shall not take positions or actions inconsistent with the Tax Treatment, including on any IRS Form 1099, unless otherwise required pursuant to a final "determination" as defined under Section 1313(a) of the Code or if the Company or a Holder concludes, after consultation with its applicable tax advisors, that a change in applicable Law after the Closing would cause the intended Tax Treatment to not qualify for a "more likely than not" confidence level, in which case the applicable party shall deliver written notice of such conclusion and the legal basis therefor to the other parties, and each such other party shall have a reasonable period to notify the applicable party if it agrees or disagrees with such conclusion and the legal basis therefor; provided, the Company and Holders shall cooperate to resolve any such disagreement in good faith.

SECTION 15. Compliance with Economic Sanctions, Anti-Corruption Laws, and Anti-Money Laundering Laws.

(a) The Company shall, and shall cause its Subsidiaries to:

(i) not offer, promise, provide, or authorize the provision of any money, property, or other thing of value, directly or indirectly, to any Person to improperly influence official action or secure an improper advantage, or to encourage the recipient to breach a duty of good faith or loyalty or the policies of his/her employer, or otherwise violate any Anti-Corruption Law;

(ii) not violate any Anti-Money Laundering Law;

(iii) not engage in any dealings or transactions (directly or knowingly indirectly) with or for the benefit of any Restricted Party, or otherwise violate any Sanctions and Export Control Laws;

(iv) adopt and maintain policies, procedures, and controls reasonably designed to prevent, detect, and deter violations of Anti-Corruption Laws, Anti-Money Laundering Laws, and Sanctions and Export Control Laws, to the reasonable satisfaction of the Series C Investor;

(v) promptly notify the Holders of any potential material violations by the Company or its Representatives about which the Company or any of its Subsidiaries becomes aware relating to any Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions and Export Control Laws;

(vi) comply with reasonable inquiries or requests for certification by a Holder to confirm compliance with the foregoing provisions; and

(vii) cooperate in good faith with the reasonable efforts of any other Holder or the Company to address and/or remediate potential violations by the Company or its representatives of Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions and Export Control Laws.

(b) The Company shall use its reasonable best efforts to assist each Holder in complying with its (or any of its Affiliates in complying with their) obligations under all Anti-Corruption Laws, Anti-Money Laundering Law or Sanctions and Export Control Laws.

SECTION 16. Notices. All notices referred to herein shall be in writing and, unless otherwise specified herein, all notices hereunder shall be deemed to have been given upon the earlier of receipt thereof or three (3) Business Days after the mailing thereof if sent by registered or certified mail (unless first class mail shall be specifically permitted for such notice under the terms of this Certificate of Designation) with postage prepaid, addressed: (i) if to the Company, (a) if sent by mail, to its office at FreightCar America, Inc., 2 North Riverside Plaza, Suite 1300, Chicago, Illinois 60606, Attention: General Counsel, or (b) if sent by electronic mail, to such electronic mail address as the Company shall have designated in writing to the Holders, (ii) if to any Holder, to such Holder at the address and electronic mail address of such Holder as listed in the stock record books of the Company (which, for all purposes hereunder, may include the records of the Transfer Agent) or (iii) to such other address as the Company or any such Holder, as the case may be, shall have designated by notice similarly given.

SECTION 17. Facts Ascertainable. When the terms of this Certificate of Designation refer to a specific agreement or other document to determine the meaning or operation of a provision hereof, the Company shall maintain a copy of such agreement or document at the principal executive offices of the Company and a copy thereof shall be provided free of charge to any Holder who makes a request therefor. The Company shall also maintain a written record of the Issuance Date, the number of shares of Series C Preferred Stock issued to a Holder and the date of each such issuance, the Stated Value and Accrued Dividends per share of Series C Preferred Stock and the Dividend Rate in effect from time to time and shall furnish such written record (with respect to such Holder's shares of Series C Preferred Stock) free of charge to any Holder who makes a request therefor.

SECTION 18. Amendment; Waiver. Notwithstanding any provision in this Certificate of Designation to the contrary, any provision contained herein and any right of the Holders of Series C Preferred Stock granted hereunder may be amended or waived as to all shares of Series C Preferred Stock (and the Holders thereof) upon the written consent of the Preferred Majority Holders; provided that (i) any amendment, modification, or waiver that, by its terms, would treat any Holder or Holder, in its capacity as such, either adversely or less beneficially relative to any other Holder shall require the prior written consent of such adversely or less beneficially affected Holder and (ii) without limiting the foregoing, without the written consent of each Holder adversely affected thereby, no amendment, modification or waiver shall:

(a) reduce the Dividend Rate or extend any Dividend Payment Date (except in accordance with the proviso to such definition as in effect on the Closing Date); provided that the Preferred Majority Holders shall be permitted to amend, modify or waive Non-Compliance Events and the effects thereof without the written consent of each adversely affected Holder;

(b) reduce the Stated Value or the Accrued Dividend; provided that the Preferred Majority Holders shall be permitted to amend, modify or waive Non-Compliance Events and the effects thereof without the written consent of each adversely affected Holder;

(c) reduce the Redemption Price (other than as a result of any amendment, modification or waiver of the effect of a Non-Compliance Event in accordance with clause (b) above); or

(d) amend Section 2, Section 4, Section 5, Section 6, Section 7, Section 8, Section 11, Section 14, Section 15 and this Section 18 (including any defined term used in such sections or any other amendment that has the effect of amending such sections).

SECTION 19. Severability. If any term of the Series C Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other terms set forth herein which can be given effect without the invalid, unlawful or unenforceable term will, nevertheless, remain in full force and effect, and no term herein set forth will be deemed dependent upon any other such term unless so expressed herein.

SECTION 20. Remedies. The Company acknowledges that the obligations imposed on it in this Certificate of Designation are special, unique and of an extraordinary character, and irreparable damages, for which money damages, even if available, would be an inadequate remedy, would occur in the event that the Company does not perform the provisions of this Certificate of Designation in accordance with its specified terms or otherwise breaches such provisions. The Holders shall be entitled to seek an injunction, specific performance and other equitable relief to prevent breaches of this Certificate of Designation and to seek to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled, at law or in equity, including without limitation money damages. All remedies available under this Certificate of Designation, under the Securities Purchase Agreement, at law, in equity or otherwise, will be deemed cumulative and not alternative or exclusive of other remedies. The exercise by any Holder of a particular remedy will not preclude the exercise of any other remedy, including by one or more actions for specific performance, in addition to any other remedies to which the Holders may be entitled.

SECTION 21. Interpretation. When a reference is made in this Certificate of Designation to an Article, a Section, Exhibit or Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or Schedule to this Certificate of Designation unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Certificate of Designation, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Certificate of Designation shall refer to this Certificate of Designation as a whole and not to any particular provision of this Certificate of Designation unless the context requires otherwise. The terms "or," "any" and "either" are not exclusive. The word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply "if." The word "will" shall be construed to have the same meaning and effect as the word "shall." All terms defined in this Certificate of Designation shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Certificate of Designation are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means, unless otherwise specified, such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Unless otherwise specifically indicated, all references to "dollars" or "$" shall refer to the lawful money of the United States. When calculating the period of time between which, within which or following which any act is to be done or step taken pursuant to this Certificate of Designation, the date that is the reference date in calculating such period shall be excluded (unless otherwise required by law or specified herein, if the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day). The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

SECTION 22. Expenses; Indemnity.

(a) For so long as the Series C Preferred Stock remains outstanding, the Company shall reimburse the Holders for each of their documented reasonable out-of-pocket costs, fees and expenses from time to time in responding to any request for approval under the Certificate (including this Certificate of Designation), enforcing their rights under the Certificate (including this Certificate of Designation), and/or amending the Certificate (including this Certificate of Designation); provided, that, with respect to any approval or any amendment, the Company shall not be obligated to reimburse the expenses of more than one single counsel for all Holders taken as a whole (such counsel to be selected by the Preferred Majority Holders in their sole discretion) and to the extent reasonably necessary, regulatory counsel and a single local counsel in each relevant jurisdiction.

(b) The Company shall indemnify and hold harmless the Holders, each of their respective Affiliates and controlling persons and each of their respective directors, officers, employees, partners, agents, advisors and other representatives (each, an "Indemnified Person") from and against any and all losses, claims, damages and liabilities to which any such Indemnified Person may become subject arising out of or in connection with any claim, litigation, investigation or proceeding relating to the Certificate (including this Certificate of Designation) (a "Proceeding"), regardless of whether any Indemnified Person is a party thereto or whether such Proceeding is brought by the

Company, any of its Affiliates or any third party, including advancing amounts to each Indemnified Person within thirty (30) days following written request therefor for any reasonable and documented legal or other out-of-pocket expenses incurred or to be incurred in connection with investigating or defending any Proceeding; provided, that the foregoing indemnity will not, as to any Indemnified Person, apply to losses, claims, damages, liabilities or related expenses to the extent they arise from the willful misconduct, bad faith or gross negligence of, or material breach of this Certificate of Designation or the Securities Purchase Agreement by, such Indemnified Person, in each case as determined by a final non-appealable judgment of a court of competent jurisdiction.

SECTION 23. Renunciation under DGCL Section 122(17). It is recognized and anticipated that (a) directors of the Company may serve as directors, officers, employees and agents of the Holders or their Affiliates or Associates ("Covered Persons"); (b) the Company, directly or indirectly, may engage in the same, similar or related lines of business as those engaged in by the Holders or their Affiliates or Associates and other business activities that overlap with or compete with those in which the Holders or their Affiliates or Associates may engage; (c) the Company may have an interest in the same areas of business opportunities as the Holders or their Affiliates or Associates; (d) the Company will derive substantial benefits from the service of Covered Persons as directors of the Company; and (e) it is in the best interests of the Company that the rights of the Company, and the duties of any Covered Persons, be determined and delineated as provided in this Section 23 in respect of any Potential Business Opportunities (as defined below).

If a director of the Company who is a Covered Person is presented or offered, or otherwise acquires knowledge of, a potential transaction or matter that may constitute or present a business opportunity for the Company or any of its Subsidiaries, in which the Company or any of its Subsidiaries could, but for the provisions of this Section 23, have an interest or expectancy (any such actual or potential transaction, matter or business opportunity, a "Potential Business Opportunity"), (i) such Covered Person will, to the fullest extent permitted by law, have no duty or obligation to refer such Potential Business Opportunity to the Company or any of its Subsidiaries or to give any notice to the Company or any of its Subsidiaries regarding such Potential Business Opportunity (or any matter related thereto), and such Covered Person shall have no duty or obligation to refrain from referring such Potential Business Opportunity to the Holders or their its Affiliates or Associates, (ii) if such Covered Person refers a Potential Business Opportunity to the Holders or their Affiliates or Associates, such Covered Person, to the fullest extent permitted by law, will not be liable to the Company, any of its Subsidiaries or any of its stockholders for any failure to refer such Potential Business Opportunity to the Company or its Subsidiaries, or for any failure to give notice to or otherwise inform the Company or any of its Subsidiaries regarding such Potential Business Opportunity or any matter related thereto, (iii) the Holders and their Affiliates and Associates may engage or invest in, independently or with others, any such Potential Business Opportunity, (iv) neither the Company nor any of its Subsidiaries shall have any right in or to such Potential Business Opportunity or to receive any income or proceeds derived therefrom, and (v) the Company shall have no interest or expectancy, and hereby specifically renounces, on behalf of itself and its subsidiaries, any interest or expectancy, in any such Potential Business Opportunity, unless all of the following conditions are satisfied: (x) such Potential Business Opportunity is presented or offered to a Covered Person solely in the Person's capacity as a director of the Company, (y) such Potential Business Opportunity is one the Company or any of its subsidiaries is legally and contractually permitted to undertake, and (z) the Covered Person believes that the Company possesses, or would reasonably be expected to be able to possess, the resources necessary to exploit such Potential Business Opportunity.

For purposes of this Section 23, "Associate" shall have the meaning set forth in Section 203 of the DGCL.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Designation this [●] day of [●] 2023.

By: /s/

Name:
Title:

Exhibit B-1

Exhibit B

Form of Warrant

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.

FORM OF

WARRANT TO PURCHASE COMMON STOCK
OF
FREIGHTCAR AMERICA, INC.

NO. W-00[_] May [_], 2023

THIS WARRANT CERTIFIES THAT, for value received, OC III LFE II LP, a Delaware limited partnership, 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 voting common stock, par value $0.01 per share ("Common Stock"), equal to (a) [__] shares of Common Stock (subject to adjustment hereunder) 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 $[__][1] (the "Exercise Price"), all subject to the terms, conditions and adjustments set forth below in this Warrant (this "Warrant").

This Warrant is being issued pursuant to the terms of the Securities Purchase Agreement, dated as of March 23, 2023, by and between the Company and the Holder (the "Purchase 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 Purchase 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 holder, 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 of the Company; (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 of the Company; 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 of the Company; 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.

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[1]NTD: Exercise Price to be equal to the average price for the Company's common stock 30 days prior to the date the transaction is announced.

(d) "Convertible Securities" means any securities (directly or indirectly) convertible into or exchangeable for the Common Stock, but excluding any warrants or other rights or options to subscribe for, acquire, purchase or otherwise be issued Common Stock or convertible securities.

(e) "Exercise Period" means the period commencing on the date hereof and ending on the Expiration Date.

(f) "Expiration Date" means ten (10) years from the Original Issue Date.

(g) "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.

(h) "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.

(i) "Original Issue Date" means May [__], 2023.

(j) "OTC Bulletin Board" means the Financial Industry Regulatory Authority OTC Bulletin Board electronic inter-dealer quotation system.

(k) "Person" means any individual, sole proprietorship, partnership, limited liability company, corporation, joint venture, trust, incorporated organization or government or department or agency thereof.

(l) "Pink OTC Markets" means the OTC Markets Group Inc. electronic inter-dealer quotation system, including OTCQX, OTCQB and OTC Pink.

(m) "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 8.06 of the Purchase 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 (a "Notice of Exercise");

(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:

$$X= Y*(A-B)/A$$

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 for purposes of Rule 144 under the Securities Act and as a recapitalization within the meaning of Section 368(a)(1)(E) of the Internal Revenue Code of 1986, as amended (or any similar provision of state or local law that follows the U.S. federal income tax treatment). 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 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 share 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 shares of 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 Holder, 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 on 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 shares of Common Stock, Convertible Securities, any warrants or other rights or options to subscribe for, acquire, purchase or otherwise be issued Common Stock or 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 shares of Common Stock, Convertible Securities, warrants or other rights or options to subscribe for, acquire, purchase or otherwise be issued Common Stock or Convertible Securities, in respect of outstanding shares of 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 date the Warrant is exercised, 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. 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.

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 Purchase 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 8.06 of the Purchase 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 Holder.

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 8.08 and 8.09 of the Purchase 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:
Name:
Title:

[HOLDER]

By:
Name:
Title:

NOTICE OF EXERCISE

1.a ❑ The undersigned hereby elects to purchase [__] shares of Common Stock, par value $0.01 per share ("Common Stock"), of FreightCar America, Inc. (the "Company") 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 [__] shares of Common Stock 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).

EXECUTION VERSION

SECOND AMENDMENT TO AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

THIS SECOND AMENDMENT TO AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this "***Amendment***"), dated as of November 22, 2022, is entered into by and among JAC Operations, Inc., a Delaware corporation ("***JAC***"), Freight Car Services, Inc., a Delaware corporation ("***Freight***"), JAIX Leasing Company, a Delaware corporation ("***JAIX***"), FreightCar Short Line, Inc., a Delaware corporation ("***Short***"), Johnstown America, LLC, a Delaware limited liability company ("***Johnstown***"), FreightCar Alabama, LLC, a Delaware limited liability company ("***Alabama***"), FreightCar Rail Services, LLC, a Delaware limited liability company ("***Rail***"), FreightCar Rail Management Services, LLC, a Delaware limited liability company ("***Management***"), FreightCar North America, LLC, a Delaware limited liability company ("***FCNA***"), FCA-Fasemex, LLC, a Delaware limited liability company ("***FCA***" and, together with JAC, Freight, JAIX, Short, Johnstown, Alabama, Rail, Management, FCNA, and any other Person who from time to time becomes a Borrower under the Loan Agreement, collectively, the "***Borrowers***" and each individually, a "***Borrower***"), each of the Guarantors signatory hereto and SIENA LENDING GROUP LLC ("***Lender***"). Terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement defined below.

RECITALS

A. Lender, Borrowers and Guarantors have previously entered into that certain Amended and Restated Loan and Security Agreement dated July 30, 2021 (as amended, modified and supplemented from time to time, the "***Loan Agreement***"), pursuant to which Lender has made certain loans and financial accommodations available to Borrowers.

B. Lender, Borrowers and Guarantors now wish to amend the Loan Agreement on the terms and conditions set forth herein.

C. The Loan Parties are entering into this Amendment with the understanding and agreement that, except as specifically provided herein, none of Lender's rights or remedies as set forth in the Loan Agreement or any other Loan Document is being waived or modified by the terms of this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Amendment to Loan Agreement. Schedule F to the Loan Agreement is amended and restated in its entirety and replaced with the schedule in the form of Exhibit F hereto.

2. Amendment Fee. In consideration of the agreements set forth herein, Borrowers hereby agree to jointly and severally pay to Lender an amendment fee in the amount of $7,500 (the "***Amendment Fee***"), which fee is non-refundable when paid and is fully-earned as of and due and payable on the date of this Amendment.

3. Effectiveness of this Amendment. This Amendment shall become effective upon the satisfaction, as determined by Lender, of the following conditions.

(a) Amendment. Lender shall have received this Amendment fully executed by all the parties hereto;

(b) Amendment Fee. Lender shall have received the Amendment Fee by wire transfer in immediately available funds;

(c) Representations and Warranties. The representations and warranties set forth herein and in the Loan Agreement must be true and correct in all material respects on and as of the date of this Amendment 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;

(d) Payment of Expenses. Lender shall have received payment or reimbursement for its reasonable and documented out-of-pocket attorneys' fees and expenses in connection with the preparation, negotiation and execution of this Amendment and the documents provided for herein or related hereto (the "***Fees and Expenses***"). Borrowers hereby authorize Lender to charge as a Revolving Loan the amount of the Fees and Expenses all when due and payable in satisfaction thereof, and request, to the extent that Borrowers have not separately reimbursed Lender, that Lender makes one or more Revolving Loans on or after the date hereof in an aggregate amount equal to the total amount of such Fees and Expenses, and that Lender disburses the proceeds of such Revolving Credit Loan(s) in satisfaction thereof.

(e) Other Required Documentation. All other documents and legal matters in connection with the transactions contemplated by this Amendment shall have been delivered or executed or recorded, as reasonably required by Lender.

4. Representations and Warranties. Each Loan Party represents and warrants as follows:

(a) Authority. Such Loan Party has the requisite corporate or limited liability company, as applicable, power and authority to execute and deliver this Amendment, and to perform its obligations hereunder, under the Loan Agreement (as amended or modified hereby) and under the other Loan Documents to which it is a party. The execution, delivery and performance by such Loan Party of this Amendment have been duly approved by all necessary corporate or limited liability company, as applicable, action and no other corporate or limited liability company, as applicable, proceedings are necessary to consummate such transactions.

(b) Enforceability. This Amendment has been duly executed and delivered by each Loan Party. This Amendment, the Loan Agreement (as amended or modified hereby) and each other Loan Document is the legal, valid and binding obligation of each Loan Party, enforceable against each Loan Party in accordance with its terms, and is in full force and effect, 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.

(c) Representations and Warranties. The representations and warranties contained in the Loan Agreement and each other Loan Document (other than any such representations or warranties that, by their terms, are specifically made as of a date other than the date hereof) are correct in all material

respects on and as of the date hereof 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 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.

(d) Due Execution. The execution, delivery and performance of this Amendment are within the power of each Loan Party, have been duly authorized by all necessary corporate or limited liability company, as applicable, action, have received all necessary governmental approval, if any, and do not contravene any applicable law or any material contractual restrictions binding on any Loan Party.

(e) No Default. No event has occurred and is continuing that constitutes a Default or an Event of Default.

5. Choice of Law. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES (EXCEPT SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATION LAW). FURTHER, THE LAW OF THE STATE OF NEW YORK SHALL APPLY TO ALL DISPUTES OR CONTROVERSIES ARISING OUT OF OR CONNECTED TO OR WITH THIS AMENDMENT AND ALL SUCH RELATED LOAN DOCUMENTS WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES (EXCEPT SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATION LAW).

6. Counterparts; Facsimile Signatures. This Amendment may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile or other similar form of electronic transmission shall be deemed to be an original signature hereto.

7. Reference to and Effect on the other Loan Documents.

(a) Upon and after the effectiveness of this Amendment, each reference in the Loan Agreement to "***this Agreement***", "***hereunder***", "***hereof***" or words of like import referring to the Loan Agreement, and each reference in the other Loan Documents to "***the Loan Agreement***", "***thereof***" or words of like import referring to the Loan Agreement, shall mean and be a reference to the Loan Agreement as modified and amended hereby.

(b) Except as specifically amended above, the Loan Agreement and all other Loan Documents, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed and shall constitute the legal, valid, binding and enforceable obligations of Borrowers to Lender, 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.

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of the Lender under the Loan Agreement or any of the other Loan Documents, nor constitute a waiver of any provision of the Loan Agreement or any of the other Loan Documents.

(d) To the extent that any terms and conditions in any of the other Loan Documents shall contradict or be in conflict with any terms or conditions of the Loan Agreement, after giving effect to this

Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Loan Agreement as modified or amended hereby.

8. Estoppel. To induce Lender to enter into this Amendment and to continue to make advances to Borrowers under the Loan Agreement, each Loan Party hereby acknowledges and agrees that, as of the date hereof, there exists no right of offset, defense, counterclaim or objection in favor of Borrowers as against Lender with respect to the Obligations.

9. Integration. This Amendment, together with the Loan Agreement and the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

10. Severability. If any part of this Amendment is contrary to, prohibited by, or deemed invalid under Applicable Laws, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given effect so far as possible.

11. Submission of Amendment. The submission of this Amendment to the parties or their agents or attorneys for review or signature does not constitute a commitment by Lender to waive any of its rights and remedies under the Loan Agreement or any other Loan Document, and this Amendment shall have no binding force or effect until all of the conditions to the effectiveness of this Amendment have been satisfied as set forth herein.

12. Guarantors' Acknowledgment. With respect to the amendments to the Loan Agreement effected by this Amendment, each Guarantor hereby acknowledges and agrees to this Amendment and confirms and agrees that its Guaranty (as modified and supplemented in connection with this Amendment) is and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects except that, upon the effectiveness of, and on and after the date of this Amendment, each reference in such Guaranty to the Loan Agreement, "***thereunder***", "***thereof***" or words of like import referring to the Loan Agreement, shall mean and be a reference to the Loan Agreement as amended or modified by this Amendment. Although Lender has informed the Guarantors of the matters set forth above, and each Guarantor has acknowledged the same, each Guarantor understands and agrees that Lender has no duty under the Loan Agreement, any Guaranty or any other agreement with any Guarantor to so notify any Guarantor or to seek such an acknowledgement, and nothing contained herein is intended to or shall create such a duty as to any transaction hereafter.

[Remainder of page Intentionally Blank]

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

BORROWERS:

JAC OPERATIONS, INC.

By: /s/ Michael Riordan
Name: Michael Riordan
Title: CFO

FREIGHT CAR SERVICES, INC.

By: /s/ Michael Riordan
Name: Michael Riordan
Title: CFO

JAIX LEASING COMPANY

By: /s/ Michael Riordan
Name: Michael Riordan
Title: CFO

FREIGHTCAR SHORT LINE, INC.

By: /s/ Michael Riordan
Name: Michael Riordan
Title: CFO

JOHNSTOWN AMERICA, LLC

By: /s/ Michael Riordan
Name: Michael Riordan
Title: CFO

FREIGHTCAR ALABAMA, LLC

By: /s/ Michael Riordan
Name: Michael Riordan
Title: CFO

FREIGHTCAR RAIL SERVICES, LLC

By: /s/ Michael Riordan
Name: Michael Riordan
Title: CFO

FREIGHTCAR RAIL MANAGEMENT SERVICES, LLC

By: /s/ Michael Riordan
Name: Michael Riordan

Title: CFO

FREIGHTCAR NORTH AMERICA, LLC

By: /s/ Michael Riordan
Name: Michael Riordan
Title: CFO

FCA-FASEMEX, LLC

By: /s/ Michael Riordan
Name: Michael Riordan
Title: CFO

GUARANTORS:

FREIGHTCAR AMERICA, INC.

By: /s/ Michael Riordan
Name: Michael Riordan
Title: CFO

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

By: /s/ Michael Riordan
Name: Michael Riordan
Title: CFO

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

By: /s/ Michael Riordan
Name: Michael Riordan
Title: CFO

SIENA LENDING GROUP LLC

By: /s/ Keith Holler
Name: Keith Holler
Title: Authorized Signatory

By: /s/ Steve Sanicola
Name: Steve Sanicola
Title: Authorized Signatory

Exhibit F

Schedule F

[Schedule of Eligible Accounts]

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 27, 2023, 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, 2022. We consent to the incorporation by reference of said report in the Registration Statement of FreightCar America, Inc. on Form S-8 (File Nos. 333-184820, 333-225886, 333-238297 and 333-265118) and on Form S-3 (File No. 333-259124).

/s/ GRANT THORNTON LLP

Chicago, Illinois
March 27, 2023

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 27, 2023

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 27, 2023

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, 2022 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 27, 2023

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

Date: March 27, 2023

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 Agreement to Issue Non-Convertible Preferred Stock to Reduce Debt and Provide Growth Capital

Company enhances capital structure

Proceeds to eliminate existing term loan debt and delayed draw facility, and provide additional capital to support next phase of growth

CHICAGO, March 27, 2023 -- FreightCar America, Inc. (Nasdaq: RAIL) ("FreightCar America" or the "Company"), a diversified manufacturer of railroad freight cars, today announced the entry into an agreement to issue new non-convertible preferred stock (the "Preferred") to its current financial partner. The issuance is expected to occur on May 22, 2023 and the proceeds will be used to repay in-full the Company's outstanding term loan debt, provide additional working capital and enhance the Company's future operating cash flows to invest in growth initiatives.

Highlights:

- Company will issue approximately 85,000 shares of new non-convertible preferred stock to its current financial partner at a purchase price of $1,000 per share.
- Proceeds of the Preferred will be used to retire the outstanding term loan debt.
- The remaining balance of the funds from the Preferred will be used to support further expansion of the Castaños footprint and new growth initiatives.
- As a result of the refinancing, the Company expects approximately $10 million of improvement in annual operating cash flows due to savings on its asset-based lending (ABL) facility and deferred cash dividends.

Mike Riordan, Chief Financial Officer of FreightCar America, commented, "Given the significant progress and momentum of our business, we've taken an important first step in the reshaping of our capital structure through today's transaction. This transaction significantly improves our balance sheet, lowers our interest costs and generates additional operating cash flow, allowing us to continue to invest in the business. Demand for our railcars is strong and this transaction supports the next increment of our planned growth."

For additional information about the Preferred, please refer to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022 filed today with the Securities and Exchange Commission.

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: 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; risks relating to the potential financial and operational impacts of the COVID-19 pandemic 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.

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